IN THE **HIGH COURT OF ENUGU STATE OF NIGERIA**

IN THE UDENU JUDICIAL DIVISION

HOLDEN IN ORBA

BEFORE HIS LORDSHIP HON.JUSTICE H.U.EZUGWU Ph.D

ON TUESDAY THE 06'l DAY OF JUNE, 2024.

SUIT NO: OB/42 2020

BETWEEN:

1. MARTINS IFEANYI CHUKWUMA **PLAINTIFFS**

2. **NNAMUCHI** OLUCHI

AND

1. PASCHAL AROH OBUIKEM } **DEFENDANTS**

2. ACCESS BANK **NIGERIA PLC.**

JUDGMENT

The plaintiffs instituted this suit by a Writ of Summons dated 9th November,2020against the defendant. 1st defendant responded with a Statement of Defence filed on the 26th January,2021.Upon the court's resumption in this jurisdiction on October,2021, this suit was struck out for want of diligent prosecution. Upon relistment following application by the plaintiffs, plaintiffs filed Amended Statement of Claim dated 16th November, 2022 but filed on 18th November, 2022. Praying the Honourable court for the following reliefs:

a. A declaration that the seizure and withholding of the 2nd plainiff's N3.100.000.00 (Three Million One Hundred Thousand Naira) by the 1st defendant is unlawful, illegal and unconstitutional.

b. An order of the Honourable Court directing the 1st defendant to pay the 2nd plaintiff N3.100.000.00 (Three Million One Hundred Thousand Naira) into the 1st plaintiff's account with immediate effect.

c. A declaration that it is unconstitutional, illegal and unlawful for the 2nd defendant to frozen (sic) or place restrictions on the 1st plaintiff's account without any order ofthe court.

d. An order of the Honourable Court directing the 2nd defendant to pay N100.000.000.00 (Hundred Million Naira) in favour of the 1st plaintiff or placing post-no-debit on the account of the 1st

piaintiff or freezing the account of the 1st plaintiff without an order of the Court.

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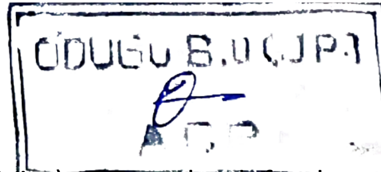

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e. N50.000.000.00 (Fifty Million Naira) against the defendants as general damages in favour of the plaintiffs.

According to the Plaintiffs' Amended Statement of Claim dated aforesaid:

1. "The 1st plaintiff name on record in this suit is a native of OwereOkpu in Orba Town Udenu Local Government Area of Enugu State within the jurisdiction of this court.

2. The 1st plaintiff is a businessman and carries on his business within Orba and its environs within the jurisdiction of this court.

3. The 1st plaintiff is a brother of full blood to the 2nd plaintiff in this suit.

4. The 2nd plaintiff is also a native of OwereOkpu in Orba Town Udenu Local Government Area of Enugu State within the jurisdiction of this court.

5. The 2nd plaintiff was a student when she opened her bank account and shall rely on her WAEC result to that effect.

6. The 1st defendant is a native of Ukehe in Igbo-Etiti Local Government Area of Enugu State, a businessman who operates and owns Bet9ja Shop.

7. The 1st defendant is a businessman who own and operates a Bet9ja shop located along Enugu Road, behind Orba Primary School, in Orba, Udenu Local Government Area of Enugu State within the jurisdiction of this court.

8. The 2nd defendant is a financial institution/commercial Bank registered under the Corporate Affairs Commission (CAC) with its branch office at Nsukka.Its business is to accept deposit of money from individuals, institutions,governments etc and other businesss that are known to law.

9. The 1st plaintiff opened a Bank with the 2nd defendant and by virtue of which the 1st plaintiff established customer-cum-banker relationship with the 2nd defendant.

10. The 1st plaintiff's Account Number in the 2nd defendant bank is 0013069253with name Martins IfeanyiChukwuma.

11. The plaintiffs aver that the 1st defendant prior to and at all times material to the incidents leading to this, is the owner of a Bet9ja shop located at Orba where the course of action that culminated to this suit arose.

12.The 2nd plaintiff playfully played a Bet9ja game at the 1st defendant's shop located at Orba.The 2nd plaintiff won the game to the tune of 7.5million plus in the 1st defendant shop. This game was played on 30th September, 2020.

13.When the 2nd plaintiff won the game, she joyously called the 1st plaintiff who is her elder brother of full blood to forward his account number because

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her account is a student account and at the time she opened it she was told the limit she or anybody can deposit money into the said account number.

14.The 2nd plnintiff avers that she only called her elder brother whose account does not have any limit deposit that can be made into it so as for the money to be paid into the Ist plaintiff on her behalf.

15.The 2nd plnintiff told the Ist defendant to pay the money in the 1st plaintiff's account because of the limit of deposit on her account.

16.The Ist plaintiff came to theIst defendant's shop at Orba, behind Orba Primary School for collection of the money as promised by the 1st defendant,but the Ist defendant in his usual way of dubiousness, did not keep the promise as he was not in his shop.

17.The Ist plaintiff called the 1st defendant on phone to know how to collect her sister's money, but the lst defendant asked him to come to Nsukka.

18.The Ist defendant grudgingly paid 4.5million into the 1st plaintiff's account No. 0013069253 in Access bank with Account Name: Martins IfcanyiChukwuma.

19.After the payment, the 1st defendant pleaded with martins to bear with him on the grounds that he was unable to ünish up with the total payment due to the 2nd plaintiff, as a result of the fact that he (sic) done nmerous transactions and has exceeded the transfer limit.

20.The 1st defendant made promise to the 1st plaintiff that he will conclude the transaction before dusk.

21.When it got to night time, around 8pm on the said day, the1st plaintiff reminded the 1st defendant the uncompleted transaction, but the 1st defendant stated that he went somewhere anid further pledge that before 9pm the 1st plaintiff will get the alert; but the 1st defendant failed to pay up the balance.

22.The decision of the 2nd defendant to place a post-no-debit (PND) alert on the accounts of a customer is unlawful.

23. The 1st plaintiff's account was frozen by the 2nd defendant without any just cause.

24.That the 1st plaintiff is entitled to exercise of fundamental right to own moveable or immoveable property as guaranteed and protected by the 1999Constitution of the Federal Republic ofNigeria (as amended).

25.The 1st plaintiff was not given any fair hearing before his account was frozen by the 2nd defendant.

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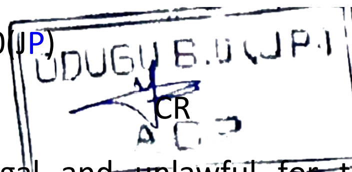


26.It is unconstitutional, illegal and unlawful for the 2nd defendant to place restrictionson the 1st plaintiff's account without giving him opportunity to defend himself.

27.The Ist defendant admitted his role in freezing my (sic) account by the 2nd defendant. In his paragraph 8 of his affidavit in support of his motion dated 28th January, 2022 and filed on the same day his averment was to the effect that he was the one that notified and instructed the 2nd defendant to freeze the 1st plaintiff's account.

28.The 2nd defendant also pu forward that it is ready to defend this suit by filing two motions, one dated 22/3/2022 and filed on the same day, and the second one dated May 2022, though no exact date on it but it was filed on 6/5/2022 as well as its deposition on paragraph 7 of its counter affidavit filed on 6/5/2022 wherein the 2nd defendant averred that it is exercising its right to align itself with the 1st defendant's case.

29.The 1st plaintiff have suffered irreparable damages because of the blockage and restriction placed on my (sic) bank account with the 2nd defendant which was activated by the 1st defendant and I deserve monetary compensation.

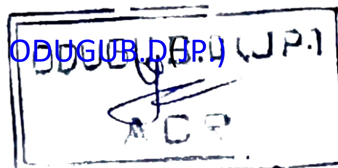
The 1st defendant filed Statement of Defence and Counterclaim dated and filed on 28th September, 2022. The 1st defendant later filed Further Amended Statement of Defence and Counter Claim dated 1st February, 2022 but filed on 8th February, 2022stating as follows:

SAVE AND EXCEPT as is herein expressly admitted, the 1st Defendant/Counterclaimant denies each and every allegation of facts contained in the Plaintiffs' Statement of Claim as if all the allegations are herein set out and traversed seriatim.

1. The 1st Defendant/Counterclaimant avers that he is not in a position to admit or denyparagraphs 1, 2, 3, 4 of the Statement of Claim but puts the Plaintiff/Defendants to Counterclaim to the strictest proof thereof.

2. The 1st Defendant/Counterclaimant denies paragraph 5 of the Statement of Claim and avers that at the material time leading tothe facts of this case,the 2nd Plaintiff/Defendant to Counterclaim was in the employment of the 1st Defendant/Counterclaimant as one of his system-operating cashiers in his Bet9ja gaming shop situated at Orba, Enugu State.

3. The 2nd Plaintiff/Defendant to Counterclaim in her written statement made to the Police, Area Command orba, barely 6 days after the jackpot winnings,



admitted that she was a cashier, an employee of the 1st Defendant/Counterclaimant at every material time to this case, contrary to the averment in paragraph 5 of the Statement of Claim that she was a student.The 15t Defendant/Counterclaimant thereby pleads the said written statement of the 2nd Plaintiff and shall at trial rely on same.

4. Paragraphs 6, 7,8,9, 10,11 of the Statement of Claim are hereby admitted.

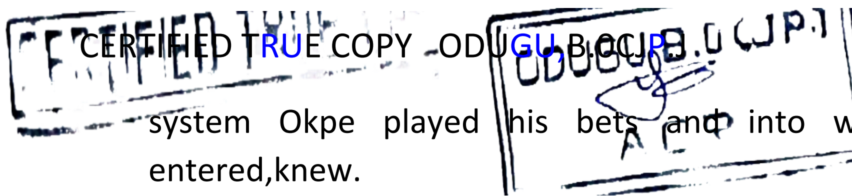
5. The 15t Defendant/Counterclaimant in response to paragraph 12 of the Statement of Claim avers that a game was played in his Bet9ja shop where the 2nd Plaintiff works as one of his cashiers and a jackpot of #7.6million was won but denies that it was the 2nd Plaintiff/Defendant to Counterclaim who played the said game and won the said jackpot.

6. The 1st Defendant/Counterclaimant avers that on the said 30th day of September, 2020, it was one of the regular customers at his Bet9ja shop at Orba, by the name Ifeanyichukwu Odo also known as Okpe, a barrow pusher,who actually came to his said Bet9ja shop and played the two separate bets on the virtual game,out of which one won the said jackpot of #7.6million.

7. The 1st Defendant/Counterclaimant avers that Okpe played the two bets with betslip No: 223500661 and betslip No: 223846140 respectively. The 1st Defendant/Counterclaimant hereby pleads the said two tickets played by Okpe and shall rely on same at trial.

8. The 1st Defendant/Counterclaimant avers that Okpe played the said two bet tickets on the betting system of the Cashier with the ID code: cashier14743-042627954.The 1st Defendant further avers that the aforementioned Cashier ID code belonged to the 2nd Plaintiff, who was a system operating cashier of the 1st Defendant/Counterclaimant at every material time to this suit.

9. The 1st Defendant/Counterclaimant avers that when Okpe played the said two tickets on the virtual system of the 2nd Plaintiff/Defendant to Counterclaim he won the sum of #2000 but unknown to Okpe a jackpot to the tune of #7.6million also fell into one of the tickets he had played but the 2nd Plaintiff/Defendant to Counterclaim, who was the cashier on whose virtual



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system Okpe played his bets and into which the jackpot winning entered,knew.

10.The 1st Defendant avers that upon the 2nd Plaintiff noticing the jackpot winning, rather than disclosing the jackpot winnings to Okpe, the true winner,she only informed him of the #2000 winnings. A player who wins a bet must return his bet ticket in order to claim the cash won. The 2nd Plaintiff therefore collected the bet tickets from Okpe and paid him #2000, after which Okpe later left the shop.

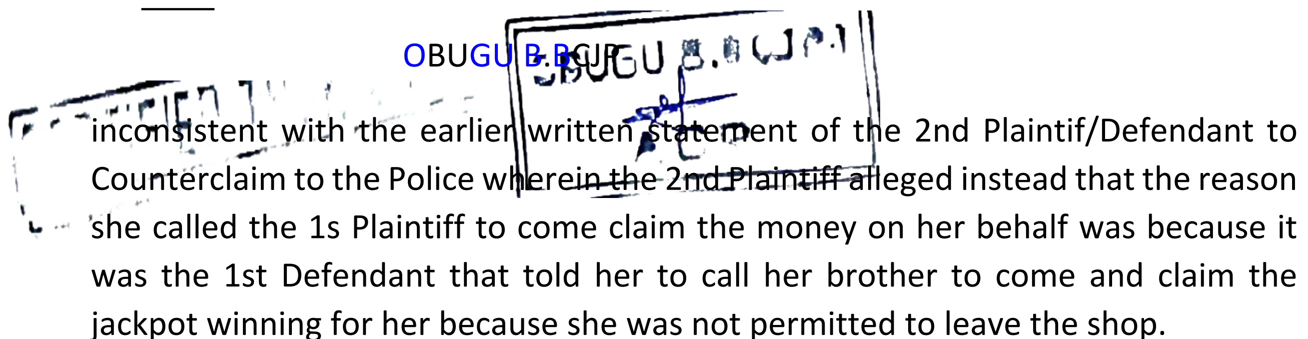
11. The 1st Defendant avers that after Okpe had stepped away from the 2nd Plaintiff's system whereon he played his bets, the 2nd Plaintiff, in order to prevent anyone, including Okpe, from noticing the jackpot winning that just entered her system, immediately shut down her system and left the shop,leaving only her co-cashier, one Lovelyne Ifechukwu Odo to attend to the other customers.

12.In further response to paragraph 12 of the Statement of Claim, the 1st Defendant/Counterclaimant avers that the law precludes cashiers or agents of a betting shop to play bets in the shop or office where they serve as cashiers or agents

13. The 1st Defendant/Counterclaimant also avers that it is a known and established rule of Bet9ja Company that no agent, staff, employees or cashiers of Bet9ja is allowed to play bet9ja games and as a matter of fact, this

rule is drummed into the ears of every new employee or staff of any Bet9ja office or shop prior to their resumption of work, even as the 1st Defendant/Counterclaimant drummed it into the ears of the 2nd Plaintiff/Defendant to Counterclaim, before she started working for him as one of his system operating cashier. The 1st Defendant/Counterclaimant hereby pleads the print-out from www.inputyouth.co.uk where the job of a betting cashier is succinctly delineated.

14. The 1st Defendant/Counterclaimant denies paragraphs 13 and 14 of the Statement of Claim and avers that the averments therein that she called the 1st Plaintiff because she was a student and had a student account are contrary and



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inconsistent with the earlier written statement of the 2nd Plaintif/Defendant to Counterclaim to the Police wherein the 2nd Plaintiff alleged instead that the reason she called the 1s Plaintiff to come claim the money on her behalf was because it was the 1st Defendant that told her to call her brother to come and claim the jackpot winning for her because she was not permitted to leave the shop.

15. Continuing from paragraph 11 above and in further response to paragraphs 13 and 14 of the Statement of Claim, The 1st Defendant/Counterclaimant avers that the true events was that the 2nd Plaintiff later returned to the shop rejoicing to Lovelyne that she has become rich; that the winner of the jackpot has collected #2000 and gone; that all the jackpot money of #7.6million was all hers now. But Lovelyne insisted that the 2nd Plaintiff should come clean and let Okpe, the true winner, know of his jackpot winning. The 1st Defendant avers that rather than the 2nd Plaintiff to listen to Lovelyne's advice and do the right thing, she attempted instead to lure Lovelyne into her crime by promising Lovelyne a substantial part of the jackpot winnings, only if Lovelyne cooperate with her (2nd Plaintiff).But Lovelyne refused.

16. 1st Defendant avers that because of the advice of Lovelyne that the 2nd Plaintiff should not keep the secret from the 1st Defendant, their boss, the 2nd Plaintiff got the 1st Plaintiff and her (2nd Plaintiff) boyfriend to join her to threaten Lovelyne, adding that if she will however cooperate they will give her out of the money enough money to use to renovate Lovelyne's family house.

17.However, Lovelyne amidst the threats and temptations maintained that the right thing should be done. Lovelyne deposed to a sworn statement at the Magistrate Court of Obollo-Afor and also made a written statement to the Police on this matter. Te 1s Defendant hereby pleads the said sworn statement and written statement of Lovelyne and shall at triaI rely on same.

18.The 1s Defendant avers that the 2"d Plaintiff continued with her wicked intention to get Okpe's money for herself. She called the 1st Plaintiff to come and front himself to the 1s Defendant as the winner of the #7.6 million winnings. She called the 1st Plaintiff to come to her place of work, the 1st

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Defendant's Bet9ja shop, in order to hand over to the Ist Plaintiff Okpe's jackpot winning ticket.

19.When the 1st Plaintiff arrived at the shop, the 2nd Plaintiff handed over the two betting tickets played by Okpe to the 1st Plaintiff, so that the 1st Plaintiff could front himself as the winner of the jackpot. The two bet tickets are tickets with betslip No: 223500661 and betslip No: 223846140 respectively.

20.The 1st Defendant denies paragraphs 15 and 16 of the Statement of Claim and states that there was no such conversation between him and the 2nd Plaintiff because the rule that staff and employees of Bet9ja are not permitted to play bet9ja was a rule clearly known and understood by the 1st Defendant and his cashiers, of which the 2nd Plaintiff was one at every material time to this case.The 1st Defendant hereby puts the 2nd Plaintiff to the strictest proof thereof.

