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DEFINITION – Signature – is the act of authenticating and attesting to the validity of a process by a lawyer by putting his name and mark on it. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. - **PAGE 134**

EVIDENCE – Affidavit Evidence – is valid and admissible where the deponent gives sufficient information about his position and the fact that he has the consent and authority of the person on whose behalf the facts are deposed. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. - **PAGES 113, 114**

EVIDENCE – Document – speaks for itself and one cannot infer what is not contained in the text into it. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. – **PAGE 17**

EVIDENCE – Presumption of Fact – where the court is required to presume the existence of a fact, it may regard it as proved until disproved or it may call for proof. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. – **PAGE 53**

EVIDENCE – Presumption of Regularity – Judicial or official acts done in a manner substantially regular are presumed to have complied with the legal requirements for its validity. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 53**

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EVIDENCE – Presumption of Regularity – Official and judicial acts done in the regular manner are presumed valid and any person challenging such acts must rebut same by credible and sufficient evidence. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 54**

EVIDENCE – Withholding Evidence – occurs where the party accused is in possession of a piece of evidence and has refused or neglected to produce same after being served a notice or subpoena to produce it. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. – **PAGE 114**

FOREIGN EXCHANGE – Legal Framework – The Foreign Exchange Act regulates the Forex market and forfeiture of imported currency must be carried out in accordance with its provisions. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGES 61, 62**

FOREIGN EXCHANGE – Market Rate – Parties are at liberty to determine by mutual consent the rate at which currency exchanges are transacted. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 58**

FOREIGN EXCHANGE – Transactions – Except transactions relating to prohibited goods, services and items, transactions in foreign exchange are lawful and valid provided proper documentation is done. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 58**

FOREIGN EXCHANGE – Transactions – Irrespective of currency, no cash payment is to be made or received in Nigeria for the acquisition of landed property, securities, stocks and securities, and vehicle except by means of fund transfers or cheques drawn on banks. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. – **PAGE 62**

FOREIGN EXCHANGE – Transactions – The holder of a domiciliary account cannot be denied access to his account where he has not violated relevant laws. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. – **PAGES 64, 65**

GARNISHEE PROCEEDINGS – Commencement – Proceedings may be commenced by a judgment creditor via ex parte application to a competent court. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. – **PAGE 20**

GARNISHEE PROCEEDINGS – Commencement – The first stage is the order nisi which is an order directing the party in custody of the sum stated in the application to pay same to the court or to the judgment creditor within a particular period of time or give reason why the money cannot be paid. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 20**

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GARNISHEE PROCEEDINGS – Judgment Debt – The judgment sum must be certain and stated in the judgment. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 27**

GARNISHEE PROCEEDINGS – Order Absolute – Once a court has made an order nisi absolute, it becomes functus officio and can no longer preside over the matter even if new evidence emerges. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 20**

GARNISHEE PROCEEDINGS – Order Nisi – A garnishee is required to show cause why the judgment debtor's money in his custody cannot be paid to the judgment creditor and where no valid reason is given, the order is made absolute against the garnishee. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 20**

GARNISHEE PROCEEDINGS – Parties – A judgment debtor who has been served with an order nisi has a right to be heard where there appear to be irregularities in the application or distortion of facts by the judgment creditor. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. – **PAGE25, 26**

GARNISHEE PROCEEDINGS – Parties – After service of the order nisi, the judgment creditor, garnishee and the judgment debtor must be given the opportunity to be heard before the order is made absolute, without reopening the decided matter for hearing. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 25**

GARNISHEE PROCEEDINGS – Procedure – A judgment creditor may apply ex parte for a garnishee order nisi which if granted must be served on the garnishee, judgment creditor and judgment debtor and the court registrar must fix a date not less than 14 days for hearing. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 25**

INTERPRETATION – "May" – When used in a contract or legislation means discretion, option or permission. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. - **PAGE 118**

JUDGMENT – Bindingness – Judgment of a court is only an authority for the issues decided upon and the peculiar facts of a case must be considered in determining its bindingness. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGES 20, 21**

JUDGMENT – Enforcement – decisions of the Supreme Court can be enforced in any part of the country by all authorities and persons and by courts with subordinate jurisdiction. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. – **PAGE 18**

JUDGMENT – Issues – A judge is not required to make separate pronouncement on every issue provided that the pronouncement

incorporates the resolution of all the issues. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 57**

LEGAL PRACTICE – Legal Practitioner – is a person who is entitled to practice as a barrister or solicitor either generally or for the purpose of any particular proceedings. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGE 134**

LEGAL PRACTICE – Legal Practitioner – Only a legal practitioner whose name is on the roll is entitled to practice as barrister and solicitor. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGES 133, 134**

LIMITATION LAW – Debt Recovery – A claim for recovery of debt is statute barred if initiated after six years from the date the cause of action accrued. - IKE OKEKE v. NWAKA INEM & 3 ORS. - **PAGE 152**

LITIGATION – Abuse of Process – occurs where there is more than one suit instituted and pending at the same time between same parties and over the same subject matter. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. – **PAGE 115**

LITIGATION – Court Process – Only a legal practitioner whose name is on the roll is qualified to sign a process. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGES 137, 138**

LITIGATION – Court Process – Signing a Process is fundamental and indispensable to its validity and the name and signature of the legal practitioner must be endorsed on the process so as to authenticate and validate it. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGES 134, 135**

LITIGATION – Court Process – The effect of a wrongly signed process is that the suit will only be struck out and upon correction can be refiled if it is not caught up by statute of limitation. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. - **PAGE 135**

LITIGATION – Court Process – Where a legal practitioner signs a process on behalf of a firm, he must clearly state his name and designation. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGE 135**

LITIGATION – Court Process – Where a legal practitioner writes his name clearly and legibly as signature over a firm's name, such process is valid since the legal practitioner is identifiable and his name is on the roll. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGES 135, 136, 137**

LITIGATION – Enforcement of Order – A person who is not a party to a proceeding but in whose favour an order has been granted or order granted

against, is entitled to enforce the order or be enforced against as if he was a party to the proceedings. - GWEDE v. DELTA STATE HOUSE OF ASSEMBLY & ANOR. - **PAGE 18**

LITIGATION – Issue – The court is not required to consider an issue that has become academic or hypothetical. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGE 138**

LITIGATION – Judgment – must be read as one component document. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 57**

LITIGATION – Judicial Notice – Court may take judicial notice of extant laws in resolving any issue even though parties may not have joined issues on it. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. - **PAGE 66**

LITIGATION – Jurisdiction – A court is competent and has jurisdiction to hear and determine a suit where it is initiated by due process after fulfilling any condition precedent. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. - **PAGE 137**

LITIGATION – Jurisdiction – A court is competent to hear and determine a matter before it where it is properly constituted, the subject matter is within its competence and no feature prevents it from exercising jurisdiction and it initiated by due process of law. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC - **PAGE 84**

LITIGATION – Jurisdiction – is fundamental and it is the power of a court to determine and hear a suit; and no matter how well conducted, proceedings without jurisdiction are a nullity. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGES 83, 84**

LITIGATION – Jurisdiction – is fundamental and no matter how well conducted, the proceedings of a court are a nullity where the court lacks jurisdiction. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. – **PAGES 137, 138**

LITIGATION – Jurisdiction – It is the claim that invokes the constitutional right to judicial remedy. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC - **PAGE 85**

LITIGATION – Jurisdiction – Superior courts of record are created by law which vests in them jurisdiction to hear and determine matters. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGE 85**

LITIGATION – Jurisdiction – The claim determines whether a court has jurisdiction or not. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGE 84**

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LITIGATION – Jurisdiction – Where a suit is commenced by originating summons, the reliefs and the averments in the affidavit determines the court's jurisdiction. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGE 84**

LITIGATION – Jurisdiction and Competence – are related and dependent on each other and the jurisdiction of a court will be affected where it has the former but lacks the latter. - CHAWALEKS NIGERIA LTD & 2 ORS. v. N.D.I.C & ANOR. - **PAGE 137**

LITIGATION – Stare Decisis – Courts are to consider the ratio of a particular case where the facts are similar to the facts and circumstances of the case at hand. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGE 93**

LITIGATION – Striking Out – A matter struck out for non-compliance with certain provisions can be refiled after compliance. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. – **PAGES 52, 53**

LITIGATION – Striking Out – A mere striking out of a matter does not finally dispose of the subject matter of the suit. - CENTRAL BANK OF NIGERIA v. FAMFA OIL LTD. & ANOR. – **PAGES 52, 53**

MORTGAGE – Equity of Redemption – A mortgagor can only redeem a mortgage by repaying the debt on the due date. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. - **PAGE 117**

MORTGAGE – Power of Sale – Failure by a mortgagee to issue statutory notice in exercising a right of sale will not vitiate the sale, and persons who are aggrieved by the breach are entitled to damages and not setting aside. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. – **PAGES 116, 117**

MORTGAGE – Power of Sale – In exercising the power of sale, a mortgagee is required to act in good faith most conducive to his benefit, to sell at a reasonable price and failure to sell at the best price will not vitiate the sale unless there is proof of fraud or collusion with the purchaser. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. – **PAGE 116**

MORTGAGE – Power of Sale – Non-registration of a deed of assignment will not vitiate the sale of mortgaged property by a mortgagee where it was done pursuant to a registered deed of legal mortgage. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. – **PAGE 117**

MORTGAGE – Relief – Equitable relief cannot be granted to a mortgagor who failed to redeem. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. - **PAGE 117**

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PARTIES – Necessary Party – Failure to join a necessary party does not affect the court's jurisdiction. - FLOBBY ENT. (NIG.) LTD v. NIGERIAN DEPOSIT INSURANCE CORP. & 2 ORS. - **PAGES 115, 116**

STATUTE – Interpretation – The proviso of a section must be interpreted in a manner that will fulfil the essence of the section. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC - **PAGE 95**

STATUTE – Interpretation – The proviso to a section of an enactment limits and qualifies the essence of that section or give it a wider operation. - CRESTWOOD HOLDINGS LTD. v. WEMA BANK PLC – **PAGE 94**

JENKINS DUVIE GIANE GWEDE v. DELTA STATE HOUSE OF ASSEMBLY; SKYE BANK PLC

SUPREME COURT OF NIGERIA

SC. 595/2018
FRIDAY 15TH FEBRUARY, 2019

(ONNOGHEN; MUHAMMAD; AKAA'HS; OKORO; BAGE, JJ.SC)

GARNISHEE PROCEEDINGS – Commencement – Proceedings may be commenced by a judgment creditor via ex parte application to a competent court.

GARNISHEE PROCEEDINGS – Commencement – The first stage is the order nisi which is an order directing the party in custody of the sum stated in the application to pay same to the court or to the judgment creditor within a particular period of time or give reason why the money cannot be paid.

GARNISHEE PROCEEDINGS – Order Nisi – A garnishee is required to show cause why the judgment debtor's money in his custody cannot be paid to the judgment creditor and where no valid reason is given, the order is made absolute against the garnishee.

GARNISHEE PROCEEDINGS – Order Absolute – Once a court has made an order nisi absolute, it becomes functus officio and can no longer preside over the matter even if new evidence emerges.

GARNISHEE PROCEEDINGS – Procedure – A judgment creditor may apply ex parte for a garnishee order nisi which if granted must be served on the garnishee, judgment creditor and judgment debtor and the court registrar must fix a date not less than 14 days for hearing.

GARNISHEE PROCEEDINGS – Parties – After service of the order nisi, the judgment creditor, garnishee and the judgment debtor must be given the opportunity to be heard before the order is made absolute, without reopening the decided matter for hearing.

GARNISHEE PROCEEDINGS – Parties – A judgment debtor who has been served with an order nisi has a right to be heard where there appear to be irregularities in the application or distortion of facts by the judgment creditor.

GARNISHEE PROCEEDINGS – Judgment Debt – The judgment sum must be certain and stated in the judgment.

APPEAL – Reply – is meant to address new points raised by the respondent which were not addressed by the appellant's brief.

APPEAL – Ground of Appeal – Issues distilled must relate to the ground of appeal which must emanate from the judgment appealed against.

EVIDENCE – Document – speaks for itself and one cannot infer what is not contained in the text into it.

LITIGATION – Enforcement of Order – A person who is not a party to a proceeding but in whose favour an order has been granted or order granted against, is entitled to enforce the order or be enforced against as if he was a party to the proceedings.

JUDGMENT – Enforcement – decisions of the Supreme Court can be enforced in any part of the country by all authorities and persons and by courts with subordinate jurisdiction.

JUDGMENT – Bindingness – Judgment of a court is only an authority for the issues decided upon and the peculiar facts of a case must be considered in determining its bindingness.

Facts:

The appellant was a candidate duly nominated by the Democratic People's Party (DPP) to contest in the Ugelli North Constituency II of the Delta State House of Assembly but was unlawfully excluded and substituted with one Edoja Rufus Akpodiete who eventually won the election and proceeded to represent the constituency. Being a pre-election matter, the appellant approached the Election Petition Tribunal for redress. The matter went up to the Supreme Court. The Supreme Court, in October 2014, restored the appellant's mandate and further made consequential orders. One of the orders was that the removed Edoja Rufus Akpodiete refunds to the coffers of the Delta State House of Assembly all the money he collected by way of salaries and allowances in whatever manner since he took office as a member of the Delta State House of Assembly under the pretext of being the duly elected candidate of Democratic People's Party (DPP) representing Ughelli North constituency II, within ninety (90) days of the court's order. The appellant was dissatisfied and went back to the Supreme Court by filing an application asking it to vary or correct the consequential order. After hearing the application, the court varied the order to the effect that instead of paying the money earned as salaries and allowances to the Delta State House of Assembly, the removed Edoja Rufus Akpodiete was to pay everything to the appellant.

In order to enforce the ruling, the appellant commenced garnishee proceedings at the Federal High Court, Abuja Division against Guaranty Trust Bank (GTB), the bankers of the removed lawmaker who were in custody of money belonging to him. The appellant stated that the judgment sum was ₦490,803.002 (Four Hundred And Ninety Million, Eight Hundred And Three Thousand, Two Naira). After hearing the application, the order nisi was made absolute in the sum of ₦83,256,648.71

(Eighty Three Million, Two Hundred And Fifty Six Thousand, Six Hundred And Forty Eight Naira, Seventy One Kobo). The appellant also filed another application for garnishee proceedings against the 1st respondent and the 2nd respondent asking the court to order the 2nd respondent to pay to it the sum of ₦490,803.002 (Four Hundred And Ninety Million, Eight Hundred And Three Thousand, Two Naira) from the account of the 1st respondent domiciled with the 2nd respondent. The 1st respondent raised a preliminary objection challenging the jurisdiction of the court to hear and determine the application. One of the grounds for the objection was that it was not a proper party in the matter. After hearing the parties, the court dismissed the preliminary objection of the 1st respondent and made the order nisi absolute against the 1st and 2nd respondents. The 1st respondent was aggrieved and filed a notice of appeal at the Court of Appeal, Abuja Division, asking the court to set aside the ruling of the Federal High Court.

The Court heard the appeal and gave judgment in favour of the 1st respondent and set aside the ruling of the Federal High Court. The court held that the 1st respondent was not the appellant's judgment debtor and that its liability only becomes enforceable when it receives the money from the removed member of the house and fails to pay same to the appellant. The court further held that since there was no evidence that the 1st respondent received any such money from the removed member of the House and refused to pay same to the appellant, the judgment debtor is the removed member of the House and not the 1st respondent. The appellant was dissatisfied with the judgment and consequently filed a notice of appeal at the Supreme Court of Nigeria, Abuja.

One of the issues for determination is whether having regard to the peculiar circumstances of the case, the Delta State House of Assembly was the appellant's judgment debtor in the proceedings.

Held ***(Unanimously dismissing the appeal):***

[1] ***Garnishee Proceedings – Commencement – Proceedings may be commenced by a judgment creditor via ex parte application to a competent court.***

A garnishee proceedings is usually commenced by an ex - parte application made to the court having jurisdiction to hear the matter by the Judgment creditor and the orders of the court usually come in two steps.
(P. 20 lines 14 - 17)

[2] ***Garnishee Proceedings – Commencement – The first stage is the order nisi which is an order directing the party in custody of the sum stated in the application to pay same to the court or to the judgment creditor within a particular period of time or give reason why the money cannot be paid.***

The first is a garnishee order NISI. Simply, NISI is a Norman - French word which means "Unless". It is therefore an order made, at that stage, that the sum covered by the application be paid into court or to the judgment creditor within a stated time unless there is sufficient reason given by the party on whom the order is directed why the payment ordered should not be made. **(P. 20 lines 17 - 21)**

[3] ***Garnishee Proceedings – Order Nisi – A garnishee is required to show cause why the judgment debtor's money in his custody cannot be paid to the judgment creditor and where no valid reason is given, the order is made absolute against the garnishee.***

Such reasons could be that he does not hold any money belonging to the judgment debtor or that such money belonging to the judgment debtor in his possession is a subject of litigation or has been assigned to a third party or any other legal and reasonable excuse. If no sufficient reason is given, the garnishee order is then made absolute and that ends the matter in that the party against whom the order absolute is made is liable to pay the amount specified in the order to the judgment creditor.
(P. 20 lines 23 - 29)

[4] ***Garnishee Proceedings – Order Absolute – Once a court has made an order nisi absolute, it becomes functus officio and can no longer preside over the matter even if new evidence emerges.***

The court then becomes *functus officio* as far as that matter is concerned in that the Judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him. See *Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd & Ors* (2005) 13 NWLR (Pt. 943) 654, *Choice Investments Ltd v. Jeromnimon (Midland Bank Ltd. Garnishee)* (1981) 1 All ER 225 at 328, *Guaranty Trust Bank Plc v. Innoson Nig. Ltd* (2017) LPELR - 42368 (SC).
(P. 20 lines 29 - 35)

[5] ***Garnishee Proceedings – Procedure – A judgment creditor may apply ex parte for a garnishee order nisi which if granted must be served on the garnishee, judgment creditor and judgment debtor and the court registrar must fix a date not less than 14 days for hearing.***

Let me state briefly that in garnishee proceedings, a judgment creditor who after diligent search identifies or knows that the judgment debtor has some money in possession or custody of a bank or other institution, may file an ex - parte application in court with an affidavit in support praying the court for an order Nisi ordering the garnishee to appear and show cause why he should not pay the amount due to the judgment debtor in his

possession to him. After the grant of the order Nisi which I said is made ex - parte, the said order must be served on the garnishee, judgment creditor and the judgment debtor and the registrar must then fix a date not less than 14 days after the service of the order nisi on the three parties aforesaid. **(P. 25 lines 5 - 13)**

[6] ***Garnishee Proceedings – Parties – After service of the order nisi, the judgment creditor, garnishee and the judgment debtor must be given the opportunity to be heard before the order is made absolute, without reopening the decided matter for hearing.***

It has to be noted that at the stage of the ex - parte application only two parties, i.e. the judgment creditor and the garnishee are involved in the proceedings. However, after the service of the order nisi on the judgment debtor, as the Court of Appeal would say in ***NADC Ltd v. Ogini (supra)***, the subsequent hearing envisage a tripartite proceedings in which the three parties are represented. I am persuaded to agree with the learned counsel for the 1st Respondent herein that at this stage of the proceedings, the three parties can be heard by the court before an order absolute is made depending on the facts and circumstance of the case. I say so advisedly bearing in mind that garnishee proceedings is in the nature of enforcement of the judgment of a court of law and does not permit the re-opening of hearing in a matter which has been settled in the judgment sought to be enforced. I shall return to this anon. See *GTB v. Innoson Nigeria Ltd* (2017) LPELR - 42368 (SC) *Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd* (2015) 13 NWLR (Pt. 943) 654.
(P. 25 lines 15 - 28)

[7] ***Garnishee Proceedings – Parties – A judgment debtor who has been served with an order nisi has a right to be heard where there appear to be irregularities in the application or distortion of facts by the judgment creditor.***

The last stage of this proceeding is that where the garnishee does not appear or appears but does not show cause why he should not be ordered to pay the judgment sum from the account of the judgment debtor in his possession to the judgment creditor, then an order absolute is made against him/her. The above procedure is backed up by section 83(1) and (2) of the Sheriffs and Civil Process Act which states as follows:-

> ***"The court may, upon the ex - parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that***

judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the state order that debts owing from such third person, herein after called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

(2) At least fourteen days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor."

Again, Order VIII Rule 8(1) of the Judgment (Enforcement) Rules provides:-

"If no amount is paid into court (following service of the garnishee order nisi), the court, instead of making an order that execution shall issue, may after hearing from the judgment creditor, the garnishee and the judgment debtor or such of them as appear, determine the question of liability of the garnishee, and may make such order as to the payment to the judgment creditor of any sum found to be due from the garnishee to the judgment debtor…."
(Underlining mine for emphasis)

There appears to me that by a combination of section 83 (2) of the Sheriff and Civil Process Act and Order VIII Rule 8 of the judgment enforcement Rules, a judgment debtor, after being served with order nisi can be heard by the court only if or where he observes irregularities in what is presented before the court by the judgment creditor. Why I say so is that at that stage, it is not an opportunity to reopen the case which judgment has been entered. It is strictly for the enforcement of such judgment. Thus, where the judgment sought to be enforced is certain, in terms of the parties, the judgment sum and the party adjudged the debtor, then the judgment debtor has nothing to say in the proceedings.

However, where, as in this case, the judgment sum is not certain and the party adjudged as the debtor is confused by the judgment creditor, I think that justice demands that the "judgment debtor" be heard in such circumstance. In other words, it is not cast on stone that a judgment debtor cannot be heard in garnishee proceedings. It is the court that will

determine whether he should be heard or not. If the application of the judgment debtor before the court is to reopen issues settled in the judgment, he cannot be heard.

But if the application is to draw the attention of the court to misleading facts put forward by the judgment creditor, there is nothing wrong with him being heard. I am persuaded by some Court of Appeal authorities in this matter including but not limited to *Barbedos Ventures Ltd v. Zamfara State* (2017) LPELR - 42499, CA, *Nigerian Breweries Plc v. Dumuje* (Supra). **(P. 25 lines 30 - 45; P. 26 lines 1 - 45)**

[8] ***Garnishee Proceedings – Judgment Debt – The judgment sum must be certain and stated in the judgment.***

In this matter, the Appellant failed to make full and frank disclosure before the Federal High Court hearing the garnishee proceedings. First, the appellant represented that he is entitled to a judgment debt of ₦490,803,002.00 when, in actual fact, neither the Supreme Court's judgment of 24th October, 2014 nor the consequential order of 26th October, 2015 enumerated any specific sum of money the appellant was to be paid. This court only ordered that Mr. Edoja Rufus Akpodiete, the removed member of the 1st Respondent should refund all the salaries and allowances he received while sitting as "member" of the 1st Respondent. One wonders how the Appellant was able to compute those sums of money by himself alone outside the judgment of the court and tag it as the judgment sum. In garnishee proceedings, the judgment sum must be certain and can be located in the judgment. It is not to be left to conjecture.
(P. 27 lines 8 - 19)

[9] ***Appeal – Reply – is meant to address new points raised by the respondent which were not addressed by the appellant's brief.***

A close perusal of the said reply brief shows that it is a readdress and emphasis on the issues already argued. This is not the purpose of a reply brief. It is to address new points of argument made by the Respondent which the Appellant did not address in his brief of argument.
(P. 17 lines 9 - 13)

[10] ***Appeal – Ground of Appeal – Issues distilled must relate to the ground of appeal which must emanate from the judgment appealed against.***

PER AKAAHS, JSC:

I agree with my learned brother, Okoro JSC that the issues formulated by learned counsel for the 1st respondent mirror the complaints of the appellant

and the issues formulated by appellant's counsel for determination are completely off tangent. Issues for determination must relate to the grounds of appeal filed and the grounds of appeal should arise from the judgement appealed against See: *Orianzi v. A.G. Rivers State* (2017) 6 NWLR (Pt. 1561) 224; *Sogunro v. Yeku* (2017) 9 NWLR (Pt. 1570) 290; *Bagobiri v. State* (2017) 18 NWLR (Pt. 1597) 247.
(P. 30 lines 17 - 23)

[11] ***Evidence – Document – speaks for itself and one cannot infer what is not contained in the text into it.***

The law is trite that a document, including a judgment of the court, speaks for itself, and one cannot read into the text what is not contained therein. See *Ahmed v. Central Bank of Nigeria* (2013) 11 NWLR (Pt. 1365) 352 at 374 paragraphs A-C. **(P. 17 lines 20 - 23)**

[12] ***Litigation – Enforcement of Order – A person who is not a party to a proceeding but in whose favour an order has been granted or order granted against, is entitled to enforce the order or be enforced against as if he was a party to the proceedings.***

Order 2 Rule 16 of the Judgment (Enforcement) Rules provides as follows:-

> ***"Where a person not being a party in a proceeding obtains an order or has an order made in his favour, he shall be entitled to enforce obedience to such order by the same process as if he were a party in the proceedings; and any person not being a party in a proceeding against whom obedience to any judgment may be enforced, shall be liable to the same process for enforcing obedience to such judgment as if he were a party to the proceeding."***
> (P. 18 lines 21 - 29)

[13] ***Judgment – Enforcement – decisions of the Supreme Court can be enforced in any part of the country by all authorities and persons and by courts with subordinate jurisdiction.***

Now section 287(1) of the Constitution states:-

> ***"The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court."***
> (P. 18 lines 12 - 16)

[14] ***Judgment – Bindingness – Judgment of a court is only an authority for the issues decided upon and the peculiar facts of a case must be considered in determining its bindingness.***

The law is trite that a decision is authority for which it actually decides. Also, judgments of the court should be read in the light of its peculiar facts upon which they were decided. See *Dangote v. CSC Plateau State* (2001) 4 SC (Pt. 11) 43, *Babatunde v. P.A.S. & T.A. Ltd* (2007) All FWLR (Pt. 372) 1721 at 1759 paragraphs E - F. **(P. 20 lines 43 - 35; P. 21 lines 1 - 2)**

OKORO, JSC (Delivering the lead Judgment): This is an appeal against the judgment of the Court of Appeal Abuja, delivered on 10th May, 2018 wherein the lower court set aside the judgment of the Federal High Court dated 8th June, 2016. The trial Federal High Court had made the ***garnishee order nisi*** absolute against the 2nd Respondent which at the material time was alleged to be in custody of the 1st Respondent's funds. A synopsis of the facts giving birth to this appeal will be quite illuminating.

The Supreme Court of Nigeria had in its judgment delivered in Appeal No. SC. 255/2013 between *Jenkins Giane Duvie Gwede Vs (1) Independent National Electoral Commission (INEC) (2) Edoja Rufus Akpodiete (3) Julius Oghenevwegba Bobi (4) Democratic People's Party (DPP)* delivered on 24th day of October, 2014 by my Noble Lord **ONNOGHEN,** JSC (now Chief Justice of Nigeria) entered judgment in favour of Appellant in that case as follows:-

> "In consequence, I enter judgment in favour of appellant in the following terms:-
>
> 1. *Appellant, JENKINS GIANE DUVIE GWEDE is hereby declared to be the duly nominated candidate by substitution of the 4th Respondent for the election in respect of Ugelli North Constituency II of the Delta State House of Assembly and is entitled to be issued with a certificate of return in respect of same.*
>
> 2. *The 1st Respondent is hereby ordered to issue the said appellant with a certificate of return in respect of the State House of Assembly election held on 26th April, 2011, forthwith.*
>
> 3. *The 2nd Respondent EDOJA RUFUS AKPODIETE is hereby ordered to vacate the seat of Ughelli North Constituency II in the Delia State House of Assembly forthwith.*
>
> 4. *It is further ordered that the said 2nd respondent: EDOJA RUFUS AKPODIETE refunds to the coffers of the Delta State House of Assembly all moneys/sums of money he collected by way of*

salary, allowances whatsoever and however described since he took his seat in the said House of Assembly under the pretext of being the duly elected candidate of the 4th respondent representing Ughelli North constituency II, within ninety (90) days of this order.

I award the sum of ₦150,000.000 costs at the High Court; ₦100,000 in the court below and ₦500,000,000 in this court in favour of Appellant and against the 1st and 2nd Respondents each. Appeal and Cross Appeal of 4th Respondent allowed, cross appeals of 1st and 2nd Respondents dismissed."

The Appellant thereafter went back to the apex court seeking to vary and/or correct the consequential Orders made by the apex court in the judgment delivered on 24th October, 2014. The Order of the apex court on the Appellant's application to it made on 26th day of October, 2015 reads in full as follows:-

"HOLDEN AT ABUJA
Appeal No: CA/B/237/2012

Before their Lordships:

Hon. Justice Walter Samuel Nkanu Onnoghen, JSC
Hon. Justice Nwali Sylvester Ngwuta, JSC
Hon. Justice Mary Ukaego Peter-Odili, JSC
Hon. Justice Olukayode Ariwoola, JSC
Hon. Justice Musa Dattijo Muhammad, JSC

Application for an order, of this Honourable Court to vary and/or correct the Consequential orders as contained in the judgment of this Honourable Court delivered on 24th October, 2014 by directing the Delta State House of Assembly/Government to pay over to the appellant/ Applicant all the Salaries and Allowances and all other perquisites of office meant for the Occupant of the seat of Ugelli North Constituency II, in the Delta State House of Assembly, from June, 2011 till October, 2014 when this Honourable Court delivered its judgment in the substantive appeal so as to give effect to its meaning or intention.

BETWEEN

JENKINS GIANE DUVIE GWEDE **APPELLANT/APPLICANT**

AND

Independent National Electoral Commission (INEC)
Edoja Rufus Akpodiete

Julius Oghenevgba Bobi **RESPONDENTS**
Democratic People Party (DPP)

Monday, the 26th day of October, 2015.

UPON READING the application herein and the Affidavit of Jenkins Giane Duvie Gwede, sworn to and filed on the 6th day of July, 2015 and after hearing from Joe Agi, SAN, (O. F. Akengba Esquire and K. E. A. Akonlom Esquire with him) of counsel for the Applicant, Prof. A. A. Utuama SAN, (Ayo Asala Esquire with him) of counsel for the 2nd Respondent, Georgina Ude Esquire of counsel for 4th Respondent. No appearance for 3rd respondent.

IT IS ORDERED:

1. **that the application be and is hereby granted by varying the consequential orders made in the judgment of this court in SC. 255/2013 delivered on 24th October, 2014 the sum of money so refunded by the 2nd respondent; EDOJA RUFUS AKPODIETE to the Delta State House of Assembly shall be paid to the Appellant/Applicant JENKINS GIANE DUVIE GWEDE as salaries, allowances e.t.c. from June, 2011 till October, 2014, and**

2. **that there shall be costs of two hundred thousand (₦200,000.00) against 2nd Respondent in favour of the Applicant.**

SGN
CHIEF REGISTRAR."

In order to enforce the judgment entered in his favour by the Supreme Court of Nigeria, the Appellant approached the Federal High Court Abuja Division vide a Motion Ex Parte filed on 23rd February, 2016 for Garnishee Order Nisi to attach the 1st Respondent's money/funds in GUARANTY TRUST BANK PLC to satisfy the sum of ₦490,803,002 which the Appellant believed comprised the salaries and allowances collected by EDOJA RUFUS AKPODIETE from 1st Respondent while purporting to represent UGELLI NORTH CONSTITUENCY II in the Delta State House of Assembly. The Order NISI was granted against the GUARANTY TRUST BANK on 7th March, 2016. The 1st Respondent was taken to be the Judgment Debtor to the Appellant in the said application. On 14th day of June, 2016 the learned trial Judge (Hon. Justice A. F. A. ADEMOLA RTD) made the Garnishee Order Absolute in the sum of ₦83,256,648.71 (Eighty Three Million, Two Hundred And Fifty Six Thousand, Six Hundred And Forty Eight Naira, Seventy One Kobo) attaching same from the custody of the Guaranty Trust Bank Plc.