21.Furthermore, the 1st Defendant avers that the 2nd Plaintiff sent him a WhatsApp message that someone has won a jackpot and followed up her WhatsApp message with a telephonecall. The 1st Defendant/Counterclaimant hereby pleads the said WhatsApp message and shall at trial rely on same.

22.The 1st Defendant avers that on the said telephone call with the 2nd Plaintiff,she told him tat someone has won a jackpot of #7.6m. The 15t Defendant thenasked the 2nd Plaintiff who the winner is but she answered the 1st Defendant that she does not know the winner because he was not a known or regular customer of their shop and that in fact that day was the first time ever the winner would come and play bets there, in the

1st Defendant's Bet9ja shop.

23.The 1st Defendant avers that during the telephone call, the 2nd Plaintiff told him that the alleged winner, that turned out to be the 1st Plaintif was anxious to talk to the 15t Defendant on how to collect his purported jackpot winnings.The 1st Defendant therefore spoke with the 1st Plaintiff asking the 1st Plaintiff to come and meet him in Nsukka with the ticket of the jackpot winning so that he (the 1st Defendant) can confirm the ticket and effect payment of the jackpot winning to the 15t Plaintiff without delay.

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24. The 1st Defendant/Counterclaimant therefore denies paragraph 17 of the Statement of Claim and in response avers that there was no telephone conversation between him and the 1t Plaintiff that the 15t Plaintiff should come and meet him in Nsukka to collect his alleged sister (the 2nd Plaintiff's)winnings rather that the true telephone conversation that the 1st Defendant had with the 1st Plaintiff was that the 1st Plaintif should come and mect the 1st Defendant in Nsukka to present the jackpot winning betting ticket to the 1st Defendant to confirm that he (1st Plaintiff) was the true winner of the jackpot and so that payment of the jackpot may be made to him as soon as the 1st Defendant confirm he was the winner.Because in betting, the person in possession of winning bet ticket is presumed to be the true winner of such bet.

25.The 15t Defendant further avers that the only reason he had any such telephone conversation with the 15t Plaintiff was because the 2nd Plaintiff, who was at that material time a cashier of the 1st Defendant whom the 1st Defendant trusted, had lied to the 15t Defendant that the 1st Plaintiff was the true winner of the said #7.6million jackpot winning. Since it is the 1st Defendant that pays substantial winnings won in his bet9ja shop upon confirmation of the true winner of such substantial winnings, by the presentation of the winning bet ticket to him by the supposed winner of such a bet.

26. The 15t Defendant in response to paragraph 18 of the Statement of Claim avers that the 15t Plaintiff came to meet him in Nsukka with the jackpot winning ticket; he credited the sum of #4.5million into the said 1st Plaintiff Access Bank account but denies making the payment grudgingly. Rather,the 1st Defendant avers that he made the payment as soon as he confirmed that the ticket the 1st Plaintiff presented to him was the jackpot winning ticket,because the slogan of Bet9ja is "No Story" meaning the moment you win and show proof of your winning, which is the bet ticket, Bet9ja pays you your winnings, no story asked.

27.In further response to paragraph 18 of the Statement of Claim, the 2nd Plaintiff in her

bank...".This statement of the 2nd Plaintiff clearly contradicts the allegation of fact in the said paragraph 18 that the 1st Defendant paid the #4.5million grudgingly. Rather it corroborates the testimony of the 1" Defendant that he pays confirmed winnings with no story asked.

28. The 1st Defendant avers that the true events were that the 1" Plaintiff came to

Nsukka and met with the 1st Defendant at a restaurant called Sogo Emporium.When they met, the 1st Defendant asked for his winning ticket but rather the 15t Plaintiff handed overto the 1st Defendant the two tickets Okpe played. The 1st Plaintiff stated to the 15t Defendant that he (15t Plaintiff) does not know which of the two tickets won the jackpot that all he knows is that one of the ticket won and the 15t Defendant should pay him his purported jackpot winnings.

29. The 1st Defendant was surprised that the 1st Plaintiff knew nothing about betting on Bet9ja to the point of not even knowing which purported ticket won him a jackpot of the two tickets with him. But the 1st Defendant thought nothing of it because his trusted cashier, the 2nd Plaintiff, had told him that the 1stPlaintiff was the true winner of the #7.6million jackpot

30. The 1st Defendant in response to paragraphs 19, 20 and 21 of the Statement of Claim avers that the 15t Defendant could not pay the full #7.6million winning and only paid #4.5million on that day because he had done many transfers that day and he did not even know that his transfer limit was #5million Naira; every other facts alleged in the said paragraphs of the Statement of Claim are hereby denied.

31.The 1st Defendant avers that having confirmed on his own bet9ja agent account on his phone right there that one of the tickets presented to him by the 1st Plaintiff was actually the ticket that won the jackpot; he proceeded to attempt to transfer all the #7.6million into the 1st Plaintiff's account but the transaction was not going through. It was after trying severally that he noticed a pop-up message on his phone from his bank that he cannot transfer beyond #5million per day. Due to this he said to the 1st Plaintiffthat he should let him transfer #4.5million and both of them can go to the bank and transfer the rest in the banking hall.

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32.The 1st Defendant avers that he successfully transferred #4.5million to the 1st Plaintiff's account with the 2nd Defendant bank. After the transfer he asked the 1st Plaintiff that they should go to the bank to transfer the rest in the banking hall. It was when they got to the bank and met the bank doors shut,that was when it then occurred to the 1st Defendant that the day was October 15t, a national public holiday. Because Nsukka is always busy, whether on holidays or normal workdays; the day looked as busy as any other day so the 1st Defendant/Counterclaimant subconsciously thought the day was a normal working day until he got to the bank and met the banking hall shut.

33.The 1st Defendant avers that he and the 1st Plaintiff both returned to Sogo Emporium where the 1st Defendant gave several assurances to the 1st Plaintiff that he will get the remaining of his purported winning the next day. The 15t Plaintiff out of excitement then praised the 1st Defendant stating that he plays bet9ja everyday and it is this kind of prompt payment of winnings by the 1st Defendant that has made him always play his bet9ja bets only in the 1st Defendant's Bet9ja shop.

34.It was at this point that the 1st Defendant became suspicious of the likelihood of the perpetuation of fraud by the Plaintiffs; because what the 2nd Plaintiff had earlier told the 1st Defendant categorically was that the winner of the jackpot was not a known person and had never played a bet in that shop until the bet that won the jackpot. The 1st Defendant then remembered how completely blank and ignorant the 1st Plaintiff was when he (the 1st Defendant) engaged him in conversation about betting on bet9ja, and also the fact that he could not tell which of the two tickets he presented to the 1st Defendant won the jackpot.

35.The 1st Defendant avers that to confirm his suspicion, he put a telephone call through to his second cashier, Lovelyne, who was on duty with the 2nd Plaintiff. It was then Lovelyne wo told the 1st Defendant the whole truth and confirmed all of the 1st Defendant's suspicion.

36.The 1st Defendant avers that he immediately brought this fraud of the Plaintiffs to the attention of the Nigeria Police,Area Command, Orba.The Police acting upon the complaint of the 1st Defendant arrested the Plaintiffs.

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The Police also wrote to the 2t Defendant bank to freeze the I" Plaintiff's account whre the #f4.5million was paid into, stating to the bank that the said bank account was subject of an investigation of fraudulent conversion. The 2md Defendant placed a Post-No-Debit on the 1" Plaintiff's bank account accordingly.

37.The 1" Defendant avers that when the Plaintiffs were arrested, they broke down and acted remorseful. They admitted their wrong right there at the Police Command, Orba and apologized with tears for trying to fraudulently convert #/7.6million jackpot winnings rightfuly belonging to Okpe, the true holder of the bet ticket that won the jackpot. The Plaintiffs then repentantly said they wanted to return the #4.5million which they had already fraudulently induced the 1" Defendant to pay into the 1s' Plaintiff's bank account.

38,The 1" Defendant avers that upon this show of repentance by the Plaintiffs and their voluntary undertaking to return the money already paid into the 15t Plaintiff's account right away, the Police in the company of the Complainant,the 1s Defendant and Counterclaimant in this case, went with the Plaintiffs to the 1st Plaintiff's bank for the withdrawal and return of the #4.5million.

39.The 1st Defendant avers that the 1st Plaintiff was in the process of filling the withdrawal form for the #4.5million when he stepped aside for a telephone call. After the 1" Plaintiff was done with the telephone call, he suddenly changed that the Police were trying to make him withdraw the said money under duress. Due to this, the bank officials halted and said the parties should go and settle this matter of duress amongst themselves and come back,before they may be able to proceed with the transaction.

40. The 1 Defendant avers that when the IPO reported the incident to their Area Commander, the said Area Commander was livid at the audacity of the Plaintiffs to continue in their criminal act; and coupled with the official report of the IPO that investigated the matter,the Area Commander ordered that the Plaintiffs be charged to Court forthwith to face the consequences of their crime. The 1" Defendant/Counterclaimant hereby pleads the Charge Sheet filed against the Plaintiffs/Defendant to Counterclaim at the Obollo-Afor

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Magistrate Court,The Jst Defendant/Counterclaimant shall at trial rely on same.

41. The 1st Defendant/Counterclaimant avers that the IPO who investigated the matter also made a report to their Area Commander dated 7/10/2020

wherein the fraud and conspiracy of the Plaintiffs to fraudulently convert the #7.6million jackpot winnings of Okpe was confirmed by the Police, The 1t Defendant/Counterclaimant hereby pleads the said Police Investigation Report and shall at trial rely on same.

42.The 1st Defendant as regards paragraphs 22, 23,24, 25,26 of the Statement of Claim states that the 2" Defendant placed a Post-No-Debit on the J"Plaintiff's account with them but denies every other fact alleged in the said paragraphs of the Statement of Claim.

43.In further response to paragraphs 22, 23, 24, 25,26 of the Statement of Claim,the 1st Defendant avers that the 2nd Defendant placed a Post-No-Debit on the 1st Plaintiff's account because the Police instructed the 2td Defendant to do so,on the grounds that the said bank account of the 1s Plaintiff was under investigation for fraud.

44. In particular response to paragraphs 25 and 26 of the Statement of Claim,the 1"' Defendant avers that it is not the job, role or duty of the 2 Defendant to adjudicate over matters of fraud or crime and that issue of fair hearing are matters for the courts of law. The Plaintiffs actually took this route and they got fair hearing by a court of law over the matter, which Court, due to the 15t Defendant lacking of proper legal representation in opposition to the Motion of the Plaintiffs to unfreeze the 1st Plaintiff's account, actually gave an Order that unfroze the account.

45. In response to paragraphs 27 and 29 of the Statement of Claim, the 1st Defendant avers that frst and foremost there is no such motion or affidavit dated 28th January, 2022 as the said motion or its affidavit in support is dead and passed away; same having been struck out by this Honourable Court on March 22,2022.Secondly the 1st Defendant denies ever admitting any role or capacity in the freezing of the 1st Plaintiff's account with the 2 d Defendant;

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because to admit same would be an admission of what the 1st Defendant did not do and that will make him a liar like the Plaintiffs.

46. This suit is frivolous and vexatious and ought to be dismissed with substantial cost against the Plaintiff/Defendants to Counterclaim.

47. The 1st Defendant avers that it has cost him not less than #6.45million to defend and prosecute this suit. The 15t Defendant/Counterclaimant

hereby pleads his receipt of payment to his new Counsel, Messrs Idowu Sofola for the defence and prosecution of this matter."

1st **DEFENDANT'S AMENDED COUNTER-CLAIM**

The 1st Defendant/Counterclaimant hereby adopts paragraphs 1 - 47 above as if same were hereinafter set out seriatim.

1. WHEREFORE the 1st Defendant/Counterclaimant counter claims against the Plaintiffs/Defendants as follows:

   a. A declaration that IfeanyiChukwu Odo also known as Okpe is the true winner of the jackpot winning of #7.6million won on 30th September, 2020which the Plaintiffs fraudulently claimed was won by the 15t Plaintiff and fraudulently induced the 15t Defendant to make a payment of #4.5million into the 1st Plaintiff's account no: 0013069253 as part payment of the #7.million jackpot winning.

   b. An order directing the 1st Plaintiff and 2nd Plaintiff jointly and severally to refund to the 1st Defendant all that #4.5million which the 1st Plaintiff fraudulently induced the 1st Defendant to pay into the 1st Plaintiff's account no: 0013069253 on 30th September, 2020 as part payment of jackpot winning of #7.6million.

   c. An order awarding against the Plaintiffs jointly and severally and in favour of the 1st Defendant interest on the sum of #4.5million which the Plaintiffs fraudulently induced the 1st Defendant to pay into the 1st Plaintiff's account no: 0013069253 on 30th September, 2020 at the prevailing rate from the date the cause of action arose until judgment and thereafter at the rate of 20% per annum until liquidation of the judgment debt.

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   d. An order awarding against the Plaintiffs jointly and severally and in faveur of the 1st Defendant the sum of #2million as general damages.

   e. An order awarding against the Plaintifs jointly and severally and in favour of the 1st Defendant the sum of #6.45million as the cost of defending and prosecuting this action.

Defence and Plaintiffs' Defence to the Purported Amended Counterclaim dated 22nd December, 2022 but filed on 10th January, 2023. It states as follows:

1."The plaintiffs in answer to the purported counterclaim hereby reiterates paragraphs 1 - 30 of amended statement of claim and incorporate same into their defence to the purported amended counterclaim and would urge this Honourable Court to dismiss the amended counterclaim for being fundamentally

defective,incompetent and lacking merit.

2. The plaintiffs also contend that this Honourable Court does not have jurisdiction to entertain the purported amended counterclaim.

3.The plaintiffs hereby put the 1st defendant/counterclaimant to the strictest proof of the averment contained in paragraph 2 of his purported amended statement of defence and purported amended counterclaim.

4. The 2nd plaintiff in further answer to the 1st defendant/counterclaimant avers that as then a student, nothing prevents her from engaging in other lawful activities that can yield income for her and as of being a full time employee of the 1st defendant/counterclaimant the 2nd plaintiff puts him in the strictest proof thereof. I know as of facts that every employee of an establishment is entitled to transport allowances, housing allowances, feeding allowances,health allowance, etc as well as other financial entitlements and emoluments.The 1st defendant never paid the 2nd plaintiff any of the allowances stated above. The 2nd plaintiff did not sign any contract of service agreement with the 1st defendant/ counterclaimant. The 2nd plaintiff was the person that played the game that she won.

5.In answer to paragraph 6 of the purported amended statement of defence and purported amended counterclaim, the plaintiffs aver that she played the game

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personally and won it at the tune of 7million not Ifeanyichukwu Odo or anybody that is called Okpe.

6. In answer to the paragraphs 7, 8 and 9 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the 2nd plaintiff avers that the said Okpe never played a game that he won N7.6 million. The said bet slip that the 2nd plaintiff used in winning the jackpot was given to the 1st defendant as evidence that it was the 2nd plaintiff that won the jackpot.

7.In reply to paragraph 10 of the purported amended statement of defence and purported counterclaim, the 2nd plaintiff avers that anybody that plays a bet sees it with his or her eyes. The holder of the ticket is the person that plays the game and if he or she wins, the player will see it in the computer where the game was played.

8. The player will hold his/her ticket to claim his winning. Okpe did not win any game of 7million. I am the person that played and won the game of 7million.The 1st defendant/counterclaimant is a man of questionable character as he is so dubious.

9. In reply and defence to paragraph 11 of the purported amended statement of defence and the purported amended counterclaim. The 2nd plaintiff avers that she did not shut her system as anybody who plays the game will see whether he or she wins it. The game is virtual game. The 2nd plaintiff was not the person who determined the winner of the game.

10.The plaintiffs in answer to paragraphs 12 and 13 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), aver that the 2nd plaintiff was not a staff or employee of Bet9ja and she is not bound by whatever guideline the company uses against its staff and employee.Every staff or employee of a company signs a contract of service with the company. The 2nd plaintiff avers that she did not sign any contract of service nor given any employment letter.

11.The fact that the 2nd plaintiff's account was student account and has a limit of deposit that can be made into it is one reason she did not forward her account to the 1st defendant, and another reason given to the police when the 2nd plaintiff was tortured by the police at the instigation of the 1st defendant/counterclaimant who wants to take advantage of the 2nd plaintiff's poor social and financial status.

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12.Paragraphs 15 and 16 are hereby denied. The 1st defendant's averments relating to the so called Lovelyne are tissues of lies. The 2nd plaintiff won the jackpot and the 1st defendant wants to shortchange her because of her poor background.

13.The paragraph 17 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the plaintiffs did not threaten the said Lovelyne. The statement made to the police and the sworn statement of the said Lovelyne were purposely activated by the 1st defendant to intimidate the plaintiffs into accepting the condition he gave them.

14.The paragraphs 18 and 19 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) are hereby denied, the 2nd plaintiff remains the winner of the game and she is entitled to the full money she won. The 2nd plaintiff did not front the 1st plaintiff as the winner of the lottery/game. The statement both the plaintiffs made to the police and sworn statement at the Magistrate Court Obollo-Affor are clear on the winner of the game which is to the effect that the 2nd plaintiff won the lottery. All the 1st defendant wants to do is to employ intimidation against the plaintiffs to suppress and short change them. It is in a bid to intimidate the plaintiffs that the 1st defendant invited the police, who tortured and employed every dehumanizing treatment on the plaintiffs; which was targeted at making the 2nd plaintiff to bow to the 1st defendant's antics.