Again by another MOTION EX-PARTE dated 2nd day of June, 2016 and filed on 3rd June, 2016 pursuant to section 83 of the Sheriffs and Civil Process Act, the Appellant proceeded to garnishee the monies of the 1st Respondent in the Skye Bank PIc. The Order prayed for in the said Motion Ex-Parte states as follo.ws:-

> **"TAKE NOTICE that this Honourable Court will be moved on the - day of 2016 (sic) at 9 O'clock in the forenoon or so soon thereafter as Applicant or counsel on his behalf may be heard praying the court for the following reliefs:-**
>
> **A GARNISHEE ORDER NISI directing the Garnishee to attach all monies accruing and belonging to the Judgment Debtor/ Respondent held by it in Accounts Number 4030013512 & 1771088456 the name of clerk, (sic) Delta State House of Assembly in its custody for the purpose of satisfying the Judgment debt of ₦490,803.002 (Four Hundred And Ninety Million, Eight Hundred And Three Thousand And Two Naira) only.**
>
> **AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable court may deem fit to make in the circumstances.**
>
> **TAKE FURTHER NOTICE that the Grounds upon which this application is brought are:-**
>
> ***i. That the Supreme Court of Nigeria entered judgment against the judgment Debtor on the 24th October, 2014.***
>
> ***ii. That the Supreme Court clarified the terms of the judgment on the 26th October, 2015.***
>
> ***iii. That by virtue of section 287(1) of the 1999 Constitution (as amended) this court is enjoined to enforce decisions of the Supreme Court.***
>
> ***iv. That the Judgment of the Supreme Court has remained unsatisfied AND TAKE FURTHER NOTICE that the Judgment creditor/Applicant shall at the hearing of this Motion seek the leave of court to and shall rely on all the Processes and Exhibits filed along in this proceedings."***

The said Federal High Court granted Decree NISI against the SKYE BANK PLC on the same 3rd day of June, 2016 and directed the said Garnishee SKYE BANK PLC to appear on 17th June, 2016 to show cause why the Garnishee Order NISI should not be made absolute.

The 1st Respondent challenged the jurisdiction of the Federal High Court to further embark on adjudicating on Garnishee proceedings against the monies of the 1st Respondent.

The Notice of Preliminary Objection challenging the trial court's jurisdiction is as follows:-

> **"NOTICE OF PRELIMINARY OBJECTION TAKE NOTICE that the Delta State House of Assembly shall, at or before the hearing of this suit or any applications filed herein, raise a Preliminary Objection concerning to the jurisdiction of this Honourable Court to entertain this suit and shall urge this Honourable court to strike out the suit in its entirety.**
>
> **TAKE FURTHER NOTICE that the grounds for this objection are:**
>
> **The Honourable Court lacked jurisdiction to entertain the application for garnishee Order Nisi. It is, therefore, liable to be struck out.**
>
> **The alleged judgment debt has been calculated unilaterally and is not in accordance with the judgment of the Supreme Court in SC. 255/2015 *Jenkins Giane Duvie Gwede v. INEC & 3 Ors*. It, therefore, amounts to a variation of the said judgment.**
>
> **The proper parties are not before this Honourable Court, contrary to section 83(1) and (2) of the Sheriffs and Civil Process Act cap 56 Law of the Federation of Nigeria, 2004.**
>
> **As it concerns the proceedings in this suit No. FHC/ABJ/CS/158/16, this Honourable court become functus officio on the 14th day of June, 2016."**

After the adoption of addresses of learned counsel on all applications, the learned trial Judge gave a considered Ruling on 8th day of July, 2016 and found against the Appellant as follows:-

> ***"The final point was that since the suit number in the previous Garnishee proceeding is the same with the second one, this court lacked the jurisdiction to hear the garnishee order proceeding.***
>
> ***Let me say away (sic) that garnishee proceeding is one of the numerous ways of enforcing a judgment. It is not one of the methods of commencing an action. What I am doing is the enforcement of the Supreme Court judgment. Where the sum enforced is less than the amount due, will the judgment creditor not have a right to continue with the enforcement? This is not a fresh action to determine a right***

but enforcement or a decision already given.

I agree with the submission of the Learned Senior Counsel that just like the bailiff of a court can continue to execute a judgment where the sum attached is less than the judgment sum, so also can the court through Garnishee proceedings issue for a specific sum, if it is insufficient to meet the debt, the judgment Creditor can proceed against any other Garnishee who is keeping the judgment Debtors money. I have read the case of ODUMOSU v. OLUWOLE (2004) FWLR (Pt. 191) 1487 cited by the judgment debtor and I rely on it and particularly the Latin Maxim "NEMO DEBT BIS VEXARI PRO CADEM CAUSA meaning - no one should be sued twice on the same cause, on the same facts if there has been a final decision of a competent court."

That case of ODUMOSU is about final determination of the matter and not when some issues are still pending. In the circumstances, I hold that I have jurisdiction and do hereby in the face of the affidavit to show cause sworn to by the Garnishee make the Garnishee Order Nisi dated 3rd June, 2016 absolute and order Skye Bank Plc to forthwith pay over the total sum of Seventy Six Million, Eighty Two Thousand Seven Hundred And Forty Four Naira, Five Kobo into the account of the Judgment Creditors account. It is further ordered that Skye Bank Plc shall file an affidavit of compliance on or before the 11th July, 2016. This shall be my order.

Sgn.

HON. JUSTICE A. F. A. ADEMOLA
JUDGE
8/7/2016"

Dissatisfied with the judgment of the trial court, the 1st Respondent which was the appellant at the court below, filed Notice of Appeal against the said judgment. In a considered judgment, the Court of Appeal allowed the appeal and set aside the judgment of the trial Federal High Court. The order absolute made by the trial court was set aside, hence this appeal to this court.

Appellant's Notice of Appeal was filed on 19th June, 2018 with three grounds of appeal. He later amended the said Notice of Appeal on 10th October, 2018. This appeal is thus based on the said amended Notice of appeal. Four issues have been distilled by the appellant for the determination of this appeal. The said issues are contained on page 2 of the appellant's brief of argument filed on 24th October, 2018 which was adopted on 21st November, 2018 at the hearing of this appeal by Joe Agi, SAN, Learned Senior Counsel for the Appellant. The issues are:-

1. ***Whether the Court of Appeal has the power to overrule the Supreme Court on an issue of law or fact in which the Supreme Court had previously taken a position.***

2. ***Whether by section 83 of the Sheriff and Civil Process Act the Court of Appeal was right by holding that the compliance with that law by the trial court amounted to denial of fair hearing to the judgment debtor.***

3. ***Whether the lower court was right to hold that because garnishee order is a final order, a judgment debtor can appeal without leave of court first had and obtained.***

4. ***Whether the learned Justices of the court below were right to have held that the failure of the 1st Respondent to dispute the amount stated in the appellant's demand letter was not admission and that the 1st Respondent is not estopped from dispute (sic) the amount.***

In the 1st Respondent's brief settled by Isaiah Bozimo, Esq and filed on 19th November, 2018, two issues have been formulated for the determination of this appeal. The issues are as follows:-

1. ***Having regard to the peculiar circumstances of this case, is the Delta State House of Assembly the Appellant's judgment debtor in these proceedings.***

2. ***Whether judgment debtors are passive spectators* or *active parties in garnishee proceedings.***

From the facts and circumstances surrounding this case coupled with the judgment of the lower court and the grounds of appeal giving birth to the issues donated by both parties, it is my well considered opinion that the two issues formulated by the 1st Respondent capture the complaint of the appellant and I shall determine this appeal based on the said two issues.

ISSUE 1:

The main contention of the learned Senior Counsel for the Appellant in this issue is that whereas this court (the Supreme Court) had held that the 1st Respondent is a judgment debtor in this matter, the court below held otherwise, thus overruling the Supreme Court as it were. He submitted that contrary to the attempt by the court below to dictate to the appellant who, among the Respondents he can proceed against to recover the judgment sum, a judgment creditor like the appellant has the liberty of selecting among the Judgment Debtors who he may proceed against

to recover his money, relying on *Mobil Producing Nig. Unlimited v. Monokpo* (2001) 18 NWLR (Pt. 744) 212 at 244 - 245.

Furthermore, the learned Silk postulated that by Order 2 Rule 16 of Judgment (Enforcement) Rules, judgment can be enforced against a person who was not listed as a party in the suit, citing and relying on the case of *Central Bank of Nigeria v. Interstellar Communications Ltd & 3 Ors* (2018) 7 NWLR (Pt. 1618) 294. The learned SAN went ahead to posit that the lower court had no legal competence to overrule the Supreme Court citing the case of *Adegoke Motors Ltd v. Dr. Babatunde Adesanya & Anor* (1989) 5 SCNJ, 80, (1989) 3 NWLR (Pt. 109) 250.

Mr. Joe Agi, SAN went ahead to discuss the issue of judicial precedent and submitted that a lower court is bound to follow the decision of a higher court on the same issue irrespective of its reservation or perceived error in the decision, relying on *Atolagbe v. Awumi* (1997) 9 NWLR (Pt. 522) 536 at 564. He then urged this court to resolve this issue in favour of the Appellant.

In response, the learned counsel for the 1st Respondent submitted that by presuming that all Respondents in SC, 255/2013 were adjudged as being jointly and severally indebted to him, the Appellant misconstrues the effect of the Joinder Ruling by this court. He opined that this court did not find the Respondents jointly liable as the appellant alleges or at all. Referring to the said ruling by this court; he submitted that every document speaks for itself, and one cannot read into the text what is not contained therein, relying on *Ahmed v. Central Bank of Nigeria* (2013) 11 NWLR (Pt. 1365) 352 at 374 paragraphs A-C. He contended that this court's true intent is discernable from a dispassionate reading of the statutory provisions cited in the Joinder Ruling. Learned counsel referred this court to Order 2 Rule 16 of the Judgment (Enforcement) Rules and submitted that, it contemplates a non-party's involvement to either enforce a judgment made in his favour or, more importantly, in the context of these proceedings, to have an order requiring his obedience enforced against him.

The learned counsel then posed this question as follows: ***"What does the judgment of this Honourable Court in SC. 255/2013 require of the 1st Respondent?"***

Referring to portions of both the judgment in the Pre - Election appeal and the varied consequential Order in the Pre - Election appeal, he submitted that it is the varied order that requires the 1st Respondent's obedience. According to him, the obligation placed on the 1st Respondent is to give payment to the Appellant of any sums of money refunded by the removed member. It is his submission that the duty to refund the monies rests squarely on the removed member and not the 1st Respondent. Learned counsel contended that it is the sums of money refunded by the removed member to the 1st Respondent that triggers a payment obligation from the 1st Respondent to the Appellant. According to him, it is Edoja Rufus

Akpodiete, the removed member who is the de *facto* judgment debtor in these proceedings. 1st Respondent's counsel submitted that the cases of *Central Bank of Nigeria v. Interstella Communications Ltd (supra) and Trade Bank Plc v. Chami* (2003) 13 NWLR (Pt. 836) 158, relied upon by the appellant are inapplicable and distinguishable. It is his view that the 1st Respondent at no time admitted liability to pay the said judgment sum. He urged the court to resolve this issue against the Appellant.

Learned Senior Counsel filed reply brief on 21st November, 2018. A close perusal of the said reply brief shows that it is a readdress and emphasis on the issues already argued. This is not the purpose of a reply brief. It is to address new points of argument made by the Respondent which the Appellant did not address in his brief of argument. I shall therefore discountenance the said reply brief.

Let me quickly state that I have painstakingly perused both the judgment of this court in Appeal No. SC. 255/2013 (the Pre - Election Appeal) and the court's varied consequential order in the said matter but I am unable to find even in remotest semblance where this court held that the 1st Respondent herein is a Judgment debtor. The learned senior counsel for the Appellant also failed to refer to any portion of the said judgment or varied order where it was so stated. The law is trite that a document, including a judgment of the court, speaks for itself, and one cannot read into the text what is not contained therein. See *Ahmed v. Central Bank of Nigeria* (2013) 11 NWLR (Pt. 1365) 352 at 374 paragraphs A-C.

However, on page 4, paragraph 4.4 of the appellant's brief, the learned Silk made the following submission:-

> ***"The 1st Respondent did not apply to this honourable court to be made one of the Appellant's but rather to be made one of the Respondents. The Judgment having been entered against the Respondents of which the 1st Respondent is one of the Respondents by virtue of the decision of this court above, can any of the Respondents now be heard to argue that it is wrong to label him/her as Judgment Debtor especially when the judgment remained unsatisfied."***

The above argument stems from the Ruling of this court on an application by the 1st Respondent to be joined as respondent contained on pages 1138 of the record of appeal which states thus:-

> ***"Having regards to the provision of section 287(1) of the Constitution of the Federal Republic of Nigeria 1999, (as amended) and hereinafter referred to as the 1999 Constitution and section 94 of the Sheriffs and Civil Process Act as well as Order 2 Rule 16 of the Judgment (Enforcement) Rules made thereunder, the applicant seeking to be***

joined in the instant application does not need to be a party by joinder as he is presumed by law to be a party and can thereby enforce any order of the court made for its benefit. The application is therefore superfluous and is consequently dismissed with costs of ₦250,000 to each respondent present in court this morning. Application filed on 15/10/15 is dismissed."

The above Ruling of this court refers to section 287(1) of the 1999 Constitution, section 94 of the Sheriffs and Civil Process Act and Order 2 Rule 16 of the Judgment (enforcement) Rules.

Now section 287(1) of the Constitution states:-

"The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court."

This provision of the Constitution does not, by any stretch of imagination make a person who was not adjudged a judgment debtor to be so addressed.

Order 2 Rule 16 of the Judgment (Enforcement) Rules provides as follows:-

"Where a person not being a party in a proceeding obtains an order or has an order made in his favour, he shall be entitled to enforce obedience to such order by the same process as if he were a party in the proceedings; and any person not being a party in a proceeding against whom obedience to any judgment may be enforced, shall be liable to the same process for enforcing obedience to such judgment as if he were a party to the proceeding."

This provision contemplates a non - party's involvement to either enforce a judgment made in his favour or to have an order requiring his obedience enforced against him. In the instant case, what is the position of the 1st Respondent in Appeal No. SC. 255/2013? Put differently, as was posited by the learned counsel for the 1st Respondent. What does the judgment of this court in SC. 255/2013 require of the 1st Respondent? The answer to this question is found in the judgment/ orders of this court in both the judgment in SC. 255/2013 and the order varying the consequential order in the said judgment.

The material order to this issue can be found on page 447 of Vol. 1 of the record of appeal which states:-

"4. It is further ordered that the said 2nd Respondent EDOJA RUFUS AKPODIETE refunds to the coffers of the Delta State House of Assembly all monies/sums of money he collected

by way of salary, allowances whatsoever and howsoever described since he took his seat in the said House of Assembly under the pretext of being the duly elected candidate of the 4th respondent representing Ugheli North Constituency II, within ninety (90) days of this order."

The above order places liability to refund the monies he collected solely on Edoja Rufus Akpodiete, the removed member of the 1st Respondent and by the said order, the 1st Respondent herein was the beneficiary as all the salaries and allowances of the removed member were to be returned to its coffers. I agree with the learned counsel for the Respondent that the above initial order did not confer any obligation on the 1st Respondent requiring its obedience.

As the facts of this case indicate, the above order of this court was varied. The said varied order is shown at page 450 of vol. 1 of the record of appeal and is stated thus:-

"..... the sum of money so refunded by the 2nd Respondent EDOJA RUFUS AKPODIETE to the Delta State House of Assembly shall be paid to the Appellant/Applicant JENKINS GIANE GWEDE as salaries, allowances etc. from June, 2011 till October, 2014…."

The question may be asked if the above order makes the 1st Respondent a Judgment Debtor. I do not think so. As was argued by the learned counsel for the 1st Respondent, the obligation placed on the 1st Respondent is to give payment to the Appellant of any sum of money refunded by the removed member. I agree also that the 1st Respondent's obligation under the varied order does not fetter, diminish or, eliminate the removed member's liability to refund all monies he collected by way of salaries and allowances while illegally sitting as a member of the first Respondent.

In its judgment, the court below made a far reaching finding on page 1131, Vol. 2 of the record of appeal, which I agree entirely as follows:-

"The person who is clearly the judgment debtor and against whom the 1st Respondent (Appellant herein) was and is supposed to press Garnishee proceedings is Hon. (Barr) Edoja Rufus Akpodiete or his Banker or any third party having his funds or monies and NOT DELTA STATE HOUSE OF ASSEMBLY. The 1st Respondent did not prove or show to the lower court that the said removed member refunded any monies or funds in forms of salaries or allowances received by the removed member to the Appellant (1st Respondent herein) and same has not been paid over to the 1st Respondent (Appellant herein)."

I agree entirely with the above view of the court below and the submission of

learned counsel for the 1st Respondent on the matter. It is the sums of money refunded by Edoja Rufus Akpodiete to the Delta State House of Assembly that triggers a payment obligation from the 1st Respondent to the Appellant. In other words, the 1st Respondent can only be found to be indebted to the Appellant where it is shown that the removed member has refunded sums of money to the 1st Respondent and that the 1st Respondent refused and/or neglected to pay such refunded sums to the Appellant. It is the removed member who is indebted to the Appellant as the Judgment Debtor. Definitely not the 1st Respondent.

This being the case, it is my view that the garnishee proceedings commenced against the 1st Respondent by the appellant was done in error. It is only monies refunded by the removed member that can be the subject of the garnishment.

A few words on garnishee proceedings. A garnishee proceedings is usually commenced by an ex - parte application made to the court having jurisdiction to hear the matter by the Judgment creditor and the orders of the court usually come in two steps. The first is a garnishee order NISI. Simply, NISI is a Norman - French word which means "Unless". It is therefore an order made, at that stage, that the sum covered by the application be paid into court or to the judgment creditor within a stated time unless there is sufficient reason given by the party on whom the order is directed why the payment ordered should not be made.

Such reasons could be that he does not hold any money belonging to the judgment debtor or that such money belonging to the judgment debtor in his possession is a subject of litigation or has been assigned to a third party or any other legal and reasonable excuse. If no sufficient reason is given, the garnishee order is then made absolute and that ends the matter in that the party against whom the order absolute is made is liable to pay the amount specified in the order to the judgment creditor. The court then becomes *functus officio* as far as that matter is concerned in that the Judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him. See *Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd & Ors* (2005) 13 NWLR (Pt. 943) 654, *Choice Investments Ltd v. Jeromnimon (Midland Bank Ltd. Garnishee)* (1981) 1 All ER 225 at 328, *Guaranty Trust Bank Plc v. Innoson Nig. Ltd* (2017) LPELR - 42368 (SC).

In this appeal, appellant has argued that the liability for the debt in these proceedings has shifted from the removed member to the 1st Respondent, thus making it the judgment debtor, citing and relying on the case of *Central Bank of Nigeria v. Interstella Communications Ltd* (supra). I have had the opportunity to read this authority which was decided by this court. With due respect to the learned senior counsel for the appellant, the said authority does not avail the appellant as it is distinguishable. The law is trite that a decision is authority for which it actually decides. Also, judgments of the court should be read in the light of its peculiar facts upon which they were decided. See *Dangote v. CSC Plateau State* (2001) 4

SC (Pt. 11) 43, *Babatunde v. P.A.S. & T.A. Ltd* (2007) All FWLR (Pt. 372) 1721 at 1759 paragraphs E - F.

In the said *Central Bank of Nigeria v Interstella Communications Ltd (supra)*, the judgment creditor, Interstella Communications Ltd (Interstella for short) obtained a judgment against Nigeria Telecommunications Ltd (NITEL for short). The judgment debt exceeded ₦23 billion and $48 million. The Federal Government of Nigeria (FGN for short), owner of NITEL set up an inter-ministerial committee to negotiate an amicable settlement of the judgment debt. Federal Government of Nigeria offered, and Interstella accepted the sum of ₦12 billion in full and final settlement of the debt (i. e, the Negotiated settlement). The agreed sum of ₦12 Billion was entered as a consent judgment in suit No. FHC/UM/CS/95/04.

In fulfillment of their undertaking to liquidate the debt, Federal Government of Nigeria wrote to the Federal Ministry of Finance to include the judgment debt in the 2009 budget.

Federal Government of Nigeria paid the sum of N2.7 Billion of the judgment debt through the Central Bank of Nigeria (CBN) but reneged on any further payments. Interstella issued garnishee proceedings against CBN and FGN. Federal Government of Nigeria contended that the Federal High Court lacked jurisdiction because:-

1. Neither FGN nor CBN were parties in suit No. FHC/UM/CS/95/04 and

2. NITEL's absence was fatal to the proceedings.

In resolving the contention, this court held that the consent judgment terminated hostilities between Interstella and NITEL. It was further held that the consent judgment was a novation which substituted the old obligation (NITEL's liability to pay the original judgment debt) with a new one (FGN's obligation to discharge the Negotiated settlement).

I agree with the learned counsel for the 1st Respondent that in this appeal, there is no comparable intervening event that transfers liability from Edoja Rufus Akpodiete to the Delta State House of Assembly except and until the said removed member had made refunds to the 1st Respondent.

The 1st Respondent did not negotiate an amicable settlement of the sums due from the removed member to the Appellant.

It never guaranteed any of the said sums due from the removed member and never released the removed member of any liability to refund his salaries and allowances.

On the issue of the sum of ₦490,803,002 (Four Hundred And Ninety Million, Eight Hundred And Three Thousand, Two Naira) alleged by the appellant to have been admitted by the 1st Respondent, the lower court made the following findings:-

> ***"Contrary to the letter of the 1st Respondent to the Appellant, the judgment of the revered Supreme Court of Nigeria did not and does not make order for payment of ₦490,803,002.00 (Four Hundred And Ninety Million, Eight Hundred And Three Thousand, Two Naira) to the 1st Respondent against the Appellant. What the orders of the apex court conclusively say is that the monies received by the removed member shall be refunded by the removed member to the coffers of Delta State House of Assembly and that when the said monies have been refunded, the monies so refunded by the removed member shall thereupon be paid by the Appellant to the 1st Respondent by the Appellant. The 1st Respondent did not disclose how he came about the sum of ₦490,803,002 as no such judgment was given against the appellant by the Supreme Court. The reply of the Appellant to the letter written by the 1st Respondent learned Silk makes it clear that as soon as Appellant secures the refunds of the monies Appellant would pay them to the 1st Respondent. ……. There is no admission whatsoever in the Appellant's letter acknowledging debt of ₦490,803,002.00 or any sum at all to the 1st Respondent. The 1st Respondent and the lower court for reasons best known to them decided to import into the Appellant's letter admission that is not therein contained.***
>
> ***The person who is clearly the judgment debtor and against whom the 1st Respondent was and is supposed to press Garnishee proceedings is Hon. (Barr.) Edoja Rufus Akpodiete or his Banker or any third party having his funds or monies and NOT DELTA STATE HOUSE OF ASSEMBLY. The 1st Respondent did not prove or show to the lower court that the said removed member refunded any monies or funds in forms of salaries or allowances received by removed member to the Appellant and same has not been paid over to the 1st Respondent."***
>
> (NB: At the court below, the 1st Respondent was the Appellant while the appellant herein was the first Respondent.)

I have reproduced the portion of the judgment of the lower court in *extenso* because it captures the essence of the issues in the judgment. I agree entirely with the above summation by the court below. The pith and substance of all I have endeavoured to say above is that the 1st Respondent was not a judgment debtor in these proceedings. Hon, Edoja Akpodiete's liability was never transferred to the 1st Respondent. The Appellant remains the judgment debtor until he refunds all the

salaries and allowances paid to him while taking a seat at the 1st Respondent's chambers. Thus the garnishee proceedings commenced by the appellant against the 1st Respondent's bank was misplaced and premature. The 1st issue is accordingly resolved against the appellant.

***ISSUE* 2:**

This issue is whether judgment debtors are passive spectators or active parties in garnishee proceedings. In arguing this issue, the learned Senior counsel for the Appellant, referring to section 83(1) of the Sheriff and Civil Process Act, submitted that from the clear wordings of the said section, the person ordered or directed to statutorily show cause is the Garnishee and not the Judgment Debtor and so the refusal of the learned trial Judge for the Judgment Debtor instead of the Garnishee to show cause cannot and did not in law amount to denial of the right to fair hearing to the judgment debtor as held by the lower court. That the statute having provided for the Garnishee to show cause without mentioning the Judgment Debtor in law means that the Judgment Debtor is excluded from showing cause. He opined that the statute having excluded the Judgment Debtor from the duty of showing cause on the garnishee proceedings the lower court was wrong to fault the decision of the trial court on the issue, relying on the case of *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841).

Learned Senior counsel contended that it was wrong for the court below to impute an obligation not proved in the statute for the Judgment debtor in a garnishee proceedings and hold that the refusal by the trial court to look at the affidavit to show cause denied him of fair hearing. It is his view that section 83(1) of the Sheriffs and Civil Process Act is akin to the rules of court that provides for an ex - parte order even when the party to be affected is present in court, he will not be heard, referring to the case of *Provincial Liquidator of TAPP Industries Ltd & Anor v. TAPP Industries Ltd* (1995) LPELR - 2928 (SC).

In conclusion, the learned Silk opined that courts of law do not brush aside the provision of a statute in order to do justice, relying on *Calabar Central Co - Operative Thrift and Credit Society Ltd v. Ekpo* (2008) 6 NWLR (Pt. 1083) 362 at 398. It is his final contention that the decision of the trial court to discountenance the affidavit to show cause did not in any way infringe on the right of fair hearing of the 1st Respondent so long as that right was not given it by statute and that the court cannot under any guise grant it such right in the name of doing substantial justice.

In response, the learned counsel for the 1st Respondent insisted that in his ensuing submission, the 1st Respondent does not concede that it is a judgment debtor in these proceedings, rather, that the submissions are nonetheless necessary to demonstrate that, having been labelled a judgment debtor by the trial Federal High Court, the 1st Respondent had a constitutionally guaranteed right to fair hearing including a right of appeal.

Learned counsel submitted that notwithstanding the conflicting decisions on the status of a judgment debtor in garnishee proceedings, such proceedings envisage two distinct stages to wit: the ex - parte order nisi stage, which concerns the judgment creditor and the garnishee, and the substantive "order absolute" stage, in which the judgment creditor, the garnishee and the judgment debtor have a right of audience.

Referring to section 83 (2) of the Sheriffs and Civil Process Act and Order VIII Rule 8(1) of the Judgment (Enforcement) Rules, learned counsel submitted that the service required under these sections is to give appropriate notice of the pending legal action to the garnishee and judgment debtor to enable them respond to the enforcement proceedings. It is his contention that after service of the garnishee order nisi, the court may proceed to make the order absolute only after hearing from the judgment creditor, the garnishee and the judgment debtor. Learned counsel cited the following Court of Appeal decisions and urged this court to be persuaded by them. They are:-

1. ***Stanbic IBTC Bank Plc v. Long Term Global Capital Ltd*** **(2016) LPELR - 40517 page 24 - 32 E - B.**

2. ***N.A.O.C. Ltd v. Ogini*** **(2011) 2 NWLR (Pt. 1230) 131, *Nigerian Breweries Plc v. Dumuje* (2016) 8 NWLR (Pt. 1515) 536.**

Learned counsel submitted that the above decisions represent the fairest, most judicious application of the law and give congruent application to section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That to maintain due process, Order VIII Rule 8 Judgment (Enforcement) Rules requires the court to receive submissions from the judgment creditor, the garnishee and the judgment debtor and that this is intended to ensure that the court has all the necessary facts for the complete and effective determination of the application. He stressed that to the extent that Order VIII Rule 8 of Judgment (Enforcement) Rules makes it mandatory for the court to hear from the judgment debtor, it shows that the 1st Respondent is a necessary party to these proceedings.

He opined that in this proceedings, the appellant failed to make full disclosure before the Federal High Court and that is the reason why the law requires the court to hear from the judgment debtor before deciding whether or not to allow a garnishee order absolute.

Finally, learned counsel for the 1st Respondent opined that the 1st Respondent's grievance is that the Appellant wrongfully labeled it as the judgment debtor and its funds were, therefore, improperly garnished and despite presenting cogent reasons to discharge the garnishee order nisi, the Federal High Court proceeded to make the garnishee order absolute. He urged this court to hold that the garnishee order absolute made on 8th July, 2016 against the 1st Respondent's funds in Skye Bank

is a final decision against which the 1st Respondent has a constitutionally guaranteed right of appeal under section 241 (a) Constitution of the Federal Republic of Nigeria. He also urged this court to resolve this issue against the Appellant.

Let me state briefly that in garnishee proceedings, a judgment creditor who after diligent search identifies or knows that the judgment debtor has some money in possession or custody of a bank or other institution, may file an ex - parte application in court with an affidavit in support praying the court for an order Nisi ordering the garnishee to appear and show cause why he should not pay the amount due to the judgment debtor in his possession to him. After the grant of the order Nisi which I said is made ex - parte, the said order must be served on the garnishee, judgment creditor and the judgment debtor and the registrar must then fix a date not less than 14 days after the service of the order nisi on the three parties aforesaid.

It has to be noted that at the stage of the ex - parte application only two parties, i.e. the judgment creditor and the garnishee are involved in the proceedings. However, after the service of the order nisi on the judgment debtor, as the Court of Appeal would say in ***NADC Ltd v. Ogini (supra),*** the subsequent hearing envisage a tripartite proceedings in which the three parties are represented. I am persuaded to agree with the learned counsel for the 1st Respondent herein that at this stage of the proceedings, the three parties can be heard by the court before an order absolute is made depending on the facts and circumstance of the case. I say so advisedly bearing in mind that garnishee proceedings is in the nature of enforcement of the judgment of a court of law and does not permit the re-opening of hearing in a matter which has been settled in the judgment sought to be enforced. I shall return to this anon. See *GTB v. Innoson Nigeria Ltd* (2017) LPELR - 42368 (SC) *Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd* (2015) 13 NWLR (Pt. 943) 654.

The last stage of this proceeding is that where the garnishee does not appear or appears but does not show cause why he should not be ordered to pay the judgment sum from the account of the judgment debtor in his possession to the judgment creditor, then an order absolute is made against him/her. The above procedure is backed up by section 83(1) and (2) of the Sheriffs and Civil Process Act which states as follows:-

> ***"The court may, upon the ex - parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the state order that debts owing from such third person, herein after called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the***

costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

(2) At least fourteen days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor."

Again, Order VIII Rule 8(1) of the Judgment (Enforcement) Rules provides:-

"If no amount is paid into court (following service of the garnishee order nisi), the court, instead of making an order that execution shall issue, may after hearing from the judgment creditor, the garnishee and the judgment debtor or such of them as appear, determine the question of liability of the garnishee, and may make such order as to the payment to the judgment creditor of any sum found to be due from the garnishee to the judgment debtor….."
(underlining mine for emphasis)

There appears to me that by a combination of section 83 (2) of the Sheriff and Civil Process Act and Order VIII Rule 8 of the judgment enforcement Rules, a judgment debtor, after being served with order nisi can be heard by the court only if or where he observes irregularities in what is presented before the court by the judgment creditor. Why I say so is that at that stage, it is not an opportunity to reopen the case which judgment has been entered. It is strictly for the enforcement of such judgment. Thus, where the judgment sought to be enforced is certain, in terms of the parties, the judgment sum and the party adjudged the debtor, then the judgment debtor has nothing to say in the proceedings.