15. The paragraph 20 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is hereby denied. The 2nd plaintiff is not a staff or employee of Bet9ja and she is not aware of the rules and regulations guiding the staff and employee of the Bet9ja. What binds an employer and employee is a contract of employment and the 2nd plaintiff did not sign any contract of employment nor was she given any employment letter. Therefore,the 2nd plaintiff is not bound by the rules and regulations guiding the staff,employee and the Bet9ja company.

16. In answer to the paragraph 21 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the 1st defendant is put to the strictest proof in showing that the said “someone” who allegedly won a jackpot is the purported“Okpe”.

17. The paragraph 22 and 23 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) are hereby denied. I told the 1st

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defendant that I won the jackpot and he is aware that I am the owner.The Ist defendant is not a trustworthy man and lives withfalsehood.

18.The paragraph 24 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is hereby denied. The plaintiffs maintain their averments in paragraph 17 of their statement of claim.

19.The paragraph 25 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is hereby denied. There was no time the 2nd plaintiff told the 1st defendant that the true winner of the game is the 1st plaintiff. The 2nd plaintiff has always told the 1st defendant that she is the true winner of the game. Her statement to the police which the 1st defendant pleaded in his statement of defence and counterclaim show that she is the winner of the game.

20.The paragraph 26 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is admitted to the extent that the 1st defendant paid 4.5million into the Access Bank account of 1st plaintiff upon presentation of the winning ticket won by the 2nd plaintiff.

21.The 2nd plaintiff in answer to the paragraph 27 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence)avers that there and (sic) there (sic) as used in her statement to the police means that the 1st defendant paid 4.5million “at once” and whatever meaning the 1st defendant attaches it is within his knowledge to so do.

22.In answer to paragraph 28 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the plaintiffs aver that the ticket handed over to the 1st defendant was the ticket won by the 2nd plaintiff.

23.In answer to paragraph 29 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the 1st defendant would not have been surprised that the 1st plaintiff knew nothing about betting on Bet9ja when he was in the know that it is the 2nd plaintiff that won the game.

24. In answer to paragraphs 30, 31 and 32 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the plaintiffs aver that the 1st defendant devised the means of deceiving the plaintiff that he has exceeded the limit of his transfer as a delay tactics to short change the 2nd plaintiff of her victory and winning game.

25. Paragraphs 33 and 34 are falsehood. The 1st defendant knew that the winner of the jackpot is the 2nd plaintiff, but because he felt that the 2nd plaintiff

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comes from a poor background hence, he decided to deprive her the game she won by seizing her remaining winning money.

26. In answer to paragraph 35 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the plaintiffs state that they are not privies or parties to the conversation held between the 1st defendant and the said Lovelyne and would not be in position to admit or deny whatever they discussed privately.

27. In answer to paragraph 36 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), that reporting to the Nigeria police, Area Command, Orba by the 1st defendant was part of the intimidating tactics employed by the 1st defendant to cow the plaintiffs down to forget about her winning money.

28. The 1st defendant in his apparent show to excessive power and level of his connection even admitted in paragraph 8 of his affidavit in support of his motion dated 28th January, 2022 and filed on the same day that he was the person that “notified" and instructed the 2nd defendant to freeze the 1st plaintiff's account. An action which both the defendants carried out without any recourse to Court which means that the defendants did freeze (sic) the 1st plaintiff's account without an order of Court because the 1st defendant is a powerful citizen - as he haš always boasted. The 1st plaintiff isentitled to **N100.000.000(One Hundred** Million Naira) as general damages against the defendants jointly for freezing the 1st plaintiff's account without an order of the Court.

29. The paragraphs 37 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence)is not true. There was no time the plaintiffs admitted that the winner of the jackpot is Okpe. The only true position of the said paragraph is that the 1st defendant used the police to illegally arrest the plaintiffs for purposes of intimidation.

30. In answer to paragraph 38 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence), the plaintiffs aver that there was no voluntary undertaking to'refund any money, the statements the plaintiffs made to the police speak volume of the true position of the matter. What happened was tat the 1st defendant used the police to torture and dehumanize the plaintiffs and the 1st defendant used his Sienna car to bundle the plaintiffs to Nsukka to force them to withdraw the 2nd plaintiff winning

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money.Even the Police Area Commander told the 2nd plaintiff that she is still a young girl to pocket the entire millions of naira.

31.In answer to paragraph 39 of the 1st defendant/oounterclaimant's statement of defence (or amended statement of defenpe), the Ist plaintiff did not make a telephone call as the police smatched their pbones from them. The plaintiffs admit that they were charged to Court, but after six days of torture and dehumanization both im police cell and the office of Area Commander who insisted that the 2nd plaintiff is still a young girl who should pot be allowed to claim the entire millioms of maira she won, every otber thing thereof are tissues of lies. The 1st defendant did tell the plaintiffs that be is a very close friend of the Area Commander and they are ready to keep them in detention for a very long time.

32.The reason the plaintiffs were charged to Court for the trump up offences is because they refused to yield to the antics of the 1st defendant and the police torture that was instigated by the Ist defendant as well as the intervention of our counsel from Onilsha It was wben our lawyer came that they started considering charging the case to Court. Everything that contains in paragraph 41of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is targeted at witch hunting the plaintiffs and concocted to browbeat the plaintiffs and they remain unshakeable because truth cannot be whittled down by falsehood.

33.The paragraph 42 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence) is admitted and the 1st plaintiff wish to:add that the Ist defendant also instigated the 2nd defendant to freeze the account of the 1st plaintiff as he admitted in his paragraph 8 of his affidavit in support of his motion on notice dated 28th January, 2022 and filed on the same day.

34.In answer to paragraph 40 of the 1st defendant/counterclaimant's statement of defence (or amended statement of defence),the plaintiffs deny committing any fraud and they have not been convicted of any crime.Placing Post-No-Debit on the Ist plaintiff's account without any recourse to the Court is unlawful and the Ist plaintiff is entitled to financial compensation as general damages against the defendants.

35.The Ist defendant is not entitled to any cost as legal fee as contained in his paragraph 45 of the 1st defendant/counterclaimant's statement of defence (or

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amended statement of defence) because he is the person who deprived the 2nd plaintiff her winning money and still went ahead to use the police against the plaintiffs as well as instigating the 2nd defendant to freeze the 1st plaintiff's account without any Court order.

36.The 1st defendant is not entitled to any of the reliefs as contained in his paragraph 1 sub (a) (b) (c) (d) and e of his purported counterclaim as the 1st defendant is on a gold-digging journey to deprive the poor girl (2nd plaintiff)her victory in the jackpot she played.

37. The plaintiffs shall contend at the trial Court this Honourable Court does not have jurisdiction to entertain the 1st defendant's purported amended counterclaim."

The 2nd defendant also filed Statement of Defence with one annexure dated 30th January, 2023 but filed on 4th April, 2023. It states as follows:

"Save and except as hereinafter expressly admitted, the defendant denies each and every material fact contained in the Plaintiffs' statement of claim (herein called 'the claim') as ifsame were set out and denied seriatim.

1. The 2nd defendant denies paragraphs 1-7 of the claim as the facts contained therein are information within the personal knowledge of the plaintiffs and 1st defendant.

2. The 2nd defendant admits paragraph 8 of the claim.

3. The 2nd defendant denies paragraph 9-21 of the claim as the facts contained therein are information within the personal knowledge of the plaintiffs and the 1st defendant.

4.In response to paragraphs 22, 23 and 26 of the claim the 2nd defendant avers that the accounts was restricted based on the fraudulent complaint lodged by the 1st defendant. That the 2nd defendant by the CBN Regulation of June 11,2015 has the power to place restriction on any customer's account where there is a suspected act of fraud on such customer's account.

5. In addition to the above, the 2nd judicious (sic) carried out this act by the power vested on it by the above CBN regulation.The 2nd defendant shall rely on the said CBN regulation during trial.

6. In further response to the above paragraphs, the 2nd defendant avers that the alleged restriction on the account has been lifted by the 2nd defendant in compliance with the order of this Court made on 25/11/2022 by **Hon. Justice**

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R O Odugu mandating the 2nd defendant to lift the PND on the 1st plaintiff's account.

7. The Ist plaintiff has been operating on his account till date and that he has withdrew (sic) the said money in issue as far back as 19/2/2022. The statement of account of the 1st plaintiff is hereby pleaded.

8. The 2nd defendant admits paragraph 24 of the claim

9. The 2nd defendant admits paragraph 28 of the claim only to the extent it is ready to defend this suit.

10. In response to paragraphs 29 and 30 of the claim, the 2nd defendant denies these paragraphs and states that it is not the cause or responsible to (sic) any alleged damage suffered by the plaintiffs. The 2nd defendant shall also put the plaintiffs to the strictest proof of same.

11. There is no known financial institution referred to as the 2nd defendant in Nigeria. The 2nd defendant is not a proper party. The 2nd defendant shall rely on its certificate of registration."

Furthermore, plaintiffs filed Reply to the 2nd Defendant's Statement of Defence dated and filed on 7th June, 2023. It states as follows:

(1) "In answer to paragraph 4 of the 2nd defendant's statement of defence, the 1st plaintiff avers that there was no fraud committed by him to warrant the restriction placed on his account by the 2nd defendant.

(2) In further answer to paragraph 4 of the 2nd defendant's statement of defence,the 1st plaintiff avers that it is only on the order of Court that an account of customer of a Bank can be restricted or frozen and there was no order of Court to that effect.

(3)The 1st plaintiff was not found guilty of any offence warranting the arbitrary action of the 2nd defendant which was done in connivance of the 1st defendant. Both the 1st and 2nd defendants cannot constitute themselves into a Court to take decision on the alleged fraud without any proof.

(4) In answer to paragraph 5 of the 2nd defendant's statement of defence, the 1st plaintiff states that he is not aware of any CBN Regulationthat supersedes the constitutional power of the Court.

(5)The 1st plaintiff also avers that the 2nd defendant failed to frontload the purported CBN Regulation that empowers her/it to violate the right of customer and mandate the 1st plaintiff gave her/it as her/its customer.

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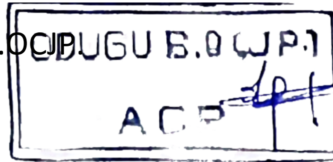

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(6) The paragraph o of the 2nd defendant's stafement of defence is hereby admitted,but the Ist plaintiff avers that he incurred economic and financial loss during the blockade of his account by the 2nd defendant. The Ist plaintiff further avers that the 2nd defendant averment in its paragraph 6 of the statement of defence is a testament that the Ist defendant restricted his account which was only lifted after certain period of rigorous judicial exercise

(7)The Ist plaintiff states that outside the oufright violation of his right by the 2nd defendant in connivance of the Ist defendant, he suffered damages in running of his business as well as the cost of engaging a counsel to defend him in the suit.

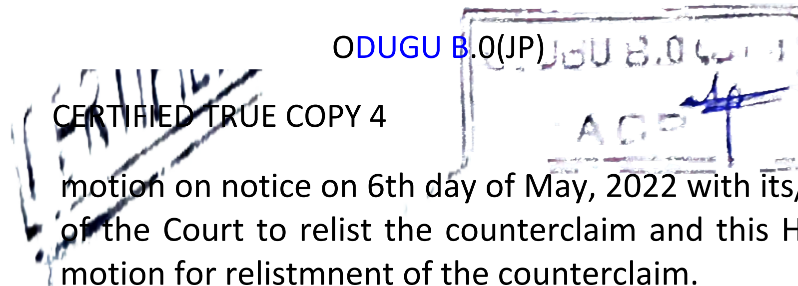
(8) The Ist plaintif admits paragraph 7 of the defendant's statement of defence and wish to add that the action of the 2nd defendant was done without any legal justification. The 2nd defendant cannot rely on the fact that the 1st plaintiff has started operating his account and therefore,is not entitled to compensatory damages, when the 2nd defendant brought Motion on Notice dated 22nd day of March, 2022 and filed on the same date which was later struck out and again fied another motion on notice on 6th day of May, 2022secking for the counterclaim to be relisted. The said 2nd defendant's later motion was granted and the counterclaim relisted.

(9)In answer to paragraph 10 of the 2nd defendant's statement of claim,the 1st plaintiff states that the action of the 2nd defendant caused damage to the 1st plaintiff.

(10)Outside the restriction of the account of the 1st plaintiff by the 2nd defendant, the conduct of the 2nd defendant in bringing motion to relist the counterclaim of the 1st defendant when the entire suit was struck (sic)was done in mala fide, especially in a suit the 2nd defendant does not have counterclaim.

(11)Even at the time of (sic) the 2nd defendant brought the motion to relist the counterclaim of the 1st defendant, the 2nd defendant had not filed any statement of defence nor any memorandum of appearance.

(12)In answer to paragraph 11 of the 2ad defendant's statement of defence,the Ist plaintiff aver that the 2nd defendant is estopped from claiming that it/she is not a financial institution when it/she had on 22nd day of March,2022 and filed on the same date which was later struck out and again filed another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motion on notice on 6th day of May, 2022 with its/her name seeking the indulgence of the Court to relist the counterclaim and this HonourableCourt granted the said motion for relistmnent of the counterclaim.

(13)The 1st plaintiff's account is still domiciled in the 2nd defendant's bank and sudden disclaimer on its name is not only strange, but amount to approbating and reprobating especially when the 2nd defendant did not frontload its/her Certificate of Registration.

(14)The 1st plaintiff avers that in event of mistake in the name of the 2nd defendant, it is only a mere misnomer which this Honourable Court can correct on its own motion.

(15)The plaintiffs also aver that the 2nd defendant was served with the originating process in this suit as far back as 12th November, 2020 and the 1st defendant did not file either a Memorandum of Appearance or statement of defence till 4th day of April, 2023. The 1st defendant did not pay the default fees as compulsorily required by the rules of this Court. The 1st defendant also was later served with amended statement of claim as far back as November, 18th 2022 and no process was filed until 4th April,2023.

(16) The plaintiffs shall at the trial of this case contend that the 2nd defendant's statement of defence is incompetent and defective in law."

At the conclusion of pleadings, trial commenced on the 9th day of November, 2023,and the 2nd Plaintiff testified as the PW1. She adopted her Amended and Additional written statement on oath each dated 18th November, 2022 and 10th January, 2023respectively. Her WAEC result was admitted as exhibit 1 and Bet9ja receipt as **exhibit 2** and the PW2 was duly cross-examined and discharged. On the same 9/11/2023, the 1st plaintiff also testified as the PW2. He adopted his Amended written deposition on oath and Additional written statement on oath each dated 18th November, 2022 and 10th January, 2023 respectively. He was duly cross-examined.At the conclusion of the evidence of the PW2, plaintiff closed their case and defence opened.

One Odo Ifeanyichukwu testified as the DW1. He adopted his written deposition on oath dated 8/2/2023 and was duly cross-examined. The 1st defendant testified as the **DW2.** He adopted his written depositions on oath dated 8/2/2023 and tendered extra judicial

statement of the PW2, 2 Bet9ja slips, print out from website, Whatsapp message, Police Investigation report admitted as **exhibits AA, DAA, DAB,** DAC and **DAD** respectively. Others are: Bet9ja Agent Business Development and Legal

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fees receipt admitted as exhibits E and Frespectively. He was duly cross-examined.One Agbo Loveline who is a co-cashier with the 2nd plaintiff testified as the DW3.She adopted her Amended written deposition on oath dated 24/11/23. She tendered her writtenstatement on oath at the Magistrate Court and her written statement at the police which the court admitted as exhibits **G** and **H** respectively. Gideon Akaba testified as the DW4. He adopted his written statement on oath 4th April,2023.He tendered certified copies of the CBN Regulation and an Order of court lifting the restriction on the 1st plaintiffs account which the court admitted as **exhibits I** and J respectively. He was duly cross-examined.

At the conclusion of the evidence of the DW3, defendants closed their case and the matter adjourned for address.

Learned counsel for the 2nd defendant- **Olusegun Daramola** - in his final written address reiterated that the restriction placed on the 1st Plaintiff's account was based on a fraudulent complaint lodged by the 1' Defendant and in compliance with the CBN Regulation of June 11, 2015. He formulated a sole issue for determination which is: **whether the 2"d Defendant is liable for the reliefs sought by the Plaintiff?**

He stated that the 2nd Defendant's witness testified to the fact that the CBN Regulation of June 11, 2015 (Admitted in evidence as Exhibit I) mandates the 2nd Defendant to place restriction on any customer's account where there is a suspected act of fraud on such customer's account.

He argued that the 2nd Defendant is therefore not liable to the Plaintiffs i any way as the 2nd Defendant acted in good faith and in compliance with the Central Bank of Nigeria which is a product of law and 'serves. as the Regulatory Body for all Banks in Nigeria. He said that the said CBN Regulation of June 11, 2015 has the force of law haven been made pursuant to the powers conferred on the Central Bank of Nigeria by the Central Bank of Nigeria Act 2007 and the Banks and Other Financial Institutions Act 2020.

He submitted that the Supreme Court in the case of **CBN V ARIBO (2018)** 4**NWLR** (PT. 1608) 130 confirmed that the Central Bank of Nigeria performs a supervisory role over Banks and other Financial Institutions in Nigeria. He argued that to hold the 2nd Defendant liable to the Plaintiffs considering the circumstances of this suit will amount to a punishment to the 2nd Defendant Bank for playing its

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role in the effort to curb fraud which has become a terrible cancer slowly snuffing life out of our dear country.

In conclusion, he prayed the court to hold that the 2d Defendant is not liable to the Plaintiffs for the reliefs sought.