However, where, as in this case, the judgment sum is not certain and the party adjudged as the debtor is confused by the judgment creditor, I think that justice demands that the "judgment debtor" be heard in such circumstance. In other words, it is not cast on stone that a judgment debtor cannot be heard in garnishee proceedings. It is the court that will determine whether he should be heard or not. If the application of the judgment debtor before the court is to reopen issues settled in the judgment, he cannot be heard.

But if the application is to draw the attention of the court to misleading facts put forward by the judgment creditor, there is nothing wrong with him being heard. I am persuaded by some Court of Appeal authorities in this matter including but not limited to *Barbedos Ventures Ltd v. Zamfara State* (2017) LPELR - 42499, CA, *Nigerian Breweries Plc v. Dumuje* (Supra).

The 1st Respondent's grievance at the trial court is that the Appellant wrongfully labeled it as the judgment debtor and its funds were, therefore, improperly garnished. Despite presenting cogent reasons to discharge the garnishee order nisi, the Federal High Court proceeded to make the garnishee order nisi absolute. I commend the Court of Appeal which painstakingly reviewed the matter and set aside the judgment of the learned trial Judge.

In this matter, the Appellant failed to make full and frank disclosure before the Federal High Court hearing the garnishee proceedings. First, the appellant represented that he is entitled to a judgment debt of ₦490,803,002.00 when, in actual fact, neither the Supreme Court's judgment of 24th October, 2014 nor the consequential order of 26th October, 2015 enumerated any specific sum of money the appellant was to be paid. This court only ordered that Mr. Edoja Rufus Akpodiete, the removed member of the 1st Respondent should refund all the salaries and allowances he received while sitting as "member" of the 1st Respondent. One wonders how the Appellant was able to compute those sums of money by himself alone outside the judgment of the court and tag it as the judgment sum. In garnishee proceedings, the judgment sum must be certain and can be located in the judgment. It is not to be left to conjecture.

Another issue which was wrong with the garnishee proceedings is that the appellant presented to the High Court that the 1st Respondent was indebted to him, when, in actual fact, the real judgment debtor is the removed member, Edoja Rufus Akpodiete. As observed by the learned counsel for the 1st Respondent, it was neither alleged nor shown that the removed member had made a full refund of the salaries and allowances required of him or that the 1st Respondent refused and/or neglected to pay any such refunded sum to the Appellant.

Another defect in the garnishee proceedings is that the Appellant did not disclose to the trial court that Guaranty Trust Bank Plc had complied with Garnishee order absolute made by the trial court on 14th day of June, 2016 having paid the said appellant the sum of ₦83,256,648.71. Instead of disclosing that such a huge part of the debt had been defrayed by the judgment debtor, the appellant still presented the whole figure of the "judgment debt" to the court requesting the 1st Respondent to pay.

And yet again, the appellant failed to disclose that he received the sum of ₦21,191,952.00 from the Delta State House of Assembly, being monies so far refunded by the removed member.

It is my view that had the learned trial Judge considered the motion filed by the 1st Respondent and the affidavit annexed, the above anomalies, especially that the 1st Respondent was not the judgment debtor, would have been clearly seen and, the learned trial Judge would not have made the order Nisi absolute.

There is no doubt that the 1st Respondent, having been served with order nisi and branded as judgment debtor and having filed processes at the trial court to protest his being labeled as judgment debtor, he was indeed a necessary party in the proceedings. Consequently, since the trial court had made the Order Nisi absolute against its funds with the garnishee, the 1st Respondent had a right of appeal under section 242(1) (a) of the Constitution of the Federal Republic of Nigeria. That order absolute was a final judgment and a party in the proceedings not satisfied, had a right to appeal against same. Finally, I hold that the 1st Respondent was not a passive spectator in the garnishee proceedings because the Appellant did not present the case properly before the High Court. Issue 2 is also resolved against the Appellant.

Having resolved the two issues adopted for the determination of this appeal against the appellant, I hold that this appeal is devoid of merit and is hereby dismissed. I affirm the decision of the Court of Appeal delivered on 10th May, 2018. I make no order as to costs.

MUHAMMAD, JSC: I read in advance the lead judgment of my learned brother JOHN INYANG OKORO JSC, just delivered. I agree with the reasoning and conclusion therein which I hereby adopt as mine to dismiss the unmeritorious appeal. I abide by the consequential orders made in the lead judgment.

ONNOGHEN, CJN: I have read before now, the lead Judgment just delivered by my learned brother, Okoro JSC and I agree with his reasoning and conclusion that the appeal lacks substance and should be dismissed.

This appeal is an offshoot of the Judgment of this Court in a pre-election matter in which the court removed a member of the Delta State House of Assembly and ordered the removed member to refund whatever money he collected as a member of the Delta State House of Assembly. The initial order of this court in the pre-election matter reads:

> **"It is further ordered that the said PW2 and respondent EDOJA RUFUS AKPODIETE refunds to the coffers of the Delta State House of Assembly all monies/sums of money he collected by way of salaries, allowances whatever and howsoever described since he took his seat in the said House of Assembly under the pretext of being the duly elected candidate of the 4th respondent representing Ughelli North Constituency II within ninety (90) days of this order"**

The above order was varied to the effect that the money returned by the 2nd respondent to the Delta State House of Assembly should be paid to Jenkins Giane Duvie Sovede as salaries, allowances etc.

It has to be borne in mind that this Court's ruling that the Delta State House of

Assembly is, in law, a party pursuant to Section 287 (1) of the Constitution of the Federal Republic of Nigeria 1999, as amended and Section 94 of the Sheriffs and Civil Processes Act as well as Order 2 rule 16 of the Judgment (Enforcement) Rules did not imply that the Delta State House of Assembly is a Judgment/debtor in respect of the sum to be refunded. The liability of the Delta State House of Assembly arises only when the removed member complies with the order and made refund but not before. A respondent is not ipso facto a Judgment/debtor in an order for recovery of money.

It is for the above and the fuller reasons in the said lead Judgment that I too dismiss the appeal as devoid of merit.

I abide by the consequential Orders made in the said lead Judgment including the order as to costs.

Appeal dismissed.

AKAAHS, JSC: I had a preview of the judgement of my learned brother, Okoro JSC dismissing the appeal. I agree with the conclusion that the appeal is lacking in merit and should be dismissed.

Following the variation made by this Court on 26 October, 2015 to the consequential order in SC. 255/2013 namely that:-

> ***"the sum of money so refunded by the 2nd respondent, Edoja Rufus Akpodiete to the Delta State House of Assembly shall be paid to the appellant/applicant Jenkins Giane Duvie Gwede as salaries, allowances etc from June 2011 till October 2014".***

the appellant approached the Federal High Court, Abuja for Garnishee Order Nisi to attach the 1st respondent's funds in Guaranty Trust Bank Plc to satisfy the sum of ₦490,803,002.00 which the appellant believed comprised the salaries and allowances which were collected by Edoja Rufus Akpodiete from the 1st respondent when he purportedly represented Ughelli North Constituency II in the Delta State House of Assembly. The Order Nisi was granted against Guaranty Trust Bank Plc on 7 March, 2016 and on 14 June, 2016, the learned trial Judge, Justice A.F.A. Ademola Rtd made the Garnishee Order Absolute in the sum of ₦83,256,648.71 (Eighty-Three Million, Two Hundred And Fifty-Six Thousand, Six Hundred And Forty-Eight Naira And Seventy-One Kobo) attaching same from the custody of Guarantee Trust Bank Plc.

In another ex-parte motion filed on 3 June, 2016, the appellant proceeded to garnishee the monies of the 1st respondent in Skye Bank Plc which was granted. The court directed Skye Bank Plc to appear on 17 June, 2016 to show cause why the Garnishee Order Nisi should not be made absolute. The 1st respondent

challenged the jurisdiction of the Federal High Court to further embark on adjudicating on Garnishee proceedings against the monies of the 1st respondent.

The learned trial Judge disagreed and stated that Garnishee proceedings is one of the numerous ways of enforcing a judgement and not one of the methods of commencing an action and that what he was doing is the enforcement of the Supreme Court judgement. He said that where the sum enforced is less than the amount due, the judgement creditor will have a right to continue with the enforcement; consequently the ex-parte motion to garnishee the monies of the 1st respondent in Skye Bank Plc is not a fresh action to determine a right but enforcement of a decision already given.

The 1st respondent was dissatisfied and appealed to the Court below which allowed the appeal and set aside the Order absolute; hence the appellant's appeal to this Court.

I agree with my learned brother, Okoro JSC that the issues formulated by learned counsel for the 1st respondent mirror the complaints of the appellant and the issues formulated by appellant's counsel for determination are completely off tangent. Issues for determination must relate to the grounds of appeal filed and the grounds of appeal should arise from the judgement appealed against See: *Orianzi v. A.G. Rivers State* (2017) 6 NWLR (Pt. 1561) 224; *Sogunro v. Yeku* (2017) 9 NWLR (Pt. 1570) 290; *Bagobiri v. State* (2017) 18 NWLR (Pt. 1597) 247.

It is not correct to argue that the lower court disobeyed the order of the Supreme Court which made the 1st respondent a debtor to the appellant. It is only when it is ascertained that Edoja Rufus Akpodiete has refunded the monies he collected as salaries and allowances to the Delta State House of Assembly that it would become indebted to the appellant if it fails to remit the amount refunded. In other words if the 1st respondent admits collecting any sums of money which was paid by Edoja Rufus Akpodiete, it becomes a trustee of such money and the order of the Supreme Court to remit the money to the appellant becomes binding on it.

My learned brother, Okoro JSC exhaustively considered the issues raised in the appeal and resolved them against the appellant. I adopt the said judgement as mine. Accordingly I find no merit in the appeal and it is dismissed. I make no order on costs.

BAGE, JSC: I have had the benefit of reading in draft the lead Judgment of my learned brother **John Iyang Okoro, JSC,** just delivered. I agree entirely with the reasoning and conclusion reached. I do not have anything useful to add. The appeal is devoid of merit, it is accordingly dismissed. Judgment of the Court Appeal delivered on the 10th May, 2018 is hereby affirmed.

Cases cited in the Judgment

Adegoke Motors Ltd v. Dr. Babatunde Adesanya & Anor (1989) 5 SCNJ, 80, (1989) 3 NWLR (Pt. 109) 250
Ahmed v. Central Bank of Nigeria (2013) 11 NWLR (Pt. 1365) 352
Atolagbe v. Awumi (1997) 9 NWLR (Pt. 522) 536
Babatunde v. P.A.S. & T.A. Ltd (2007) All FWLR (Pt. 372) 1721
Bagobiri v. State (2017) 18 NWLR (Pt. 1597) 247
Barbedos Ventures Ltd v. Zamfara State (2017) LPELR – 42499 CA
Buhari v. Yusuf (2003) 14 NWLR (Pt. 841)
Calabar Central Co - Operative Thrift and Credit Society Ltd v. Ekpo (2008) 6 NWLR (Pt. 1083) 362
Central Bank of Nigeria v. Interstellar Communications Ltd & 3 Ors (2018) 7 NWLR (Pt. 1618) 294
Dangote v. CSC Plateau State (2001) 4 SC (Pt. 11) 43
Guaranty Trust Bank Plc v. Innoson Nig. Ltd (2017) LPELR - 42368 (SC)
Mobil Producing Nig. Unlimited v. Monokpo (2001) 18 NWLR (Pt. 744) 212
N.A.O.C. Ltd v. Ogini (2011) 2 NWLR (Pt. 1230) 131
Nigerian Breweries Plc v. Dumuje (2016) 8 NWLR (Pt. 1515) 536
Odumosu v. Oluwole (2004) FWLR (Pt. 191) 1487
Orianzi v. A.G. Rivers State (2017) 6 NWLR (Pt. 1561) 224
Provincial Liquidator of TAPP Industries Ltd & Anor v. TAPP Industries Ltd (1995) LPELR - 2928 (SC)
Sogunro v. Yeku (2017) 9 NWLR (Pt. 1570) 290
Stanbic IBTC Bank Plc v. Long Term Global Capital Ltd (2016) LPELR - 40517
Trade Bank Plc v Chami (2003) 13 NWLR (Pt. 836) 158
Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd & Ors (2005) 13 NWLR (Pt. 943) 654

Foreign case cited in the Judgment

Choice Investments Ltd v. Jeromnimon (Midland Bank Ltd. Garnishee) (1981) 1 All ER 225

Statutes cited in the Judgment

Sections 36, 242(1) (a) & 287(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
Sections 83(1) and (2) & 94 of the Sheriffs and Civil Process Act cap 56 Law of the Federation of Nigeria, 2004

Rules of Court cited in the Judgment

Order 2 Rule 16 of the Judgment (Enforcement) Rules
Order VIII Rule 8(1) of the Judgment (Enforcement) Rules

History:

HIGH COURT

Federal High Court (Abuja Division)

COURT OF APPEAL
Court of Appeal (Abuja Division)

SUPREME COURT OF NIGERIA
Walter Samuel Onnoghen, CJN ***(Presided)***
Musa Dattijo Muhammad, JSC
Kumai Bayang Akaa'hs, JSC
John Inyang Okoro, JSC ***(Read the lead Judgment)***
Sidi Dauda Bage, JSC

Counsel:
Joe Agi, SAN with K. E. A. Akonjom Esq., Oladimeji Ekengba Esq and Ewere A. Ahemeke, Esq for the Appellant.
Isaiah Bozimo Esq. with Ebuka Enechebe Esq. for 1st Respondent.
A. Uno Kanu, Esq. for 2nd Respondent.

CENTRAL BANK OF NIGERIA v. FAMFA OIL LIMITED; UNITY BANK PLC

COURT OF APPEAL
(LAGOS DIVISION)

CA/L/474/2018
THURSDAY 21st FEBRUARY, 2019

(GARBA; IKYEGH; TUKUR, JJ.CA)

FOREIGN EXCHANGE – Market Rate – Parties are at liberty to determine by mutual consent the rate at which currency exchanges are transacted.

FOREIGN EXCHANGE – Transactions – Except transactions relating to prohibited goods, services and items, transactions in foreign exchange are lawful and valid provided proper documentation is done.

FOREIGN EXCHANGE – Legal Framework – The Foreign Exchange Act regulates the forex market and forfeiture of imported currency must be carried out in accordance with its provisions.

FOREIGN EXCHANGE – Transactions – Irrespective of currency, no cash payment is to be made or received in Nigeria for the acquisition of landed property, securities, stocks and securities, and vehicle except by means of fund transfers or cheques drawn on banks.

FOREIGN EXCHANGE – Transactions – The holder of a domiciliary account cannot be denied access to his account where he has not violated relevant laws

COMMERCIAL TRANSACTIONS – Right to Trade – Every person in law has the right to conduct his business and commercial transactions without any unlawful interference from any authority.

DAMAGES – Award – A person whose right is violated is entitled to adequate but not excessive damages.

ADMINISTRATIVE LAW – Administrative Notices – are mere information and guidelines about government activities and do not have the force of legal notice or subsidiary legislation.

LITIGATION – Striking Out – A mere striking out of a matter does not finally dispose of the subject matter of the suit.

LITIGATION – Striking Out – A matter struck out for non-compliance with certain provisions can be refiled after compliance.

LITIGATION – Judgment – must be read as one component document.

JUDGMENT – Issues – A judge is not required to make separate pronouncement on every issue provided that the pronouncement incorporates the resolution of all the issues.

LITIGATION – Judicial Notice – Court may take judicial notice of extant laws in resolving any issue even though parties may not have joined issues on it.

EVIDENCE – Presumption of Regularity – Judicial or official acts done in a manner substantially regular are presumed to have complied with the legal requirements for its validity.

EVIDENCE – Presumption of Fact – where the court is required to presume the existence of a fact, it may regard it as proved until disproved or it may call for proof.

EVIDENCE – Presumption of Regularity – Official and judicial acts done in the regular manner are presumed valid and any person challenging such acts must rebut same by credible and sufficient evidence.

ADMINISTRATIVE LAW – Public Officers Protection – "Continuation of Damage or Injury" in reference to the Public Officers Protection Act means that a fresh cause of action arises where there is a continuous repetition of the act or omission complained of.