Learned counsel for the plaintiff on the other **hand-Joachim Okechukwu Odo** in his final written address stated that the 1" Defendant filed his purported Statement of Claim and Counter-Claim on 26/1/2021 out of time without payment of penalty fees and any address of service. He stated that in disobedience to the rules of this Honourable Court the 1st Defendant filed further Amended Statement of Defence and Counter-claim without the leave of the Court. He also stated that the 2rd Defendant on 4th day of April, 2023 that is almost three years filed its statement of defence without any memorandum of appearance or payment of default fees to the registry of this court.

He stated inter alia, that both parties tendered exhibits during trial. The Counsels of the respective parties agreed that all the documents should be tendered during the trial, but the objections to the admissibility or otherwise will be raised in the Final Written Address. Flowing from the aforesaid, he objects to the admissibility of the following documents: EXH: DAB = Input youth.co.uk print out; EXH: DAC = Whatsapp message; EXH: DAD= Police Investigation Report and EXH: E = Bet9ja Agent Buz Development. Others are: EXH: F = Receipt of Solicitor's fees; EXH: G=Lovelyne's Statement on Oath at Magistrate's Court, Obollo and EXH: H= Lovelyne's Statement to the police.

Grounds for the objections to the admissibility of the above listed documents are predicated on the followings:

On **Exhibit DAB which is a print out from www.inputyouth.co.uk.He** stated that the above Exhibit DAB has no date on it. There is no name of the maker nor any signature on the document. He submitted that it is the law that any document without the name of the maker or signature on it is worthless. He cited Gbadamosi & Anor v **Biala & 3 Ors (2015) 10 WRN 112 (P.127) LINES 10-25.**

He argued that the fact that a document was accompanied with Certificate of Compliance is not enough to admit the said document in evidence especially when the document sought to be tendered in evidence is a legally inadmissible document. He stated that his further objection to the said Exhibit DAB is that Certificate of Compliance was not pleaded nor referred to in the

DW2's that is, the 1st Defendant's Amended Written Statement on Oath.

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On Exhibit DAC which is the Whatsapp message, he adopted his argument made against admissibility of Exhibit DAB above.He further added that the said DAC bears Oluchi Oloye which is not the name of the 2nd Plaintiff and the phone number is not her own. He referred to the answer of the PW1 during cross-examination where she confirmed that the said phone number was neither hers nor has she ever used the number before. He argued that above evidence shows that even if the Exhibit DAC is admitted in evidence, it has no probative value.

On Exhibit DAD Police Investigation Report, he contended that Exhibit DAD is a Police Investigation Report, which in the eyes of the law a public document in the custody of the police. He stated that it is only a certified true copy of it that emanated from the police that is admissible in evidence. He stated that the said Exhibit DAD was not certified by the police and there is nothing to show that it was already an exhibit tendered before the Magistrate's Court Obollo-Afor. He argued that it can only be ådmitted in its original form or certified true copy duly certified by the police and tendered either by the IPO or a police officer in the team that investigated the matter.

He contended that the 1st Defendant did not call any of the officers who allegedly investigated the case. That the said Exhibit DAD being a report in respect of a criminal charge is not admissible in evidence in a civil proceedings. He cited Abubakar &**Anor v Joseph & Anor (2008) LPELR-48** (SC). He stated that the DW2 on 9th day of November, 2023 during cross-examination maintained that the IPO's investigation was compromised. That he was asked by the Plaintiff's counsel thus: "The purported Police Investigation Report did not canture both the statements the 1st and 2nd Plaintiffs made to the police.

DW2 answered thus: “The IPO was highly compromised". He urged the Court not to attach any probative value from a compromised IPO's investigation report.

On Exhibit E which is Bet9ja Agent Buz Development, he adopted his argument and submissions made with respect to Exhibits DAB and DAD above. He added that there is nowhere the 1st Defendant pleaded the purported Bet9ja Agent Buz Development.That even if it was pleaded, the 1st Defendant who testified as DW2 told this Court during cross-examination that he is not the maker of the said document which is a computer generated document, hence he has no legal standing to certify a document he never produced, the said accompanied Certificate of Compliance

is worthless.

On Exhibit F which is a receipt of Solicitor's fees, he argued that the purported receipt from the 1st Defendant's Soliciter has no name of the maker of the receipt

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which should be a name of the staff of the said Law Firm. That signature alone without name of the owner of the signature makes the said receipt an incompetent and worthless document and inadmissible in evidence. He cited Gbadamosi **&** Anor v **Biala & 3 Ors (supra) p. 127 lines 10 - 25** wherein the Court held that "the law requires that the identity of the persor who purported to sign a document must be clearly and unambiguously disclosed."

He stated that the DW2 is also not the riaker of the said receipt, but the Law Firm of IdowuSofola& Co.and no foundation as made to that effect. He cited Ikpeazu v Alex **Otti & 3 Ors (2016) 8 NWLR (P , 1513) 38 p. 93 paras A -** B.Again, that the DW2 by his own motion was recalled to tender "Bet9ja Agent Business Development"document and to enable him substitute certified true copies of some exhibits, he was never recalled to tender receipt of professional fees as he already concluded his testimony and discharged by the Court. Therefore, for any document to be tendered through him, it must be by the leave of the Court.

On Exhibits G **and H,** he contended that the documents sought to be tendered relate to criminal charge or case. Therefore, that they are not admissible in civil proceedings and he adopted the argument he made in Exhibit DAD and urged the Court to reject the aforementioned documents.

In addressing the main issues in his final address, he sought the leave of this Honourable Court to argue this our Fin 1 Written Address and relate it to the both Defendants' case in this one document. I. doing that, he distilled the following issues for determinations:

1.*Whether the Plaintiffs proved their case as **required** by the law to be **entitled** to the judgment of this Honourable Ceurt considering the **following issues**:*

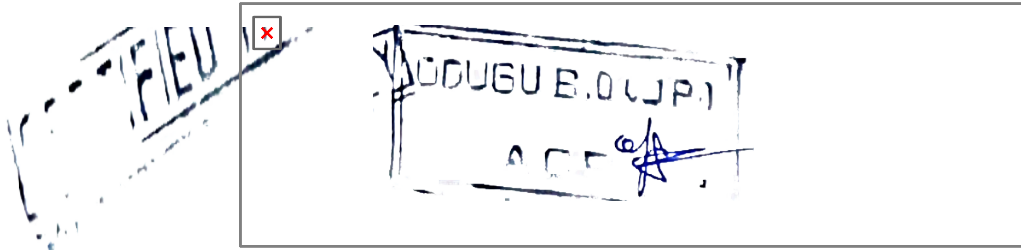
a. Whether the Court can a:t on unchallenged, uncontroverted and uncontradicted evidence in reaching its decision?

b.Whether the Court can act on admitted facts in reaching its decision?

2. *Whether the defendant's defence, **and the 15t Defendant's** counter-claim are sustainable in law considering the following issues:*

a. *Whether counter-claim is an independent suit and failure to adduce admissible evidence by the 1' Defendant/counter-claimant in support of the counter-claim is fatal to his case?.*

b. *Whether the court is enjoined to re ect the entire evidence where there are material contradictions in the evider e adduced by a party?*



c. *Whether there is need to furnish particulars of fraud wvhere allegation of fraud is raised and the standard of proof required where there is an allegation(s) of the Commission of civil proceedings?.*

d. *Whether a court can give judgment in favour or against person not made a party in the suit?.*

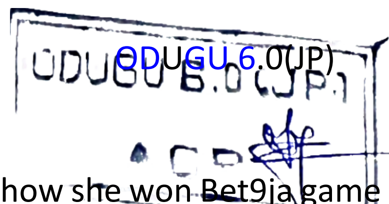
e. *Whether the Court has jurisdiction to entertain a suit against a correct person or party brought to court in wrong name after the person or party's participation in the proceedings, especially when such person/party hid his/its name from the Court and the Plaintiffs?.*

On issue **1:** Whether the **Court can act on** unchallenged, uncontroverted and **uncontradicted evidence in reaching its** decision? He submitted that in Kayili v **Yulbuk (2016)** 6 **W.R.N 52 P.74 LINE 45,** the Supreme Court held that"“The *law is trite and enjoins a Court to act on unchallenged evidence".* He also submitted that it is also the law that facts which are not denied are deemed admitted. He argued that the Defendants did not deny the pleaded facts and the evidence adduced. That the Court in **Engr.Christopher Ugwu & 5 Ors v Ezeanowai & 2 Ors (2017) 41** WRN 62(P.95)**LINES 30 -** 35 held that *“What is not denied on the pleadingsneeds no further proof at the trial. No person sets out to prove that which has not been denied'.*

That this is more so when the law isto the effect that the unchallenged evidence adduced by a party at the trial of a case that is cogent and very reliable is deemed admitted.He cited Main Strect Lane Ltd. v Chaine (2015) 4 WRN ***74.***

That in **Infinity Trust Saving & Loans &** Anor v **Ibrahim D.el-ladan** Esq. **& Ors.**(2022 - 05) LEGAL PEDIA 77008 (CA), held that in law, evidence that is unchallenged and or uncontradicted or uncontroverted by the adverse party is good evidence for the Court to rely and act upon to make relevant findings. Also, Oziegbu **Enginecring Co. Ltd.** v **Iwuamadi** (2009) 16 NWLR (Pt. 1166) 44 @ P. 63, D-F where it was held: *“That the Court is entitled to accept (and in some situations bound to) credible evidence that was not challenged or controverted on any issue calling for decision of the Court".*

That the evidence of the 2nd Plaintiff who testified as PW1 is contained in her Amended Written Statement on Oath of 18th November, which accompanied the Plaintiffs' Amended Statement of Claim, and in Additional Written Statement on Oath of 10th January, 2022, which accompanied reply to the purported Amended Statement of Defence and Plaintiff's Defence to the purported Amended Counter-Claim."



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That the PW1 led evidence on how she won Bet9ja game woth N7,600000.00 (Seven million six hundred thousand naira). And she averred that she played the game personally. That she further stated that she had a bank account which she opened when she was a student and the said account has limited amount of deposit that can be made into it, hence the PW2 the 1st Plaintiff, who is a brother of full blood to the PW1,came forward and brought his bank account to receive the winning money on her behalf.

He argued that the **PW1's** evidence was not challenged, contradicted nor uncontroverted by the Defendants. He argued that the PW1's evidence was further strengthened by the evidence elicited from her during cross-examination by the 1st Defendant's counsel that she was attending Girls Secondary School Owereze Orba from 2012 to 2015 when she opened that account, among others.

He contended that the above evidence of the PW1 remains unshakable. He submitted that it is trite law that evidence elicited during cross-examination has the same probative value, and is as valid and authentic as evidence elicited during examination-in-chief. He cited **Ogbemudia v. Omereje (2020) LPELR - 50371** (CA), Pius v.**State (2015) LPELR-24446** (SC).

Also the recent case of Salini (Nig) Ltd v. **Transworld Investment Ltd & Ors (2022)**LPELR-58370 (CA) wherein the Court held that *"In law, evidence elicited under cross-examination once they are on facts pleaded and issue joined thereon by the parties* is *admissible in evidence...."He* stated that the parties joined issues on the limit of deposit that can be made into the 2nd Plaintiff's bank account and on when the PW1opened her account as then a student.

He submitted that the plaintiffs have proved their case because the standard of proof in civil case is on the balance of probability and it is his submission that the plaintiffs have

established their right as it relates to the 1st Plaintiff's claim against the 2nd Defendant in freezing or placing restriction on his account and the 2nd Plaintiff's claim against the 1st Defendant for winning the Bet9ja game on the balance of probability and therefore entitled to the claim thereof. He referred the court to the case of **Tanko v Echendu (2010) LPELR-3135** (SC).

He stated that in civil cases, the burden of proof shifts from side to side throughout the proceedings until all the issues in dispute are resolved. He cited S.P.D.C.N v **Ekwems & Ars (supra) (p. 245 paras. A-B). He** argued that the plaintiffs having proved their case, the burden of proof shifts to the defendants. That the only semblance of defence the 15t Defendant put up is that the 2nd Plaintiff whom he called a cashier is not allowed to play Bet9ja game. The same person the 1st

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Defendant as DW2 admitted during his cross-examination that she, the 2nd Plaintiff,is not a staff of Bet9ja, neither was she given any appointment letter. That the 2d Defendant admitted it placed post-no-debit and restriction on the 1st Plaintiff's bank account without any Order of Court.

He contended that there is personal liability on any agent who exceeds the limit or bounce of its authority. He submitted that it is the law that if an agent like the 1Defendant is the wrongdoer it cannot escape personal liability. That this was decision of the Court in **Registered Trustee of the word of power global** Ministries International v **DN** Tyre & **rubber PLC (2016) LPELR - 42255**(CA). Furthermore, the Court was also confronted in Cotecna **International Ltd. v** Church Gate Nig. **Ltd & Anor (2010) LEPLR-877** (SC) wherein the Apex Court held that there are situations where an Agent would be liable for the act of the principal,where an agent exceed its limit or bounce of its authority as has been proved and averred in this present case. The DW2 i.e, the 15t Defendant admitted during cross-examination that the winning money is not his money and he submitted that there is nowhere the Bet9ja instructed him not to release the 2 d Plaintiffs winning money to her.

He urged the court to hold that the 1st Defendant exceeded his authority as agent of Bet9ja as regard the winning money that is not his own, an act which he admitted during cross-examination and therefore is liable in damages in favour of the Plaintiff.

On issue 1(b),whether *the **Court can act on admitted facts in reaching its** decision?* He submitted that it is settled law that admitted facts need no further proof. He cited **section 123 of the Evidence Act, 2011; Prince Water House v Momoh (2022)** NWLR **(Pt. 1755) 32 @ (P.52,PARAS F - H);Ezemba v Ibeneme (2004) 14 NWLR (PG. 894),617.**

It is his argument that by tendering Ex} ibit DA by the 1st Defendant, the said Exhibit DA is the 2nd Plaintiffs Statement to the Police, wherein the 2nd Plaintiff categorically stated that she personally played the gaine which is subject matter of this suit,the 1st Defendant who testified as DW2, and tendered the said Exhibit DA has admitted that the 2nd Plaintiff played the game and won N7,600,000.00 (Seven million six hundred thousand naira).

He submitted that it is the lawthat where there are admissions by a party against his interest, such admission will be admissible against the person. He cited Ali VS UBA PLC(2014)LPELR-22635(CA)wherein the Court held that *"it* is *trite law that an*

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admnission by a party against his interes is best evidence in favour of his advisory in his suit."He also cited **Onyenge v Ebere (2004)13 NWLR (PT. 899) 20.He** argued that tendering the Exhibit DA by the 1st Defendant is an admission against his interest and he urged the Court to so hold. He stated however, that any attempt by the 1st Defendant to contradict or vary the content of the document he already tendered in the Court, will fail because it is trite law that oral or parole evidence cannot vary the content of a document.

That this is because, the law is settled that whenever ther is documentary evidence before the Court,the documentary evidence is to be used as hangers on which the veracity of oral evidence is assessed. He citede **Olusa v. National Institute for Cultural Orientation & Ors (2022 - 05) LEGAL PEDIA 87515(CA).**

That it is in the light of the above principle of law that the Court in **Yonwuren** v.**Modern Signs Ltd (2021) 14 NWLR ((T. 1975) 122 (P.158 Paras C -D)** held that ***"Documentary evidence is superior to prrole evidence"***

He stated that the importance of documentary evidence in cases was further emphasized in **GLOBE MOTORS HOLDINGS (NIG) LTD.VS. IBRAHIM (2021)LPER-54550** (CA) wherein the Court held that "Documentary evidence, generally is regarded as the best evidence whenever available is the barometer by which the truth of oral evidence is gauged."

He said that content of a document speaks for itself and documentary evidence is the best form of evidence in proof of cases. He cited **AMOBI.VS. OGIDI UNION (NIG)& ORS (2023) 1 NWLR (PT.1864) (PP.199-202).**

Again,he stated that the1st Defendant dmitted that he has paid the N4,500,000.00(Four million five hundred thousand na ra) out of the total money won by the 2nd Plaintiff and the remaining balance of $3,100,000.00 (Three million one hundred thousand naira) is in his custody. That th ; 1st Defendant further admitted that the said money or winning money by the 2nd Plaintiff does not belong to him but Bet9ja. One wonders why should the 1st Defendant detain money that does not belong to him and the supposed owner is not interested in pursuing any case against the Plaintiffs.

That the DW3 admited that the 1st Plaintiff is the brother of full blood with the 2nd Plaintiff.And she also admitted that the 2nd Plaintiff celebrated winning the game.

That the DW2, the 1st Defendant and DW1 admitted that the evidence they led on who won the game is based on what they were told.

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Also, that the 2nd Defendant admitted both in its pleadings and evidence led by DW4that it blocked the 1st Plaintiffs account and the freezing of the account was done on the instruction of the 1st Defendant, without an Order of any Court. He invited the Court to look at the paragraph 4 of DW4's Written Statement on Oath dated 4th April 2023 and adopted on 10th day of February, 2024. That it is a clear admission of breach of legal obligation and mandate given to them by the 1st Plaintiff. He referenced **G.T.B PLC V.Adcdamola (2019) 5 NWLR (P. 1664) 30BAT (P. 43. PARAS. E-F),**where the Court held that***:"before freezing customer's account or placing any form of restrain on any bank account, a bank must be satisfied that there is an order of Court".***

He submitted that the 2nd Defendant vi lated the 1st Plaintiffs right and acted without any Order of Court in freezing his ac ount based on mere complaints of a private citizen like the 1st Defendant.

He submitted also that the Court in **Arogundade v Skye Bank PLC (2020)LCN/14893** (CA) held that ***"No person or institution has power unilaterally to place*** *a* ***restriction on the account of a custonier. No law allows for such act or action. In a*** *civilized* ***society people abide by the law and consequently (sic) are suffered for the violation"***

See also **GTB v. Joshua (2021) LPELR - 53173 (CA).CBN regulation is not an order of the Court and cannot be supersede the constitutional power of the court.**

That the 1st Defendant admitted that Bet9ja ticket which he tendered as Exhibit DAA and Bet9ja ticket the Plaintiffs tendered are the same thing; it means that the 1st Defendant admitted that it was the tick et the 2nd Plaintiff used in winning the game.He urged the Court to hold that facts ad aitted need no further proof.

On issue 2(a)***:*** *whether* ***counter-claim is an independent suit and failure to adduce*** *admissible evidence by* ***the 1s Defendant/counter-claimant in support ofthe counter-****claim is fatal to his case.*

He submitted that it is settled law that counterclaim is an independent action and just like a cross action, cross petition or cross appeal. It is a separate suit altogether.He cited ABE VS. DAMAWA (2023) 3 NWLR (PT. 1871) 335; ONWUAKPU & **ORS** V. ONYEAMA & ORS (2022) 17 NWLR (PT. 1855)97(PP.171,PARAS,A-F,175,PARAS G-H) where the Supreme Court held that "A *counterclaim made by a defendant in an action is for the purposes of determination of a separate, independent and distinct action on its own from the action in which it was brought or made and neither of the two claims depend on each other."*

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He stated that by virtue of section 131(1) of the Evidence Act, 2011,whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. He cited S.P.D.C.N V.**EKWEMS (2023) 4 NWLR (PT. 1874) (SC) 213 (P.262,** PARAS A-B), where the Supreme Court held that "A *pleading that is not supported by credible evidence,no matter how elegantly made, is of no value to the Court in its effort to discover the truth".*

That in ONWUAKPA & **ORS VS. ONYEAMA & ORS (SUPRA)** the Court held that it is only credible and positive evidence that the Counter-Claimant can be entitled to the reliefs in his Counter-Claim not palpable contradictions in evidence. He submitted that it is the law that Court cannot cherry-pick or choose pieces of evidence to believe or disbelieve and that is exactly what the Counter-Claimant has done in this case and as such he urged the court to discountenance the entire evidence led by the counter-Claimant and his witnesses for being contradictory. He cited **AYORINDE** VS.**KUFORIJI (2022) 12 NWLR (PT. 1843) 43 (P.** 81 PARAS. **E-F),** where the Supreme Court held that *"The counterclaim being a distinct and independent suit,the counterclaimant must succeed on the strength ofhis case and not on the weakness of advisory's case".*

Furthermore, he stated that the 1st Defendant/Counter-claimant's pieces of evidence are riddled with hearsay evidence. Both the evidence led by him and the one led by his witnesses and such hearsay evidence cannot sustain a counter-claim in law. He submitted that it is settledlaw that where a witness in his own testimony in Court repeats a statement, oral or written made by another person in order to prove thetruth of the facts stated therein, such testimony is treated as hearsay and not permitted or allowed to be used in judicial proceedings. He cited OSHO .VS. STATE (2012) 8**NWLR (PT.1303)P.243 (CA).**

He argued that in the instant case, the pieces of material evidence adduced by all the 1st Defendant's witnesses are all hearsay and as such inadmissible. He assumed without conceding that if the Court goes on to consider same, such pieces of evidence lack probative value.

He said that the DW1 in his pieces of hearsay evidence given by the 1st Defendant's witnesses including the 1st Defendant himself are noticeable in the following aspect of their testimonies; DW1 told the Court that someone told him that he won the Bet9ja game worth N7,600,000.00 (Seven million six hundred thousand naira).

Also,that the entire pieces of evidence of DW2 are anchored on what someone told him and he also admitted that he was told; both in his evidence-in-chief and during cross-examination.

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He invited the court to look at the paragraph 4 sub-paragraph a-fand paragraph 8 and sub-paragraphs a-fof the DW2's Amended Statement on Oath dated 8th dayof February, 2023 and adopted on 9th day of November 2023. Not only that,the averments and evidence as contained in the DW2's Amended Statement on Oath are bundle of hearsay evidence,but are offensive to Section **115 of the Evidence Act 2011**as amended and therefore, inadmissible. He said that the DW2 failed to state the time place and circumstances of the Information he

deposed to on his Written Deposition,The DW2 failed to state the date, time and place where the purported information was passed to him by the DW3, The only date contained thereof is 30th September, 2020,which is the day the sald Okpe, DWi purportedly played the game that is subject matter before this court, not date/day he was informed as it is lacking in his Amended Statement on Oath.

He stated that the Poser ia,even if 30th day of September 2020 was the day/date he was informed by the DW3, why did he, the DW2, the 1" Defendant go ahead on Ist October 2020 to pay N4,500,000,00 (Four million five hundred thousand naira) being part payment of the lottery money?. That is an admission that the money was won by the 2ml Plaintiff and nothing more.

That closely knitted to the above hearsay evidence adduced by the 1st Defendant witnesses is the hearsay evidence led by the DW3, she told the Court that it was the 2nd Plaintiff that told her that she won a game of N7,600,000,00 (Seven million six hundred thousand naira).

It is his submission that all the material pieces of evidence of 1st Defendant's witnesses are damaging hearsay and no Court will rely on same. He prayed the court to discountenance same and hoId that not only that it is inadmissible, but not worthy of an ounce of any probative value. He urged the court the hold that the Counter-Claimant has failed to prove his counter-claim as required by the law.

On issue 2(b): ***whether the court is enjoined to reject the entire evidence where there are material contradictions in the evidence adduced by a party?*** He stated that **in AYORIDE V. KUFORIJI (2022) 12 NWLR (PT. 1843)43(P.109)PARAS** A-C,the Supreme Court held that ***"where there are conflicts in the evidence calledby the same party to his case, their testimony will betreated as unreliable"***

The above principle of law was maintained by the Apex Court in an earlier decision in **KAYILI V. YILBUK & 2 ORS (2016) 6 WRN 52, (P. 98) LINES 15-20** per Ogunbiyi JSC where the Court held that ,"the law is well positioned that where there

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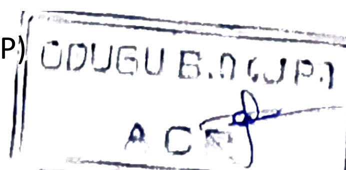

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are material contradictions in the evidence adduced by a party, the Court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting versions to follow. The entire evidence must be rejected". He also cited **MOGAJI** V.**CADBURY (NIG) LTD (1985) 2 NWLR (P.7) 393.** He stated that the basis of the above principle is that the Court cannot be boxed into a tight corner of cherry-picking exercise".

He argued that in the instant case, there are material contradictions in the pieces of evidence adduced by the 1st Defendant's witnesses and the 1st Defendant who testified as DW2. The DW2, the 1st Defendant was asked by the Honourable Court thus:Q:"When did Okpe come into the matter?"

DW2 (Pascal) answered thus "About three weeks after", this piece of material evidence is in conflict with the Testimony of DW3, who told the Court that the said Okpe came into the matter the next day.

As rightly observed by my Lord thus:"Recall that Pascal Aroh stepped out of the Court when DW3 told the Court that Okpe came into the matter the next day".

That in ironic twist, the DW2 who pleaded and tendered Exhibit DA which is the 2nd Plaintiffs Statement to the police, contradicted himself when he denied the content of the document which he tendered. He submitted that it is law that content of document cannot be varied or altered by mere oral evidence. He noted that a party or witness is not allowed in law to approbate and reprobate at the same time.

He contended that it is an unforgivable contradiction on the part of DW2's evidence to state in his paragraph 30 of further statement on oath that the Plaintiff obtained a court order fraudulently, while he admitted in his cross-examination that he was represented by a counsel during the time the order was granted by your learned brother Hon. Justice R.O Odugu.

Again that in paragraph 34 of the Amended Statement on Oath of DW2, he averred thus: "secondly I deny ever admitting any role or capacity in the freezing of the 1st Plaintiffs account with the 2nd Defendant, because to admit same would be an admission of what I did not do and that will make me a liar like the Plaintiff."

Above quoted statement is the DW2's evidence denying ever playing role in the illegal and unlawful freezing of account of the 1st Plaintiff without any Court Order.

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However, DW4 led evidence in paragraph 5 of his Written Statement on Oath dated 4th April 2023 and adopted on 10th day of February 2024 that the restriction of the lst Plaintiff's account basedon the complaint lodged by the Ist Defendant.

He contended that the above contradictions and conflicts in the Defendant's evidence are so material that the Court is invited to treat them as unreliable. He said this is because the Court cannot pick and choose which portion of the evidence of a witness to believe. It is either the witness is a truthful or an outright liar where total evidence must be evaluated as credible or incredible as the case may be. He cited STATE V **EDUCATION (2022) 18 NWLR**

(PT. 1861) SC 1 (PP. 60, PARAS B - D; 70PARAS E- G) - The Court could not pick and choose which evidence to believe and was bound to reject them both. Also **KAYILI V. YILBUK (2015) 7 NWLR (PT.1457)26: AYENI PEOPLE OF LAGOS STATE (2016)LPELR-41440.**He urged the Court to so hold.

On issue 2 (c)*: whether there is need* ***to furnish particulars*** *of fraud where allegation* ***of fraud is raised and the standard*** *ofproofrequired where there is an allegation(s)****ofthe Commission of civil proceedings.***

He stated that in APC VS. **Sheriff (2024) 2 NWLR (Pt. 1921) 49 (PP.151-152.Paras** G - G),the court held that *An allegation of fraud requires that the particulars of fraud be set out to confer any modicum of seriousness on such an allegation of fraud to warrant further enquiry into it at trial. In other words, unless and until an allegation offraud is expressly made and supported by its particulars,it is a non-starter. A mere or bare or banal allegation offraud, no matter how grave, is ofno movement ifit is not supported by the relevant (sic) of fraud that is merely generic, vague and lacking in the specific and particulars is in law a non-starter and useless."* Also NAMMAGI V. **AKOTE (2021)** 3 **NWLR (PT.1762)**170.

He argued that in the present case, particulars of fraud were not set out on the allegations of fraud, the 1st Defendant in his further amended statement of defence and counter-claimas well as his reply to the Plaintiff's defence to counter-claim. The 1st Defendant alleged fraud in the following paragaphs of his pleadings which also form part of his written statement on oath. The said paragraphs the 1st Defendants alleged fraud are as follows paragraph 6, 9, 26 and 30 of his Further Statement on Oath which accompanied his reply to Defence to the amended counter-claim. The said allegation of fraud also contained in his further amended statement.

He *invited the court to specifically take judicial notice of paragraph 30 of the 1st Defendant Further Written Statement on Oath which similar allegation in his*

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paragraphs 29 of Defence to Amended Counter-Claim wherein he alleged that the Plaintiff obtained fraudulent Court Order. He stated that a litigant who accused a Court of giving a fraudulent Order is not entitled to a favourable relief before the Court. Ironically, it is the same order of court which the 1' Defendant admitted that the motion on notice that gave rise to the said order was served on him and he was dulyrepresented by a Counsel.

He stated that in **EKANEM V. REGD. TRUSTEES, CCGS (2023) 6 NWLR (PT.**1879) 43 (SC) (P. 70, PARAS B -D) the Court held that when fraud is alleged in a suit, it must be pleaded, the particulars given and established in evidence by proof beyond reasonable doubt.

He stated that on all fours with the present case is the case of **TAYLEK DRUGS CO.LTD** V. **ONANKPA (2019) 3 WRN 129 (P.157) LINES 10** - 20,wherein the court held that***: "... the assertion of the Appellant in his counter-claim*** *is that the* ***Respondent fraudulently misappropriated the funds ofthe Appellant. That*** *being the* ***case,*** *an* ***allegation ofcriminal offence was in issue and indeed the crux*** *of the* ***counter-claim. Therefore, since the allegation has to do with fraud, it must*** *be* ***pleaded with*** *particularity.* ***So, the Appellant was obligated to have pleaded and expressly set*** *out* ***the particulars of fraud alleged. This was not done"***

That in **TAYLEK DRUGS CO.LTD ONANKPA (SUPRA) (P. 157) LINES 20 - 30,**the Court held that***: "... the law is trite that ifthe commission ofa crime bya party to a proceeding is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt. See Section 135 (1) of the Evidence Act. Thus,fraud being an allegation ofa criminal nature, the standard ofproofis proofbeyond reasonable doubt."***

He urged the Court to hold that the 1st Defendant/Counter-Claimant has failed to particularize his allegations of fraud and to prove the alleged crime beyond reasonable doubt as required by the law.

On issue 2 (d)*: whether a court can give judgment in* ***favour or against*** *a* ***person not*** *made a party* ***in the*** *suit?* He submitted that it is the law that the Court cannot give a judgment against or in favour of a person who will be affected by its decision if such a person is not made a party to the suit. He referred the court to the case of **BABATOLA V,ALADEJANA (2001) 12 NWLR (PT.** 728) 597 SC, where the Supreme Court held that the Court has no jurisdiction to deide the fate of a person or a matter concerning him when such a person is not made a party to the action.

He argued that in the instant case, the DW1, Odo Ifeanyi(a.k.a Okpe) who testified as the 1st Defendant witness is not a party to this suit and was not made a party in the 1st

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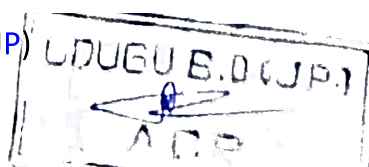

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Defendant's counter-claim. He referred the court to the 1st Defendant's Counter Claim and it will show that the said DW1, i.e. the Ifeanyi Odo was never made a party to the counter-claim, hence he cannot be made to reap the benefit or suffer any negative out of this suit including the Counter-claim. He urged the Court to so hold. He said that the 1st Defendant's case and the unsubstantiated case before the court is that DW1 Odo Ifeanyi (a,k.a Okpe) is the owner and winner of N7,600,000.00 (Seven million six hundred thousand naira) having won the Bet9ja ticket, but he, the 1st Defendant failed to make the said Odo Ifeanyi (a.k.a Okpe) a party to join him in the counter-claim.That even the DW1 does not know his status in the case as he was procured to give evidence and that is why, when he was asked by the Plaintiff's counsel thus:

"In the suit which there is a counter-claim against the Plaintiff, you are not a party to it?"

He answered "I do not understand"

That is someone who claims that he purportedly won 7.6 million. He said it is interesting to note that he gave evidence in Igbo language and an interpreter explained the question to him; still he remained evasive.

In the same vein, the DW2, the 1st Defendant was asked thus: "the purported winner which you brought is not also a party in that your counterclaim"and he answered "No".

He contended that the said DW1 that is, Ifeanyi Odo (a.k.a Okpe) was never made a party to the Counter-Cliam hence, he cannot be made to reap the benefit or suffer any benefit out of this suit, including the Counter-Claim. He urged the Court to so hold.

On issue 2(c)***:whether the* Court has jurisdiction to entertain a suit against a correct person or a party** *brought to court* ***in wrong name after the person or party's participation*** *in the proceedings,* ***especially when such person/party hid his/its name from the Court and the Plaintiffs.***

He stated that the 2nd Defendant raised issue in its pleadings that he is not a prper party and that it relied on its Certificate. of Registration, however, there is nowhere in its final Written Address where the Coursel on its behalf argued same. He stated that to be on the safe side of the law, the Plaint ffs shall respond to the issue pleaded by the 2nd Defendant in this their final written address. He contended that the 2nd Defendant is a legal entity and was sued in that capacity. It is based on that it brought motion on notice seeking the indulgence of the court to relist the counter-claim of the 1st Defendant even when it did not file any.

He argued that the 2nd Defendant having pleaded the Certificate of Registration refused to frontload same when it filed its Statement of Defence. That the Plaintiffs in their Reply to the 2nd Defendant's Statement of Defence,queried the where-about of the said Certificate of Registration and the 2nd Defendant remained adamant, until the

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Plaintiffs closed their case. It was when the 2nd Defendant's witness was led in evidence in chief that the said certificate was tendered in the evidence. He canvassed the following arguments:

> It is trite law that the Court has jurisdiction to entertain a matter when a correct a.party or person, be it natural person or juristic personality is sued with wrong name, especially when the correct name is hidden by the party/person sued.

The failure to frontload document under the rules of Court makes the document b.inadmissible in evidence.

That in **REGISTERED TRUSTEES OF AIRLINE OPERATORS OF NIGERIA** V.NAMA (2014) **8 NWLR (PT. 1408) OR (2014) LPELR 2237** (SC),the Court held that a situation in law where incorrect name is given to a person in the Writ of Summons is a misnomer. That it occurs when a mistake is made as to the name of a person who sued or was sued or when an action is brought by or against the wrong name of a person. The Courts have held that in such a circumstance,the Court can suo motu amend the name of the party to meet the end of justice.

That in EMERPO J. CONTINENTAL LTD. **V.CORONA** S. **& CO** (2006) 11NWLR (PT. 991) 365, the Supreme Court held that "a misnomer occurs when the correct person is brought to Court in wrong name..."

That the Court i Registered Trustees **of Airliné Operators** of **Nigeria** (supra) further held that "when both parties are quite familiar with the entity envisaged in a Writ of Summons and could not have been misled or have any real doubt or misgiving as to the identity of the person suing or being sued, then there can be no problem of mistaken identity to justify a striking out of the action. A misnomer that will vitiate the proceedings would be such that will cause reasonable doubt as to the identity of the person intending to sue or be sued."