Facts:

The appellant is an agency of the Federal Government of Nigeria responsible for regulating banks and other financial institutions in Nigeria. The 1st respondent is a company carrying on business in Nigeria. The 2nd respondent is the banker of the 1st respondent. The 1st respondent holds a domiciliary account with the 2nd respondent. In a bid to carry out several transactions in furtherance of its business objectives, the 1st respondent requested that the 2nd respondent transfer foreign currency from its domiciliary account to named beneficiaries. The 2nd respondent declined the request on the ground that there was a directive promulgated in a notice by the appellant directing the bank not to honour the request. Consequently, the 1st respondent was denied access to its foreign currency domiciled with the 2nd respondent.

The 1st respondent was aggrieved and filed a suit against the appellant and the 2nd respondent at the Federal High Court, Lagos Division alleging violation of its rights. The appellant filed a preliminary objection to the hearing of the suit on the ground that the acts alleged to have been done against the business interest of the 1st respondent is statute barred by virtue of the Public Officers Protection Act and

that the suit was incompetent having been filed after the three months period allowed under that law for pursuing claims against a public officer. The appellant argued that the court lacked jurisdiction to hear and determine the matter. After hearing the parties on the application, the trial judge dismissed the application and assumed jurisdiction to hear the matter. And the end of trial, judgment was given in favour of the 1st respondent. The appellant was aggrieved and filed a notice of appeal at the Court of Appeal, Lagos Division.

The major issue in the appeal is whether the appellant has the power to interfere with the business interests of the 1st respondent by ordering the 2nd respondent not to honour the request of the 1st respondent and placing of restrictions on the domiciliary account of the 1st respondent.

Held ***(Unanimously dismissing the appeal):***

[1] ***Foreign Exchange – Market Rate – Parties are at liberty to determine by mutual consent the rate at which currency exchanges are transacted.***

Section 9 of the Forex Act provides that –

> *"9. Rate in the Market*
>
> *The rate at which each transaction in the Market shall be executed shall be the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned."*

While Para 5(c) of Exhibit MODU-2 leaves the transaction of conversion of foreign currency into Naira to be at the prevailing bank interest rate, section 9 of the FOREX Act stipulates that each transaction in the Market shall be at the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned.
(P. 58 lines 15 - 21)

[2] ***Foreign Exchange – Transactions – Except transactions relating to prohibited goods, services and items, transactions in foreign exchange are lawful and valid provided proper documentation is done.***

Section 10 of the FOREX Act provides –

> *"Subject to the provisions of paragraph (b) of section 11 of this Act and except where a transaction is prohibited by law, any transaction adequately supported by appropriate documentation*

shall, for the purpose of this Act, be an eligible transaction for the purchase of Foreign Exchange in the Market."

Paragraph (b) of section 11 of the Act provides –

"Nothing in this Act shall be construed –

(b) to imply that transactions relating to goods, services or items absolutely prohibited by any enactment or law may be conducted in the Market."
(P. 58 lines 35 - 41)

[3] ***Foreign Exchange – Legal Framework – The Foreign Exchange Act regulates the Forex market and forfeiture of imported currency must be carried out in accordance with its provisions.***

These do not supersede the Forex Act which prevails even over any other law vide section 37 (2) of the Forex Act which provides that-

"If the provisions of any other law, including the enactments specified in subsection (1) of this section (a) the Bill of Exchange Act," (b) the Central Bank of Nigeria Act,' (c) the Banks and Other Financial Institutions Act (BOFIA) (d) the National Economic Intelligence Committee (Establishment, etc.) Act.

are inconsistent with those of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void."

Section 3(2) of the Forex Act provides –

"No foreign currency imported pursuant to this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Federal or a State Government except as provided under this Act."

While section 17(5) thereof provides –

"No money imported for the purpose of this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Federal or a State Government."
(P. 61 lines 34 - 45; P. 62 lines 1 - 11)

[4] ***Foreign Exchange – Transactions – Irrespective of currency, no cash payment is to be made or received in Nigeria for the acquisition of***

landed property, securities, stocks and securities, and vehicle except by means of fund transfers or cheques drawn on banks.

There is also section 22 of the Forex Act which provides –

> *"22* ***Payments for certain goods***
>
> *1. Notwithstanding anything to the contrary contained in any enactment or law and except as provided in subsection (2) of this section, no person shall, in Nigeria, make or accept cash payment, whether denominated in foreign currency or not, for the purchase or acquisition of the following-*
>
> *(a) landed properties;*
>
> *(b) securities, including stocks, shares, debentures and all forms of negotiable instruments; and*
>
> *(c) motor cars, including other vehicles of any description whatsoever*
>
> *2. Payments for the items specified in subsection (1) of this section shall as from the commencement of this Act, be made by means of bank transfers or cheques drawn on banks in Nigeria only."*
> **(P. 62 lines 13 - 33)**

[5] ***Foreign Exchange – Transactions – The holder of a domiciliary account cannot be denied access to his account where he has not violated relevant laws.***

I agree with the court below when it held in part of its judgment in page 492 of the record that –

> *"It is my view that none of these fall into the prohibitions spelt out by section 22 of the foreign exchange act. The Plaintiff cannot therefore be denied access to its account.*
>
> *All said and done, the undisputed affidavit evidence before me is that the Plaintiff is not a Foreign Exchange market operator. It is not into the business of buying and selling foreign exchange. It is simply a depositor of oil export proceeds in a domiciliary account with the 2nd Defendant.*

Therefore except where it is shown to have ventured into something unlawful, the Plaintiff in my view is protected by law to have unrestricted access to its funds with the 2nd Defendant. I refer in particular to the provisions of Section 3(2) and 17(5) of the Foreign Exchange Act."

Section 1 of the Forex Act defines Market as –

"There is hereby established an Autonomous Foreign Exchange Market (in this Act referred to as the Market) where transactions in foreign exchange shall be conducted in accordance with the provisions of this Act."

The Act goes on to state in section 41 thereof that an Autonomous Foreign Exchange Market is a market in which authorised dealers, authorised buyers, foreign exchange end-users and the Central Bank of Nigeria are participants and may include any other participant that the Government of the Federation may, from time to time recognize; while domiciliary account means a foreign currency account domiciled in Nigeria opened, maintained and operated with banks in Nigeria under this Act. And 'bank' is defined in section 41 of the Forex Act to have the meaning assigned to it by section 55 of the Central Bank Act which defines a bank as a bank licensed under the Banks and Other Financial Institutions Act (BOFIA) 1991 or under the repealed Banking Act or any other prior legislation. **(P. 64 lines 34 - 44; P. 65 lines 1 - 22)**

[6] ***Commercial Transactions – Right to Trade – Every person in law has the right to conduct his business and commercial transactions without any unlawful interference from any authority.***

Interference with business transactions of another as in this case would affect the source of livelihood of the person operating the business vide the Supreme Court case of *Ajao v. Ashiru and Ors.* (1973) N.S.C.C. 525 at 533 on the right of every person (natural and artificial), to go about his or her lawful business unhampered by anyone else, be it a Government functionary or a private individual; and the Supreme Court case of *Ibadan City Council v. Odukale* (1972) N.S.C.C. 531 at 542 citing the English case of *Nagle v. Fielden and Ors.* (1966) 12 Q.B. 633 at 644 to the effect that a man has a right to work at his trade, business, or profession without being unjustly excluded or shut out from it at the whim of those having authority over it. **(P. 67 lines 12 - 21)**

[7] ***Damages – Award – A person whose right is violated is entitled to adequate but not excessive damages.***

I find the award of ₦10 million damages manifestly high in the circumstances of the case as it did not take into consideration that the domiciliary account attracted interest in favour of the 1st respondent vide section 15 of the Banking Act CAP. 28 LFN which lessened the burden of the litigation on the 1st respondent, therefore I am disposed to disturb the award and vary it from ₦10 million to ₦5 million on the principle that where a right is infringed, a remedy must be provided.
(P. 67 lines 31 - 36)

[8] ***Administrative Law – Administrative Notices – are mere information and guidelines about government activities and do not have the force of legal notice or subsidiary legislation.***

In my considered opinion, the MODU series of Exhibits are not legal notices as to constitute subsidiary legislation vide *Abubakar v. Bebeji Oil and Allied Products Ltd. and Ors.* (2007) 18 NWLR (Pt. 1066) 319 at 384; these MODU series of Exhibits are merely information and guidelines about governmental organisation and the exercise of discretionary powers and in themselves have no legal effect, having no statutory authority vide *Maideribe v. F.R.N.* (2014) 5 NWLR (Pt. 1399) 68 at 92 - 93.

I agree with the court below that Exhibits MODU - 3 and MODU - 4 are inconsistent with section 10 of the FOREX Act (supra). Only an enactment or law may prohibit transactions relating to goods, services or items to be conducted in the market, not by guidelines, circular, policy speech, regulation, or memoranda. **(P. 61 lines 21 - 32)**

The case of *Psychiatric Hospital Management Board v. Ejitagha* (2000) 6 SCNJ 263 states that policy speech cannot supersede the law or an enactment; likewise the case of *Katto v. C.B.N.* (1999) 5 SCNJ 1 to the effect that regulations do not take the place of legislation; also, it is trite that subordinate legislation is prima facie, utra vires if it is inconsistent with the substantive provisions of the statute by which the enabling power is conferred or on any other statute vide *I.G.P. v. Mobil Producing Nigeria Unlimited* (2018) 14 NWLR (Pt. 1639) 329 at 393; *Ewete v. Gyang* (1997) 3 NWLR (Pt. 496) 728 at 735; *Oloriegbe v. Omotosho* (1993) 1 NWLR (Pt. 270) 386; and, also the case of *Maideribe v. F.R.N.* (2013) 5 NWLR (Pt. 1399) at 68 to the effect that circular has no legal status.
(P. 62 lines 35 - 44)

[9] ***Litigation – Striking Out – A mere striking out of a matter does not finally dispose of the subject matter of the suit.***

A case that is merely struck out does not dispose of the rights of the parties with respect to the subject matter of the action. See *Alor v. Ngene*

(2007) 17 NWLR (Pt. 1062) 163 at 178 thus –

> *"In Nigeria, it is the nature of the order test that has been constantly applied. If the order made finally disposes of the right of the parties, then the order is final. If the order does not, then it is interlocutory. An order is also regarded as final if it at once affects the status of the parties for whichever side the decision may be given, so that if it is given for the plaintiff, it is conclusive against the defendant, if it is given for the defendant, it is conclusive against the plaintiff."*

An action merely struck out does not determine the rights of the parties conclusively. Once the order striking out the case subsists it does not confer any judicial remedy to any of the parties capable of enforcement.

Thus in *Oronto v. Onigbanjo* (2004) 17 NWLR (Pt. 903) 601 it was held that an order striking out a matter (save on ground of lack of jurisdiction) preserves the rights of the parties to relitigate the matter as there had been no proper and conclusive determination of the matter on the merits. **(P. 52 lines 7 - 21; P. 53 lines 1 - 4)**

[10] ***Litigation – Striking Out – A matter struck out for non-compliance with certain provisions can be refiled after compliance.***

There is this unique feature in the striking out of an action (not for want of jurisdiction) but for non-compliance with a rule or practice or procedural laws or condition precedent of an action stated by the Supreme Court in the case of *Re: Apeh* (2017) 11 NWLR (Pt. 1576) 252 at 276 thus-

> *"On the other hand, where a matter is simply struck out for a reason: non-compliance with a provision of law, rule and or practice; where a point of objection is raised (which point can be complied with, thereafter), where a process is technically bad for a reason (which can later be rectified) the originator/initiator of that process is at liberty to re-file that process after same has been brought in compliance with the correct position of the law, rule or practice as may thereof be required."*

It follows that the order striking out the action in the manner it occurred in this case should not, in my modest opinion, bar the claimant from renewing the action in proper form. **(P. 52 lines 7 - 21; P. 53 lines 1 - 4)**

[11] ***Litigation – Judgment – must be read as one component document.***

It is necessary to read a judgment corporately as one harmonious whole

or as one component vide *Akaighe v. Idarna* (1964) All NLR (Reprint) 317 at 322, *Mbani v. Bosi* (2006) 11 NWLR (Pt. 991) 400 at 417, *Adegbuyi v. A.P.C.* (2014) All FWLR (Pt. 761) 1486 at 1504 following *Adebayo v. A.G., Federation* (2008) All FWLR (Pt. 412) 1195. **(P. 57 lines 5 - 9)**

[12] ***Judgment – Issues – A judge is not required to make separate pronouncement on every issue provided that the pronouncement incorporates the resolution of all the issues.***

Similarly, issue 6 was considered in the judgment of the court below in pages 475, 477, 479 - 480 of the record showing the court below considered all the issues properly raised and placed before it. And, in my respectful opinion, it is not mandatory for a trial judge to render separate holding on each issue. Suffice it that a corporate rendition of the holding on all the issues are made as in this case vide *NOSPETCO Oil and Gas Ltd. v. Prince Matiluko and Ors.* (2012) 10 NWLR (Pt. 1307) 115 at 153, *Etajata v. Oogbo* (2007) 16 NWLR (Pt. 1601) 554 and the cases of *Adebayo v. A.G., Ogun State* (2008) LPELR - 80, *Duzu and Anor. v. Yunusa and Ors.* (2010) LPELR - 8989 cited by the 1st respondent. **(P. 57 lines 25 - 33)**

[13] ***Litigation – Judicial Notice – Court may take judicial notice of extant laws in resolving any issue even though parties may not have joined issues on it.***

Even if the parties did not join issue on section 22 of the Forex Act, the materials before the court below justified it to take judicial notice of section 22 of the Forex Act and consider it in its judgment under section 122 (2) (a) of the Evidence Act read with the cases of *Omokuwajo v. F.R.N.* (2013) 9 NWLR (Pt. 1359) 300, *Gbagbarigha v. Toruemi* (2013) 31 W.R.N. 35, *USI Enterprises Ltd. v. The Kogi State Government and Ors.* (2005) 1 NWLR (Pt. 908) 494 at 517 - 518; moreover, the appellant did not establish miscarriage of justice from the utilization of section 22 of the Forex Act by the court below vide *Ogembe v. Usman* (2011) 17 NWLR (Pt. 1277) 638. **(P. 66 lines 13 - 21)**

[14] ***Evidence – Presumption of Regularity – Judicial or official acts done in a manner substantially regular are presumed to have complied with the legal requirements for its validity.***

The court below voided Exhibits MODU 1 - 4 without taking into full consideration the presumption of regularity of official acts under section 168 of the Evidence Act. It is a powerful presumption, though rebuttable, and is expressed by the draftsman thus –

"(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that a person acted in a public capacity, it is presumed that he had been duly appointed and was entitled so to act."
(P. 53 lines 17 - 27)

[15] ***Evidence – Presumption of Fact – where the court is required to presume the existence of a fact, it may regard it as proved until disproved or it may call for proof.***

The onus is on the 1st respondent to prove to the letter that the official act of the appellant in issuing the guidelines, Exhibits Modu-2 to -4, was not done without the approval of the Minister vide section 145(1) and (2) of the Evidence Act to wit –

"(1) Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved".
(P. 53 lines 29 - 39)

[16] ***Evidence – Presumption of Regularity – Official and judicial acts done in the regular manner are presumed valid and any person challenging such acts must rebut same by credible and sufficient evidence.***

The 1st respondent did not therefore tender sufficient evidence to rebut - the presumption under section 168(1) and (2) of the Evidence Act (supra). The said presumption therefore inures to the benefit of the appellant that the guidelines were properly made and issued vide *Adighije v. Nwaogu* (2011) All FWLR (Pt.559) 1006, *Amako v. State* (1995) 6 NWLR (Pt.399) 11.
(P. 54 lines 9 - 13)

[17] ***Administrative Law – Public Officers Protection – "Continuation of Damage or Injury" in reference to the Public Officers Protection Act means that a fresh cause of action arises where there is a continuous repetition of the act or omission complained of.***

The phrase "continuance of damage or injury" in the POPA is a term of art without statutory definition. It is sometimes called "continuing damage or injury". Thus in *Aremo II v. Adekanye* (2004) 13 NWLR (Pt.891) 572 at 593 - 594, the phrase was interpreted to mean where there has been continuance of damage, a fresh cause of action arises from time to time, as often as damage is caused. Reliance was placed on the old English case of *Battishill v. Reed* (1856) 48 CB 696 at 714 with the example that if an owner of mines works and causes damage to the surface more than the limitation period before action is filed and after the limitation period a fresh subsidence causing damage occurs without any fresh working by the owner, an action in respect of the fresh damage, not the previous damage, is not barred as the fresh subsidence resulting in injury gives a fresh cause of action.