That in JOSEPH AFOLABI **& 2 ORS V. JOHN ADEKUNLE & ANOR (1983) 2**SCNL141 @ 15, Aniagolu, JSC (of blessed memory) stated that ".... it *is perhaps necessary to emphasize that justice is not a fencing game in which parties engage themselves in an exercise of outsmarting each other in whirling of technicalities to the detriment of the determination of the substantial issues between them".* He urged the Court to so hold.

Concluding, he prayed the court to enter judgment in favour of the Plaintiffs against the Defendants and dismiss the Counter-Claimant's claim with punitive cost.

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Learned counsel for the 1st defendant/counterclaimant- **Olanrewaju Akinsanya in** his final written address formulated the following five (5) issues for determination:

1.Whether *there existed any betting contract between the 1s' Defendant and the 2"" Plaintiff whereunder the 2" Plaintiff could have played bets and won a jackpot winning of#7.6million or any bet winning at all?*

2.Whether the Plaintiffs have discharged the burden of proving that the 2"d Plaintiff was eligible to play bets in the 15 Defendant's betting shop and wonthe #7.6million jackpot winning?

3.Whether the pleadings and evidence of the Plaintiffs are believable and established in law which this Honourable Court can safely rely on in the determination of this suit?

4. *Whether the 15t Defendant/Counterclaimant has sufficiently proved his case and is enttled to the granting of his Counterclaim by this Honourable Court?*

5. Whether the 15' Defendant/Counterclaimant is entitled to damages including the cost of Solicitor's fee of #6.45million he incurred and paid for the defence and prosecution of this action?

On issue 1*:whether there existed any betting contract between the 15t Defendant* ***and the 2"" Plaintiff*** *whereunder the 2"d Plaintiff could have played bets and won* ***a jackpot winning of#7.6million or*** *any bet* ***winning*** *at* ***all?*** He submitted that the action of the Plaintiffs brought against the 1st Defendant is by its very nature a simple case of breach of unilateral contract and no more. He said that the Plaintiffs are therefore bound to prove that the unilateral contract they are complaining was breached by the 1st Defendant actually applied to the 2nd Plaintiff and that same was breached by the 1st Defendant.He reproduced the provisions of **section 131(1) of the Evidence Act, 2011 (supra).** He contended that if they fail to prove to this Court that such a contract existed and was breached by the 1st Defendant, their claims must fail and fall like a pack of cards. He urged the court to so hold.

He argued that the Plaintiffs are simply saying by their suit against the 1st Defendant that the 2nd Plaintiff entered into a betting unilateral contract with the 1st Defendant whereunder the 2nd Plaintiff is claiming she was able to play bets and purportedly played a bet that won her a jackpot of #7.6million but the 1stDefendant has allegedly breached the purported betting contract by refusing to pay to her, or through the 1st Plaintiff,the said jackpot winning.

He defined a unilateral contract as being a contract whereby there is only one party making the promise to do an act in return for anyone who meets certain terms laid

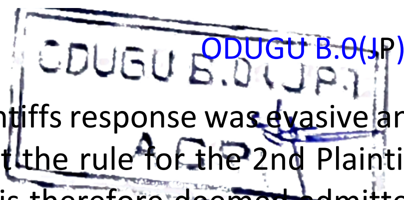
down by the first party. He cited **Amana Suits Hotels Ltd. v. P.D.P. (2007) 6NWLR (Pt. 1031) C.A. pp 480-481 paras.H-C.**

He submitted that this matter is a source of unilateral contract as posited by the appellate court above. That the 1# Defendant's betting shop is a place of unilateral contracts, whereby a customer/punter is promised winnings where he bets by making predictions and those predictions turn out correct. A punter accepts the offer when he pays and plays a bet. He argued however, that justas the case with all unilateral contracts, not everyone is qualified to accept the offer made by the I"Defendant in his betting shop. He stated that one general and common exempted group of persons are persons under the age of 18 years (minors) and cashiers who work in a betting shop, who accept bets and pay out winnings to customers whose bets turn out correct, are exempted from the offer in the betting shop where they work, just as the 2nd Plaintiff was exempted from the offer to play bets in the shop of the 1s Defendant where she worked at every material time to this case.

He contended that it is not in dispute that the 2nd Plaintiff worked as a cashier in the 1st Defendant's betting shop and paid out winnings to customers who won,as she positively admitted this under cross-examination. He contended that the 2ad Plaintiff having been a cashier in the shop accepting bets from customers who want to play bets and also havig the power to pay winners was clearly exempted from the offer to stake bets in the 1st Defendant's betting shop. He urged the court to so hold.

He contended that the fact that establishes that no betting offer was made to the 2Plaintiff fom the 1st Defendant, which the 2nd Plaintiff could have accepted and won the jackpot or any winning at all, are the averments in the pleadings of the 1t Defendant of the rule that system cashiers or any other worker in the 1" Defendant's shop were not allowed to place bets in the 1st Defendant's betting shop,let alone win anything. He referred to paragraphs 13 and 20 of his Amended Statement of Defence, paragraphs 10 and 15 of the Plaintiffs Reply/Defence to Counterclaim,He stated that in OMPADEC v. Dalek (Nig.) Ltd. (2002) 12 NWLR (Pt.781)384C.A.the Court held thus:

“Every allegation of fact, which is not specifically denied, or stated not to be admitted shall be taken as established at the trial. Accordingly, a denial should not be evasie and where any allegation offact in the statement of claim has not been specifically claimed or denied by implication, the plaintiffis not even obliged to establish it by evidence. In the instant case, the trial court was right when it found that the statement of defence did not specifically or by implication say that the plaintiffwas not an incorporated company, and as such was not an issue for trial bythe court.”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He argued that the Plaintiffs response was evasive and did not specifically or by implication deny that it was against the rule for the 2nd Plaintiff to play bets at the 15t Defendant's betting shop. This rule is therefore deemed admitted and the 15t Defendant needed not adduce any further proof. As facts deemed admitted need not be proved. He cited section **123 of the Evidence Act 2011.**

He also stated that the Plaintiffs by their afore-reproduced traverses were also stating in effect that they do not admit the existence of the rule; in other words that they are not in a position to admit or deny the averment of the existence of the rule.He stated that in **Jadcom Ltd. v. Oguns Electricals (2004) 3 NWLR (Pt.** 859) 153C.A. the Court held thus*:* *"Every allegation* ***of fact in any pleadings,not*** *being a* ***petition or summons, if not denied specifically or by necessary implication,*** *or* ***stated to be not admitted in the pleading of the opposite party, will be taken*** *to be* ***admitted"***

Also in Idris v. A.N.P.P **(2008)** 8 **NWLR** (Pt. **1088) 1** C.A. the Court held thus**:**“A ***traverse to the effect that 'a defendant is not in a position to admit or deny an averment' by a plaintiff is deemed to be an admission of the plaintiff's averment."***

He submit that the Plaintiffs having stated in effect that they do not admit and are not in a position to deny or admit the averments of the 15t Defendant that it was against the rule

for the 2nd Plaintiff to play bets in the shop of the 15t Defendant, the said averments of the 1st Defendant are deemed admitted and therefore need no further proof. He urged the court to so hold.

He argued that it is practically impossible that the 2nd Plaintiff was not aware of the rule that precluded her from betting in the shop. He assumed without conceding that if the 2nd Plaintiff was actually not aware of the rule that precluded her from betting,she would still be bound by the rule and deemed to have admitted to the existence of same. This is because ignorance of the law is never an excuse. He cited the case of Elias v. Ecobank (Nig.) **Plc. (2019)** 4 NWLR (Pt. 1663) 381 S.C. He submitted that the 2nd Plaintiff claiming that she is not aware of the rule that she could not play bets in the 1st Defendant's betting shop where she was working and had worked for months as a system cashier, is unbelievable, ridiculous and unacceptable, to say the least. He urged the court to so hold.

He referred to the ongoing trial in **MOB/41C/2020: COP** V. **NNAMUCHI OLUCHI & MARTINS ODO** IFEANYI at the Obollo-Afor Magistrates' Court and Isah v. State (2019) LPELR-49363 where the court held thus: ***"The evidence** of the investigating Police Officer **I hold can never be taken to** be **hearsay, it is the** report of what he saw or discovered in **the** course **of** his investigation."* He quoted the report of the IPO and contended that the report of an IPO, as per Exhibit **DAD**

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in this case, is as good as and carries the same weight as the evidence of an eye-witness, in this case DW3 being the eye-witness. He urged the court to so hold.

He submitted that it is also an established and trite law that evidence of a party that is not controverted by the other party is deemed admitted by that other party and the Court in such instance is bound to hold such uncontroverted evidence as established.He stated that in **Gata v. Paulosa (Nig.) Ltd. (1998) 3 NWLR (Pt. 543) 574 C.A.atPage 581 para. H** the Court rightly held: ***"The credibility of the Evidence of a witness can only be challenged by cross-examination or production of Evidence directly challenging the truth ofhis testimony."***

He contended that where an opposing party does not produce evidence challenging the truth of a party's testimony, the only way to challenge the evidence of such a witness can only be by cross-examination. He cited **Osuigwe v.Nwihim(1995)3**NWLR (Pt.386) 752 C.A. where the Court held **at Page** ***767:"where Evidence of a witness has not been challenged, contradicted or shaken under cross examination and such Evidence is not inadmissible in law, provided the Evidence is** in **line with the facts so pleaded, the Evidence must be accepted as the correct version of what was expected to be proved."*** Also, **Anigbogu v.Uchejigbo(2002) 10 NWLR (Pt. 776) 472 C.A.at page 486; Pascutto v.Adecentro (Nig.) Ltd. (1997) 11 NWIR (Pt.529) 467 S.C.**

He argued that this Court is bound to believe the evidence of a witness that is not challenged or contradicted or shaken under the cross-examination of the opposing party.

He contended that he cited the above authorities to commend to the Court uncontroverted evidence of DW2 and DW3, in particular the uncontroverted evidence of DW2 as contained in **paragraph 10** of his amended Statement on Oath and **paragraph 21** of his pleadings, that the 2nd Plaintiff sent him a WhatsApp message that someone has won a jackpot on her system; and DW3's evidence that it was a crime to play bets in the shop as cashiers as contained in **paragraph 2** of her Statement on Oath and also as stated under cross-examination.

He stated that with regard to the evidènce of DW2 that the 2nd Plaintiff sent him a WhatsApp message that someone has von jackpot on her system.This evidence of DW2 was never controverted or challenged at all by the Plaitiffs,neither in their pleadings nor in their cross-examination of DW2. The said WhatsApp message was even frontloaded and tendered and admitted as Exhibit **DAC** in the trial of this suit before this Court.

Learned counsel refered **paragraph 16** of the Plaintiffs reply to the Statement of Defence and Counterclaim of the 1st Defendant and argued that from the Plaintiffs'traverse,they never contended at all that the WhatsApp message was not true; they

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never contended that the message w s not sent from the 2"d Plaintiff to the 1"Defendant. In fact that by their puttin the 1s Defendant to strictest proof to show that the “someone” referred to in the message was Okpe shows that they clearly admitted the veracity of the document and its contents.

He also contended that during the cross-examination of the 1st Defendant as DW2,the Plaintiffs never cross-examined DV'2 on his evidence of DAC or the contents of DAC.He stated that this clearly establishes that DAC and its contents are true. And relying on the plethora of authorities cited above on unchallenged evidence,this Court is bound to hold that DAC and its contents are true. He urged the court to so hold.

He also referred to the evidence of the DW3 that it was a rule that she and the 2nd Plaintiffs, who were cashiers, were not allowed to play bets in the shop. He stated that this evidence of DW3 was never controverted or challenged, not even after she restated it under cross-examination.Hi stated that the evidence of DW3 that the 2nd Plaintiff could not play bets in the shp let alone win any bet winning was never challenged nor shaken by the Plaintif's, not even during cross-examination.That this Honourable Court is therefore bo ind to accept it as truth that the rule of the betting shop of the 1st Defendant precluded the 2nd Plaintiff from playing bets in the shop let alone win any bet winning at all. He urged the court to so hold.

He contended that the 2nd Plaintiff admitted by implication under cross-examination the fact that she collects and held winning bet tickets of punters/customers in trust.He argued that it is simple common sense that if she was allowed to play bets in the shops like the customers, it will leave room for perpetuation of fraud and no punter will play bets in a shop where he knows the cashier can claim his winning bets;because in betting, the holder of the ticket is the presumed true winner of the bet.He argued that it corroborates **Exhibit DAC** and its contents and the evidenceof DW3that before the 1st Defendant pays the winning money to a winner of Bet9ja game he must have confirmed that the person is he proper winner from them.

He further referred to Exhibit E and cr ntended that it is true that the rule precluded the 2nd Plaintiff from playing bets in the 1st Defendant's shop because she was working there as a cashier; and this in

the Plaintiffs cannot therefore complain of the breach of a nonexistent contract.

Finally on issue 1, he assumed without conceding that if the 2nd Plaintiff actually played the bet that won the jackpot winning it was wrong and unlawful for her to have done so; and therefore the Court has a duty to hold against her because to hold in her favour that she won and be paid the jackpot winning would amount and be tantamount to this Honourable Court aiding a wrongdoer to benefit from his own

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wrong. As it is trite that a wrongdoe will not be allowed to benefit from her own wrong.

On issue **2**:*"whether* ***the Plaintiffs have discharged the burden of proving that the 2"d Plaintiff*** *was* ***eligible*** *to* ***play bets in the 1s Defendant's betting shop and won the #7.6million jackpot winning?"*** He adopted all their arguments,submissions,with all authorities cited and relied upon in issue 1 hereunder in support of their **issue 2 and cited section 131 of the Evidence Act, 2011 (supra).**

He stated that the Plaintiffs in their pleadings claimed that the 2nd Plaintiff telephoned the 15t Defendant to pay her purported jackpot winning to the 1s Plaintiff, who is a third party. He stated that this claim of the Plaintiffs was vehemently denied and opposed in paragraph 6 of the 1st Defendant's Reply to **Defence to Amended Counterclaim** ind paragraph 7 of the DW2's Statement on Oath titled **Further Statement on O** th of Pascal ArohObuikem. He argued that this evidence of DW2 was never ch llenged at all during cross-examination and same is deemed admitted. He argued tat it is established that Bet9ja or its agent the 1st Defendant, do not pay winnings to third parties, and in rare situations where they do so it is on the authority of a verifying affidavit deposed to by the actual winner of the bet winning.

He also argued that the Plaintiffs having asserted that the #4.5million paid to the 1st Plaintiff was in a third party capacity on the purported behalf of the 2nd Plaintiff;the burden is on them to prove that Bet9ja and by extension, 1st Defendant, who is an agent of Bet9ja, pay winnings to third parties. They also have the burden to prove that the 2nd Plaintiff deposed to a verifying affidavit authorizing the 1st Defendant to pay the purported winning to the 1st Plaintiff. He cited Adesina v. Air France (2022) 8 NWLR **(Pt.1833) 523** S.C. He contended that at no time did the Plaintiffs show either the 1st Defendant or this Court the verifying affidavit by which she authorized the 1st Defendant to pay he purported winning to the 1st Plaintiff, who is a third party. He also contended thi : the Plaintiffs failed to prove that the 2nd Plaintiff was eligible to play bets in th 1st Defendant's shop; or that the 2nd Plaintiff actually played the bet that won the jackpot; or that Bet9ja or its agent the 1st Defendant pay winnings to third parties; or that the 2nd Plaintiff deposed to a verifying affidavit authorizing the 1st I efendant to pay her purported winning to the 1st Plaintiff; by failing to lead any crediole evidence to prove their said assertions.

On issue 3: *whether the pleadings and evidence of the Plaintiffs are believable and established in law upon which this Honourable Court can safely rely on in the determination of this suit?*

He contended that the 2nd plaintiff ever denied that she was not the one who sent the pleaded WhatsApp message **Exhibit** DAC and as such its content is admitted and

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established in this suit and her denial during cross-examination notwithstanding. He reproduced some portions of **Exhibit DA,** which is the written statement of the 2Plaintiff to the Police and stated that the reason the 2m Plaintiff gave to te police for the 1" Defendant paying the part-winnig of #4.5million to the 1st Plaintiff was that the 1st Defendant does not permit her to leave the shop.

Also,that the issue of torture and harassment by the Police is trying to imply that **Exhibit DA** was obtained from the 2nd Plaintiff through the purported torture and harassment of the police. He submitted that it is trite law and as it was also held in **A.G., Rivers State v. A.G., Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31 S.C.thus***: "***A** ***party cannot rely or take the benefis of the contents of a document and at the same time turn around to que tion the legality of the same document. It is the*** *rule* ***of*** *equity* ***that*** *one cannot* ***approbate and reprobate. It*** *is a* ***doctrine of justice and equity that it would be unjust and inequitable to blow hot and cold."***

He stated that the Plaintiffs while trying to falsely imply that Exhibit DA was obtained by torture, went ahead in their pleadings and evidence to rely on the same **Exhibit** DA in support of their purported claim that she played the game and won the jackpot; particularly **paragraphs.14 and 19** of their reply to 1st Defendant's Statement of Defence and **paragraphs 15 and 20** of the 2nd Plaintiff's Additional Statement on Oath. He argued that the Plaintiffs having relied on **Exhibit DA** to support their claim that the 2nd Plaintiff played and won the jackpot cannot be heard to say that same was obtained by the Police from the 2nd Plaintiff by torture of any kind. That it istherefore established that Exhibit DA is valid and true as a voluntary statement of the 2nd Plaintiff to the Police.He urged the court to so hold.

He stated that the Plaintiffs reason that the 15t Defendant paid the part-winning of the jackpot to the 1st Plaintiff was b,cause the 2nd Plaintiff's bank account was a student account that had a limit below the amount of the jackpot winning is inconsistent with what they told the police that it was because the 2nd Plaintiff was not permitted to leave the shop. He cited the decision of the Supreme Court in **Samaila** v. **State (2024)** 2 **NWLR (Pt. 1923) 465 at page 486** thus: ***"Where a witness' statement to the Police contradicts his evidence in court, the court should regard him as an unreliable witness and discountenance his testimony in court."***

He urged the court to regard the Plaintiffs, PW1 and PW2, as unreliable witnesses and discountenance their testimonies; their testimonies to the police and this court having been inconsistent with each other.,

He assumed without conceding that if it was the 2nd Plaintiff that played the bet and won the jackpot but the 15t Defendant wanted to cheat her out of her jackpot winning, the question then will now be, why did the 1st Defendant initially pay

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#4.5million to the 1st Plaintiff without any story as soon as the 1st Plaintiff presented the winning bet ticket to the 1st Defendant?

That if the 1st Defendant truly wanted to use power and influence to cheat the 2nd Plaintiff out of her purported jackpot winning, why did the 1st Defendant not keep all the #7.6million but paid #4.5million already to the 15t Plaintiff, as soon as the 1st Plaintiff presented to the 1st Defendant the jackpot winning bet ticket?

He contended that from the cross-examination of the 1st Plaintiff that all through the time the 1st Plaintiff was with the 1st Defendant at Sogo Hotel, immediately before the #4.5million was paid, all that mattered to and required by the 1st Defendant was just to see the winning ticket and paid the 15t Plaintiff immediately he confirmed it was the winning ticket of the jackpot. He said this is so because, and as also admitted by the Plaintiffs in their paragraph 8 of their reply to the Statement of Defence and Counterclaim of the 1st Defendant,the holder of a winning bet ticket is the presumed true winner of that bet ticket.

He argued that the 1st Defendant in his pleadings and evidence made it clear, and was never controverted by the Plaintiffs, that he never knew the 1st Plaintiff until that evening when the 1st Plaintiff came to meet him at Sogo Hotel with the jackpot winning ticket.

He assumed without conceding that if the 1st Defendant wanted to pay the 1st Plaintiff on behalf of the 2nd Plaintiff,and the 1st Plaintiff being someone not known by the 1st Defendant, how does it make any sense that the 1st Defendant would not ask for some form of identity card to confirm the identity of the 1st Plaintiff as the true person coming to receive the payment on behalf of the 2nd Plaintiff? "The worst (sic) least would have been the 1st Defendant would put a telephone call through to the 2nd Plaintiff to confirm if the person of the 1st Plaintiff with him was the person he should pay her purported winning to.”

He also argued that the pleadings and evidence of the Plaintiffs are unbelievable and all pack of lies which this Honourable Court cannot rely on in this case and same should be discountenanced by the Court accordingly. He urged the court to so hold.

On issue 4:*whether the 1st Defendant/Counterclaimant has sufficiently proved his case and is entitled to the granting of his Counterclaim by this Honourable Court?* He adopted all their arguments, submissions, and authorities cited and relied on under issues 1 -3. He contended that the 1st Defendant/Counterclaimant has sufficiently proved his case and is entitled to the granting of his Counterclaim by this Honourable Court.

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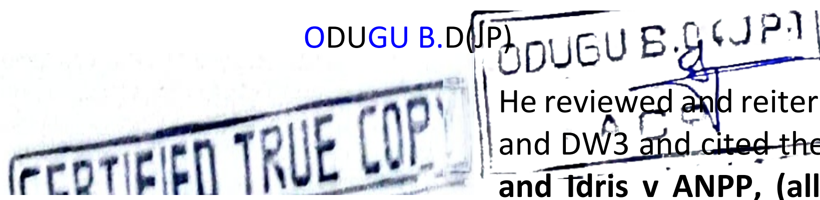

He reviewed and reiterated the evidence of the **PW2** and DW3 and cited the cases **of Dalek, Jadeom Ltd, and Idris v ANPP, (all Supra)** and contended that they are deemed established.

Secondly, that the 1" Defendant pleaded the WhatsApp message (as per **Exhibit** DAC and tendered same to the Police, as can be clearly gleancd from **Exhibit DAD)** from the 2nd Plaintiff to him that someone has won jackpot on her, 2"d Plaintiff, system. In their response, the Plaintiffs only asked that the 1" Defendant prove that the "someone" in the WhatsApp message was Okpe. And also, the Plaintiffs never challenged or deny Exhibit **DAC** to the Police.Therefore,by their silence on Exhibit DAC to the Police and their response in their pleadings, the Plaintiffs clearly have admitted to **Exhibit DAC.** He wondered whether she will refer to herself as "someone" if truly she was the one who won the jackpot? Would she simply not say that I won the jackpot? He cited the cases of **Gata, Osuigwe,Anigbogu, and Pascutto, (all *Supra)*** that the Court is bound to accept uncontroverted evidence as the truth.

He narrated the efforts they made to get the call records of 30th September, 2020between the 1s Defendant and the 2id plaintiff from MTN Telephone Providers through the order of this court. He contended that if the 1st Defendant was not saying the truth, why would he seek an order of court to force MTN to release the recording of the said telephone conversations.

Learned counsel to the 1st dfendant was emphatic that the evidence of the **DW1,**DW2 and the DW3 shows that the D'V1 was the person who actually played and won the game.

He also gave evidence as regards the legal representation of the 1st Defendant by the law firm of IDOWU SOFOLA & CO. and the number of appearances. He contended that the 1st Defendant/Counterclaimant has proved and established his case and is thus entitled to the grant of his Counterclaim by this Court. He urged the court to so hold.

On issue 5: ***whether the 1" Defendant/Counterclaimant*** *is entitled to* ***damages*** *including the cost of Solicitor's fee of#6.45million he incurred* ***and*** *paid* ***for*** *the defence and prosecution of this action?* He answered same in the affirmative and cited Sambo &Ors v. Okon&Ors. (2013) LPELR-20394 (CA) where it was held thus*:"where a person's legal right has been infringed or invaded,and injunctive reliefs are claimed and proved at the trial, the successful party is entitled to damages and cost of the litigation."*

Also, the Court more succinctly hel in a more recentdecision of Oguejifor&Anor. v. Ubakason (Nig) Ltd. (2022,LPELR-56783(CA) thus: *"The principle of law is that a successful party is entitled to be indemnified* ***for*** *costs of litigation*

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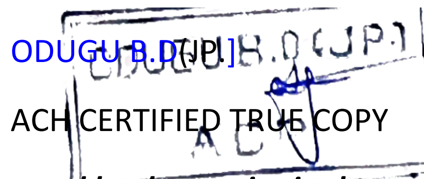

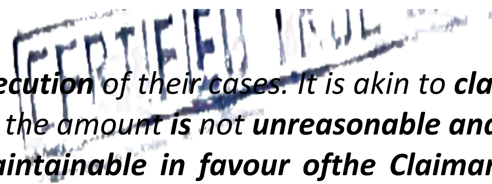

which includes charges incurred by the parties in the prosecution** of their cases. It is akin to **claim for special** damages. Once the Solicitor's fee is pleaded and the amount **is** not **unreasonable and it is provable, usually by receipts, such** a claim can be **maintainable in favour ofthe Claimant" (Underlining is ours for emphasis)

He argued that the 1s Defendant pleaded the Solicitors' fee he incurred in **paragraph 47** of his Statement of D,fence of 1st February, 2023 and proved it by tendering the reccipt he was issued for the payment by the law firm,MessrsIdowuSofola& Co. as per Exhibit F. He said that the 1st Defendant is therefore not only entitled to damages but also entitled to recover from the Plaintiffs the Solicitors' fee of #6.45million he incurred in defending and prosecuting this action.

He contended that DW3 never stated that Okpe came into the matter the next day;and Dw3 did not say she advised the 2nd Plaintiff to open the system and even allow Okpe to have his win and she refused or that the 2nd Plaintff came and announced to her she won the game."

In conclusion, he urged the court to uphold all their arguments and submissions contained herein and grant the 15t Defendant's Counterclaim while dismissing the case of the Plaintiffs with substantial nunitive cost against them in favour of the 1st Defendant.

Learned counsel to the 1st defendant **-Olanrewaju Akinsanya-also** filed Reply on points of law dated and filed on 8/4/2024. He responded to the objection of the plaintiffs' counsel regarding the tendering and admissibility of the aforestated documents as follows:

On **exhibit DAB,** he submitted that it is computer-generated evidence and its admissibility is governed by section 84 of the Evidence Act,2011.He stated that the name or signature is not a requirement for computer-generated evidence as **exhibit DAB** but it suffices that subsection 2 of the said section 84 is complied with, and which was fully complied with in exhibit DAB. He also stated that it is incorrect to state that exhibit DAB carries no date as it carries the date it was printed out of a computer and that is the only date that matters as regards computer-generated evidence like exhibit DAB.

He contended that a computer-generatei document that complies with section 84 (2)of the Evidence Act is admissible with full probative value and is immaterial that such certificate of compliance is not pleaded or adduced in evidence. he cited Dickson v Sylva (2017) **8NWLR (Pt. 1567)167 (SC).**

On exhibit DAC, he urged the court to discountenance the objection because it's nothing but the learned counsel giving evidence in a written address. He cited

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B.S.J.S.C.v Danjuma (2017) 7 NWLR (Pt. 1565) 432 at 457 paras B-C where the Court of Appeal stated thus: "no matter how beautiful a counsel's written address is, it cannot take the place of evidence. A court is bound by the evidence before it and not the address of counsel not supported by material evidence." He stated that learned counsel to the plaintiff stating that the telephone number is not the 2nd plaintiff's is giving evidence in a written address and the court is bound to discountenance same.

He also stated that at no time at the police or Magistrate Court or before this court was the name on exhibit DAC challenged or denied. He said that it is not in dispute that exhibit DAC originated from the 1st defendant's phone who saved the 2nd defendant's name as Oluchi Oloye. He statedthat it is immaterial what name the 1st defendant chose to save his cashier's name with. He stated that what is material is that the said cashier - the 2nd plaintiff, never challenged or deny the said exhibit DAC. He also stated that oral evidence may not vary documentary evidence. He also argued that while evidence elicited during cross-examination may constitute evidence for the party that cross-examined a witness, such evidence goes to no issue if no facts in support were pleaded in the pleadings of the said party that elicited such evidence during cross-examination. He cited **Makon Engr.** & **Tech. Services Ltd. v Nwokedinko (2020) 5 NWLR (Pt.1716) 165 (CA).**

He argued that at no time in the plairtiffs pleadings did they ever plead that the number on exhibit DAC was not the 2hd plaintiff's number or that she was not the one whose name and number was saved as Oluchi Oloye. That the purportedly elicited evidence of cross-examination they purportedly seek to rely on goes to no issue.

On exhibit DAD, he referred to the against the plaintiffs at te Magistrate Court and stated that the police prosecuting the charge had tendered the original copy of exhibit DAD to the Magistrate Court from where they obtained the certified true copy of it. He submitted that it is trite that the one to certify a public document is the officer in custody of the original copy of the document. He stated that the police having tendered the original copy of exhibit DAD to the Registrar of the Magistrate Court Obollo Afor, the right officer from whom to obtain a certified true copy of exhibit DAD became the Registrar of the said Magistrate Court from whom the 1st defendant obtained the said certified true copy of exhibit DAD. He cited G.T.**Invest. Ltd. v WittBush Ltd. (2011) 8 NWLR (Pt. 1250) 500 S.C**

He also argued that Abubakar v **Joseph (supra)** is notapplicable in this case because the holding of the court there was about and on records of criminal proceedings and not the report of an investigating police officer. He also cited Bello v **Ringim(1991)7** NWLR (Pt. 206) 668 CA.

On Exhibit E, he submitted that it is sufficient if facts supporting a document are pleaded, and it is of no need or cons quence to specifically plead a document as long as facts supporting such documenis are contained in the pleadings of the party.He cited **Jinadu v Esurombi-Aro (2005) 14 NWLR (Pt. 944) 142 CA;Adegbite** v **Amosu (2016) 15 NWLR (Pt. 1536) 405 SC.** He stated that the 1st defendant surely pleaded therule that cashiers cannot play bets in a shop where they work. That exhibit E was tendered to further establish this rule already pleaded.

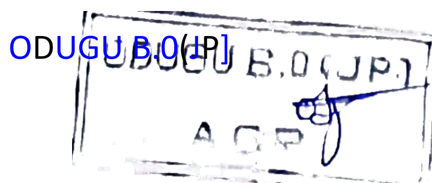
He stated that the 1st defendant never said he is the maker of exhibit E is also a computer-generated but emanated from the custody of Bet9ja Company,the principal of the 1st defendant. That exhibit E was signed by one Mr Adewale Akande whose designation in Bet9ja was also clearly stated on the document as the Chief Compliance Officer.

On exhibit F, he submitted that it is trite that a receipt (exhibit F) is is evidence of payment and not subject to same rigor us standard of a court process that must be signed and have the name of the coun el in that firm who signed such process. He stated that as long as prima facie it is r t disputed that the receipt was issued by the creditor, it is admissible. He cited **Adeieke v. Oyetola(2023) 11 NWLR(Pt.1894)**71 **C.A.**

He assumed without conceding that if because the name of the maker of the signature on Exhibit F is not known, it renders Exhibit F worthless and inadmissible,such circumstance is a mere irregularity that the Court has the power to deal with in the interest of justice; as it has been established in the case of **Odunewu v.Agoro(2022) 7 NWLR (Pt. 1830) 545 S.C. at page 570** thus:***"The law* is *settled that a court of law faced with disputed signature has the power to compare the disputed signature with any signature agreed to be an undisputed or genuine signature."***

Relying therefore on the foregoing, hetated that it cannot therefore be said that the maker of Exhibit F is not known, as w'en this Court compares the signature on the receipt, Exhibit F, and compare with th signature on all the processes signed by the 1st Defendant's Counsel, including this Reply on Point of Law, the Court will see that the signature on Exhibit F is the same signature of Counsel to the 15t Defendant,that is the signature of **OlanrewajuAkinsanya, Esq.** of Counsel to the 1st Defendant.

He also stated that admissibility of a document is based on being relevant, pleaded and admissible in law. And Exhibit F meets all these 3 criteria to wit: it is relevant,



pleaded in **paragraph** 47 of the I" Defendant's Statement of Defence/Counterclaim, and admissibia in law.The objection to the admissibility of Exhibit F or its probative value, therefore cannot stand.

On **Exhibits G and H,** he adopted his arguments and submissions against the objections of the Plaintiffs to Exhibit DAD and urged the Court to dismiss all the objections of the Plaintiffs with regards to the aforementioned Documents of the 1"Defendant tendered in evidence in this suit.

All other responses by the learned counseI to the I" defendant were based on facts and not law. As such, they are hereby discountenanced.

I have carefully read and considered all the processes filed in this suit, the aflidavits and exhibits annexed, their testimonies in court and submissions by both parties.

It is proper to rule on the objection to admissibility of documents raised by the learned counsel to the plaintiffs agiinst the documents tendered by the learned counsel to the 1st defendant.

Ruling: the law is trite that what governs admissibility is relevancy. Admissibility is one issue. The weight to attach to documents already admitted is an entirely different issue.See Having said that, the said documents which this court considers relevant in this case are properly admitted.

The issue before this court is **whether the plaintiffs proved their claims to be entitled to the reliefs sought.**

The game in question giving rise to this suit was played on the 30th September,2020. The 1st defendant paid the N4.5m into the Acess Bank account of the 1s plaintiff on 1st October, 2020. According to the Police Investigation Report, the matter was reported at their station on the 5th October, 2020 while they concluded investigation and dated their report 7'" October, 2020. This court is left in the dark as to what transpired between the parties from the 2"d October, 2020 to 4th October,2020.

Now, let us go into the facts of this case. According to exhibit DAwhich is the extra judicial statement of the 2nd plaintiff dated 5/10/2020, “My name is Oluchi **Nnamuchi.** I know the complainant... I am working for him at his bet Nija (sic)shop at Enugu road by the round about Orba. I personally played game of visual N500 in that same day. The game enterd with jackport. This incident happened on Wednesday 30/9/2020. Later on that same day I called my director... and told him that I played game and that the game entered. He personally told me to called (sic)my brother Odo Martin to come and claim the money for me because he does not

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permit me to go out of the shop. Immediately,I called my brother Odo Martin who came to the shop and called my director on phone but my director told him to come and meet him

at Nsukka ... To my surprise, on 2/10/2020 at about 12.00hrs while I was in the shop in company of one of our staff-Ifechi Nwodo when my director...came and told me to enter inside his car so that we can go to the next shop at Wald (sic) Bank for collection of paper for printing of games result. To my surprise,on our way going, we meet (sic) women who entered inside our car from there I was brought to the police station...."