The Supreme Court followed the same conclusion in the case of *A.G., Rivers State v. A.G., Bayelsa State* (2013) 3 NWLR (Pt.1340) 123 at 148 - 149 where the plaintiff in the case averred in the pleadings and deposed to in an affidavit that he continued to be deprived of the allocation he is entitled to every month and the same had not ceased and the Supreme Court held per the lead judgment prepared by his lordship, Galadima, J.S.C., that in such situation of continuance of damage or injury which has not ceased, the defence under the POPA is not available to the person raising it. The said decision was given by a Full Panel of the Supreme Court (Musdapher, C.J.N., Mohammed, Tabai, Fabiyi Adekeye, Galadima and Rhodes-Vivour, JJ.S.C.). See also the limitation of action case of *Adepoju v. Oke* (1999) 3 NWLR (Pt.594) 154 at 164 where the Supreme Court held that every new act constitutes a fresh cause of action within the limitation period.

Then in *I.N.E.C. v. Ogbadibo Local Government and Ors.* (2016) 3 NWLR (Pt.1498) 167 the Supreme Court re-emphasised in the lead judgment prepared by his lordship, Okoro, J.S.C., that "continuance of damage or injury" for the purpose of timeline of POPA means the continuance of the legal injury.

A continuing damage or injury may therefore arise from the repetition of acts or omissions of the same kind as that for which the action was brought and in such a case a fresh cause of action arises with every wrong. **(P. 54 lines 36 - 45; P. 55 lines 1 - 23)**

IKYEGH, JCA (Delivering the lead Judgment): The foundation of the appeal is based on an amended notice of appeal with thirteen (13) grounds of appeal filed on 07.09.18, but deemed as properly filed on 05.11.18, challenging the decision of the Federal High Court, Lagos (the court below) whereby the court below dismissed the appellant's preliminary objection and assumed jurisdiction over the originating

action which it determined to finality resulting in a judgment in favour of the 1st respondent.

In a brief of argument filed on 07.09.18, but deemed duly filed on 05.11.18, the appellant argued that the judgment earlier given in the case between the same parties over the same issues was a final judgment, therefore the court below was wrong in holding that it was not a final judgment caught by cause of action estoppels and was an abuse of the process of the court and should not have been be relitigated citing in support the cases of *Fadiora v. Gbadebo and Anor.* (1978) All NLR 42, *Arubo v. Aiyeleru and Ors.* (1993) 3 NWLR (Pt.280) 126 at 147, *Okugo and Anor. v. Nwokedi and Ors.* (1997) 8 NWLR (Pt. 517) 467, O*zungwe v. Gbishe* (1985) 2 NWLR (Pt.11, vo1.17) 914 at 922, *Savage v. Uwechia* (1972) 3 SC 206 at 215, *Onyeabuchi v. INEC* (2002) 8 NWLR (Pt.769) 417 at 449.

It was submitted that the allegations that the 1st respondent was unjustly denied access to its funds with the 2nd respondent by the appellant was a continuing injury unaffected by the running of time for the protection of the appellant as a public officer was wrong in that the denial of the access was not a continuing injury, therefore the action having not been brought within 3 months from the date of injury or act complained of was statute-barred and should have been struck out citing in support the cases of *I.N.E.C. v. Ogbadibo Local Government and Ors.* (2015) LPELR-24839, *Sanda v. Kukawa Local Government* (1991) 2 NWLR (Pt.174) 379, *Ibrahim v. Judicial Service Committee, Kaduna State* (1998) 14 NWLR (Pt. 584) 1 and section 2(a) of the Public Officers (Protection) Act Cap. P41 Laws of the Federation, 2004.

It was submitted that the 1st respondent having contended that the approval of the Minister of Finance was not obtained by the appellant before issuing Memorandum 26 Appendix 1 and the circular dated 20.02.15 when there was no question in the originating summons on the issue, the court below lacked the jurisdiction to delve into the issue as it did not arise on the face of the originating summons rendering the proceedings a nullity; more so, the court below should have applied the principle of the presumption of regularity of official acts to the case citing in support the cases of *Olley and Ors. v. Tunji and Ors.* (2013) 10 NWLR (Pt.1362) 275 at 316 - 317, *Alubankudi v. A.G., Federation and Anor.* (2002) LPELR-11192, *Matari and Ors. v. Oangaladima and Anor.* (1993) LPELR-1846, sections 145(2) and 168(1) of the Evidence Act, 2011 (Evidence Act).

It was submitted that the court below was wrong when it held in its judgment that paragraph 5C of Exhibit Modu-2, Memorandum 26, contradicts section 9 of the Foreign Exchange Act (Forex Act) while Appendix 1 of Memorandum 26, Exhibit Modu-3, and the appellant's circular dated 20.02.15, Exhibit Modu-4, contradict and/or are inconsistent with section 9 of the Forex Act when section 9 of the Forex Act deals with the Autonomous Foreign Exchange Market, not Foreign Exchange Currency Domiciliary Account which is the theme of Memorandum 26,

Exhibit Modu-2 vide sections 1 and 41 of the Forex Act read with section 55 of the Central Bank Act and the cases of *I.T.F. v. N.R.C.* (2007) 3 NWLR (Pt. 1020) 28 at 63 - 64, *Nigeria Development Co. Ltd. v. Adamawa Water Board* (2008) 9 NWLR (Pt.1 093) 498.

It was submitted that the court below should not have held in its judgment that Appendix 1 of Memorandum 26, Exhibit Modu-3 and the Appellant's circular dated 20.02.15, Exhibit Modu 4, contradicted section 10 of the Forex Act for providing restrictions when section 10 of the Forex Act provides that only transactions that are not prohibited by law and that are adequately supported by appropriate documentation shall be eligible transaction in the foreign exchange market showing there is no restriction to any transaction so long as the transaction is lawful and properly documented, therefore it was concluded in argument that the court below did not draw appropriate inference from the said Exhibits vis-a-vis section 10 of the Forex Act; and that its decision on the issue is, accordingly, perverse and should be set aside citing in support the cases of *Okhuarobo v. Aigbe* (2002) 9 NWLR (Pt. 771) 29, *U.T.B. (Nig.) v. Ozoemena* (2007) 3 NWLR (Pt.1022) 448 at 471.

It was submitted that having regard to the fact that Exhibits Modu-2 and Modu-3 were made in September, 2006 vide page 486 of the record and Exhibit Modu-4 which was mentioned in both Exhibits Modu-7 and Modu-8 were dated 20.02.15 and did not take away or impair any vested right but only clarified paragraph 5 of clause 0 of the Foreign Exchange Manual which was in existence since September, 2006, the court below was wrong in holding that Exhibits Modu-2, Modu-3, Modu-4 were made retrospectively and were also applied retrospectively on the 1st respondent citing in support the case of *Adesanoye v. Adewole* (2000) 9 NWLR (Pt. 671) 127 at 141 read with sections 10 and 11 of the Forex Act.

It was submitted that the parties did not join issues on section 22 of the Forex Act therefore the court below should not have descended into the arena and suo motu applied section 22 of the Forex Act to hold that the 1st respondent was entitled to access its funds in its foreign domiciliary account citing in support the case of *Victino Fixed Odds Ltd. v. Ojo* (2010) 8 NWLR (Pt.1197) 486 at 501.

It was submitted that the 1st respondent did not allege denial of its fundamental rights to have unhindered access to its property - the funds - with the 2nd respondent, therefore the court below was wrong in making a case for the parties on a breach of fundamental right suo motu and deciding thereon without affording the appellant the opportunity to be heard on the issue citing in support the cases of *Olatunji v. Adisa* (1995) 2 NWLR (Pt. 376) 167, *Victino Fixed Odds Ltd. v. Ojo (supra)*.

It was submitted that the court below erred in holding in its judgment in page 493 of the record that it answered all the questions put for determination in favour of the 1st respondent when it did not decide questions 1, 2, 4, 7 and 8 raised in the originating summons; while its answer to question 3 is erroneous in that Exhibits

Modu 2 - 4 are not contrary to, nor at variance with sections 3(2), 9, 10, 17(5) of the Forex Act; as well as question 5 which the appellant submitted was erroneously answered by the court below in that Exhibit Modu 2-5 were not applied retrospectively.

It was also argued that having found in its judgment in page 486 of the record that section 10 of the Forex Act does not provide any restrictions, as long as the transaction is lawful and properly documented the court below should have held that the 1st respondent having not provided appropriate documentation for the transaction, was in breach of section 10 of the Forex Act; and that had the court below examined all the sections of the Forex Act it would have answered question 6 to the effect that the 1st respondent breached the Forex Act; It was also argued that the court below did not consider that sections 42 and/or 44 of the 1999 Constitution were contravened or violated, therefore it should not have granted reliefs 'e' and 'f' sought in the action; more so, the court below did not consider, nor made findings on the questions raised on the originating summons on expropriation, seizure, and/or forfeiture of the 1st respondent's funds for which reliefs 'h' and 'I' were sought and ought not to have granted these reliefs; and that the award of ₦10 million damages was baseless; consequently, the appellant urged that the appeal should be allowed and the decision of the court below set aside and the action be struck out and/or dismissed.

Only the 1st respondent filed brief of argument. It was filed on 11.10.18, but deemed as properly filed on 05.11.18. It was argued in the brief that the judgment in suit No. FHC/L/CS/868/2015 contained in pages 466 - 469 of the record of appeal (the record), did not indicate that the issues in controversy between the parties in that case were totally resolved as that court struck out the matter on the ground of technicality without deciding it on the merit, so the plea of cause of action estoppels and abuse of court process did not lie against the action citing in support the cases of *Oshodi v. Eyifunmi* (2000) 13 NWLR (Pt. 684) 298, *Nkanu and Ors. v. Onum and Ors.* (1977) 5 S.C. 11, *Ikpang v. Edoho* (1978) 6 - 7 S.C. 221, *Ozungwe v. Gbishe* (1985) NWLR (Pt. 95) 59, *Onuora v. Ofomata* (2012) LPELR - 19942.

The 1st respondent argued that there was continuance of damage or injury which had not ceased in respect of the complaint of the 1st respondent that pursuant to section 19 of the Forex Act it paid some money into its domiciliary account but due to the alleged illegal and unconstitutional activities of the appellant, the 1st respondent had not been able to access its funds till date vide page 353 of the record which formed the cause of action of the 1st respondent and being a continuing injury or damage and the issue involves the application of the provisions of the Constitution which is not caught by estoppel, the action cannot be time barred under section 2 of the Public Officers (Protection) Act citing in support the case of *A.G., Rivers State v. A.G., Bayelsa State* (2013) 3 NWLR (Pt.1340) 123 at 148 - 149, *A.G., Bendel State v. A.G., Federation* (1981) 12 NSCC 314 at 338 - 339, AND 395, *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (1982) NSCC 477 at 500,

Encyclopedia of the Laws of the Federation Republic of Nigeria (First Edition) Vol. 9 at 103, section 1 (1) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution).

The 1st respondent argued that the question whether the approval of the Minister of Finance was required was raised in issue 1 of the 1st respondent's originating action in page 4 of the record bringing into discussion the question whether the appellant can make subsidiary regulations which the 1st respondent canvassed in its written address in support of the originating summons in pages 152 - 154 of the record to which the appellant did not respond vide pages 227 - 245 of the record containing the appellant's written address against the originating summons but which was alluded to by the court below in page 482 of the record.

The 1st respondent pointed out that it rebutted the presumption of regularity by identifying the requirement for ministerial approval, which is contained in section 1 (2) of the Forex Act vide page 250 of the record; that the 1st respondent pleaded the requirement for ministerial approval in paragraphs 22, 24(b), 24(c) and 24(d) of the further affidavit in page 250 of the record and pointed out in paragraph 4.04 of its written address in pages 152 - 153 of the record the absence approval from the body of Memorandum 26 and Appendix 1 of the Foreign Exchange Manual and clarification dated 20.02.16, Exhibits MODU 2 - 4, of any indication suggesting such approval was sought and given by the Minister as required by statute thus successfully rebutting the presumption of regularity and shifted the burden of proof to the appellant to show that indeed the Minister's approval was obtained before the issuance of Memorandum 26, Appendix 1, and the circular dated 20.02.15, which the appellant failed to do, therefore the court below was right in holding in its judgment in pages 482 - 484 of the record that in the absence of the approval of the Minister of Finance Exhibits MODU 2 - 4 stand void ab initio citing in support the case of *Nvene v. FRN* (2016) LPELR-40948.

The 1st respondent argued that it made arguments regarding inconsistencies between Exhibit Modu 2 (para 5C of Memorandum 26) and section 9 of the Forex Act in pages 146 - 159 of the record and paragraph 36 of the further affidavit in page 252 of the record which the appellant did not counter in its written address in paragraphs 33 - 34 at pages 234 - 236 of the record.

It was therefore argued that parties are bound by their pleadings - the appellant is bound by its counter affidavit in pages 191 - 196 of the record and its written address in pages 227 - 245 thereof.

It was further argued that the court cannot make a different case for the parties and being an appellate court the appeal is a re-hearing entitling the Court to examine all the materials and arguments that were before or addressed to the Court or the court below citing in support Civil Procedure in Nigeria (2nd Edition) by Fidelis Nwadialo and the case of *Oredoyin and Ors. v. Arowolo and Ors*. (1989) 4 NWLR

(Pt.114) 173 at 192.

The 1st respondent referred to paragraph 7 of the affidavit in support of the originating summons in page 9 of the record to contend that the appellant consistently maintained that certain provisions of the Forex Act applied to the action in spite of the fact that such provisions only dealt with transactions in the Market as defined by section 1 (1) of the Forex Act which the appellant sought to apply on the 1st respondent.

It was also argued that the appellant went further to restrict the exchange rate applicable to the 1st respondent to "inter bank rate" contrary to section 9 thereof which indicates that such rate shall be the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned, which violation is evident in the appellant's circular, Exhibit MODU-4 and the appellant's response letter to the 2nd respondent, Exhibit MODU-8 which ties Memorandum 26 paragraph 5c which ensures holders of export or domiciliary account to have "unfettered" access to the funds in their account with minimum documentation with the requirement for the 1st respondent's adherence to the regulations governing the market which deals with qualification for eligible transactions; consequently, the 1st respondent contended that the court below was correct in holding that paragraph 5C of Exhibit MODU-2 is against the spirit of section 9 of the Foreign Exchange Act which allows buyers and sellers to freely negotiate as to the rate.

The 1st respondent argued that by the appellant adding a list of items termed 'eligible transactions' in Appendix 1 of the Foreign Exchange Manual, Exhibits MODU-3 and MODU-4 which are inconsistent with section 10 of the Forex Act, the court below was right in holding that Exhibits MODU-3 and MODU-4 are inconsistent with section 10 of the Forex Act which requires that to qualify as an eligible transaction, a purchaser in the Foreign Exchange Market requires that the transaction does not offend section 10 of the Forex Act; that the transaction is not prohibited by any law (not subsidiary legislation); and that the transaction is supported by appropriate documentation.