The DW3,on the other hand, in **exhibit** H which is her extra judicial statement at the police also dated 5/10/2020 stated thus and I quote:"My name is **Ifechukwu** Nwodo. I know the complainant in this case...I am one of the cashier (sic) working for him at Enugu road beside round about Orba. It was on Wednesday the 30/9/2020at about 16.00hrs while I was in the bet Naija (sic) shop in company of Oluchi Nnamuchi and other customers. So, one boy known as Okpe played a game. The said Okpe usually played over 2 and ... over 2 is N500 only. Immediately, Okpe played the game, he went to another system which we used for booking of games there and Oluchi told ... Okpe that the game entered N2000 only which Okpe collected the N2000. Immediately Oluchi short (sic) down the system and left outside to unknown place living (sic) theremaining customers in my own care,not quite long the customers left, later on that same day at about 17.00hrs,Oluchi came back to the shop, there she was like telling me that now, that she is now reach(sic)and that she want to call her brother to come and claim the money for her that the person that played the game has gone long time, that the person has collected N2000.And Oluchi called our director on phone and told him that somebody eat jackpot in her system...."

In her swor written statement at Obollo-Afor Magistrate Court dated 27h October,2020,marked exhibit G, the DW3 **-Ifechukwu** Nwodo -stated thus:"...that on Wednesday the 30h day of September, 2020 at about 16.00hrs,I was on duty with Nnamuchi Oluchi when one boy called Okpe came to the system of Nnamuchi Oluchi and played game with N500. He won N7.673.000.00 she told him that he has won N2000 and she gave N2000 to the boy and heleft..."

In her Amended statement on oath dated 24 November, 2023,the **DW3-Ifechukwu Nwodo** - stated as follows: "on Wednesday,the 30 of September,2020,I was on duty with my fellow cashier-the 2nd plaintiff-when one of our regular customers who always came to our shop to play bet9ja to (sic)play(sic)two bets.The name of the said customer is Ifeanyichukwu Odo also known as Okpe.Okpe played the two bets on the 2ad plaintiff's virtual system and not on my system,but the way our 2 systems are arranged, both systems are close to each other and I

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can see the screen of the 2nd plaintiff and she can also see mine.When Okpe played his bets, his bet won N2000 but I noticed on the screen that a jackpot winning of #7,6million had entered one of the two bets that Okpe played. I expected the2nd

plaintiff to announce the good news to Okpe of his jackpot winning, but to my surprise, the 2nd plaintiff only informed Okpe of #2000 winning. The 2nd plaintiff thus collected the bet tickets from Okpe and paid Okpe only the #2000 winning,after which Okpe stepped away from the system of the 2nd plaintiff whereon he had just played his two bets. When Okpe left, I watched the 2nd plaintiff as she quickly shut down her system and left the shop, leaving only me to attend to all the other customers. The 2nd plaintiff later came back rejoicing that she was rich, she was now a millionaire because the winner of the jackpot on her system is gone after she had paid him (Okpe) #2000. She was rejoicing that all the #7.6million was all hers now."

The DW1 who is at the centre of the imbroglio and the alleged winner of the Bet9ja game stated in his Amended statement on oath in this court dated 8/2/2023 stated as follows:

"I,IfeanyiChukwu Odo also known as **Okpe,** Male, Christian, an Artisan,Nigerian citizen and native of Orba in Udenu LGA of Enugu State do hereby make oath and state as follows that:

1. I am the above-named person and a regular customer at the 1st Defendant's bet9ja shop at Orba where I always play bets.

2. As it is my usual manner, I visited the 1st Defendant said bet9ja shop to play bets. I usually play two tickets, so I played two tickets on the virtual system of the 2nd Plaintiff.

3. The 2nd Plaintiff told me that I on #2,000. She collected my tickets and paid me #2,000 after which I left the shop.

4. I was later shown my tickets at the Police Station, Orba where I confirmed that they were the tickets I played on that 30th September,2020 at the 1st Defendant's bet9ja shop, on the 2nd Plaintiff's system and that I won the jackpot of N7.6M.,"among others.

Meanwhile, during cross-examination, the DW1 told the court that before he played that game including now, he has no visual impairment. However, responding to the question: "the game you allegedly won was told you by someone else? That is to say,someone else told you that you won the game?

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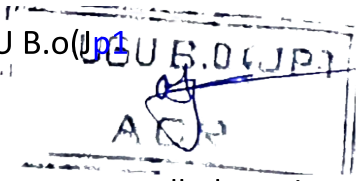

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The DW1 stated thus: "Bet9ja game usually last ninety seconds. Sixty seconds into the game, the system switched off. The 2id plaintiff asked me to go and play in her neighbour's system. I played two tickets there and it did not favour meand I went back to the 2h plaintiff's system. She refused to open the system and said she was going. She said that fuel has finished and I gave her two thousand naira(N2000)to buy fuel. She said no that she wants to go because it is late."

The **DW1** also stated that he do not know whether this issue of giving two thousand naira (N2000) to the 2m plaintiff for fuel, as claimed, is contained in his written deposition on oath. Of course, this assertion was not pleaded.

Now,the 2nd plaintiff stated in her statement-exhibit **DA** -that she was **tricked** and taken to the police station on the 2nd October, 2020. This assertion was neither contradicted nor controverted by the defence. This assertion runs contrary to the Police Investigation Report dated 7 October, 2020 - exhibit **DAD.** The introduction of **exhibit DAD** stated thus:"this deals with a case of conspiracy and fraud reported in this office on 5/10/2020." The said report further stated, inter alia,that "the suspects were subsequently arrested and their statements obtained under caution, although they denied the fraudulent narration. I later discovered oneOdo Ifeanyi alias Okpe who was identified by the complainant and his witness as the actual winner and took his statement."

The said extra judicial statement of the said Odo Ifeanyi taken by the Investigating Police Officer in the course of investigating this complaint was not made available to this court. The said statement of Odo Ifeanyi was neither annexed, listed in the list of documents nor tendered as an exhibit. Also, the date of the discovery of the said Odo Ifeanyi was also not disclosed to this court. These issues became relevant after the 1st defendant who testified as the DW2 told this court that Odo Ifeanyi came into the picture three weeks after the incident giving rise to this suit arose.Court asked: "Pascal, when did Okpe come into the picture?" the DW2 answered:"about three weeks after. He didn't know immediately. It was when the story started going round that he came and told me and I decided to carry him along....."

The game was played on 30/9/2020 while the part payment made on the 1/10/2020.The matter was reported to the police on the 5/10/2020. The Police concluded investigation and released their report dated 7/10/2020. The alleged winner of the game came to know about his win and the controversy surrounding it three weeks after through stories going round. Three weeks after the incident should be around twenty something October, 2020. However, mysteriously, before the police concluded their investigation, the IPO stated that he discovered the same Odo Ifeanyi alias Okpe and the 1st defendant - the **DW2** - and his witness - the DW3-identified him as the actual winner before he took his statement and made exhibit

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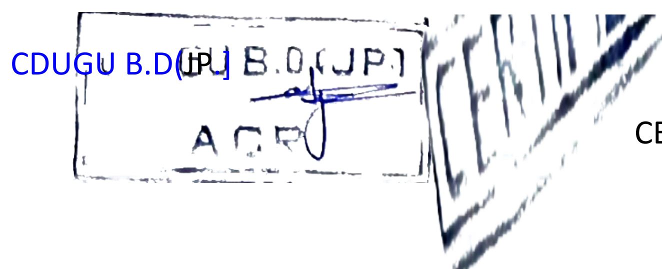
DAD - the police investigation **report dated** 7/10/2020. The said statement extracted from Odo Ifeanyi alias Okpe was not tendered before this court. This three weeks version stated by the 1st defendant as when Okpe came to kow about this matter ishowever, contrary to the statement on oath by Okpe who stated that “I was later shown my tickets at the Police Station, Orba where I confirmed that they were the tickets I played on that 30th September, 2020 at the 1st Defendant's bet9ja shop,on the 2nd Plaintiff's system and that I won the jackpot of N7.6m.”

Apart from the aforementioned, there are a lot of flip-flps in the pleadings and evidence of the defence witnesses. I will ex-ray some of them below.

1. In exhibit **H** which is the extra judicial statement of the **DW3- Ifechukwu Nwodo** dated **5/10/2020,** DW3 stated that “Odo Ifeanyi (alias Okpe) played the bet9ja game. Immediately Okpe played the game, he went to another system which we use for booking of games. There and then, Oluchi told Okpe that the game entered N2000 only which Okpe collected the N2000.Immediately, Oluchi shut the system and left....”

2. In paragraph 3 of exhibit G which is her sworn written statement at Obollo-Afor Magistrate Court, the **DW3** stated that “... that on Wednesday the 30th day of September, 2020 at about 16.00hrs, I was on duty with Nnamuchi Oluchi when one boy called Okpe came to the system of Nnamuchi Oluchi and played game with N500. He won N7.673.000.00 she told him that he has won N2000and she gave N2000 to the boy and he left...”

3. While from paragraphs 3 to 6 of her written statement on oath in this court,the **DW3** recognized Odo Ifeanyi/Ifeanyi Odo (alias Okpe) as their regular customer. She also stated that she saw when Okpe won the N7.6m in the 2nd plaintiff's syste and expected her to disclose same to Okpe and the2nd plaintiff refused to do that. Instead, the 2nd plaintiff only told Okpe about his N2000 win, paid him the N2000 and Okpe left. The DW3 did not cite any bet9ja law or regulation forbidden or precluding her from making the disclosure to Okpe since she claimed to have seen the win in the 2nd plaintiff's system with her own eyes. The DW3 did not also state any bet9ja laws or regulation that mandates the manager of a system with a win to be the only one to declare and disclose the win to the winner, irrespective of who else saw the win. At her level, the DW3 who allegedly saw a win of that magnitude sectretly kept it to herself without betraying any emotion like shouting, been joyous or general excitement that will attract other customers in their shop at the time.Curiously, the DW3 did not reveal what she saw to the 1st defendant



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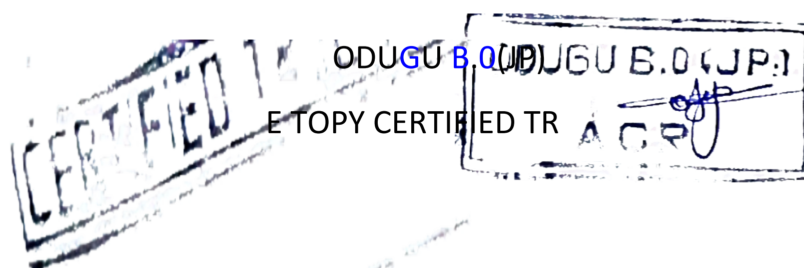
and even to her co-cashier -the 2nd plaintiff-until she came back to her that she played the game and won N7.6m.

4. The alleged winner of the game - the **DW1 (Odo Ifeanyi alias Okpe) -**whom the DW3 stated collected the N2000 and left, told the court during cross-examination that "Bet9ja game usually last ninety seconds. Sixty seconds into the game, the system switched off. The 2nd plaintiff asked me to go and play in her neighbour's system. I played two tickets there and it did not favour me and I went back to the 2nd plaintiff's system. She refused to open the system and said she was going. She said that fuel has finished and I gave her two thosand naira (N2000) to buy fuel. She said no that she wants to go because it is late." That is to say that the system shut itself sixty minutes into a game of ninety minutes. This is contrary to the evidence of the DW3that the 2nd plaintiff shut the system after Okpe won N7.6m and she deceived him by paying him N2000 and he left. Also, this idea of his claim that the2nd plaintiff refused to open the system stating that fuel has finished and he gave her N2000 for fuel is not contained in any of the defence pleadings.

   However, this is contrary to his written statement on oath in this court where the DW1 stated that: "as it is my usual manner, I visited the 1st defendant said bet9ja shop to play bets. I usually play two tickets, so,I played two tickets on the virtual system of the. 2nd plaintiff. The 2nd plaintiff told me that I won N2000. She collected my tickets and paid me N2000 after which I left the shop." Here, the issue about the system shutting itself sixty seconds before the ninety seconds the game normally last andthe **DW1** going to play in the DW3 system as a result of the system shut down was never mentioned in the statement on oath of the DW1 in this court. This assertion is at variance with the evidence of the DW3 who consistently stated that the 2nd plaintiff shut down the system after paying Okpe N2000 and Okpe left. So, as far as Okpe is concerned, the system switched off on its own. He never stated he saw the 2nd plaintiff switch off the system. However, as far as the DW3 is concerned,the 2nd plaintiff shut down the system.

5. All the ingredients and embellishments of the facts in the statement on oath of the DW3 not contained in exhibits G and H earlier made by her are considered as an after -thought fabricated to achieve a hurtful purpose and serve the interest of her master/director.

The case of the 1st defendant is that the bet9ja statutory proisions preclude the 2nd plaintiff who is a cashier in his shop rom playing bet9ja games in his shop.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Secondly,it is also the case of the I" defendant that Odo Ifeanyi (alias Okpe) was the one who actually played the game in question and won. The 1s defendant was not physically present in his shop when the said game in contention was played. He did not witness the transaction giving rise to this suit with any of his senses. He placed great and heavy reliance on the evidence of the **DW3-Ifechukwu Nwodo** -the co-cashier to the 2m plaintiff whose evidence is flawed with consistent flip-flops.

Therefore,from the foregoing, the evidence of the defence witnesses is fraught with various degrees of inconsistencies and appears to be in contradiction with each other. The law is trite that where there is material contradiction in the evidence of a witness or evidence adduced by a party the court has only one duty namely: to reject the entire evidence as the court cannot pick and choose the conflicting versions to follow.See the following cases**: Unipetrol (Nig.) Plc. vs. Adireje (W/A) Ltd** (2004) **All FWLR (Pt. 231) 1238 at 1277 para E; Zakiai vs. Muhammad (2017)**17 NWLR **(Part 1594) 181 at 243 paras A-C. Kayili vs. Yilbuk & Ors (2015)LPELR-24323 (SC); (2015) 7 NWLR(Pt.1457)26.**

The written statement on oath of the **DW1** and his responses to questions during cross-examination in this court gives him out as a procured witness. The pleadings and evidence on record has not in any way proved that Odo Ifeanyi alias Okpe was the person who actually played the said bet9ja game and won the N7.6m.Consequently, the case of the defence and their counter claim fails and is hereby dismissed.

It is the case of the plaintiffs that the 2nd plaintiff stated that she played the bet9ja game, won and informed her Boss - the 1st defendant (DW2) - whom she claimed told her to call her brother to claim the money for her because he does not permit her to go out from the shop. See exhibit **DA.** However, in another twist, the 2nd plaintiff took a summersault and stated that the 1st defendant told her to call the brother to receive the money on her behalf since her account is a student account.Those assertions cannot be true in view of **exhibit DAC** which is the message she sent to the 1s defendant on Whatsapp which stated thus: “Oga someone eat jackpot in my system." It is no where stated in the document that the “someone”she referred to is herself (2nd plaintiff). Also, there is nothing on record before this court signifyingthat she ever disclosed to the 1st defendant that she was actually the person who played the game. So, I believe this aspect of the evidence of the 1st defendant that she deceptively brought in the brother as the winner of the game.

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Also, during cross-examination, the 2nd plaintiff denied that the phone number 08146288194 she used to send the text to the 1" defendant is not her number and that she has never used the

number before. She also denied the name accompanying the number. This is shameful and shows lack of character.

From the foregoing, the pertinent question now is whether this development is material enough to move the court to reject the evidence of the plaintiffs. The Supreme Court held in the case of **Edosa & Anor v. Ogiemwanre (2018) LPELR - 46341 48** that "it is not all contradictions that result in rejection of the evidence of a witness. It is only those that are material and result in miscarriage of justice that would warrant such a rejection of evidence."

In the light of the above, I hereby answer the said question i the negative. This court therefore believes the evidence of the 2nd plaintiff that she actually played the said game and won. Her action may have gone contrary to the rules guiding and regulating the activities of workers under the employment of the bet9ja company.However, in every law, there are always provisions for punishment for the breach. If there is any such provision in the bet9ja laws, it was never canvassed before this court. It will be unconscionable to deprive the 2nd defendant of her win and procure a total stranger to claim the win simply because the rule of the company precludes her from betting in the shop where she works.

As it pertains to the 2nd defendant, the **DW2,** during cross-examination, also confirmed to this court that he reported the issue concerning the payment of N4.5m to the 2nd defendant and that led to the restriction of the account of the 1st plaintiff. I agree with the submissions of the learned counsel to the plaintiffs that there is no question of identity as to whether this suit refers to the 2nd defendant.

I also agree with him that the 2nd defendant or any bank in Nigeria has no authority to restrict anybody's account without a court order. So, the 2nd defendant acted ultra vires their powers when it restricted the account of the 1st plaintiff based on the report of the 1st defendant without an order of a court of competent jurisdiction. The 2nd defendant is therefore liable.

Therefore, from the evidence before this court, the case of the plaintiffs hereby succeeds. I hereby order as follows:

a. That the seizure and withholding of the 2nd plaintiff's N3.100.000.00 (three million one hundred thousand naira) by the 1st defendant is unlawful, illegal and unconstitutional.

b. The 1" defendant to pay the 2md plaintiff N3.100.000.00 (three million one hundred thousand naira) into the 1" plaintiff's account with immediate effect.

c. That it is unconstitutional, illegal and unlawful for the 2nd defendant to place a restriction order on the account of the 1"plaintiff's without a court order.

d. The 2" defendant to pay N1,000.000.00 (one million naira) to the 1st plaintiff as damages for placing a restriction on his account without a court order.

H.U.Ezugwu(Ph.D)

Judge

06/06/2024

Appearances:

J.N.Itodo Esq. holding the brief of Joachim Okechukwu Odo Esq. for the plaintiffs.

K.I.Okebe Esq.holding the brief of Olanrewaju Akinsanya Esq. and A. O.

Ademola Esq. for the 1st and 2nd defendants.

JUDICIARY

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