The 1st respondent referred to paragraphs 13 - 17 of the affidavit in support of the action in pages 10 - 13 of the record, the written address in support of the action in page 143 of the record, paragraphs 4 - 37 of the further affidavit in pages 247 - 252 of the record, as well as the reply on points of law in pages 274 - 283 of the record to contend that it had consistently argued that Exhibits MODU-2, MODU-3 and MODU-4 offend sections 9, 10, 3(2) and 17(5) of the Forex Act for being at variance with the Act and are on that basis void and an illegality which was upheld by the court below in its judgment in page 493 of the record citing in support Halsbury's Laws of England (Constitutional and Administrative Law) Vol. 20, 5th Edition 2014 1164 at paragraph 165 and the cases of *Khawaja v. Secretary of State for the Home Department* (1984) AC 74 at 101, Re Hassan (1976) 2 All ER 123.

The 1st respondent argued that Exhibits MODU-2, MODU-3 and MODU-4 were made, to take effect at a later date after the deposit in the account were made and after the transactions listed in Exhibit 14(a) - (g) of the affidavit in support of the originating summons had already been made, therefore the court below was right in holding that Exhibits MODU-2, MODU-3, MODU-4 and MODU-5 made on 20.02.15 should not have been retrospectively applied by the appellant on the 1st respondent.

The 1st respondent argued that it had raised and argued in the written address supported by paragraph 33 of the further affidavit whether it was in breach of any of the provisions of the Forex Act in any of its activities with the 2nd respondent vide pages 5, 149, 167, 252, 297 - 306 of the record which the appellant had opportunity to react to the arguments and should not be allowed to complain for the failure to utilize the opportunity showing the court below did not raise the issue suo motu citing in support the cases of *Okafor v. Okafor and Ors.* (2017) LPELR - 42092, *Uma and Ors. v. Effiom and Ors.* (2013) LPELR-21407.

The 1st respondent also argued that sections 11 and 12 of the Forex Act removed all restrictions imposed on possession, use, access and transferability of foreign currencies in Nigeria, except as prohibited or limited by the Act itself, not by any regulation or subordinate legislation, fiat, circular or memorandum; and that section 22 of the Forex Act does not prohibit the transaction stated in paragraph 14(a-g) of the affidavit in support of the originating summons, so the prohibition drawn up by the appellant in Exhibits MODU-2 - 4 are null and void vide sections 3(2) and 17(5) of the Forex Act which guarantee export proceeds from any restrictions.

The 1st respondent argued that it had raised and argued the issue whether the provisions of paragraph 5(c) of Exhibit MODU-2 as well as Exhibits MODU-3 and MODU-4 are not at variance with the provisions of section 44 of the 1999 Constitution vide pages 5 and 169 - 172 of the record to which the appellants responded in the written address in pages 231 - 233 of the record showing the issue was not raised suo motu at the court below as erroneously contended by the appellant.

It was further argued that expropriation which is a governmental taking over or modification of an individual's property right vide Black's Law Dictionary 8th Edition, or as the act or process of controlling by rule and restriction vide Black's Law Dictionary 7th Edition which tallied with the appellant drawing up a list of goods that can be brought by and/or services paid for by the 1st respondent contrary to the goods and services prohibited by any, as well as restricting the rate of interest for the conversion of foreign currency amount to expropriation by regulation; accordingly, it was argued that paragraph 5(c) of Memorandum 26 and Exhibits MODU-3 – 5 tend to modify the right of the respondent to its funds, albeit still in its bank account which should be unconstitutional, null and void.

It was argued that the findings made by the court below on issue 2 were subsumed with issue 1 vide pages 482 - 484 of the record in tandem with the argument of the two issues together by the 1st respondent in pages 151 - 155 of the record, while issue 4 was subsumed with issue 5 vide pages 163 - 166, 241 - 242 and 488 of the record; likewise issues 7 and 8 vide pages 482, 488 and 492 of the record showing the court below gave its decision on the retrospectivity of certain documents and that Exhibit MODU-5 was a mere policy speech which cannot be reckoned with upon which the court below excluded it for the purpose of determining the issues presented before it thus not granting a positive relief in relation to the issue; therefore the 1st respondent argued that the appellant was wrong in submitting that the court below did not pronounce on these issues citing in support the cases of *Adebayo v. A.G., Ogun State* (2008) LPELR-80, *Duzu and Anor. v. Yunusa and Ors.* (2010) LPELR-8989, *NNPC v. Famfa Oil Ltd.* (2010) 17 NWLR (Pt. 1328) 148 at 188.

The 1st respondent argued that the court below made proper evaluation of facts and sections of the law submitted to it for determination in its judgment in pages 475 - 480 of the record, therefore the appellant was wrong in submitting that the court below did not evaluate the materials placed before it; and that based on sections 42 and 44 of the 1999 Constitution read with sections 3(2), 9, 10, 17(5) of the Forex Act the court below was right in its judgment in page 492 of the record that except where the 1st respondent is shown to have ventured into something unlawful it is protected by law to have unrestricted access to its funds with the 2nd respondent in accordance with sections 3(2) and 17(5) of the Forex Act; showing the court below considered and determined the issues of expropriation, seizure and/or forfeiture.

It was argued that the court below having found in its judgment in page 492 of the record that the appellant unlawfully restricted the 1st respondent from full access to its funds with the 2nd respondent it was right to use its discretionary powers to award the damages of ₦10 million in favour of the 1st respondent for the breach or wrong, citing in support the case of *Chukwuanu v. Uchendu and Ors.* (2016) LPELR-41022.

It was also argued that the style of writing judgment is immaterial so long as the material issues in dispute are determined in the judgment citing in support the cases of *Usman v. Abubakar* (2001) 12 NWLR (Pt. 728) 685 at 716, *Olomosola and Anor. v. Oloriawo and Anor.* (2002) 2 NWLR (Pt. 750) 113 at 125; upon which the 1st respondent urged that the appeal be dismissed.

The reply brief filed on 22.11.18 contended that the rights of the parties were determined by the striking out of the case making it a final decision, not an interlocutory decision citing in support the case of *Ebokam v. Ekwenibe and Sons Trading Co. Ltd.* (1999) NWLR (Pt. 622) 242; that the case of *Guowere and Ors. v. Udeh and Ors.* (2016) LPELR-41028 decides it that there are situations

where a case can no longer be opened though it was struck out and vice-versa citing in addition the case of *Obasi Bros. Co. Ltd. v. M.B.A.S. Ltd.* (2005) 9 NWLR (Pt. 929) 117 at 129; that it is the basis or reason for the striking out of an action that would determine whether it is final or interlocutory citing in support *Ugwu v. PDP* (2013) LPELR-21356, *Obasi Bros. Co. Ltd. v. M.B.A.S. Ltd. (supra)*; and that where the 1st respondent had prosecuted its case to finality but failed the striking out of the case was a final decision.

The appellant further submitted-in the reply brief that the legal injury allegedly committed by the appellant was a complete act, to wit, refusal of the application which occurred on 28th day of May, 2015, and what occurred subsequently as complained of is the effect of the refusal of the 1st respondent's application which occurred in May, 2015; and, that the effect of an act cannot be continuation of the original legal injury citing in support *Obiefuna v. Okoye* (1961) 1 All NLR 357 at 360 - 363, *Egbe v. Adefarasin* (1985) 1 NWLR (Pt. 3) 549 at 568.

It was also argued in the reply brief that the issue of the approval of the Minister was not one of the specific questions posed for determination in the originating summons and the Court would be incompetent to determine it citing in support the case of *Musa Alubankudi v. A.G., Federation and Anor.* (2002) LPELR-11192, *Olley and Others v. Tunji and Ors. (supra)*, that the 1st respondent did not put evidence before the court below that the act was not regular, therefore the presumption of regularity under section 168(1) of the Evidence Act was not rebutted citing in support *Shitta Bay v. A.G., Federation* (1998) 7 SCNJ 264 at 287 or (1998) 10 NWLR (Pt. 570) 392, *Adighije v. Nwaogu* (2010) 12 NWLR (Pt.1209) 419 at 461.

The reply brief proceeded from pages 8 to part of page 12 to rehash the arguments canvassed in the appellant's brief contrary to Order 19 rule 5(1) of the Court of Appeal Rules 2016 (the Rules of the Court) which states that the reply brief should deal only with all new points arising from the respondent's brief.

The appellant contended in the reply brief that section 22 of the Forex Act was not raised suo motu by the court below and tendered an apology for its contrariwise contention in page 13 of the reply brief which also fell foul of Order 19 rule 5(1) of the Rules of the Court; likewise, pages 14 - 15 of the reply brief. The appellant concluded by contending that the court below having not considered all the questions raised there could be no basis to hold that all the questions were thus resolved in favour of the 1st respondent.

Pages 197 to 218 of the record contain the judgment of Idris, J., (as he then was) where the learned jurist concluded in page 218 of the record in these words –

> *"The court cannot look at or rely upon Exhibit B, which is the document that has been presented before the court for its interpretation. In the*

circumstances there is nothing before the court to interpret in the light and facts of the circumstances of this case.

This case ought to fail at this stage. It is hereby struck out."

The case (supra) was thus struck out without any order determining the rights of the parties on the merit or with finality. A case that is merely struck out does not dispose of the rights of the parties with respect to the subject matter of the action. See *Alor v. Ngene* (2007) 17 NWLR (Pt. 1062) 163 at 178 thus –

"In Nigeria, it is the nature of the order test that has been constantly applied. If the order made finally disposes of the right of the parties, then the order is final. If the order does not, then it is interlocutory. An order is also regarded as final if it at once affects the status of the parties for whichever side the decision may be given, so that if it is given for the plaintiff, it is conclusive against the defendant, if it is given for the defendant, it is conclusive against the plaintiff."

An action merely struck out does not determine the rights of the parties conclusively. Once the order striking out the case subsists it does not confer any judicial remedy to any of the parties capable of enforcement.

There is this unique feature in the striking out of an action (not for want of jurisdiction) but for non-compliance with a rule or practice or procedural laws or condition precedent of an action stated by the Supreme Court in the case of *Re: Apeh* (2017) 11 NWLR (Pt. 1576) 252 at 276 thus-

"On the other hand, where a matter is simply struck out for a reason: non-compliance with a provision of law, rule and or practice; where a point of objection is raised (which point can be complied with, thereafter), where a process is technically bad for a reason (which can later be rectified) the originator/initiator of that process is at liberty to re-file that process after same has been brought in compliance with the correct position of the law, rule or practice as may thereof be required."

It follows that the order striking out the action in the manner it occurred in this case should not, in my modest opinion, bar the claimant from renewing the action in proper form.

I therefore agree with the court below that the rights of the parties were not finally and conclusively determined by Idris, J. (as he then was) as his lordship did not interpret what was brought before him for or against the appellant when he observed and held that there was "nothing before the court to interpret", showing it did not decide the rights of the parties but struck out the action thus placing the parties back to the position they were before they went to court.

Thus in *Oronto v. Onigbanjo* (2004) 17 NWLR (Pt. 903) 601 it was held that an order striking out a matter (save on ground of lack of jurisdiction) preserves the rights of the parties to relitigate the matter as there had been no proper and conclusive determination of the matter on the merits.

There was therefore no abuse of process of the court in filing the present action. There was accordingly no cause of action estoppel in suit No. FHC/1/CS/868/2015 to bar the present action as cause of action estoppel would only arise if the issue is distinctly alleged in the action and distinctly decided. Here the issue was not distinctly decided vide *Udo and Ors. v. Obot and Ors.* (1989) 1 NWLR (Pt. 95) 59 at 69 - 71.

The decision of Idris, J., (as he then was) striking out the action was therefore an interlocutory order and did not put to rest the rights of the parties as to constitute an estoppel and/or an abuse of the process of the court.

The court below voided Exhibits MODU 1 - 4 without taking into full consideration the presumption of regularity of official acts under section 168 of the Evidence Act. It is a powerful presumption, though rebuttable, and is expressed by the draftsman thus –

> *"(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.*
>
> *(2) When it is shown that a person acted in a public capacity, it is presumed that he had been duly appointed and was entitled so to act."*

The onus is on the 1st respondent to prove to the letter that the official act of the appellant in issuing the guidelines, Exhibits Modu-2 to-4, was not done without the approval of the Minister vide section 145(1) and (2) of the Evidence Act to wit –

> *"(1) Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.*
>
> *(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved".*

Issue 1 contained in page 4 of record did not raise the question of obtaining approval from the Minister of Finance for the appellant to issue guidelines for transactions in the Forex Market. Paragraphs 22, 24(b), 24(c) and 24(d) of the further affidavit of the 1st respondent contained in page 250 of the record read together merely made general statement that there was no evidence whatsoever

that the Minister granted his approval to Memorandum 26 et al that is Exhibits Modu-2 - 5, which did not constitute convincing evidence to rebut the presumption of regularity of official acts.

Having not been raised as one of the issues to be determined in the action, the court below was in error in holding that proof of approval of the Minister was not established to validate Exhibits Modu-2 to -4.

The 1st respondent did not therefore tender sufficient evidence to rebut - the presumption under section 168(1) and (2) of the Evidence Act (supra). The said presumption therefore inures to the benefit of the appellant that the guidelines were properly made and issued vide *Adighije v. Nwaogu* (2011) All FWLR (Pt.559) 1006, *Amako v. State* (1995) 6 NWLR (Pt.399) 11.

The parties and the court below limited discussion of the Public Officers (Protection) Act (POPA) to the phrase "continuance of damage or injury" with respect to the running of time for the purpose of the POPA. I too will confine myself to the narrow issue agitated at the court below and on appeal in this case.

The court below held on the issue in its judgment in pages 469 - 470 of the record that-

> *"The other ground is that the action is statute barred. The Plaintiff in my view has raised a formidable defence to this objection. Learned Counsel to the Plaintiff has argued that injury or damage is a continuous one that had not been abated as the time of filing the action. Therefore the 1st Defendant cannot take advantage of the provisions of the public officers' protection act. The allegation of the Plaintiff as discernible from its Originating Summons is that the 1st Defendant had unjustly denied it access to its funds with the 2nd Defendant. From the facts before me, it is clear the allegation of the Plaintiff subsists up to the time of filing this suit and even during its pendency.*
>
> *On this score alone, I do not think the 1st Defendant can avail itself of the provisions of section 2 of the Public Officers Protection Act."*

The phrase "continuance of damage or injury" in the POPA is a term of art without statutory definition. It is sometimes called "continuing damage or injury". Thus in *Aremo II v. Adekanye* (2004) 13 NWLR (Pt.891) 572 at 593 - 594, the phrase was interpreted to mean where there has been continuance of damage, a fresh cause of action arises from time to time, as often as damage is caused. Reliance was placed on the old English case of *Battishill v. Reed* (1856) 48 CB 696 at 714 with the example that if an owner of mines works and causes damage to the surface more than the limitation period before action is filed and after the limitation period a fresh subsidence causing damage occurs without any fresh working by the owner, an action in respect of the fresh damage, not the previous damage, is not

barred as the fresh subsidence resulting in injury gives a fresh cause of action.

The Supreme Court followed the same conclusion in the case of *A.G., Rivers State v. A.G., Bayelsa State* (2013) 3 NWLR (Pt.1340) 123 at 148 - 149 where the plaintiff in the case averred in the pleadings and deposed to in an affidavit that he continued to be deprived of the allocation he is entitled to every month and the same had not ceased and the Supreme Court held per the lead judgment prepared by his lordship, Galadima, J.S.C., that in such situation of continuance of damage or injury which has not ceased, the defence under the POPA is not available to the person raising it. The said decision was given by a Full Panel of the Supreme Court (Musdapher, C.J.N., Mohammed, Tabai, Fabiyi Adekeye, Galadima and Rhodes-Vivour, JJ.S.C.). See also the limitation of action case of *Adepoju v. Oke* (1999) 3 NWLR (Pt.594) 154 at 164 where the Supreme Court held that every new act constitutes a fresh cause of action within the limitation period.

Then in *I.N.E.C. v. Ogbadibo Local Government and Ors.* (2016) 3 NWLR (Pt.1498) 167 the Supreme Court re-emphasised in the lead judgment prepared by his lordship, Okoro, J.S.C., that "continuance of damage or injury" for the purpose of timeline of POPA means the continuance of the legal injury.

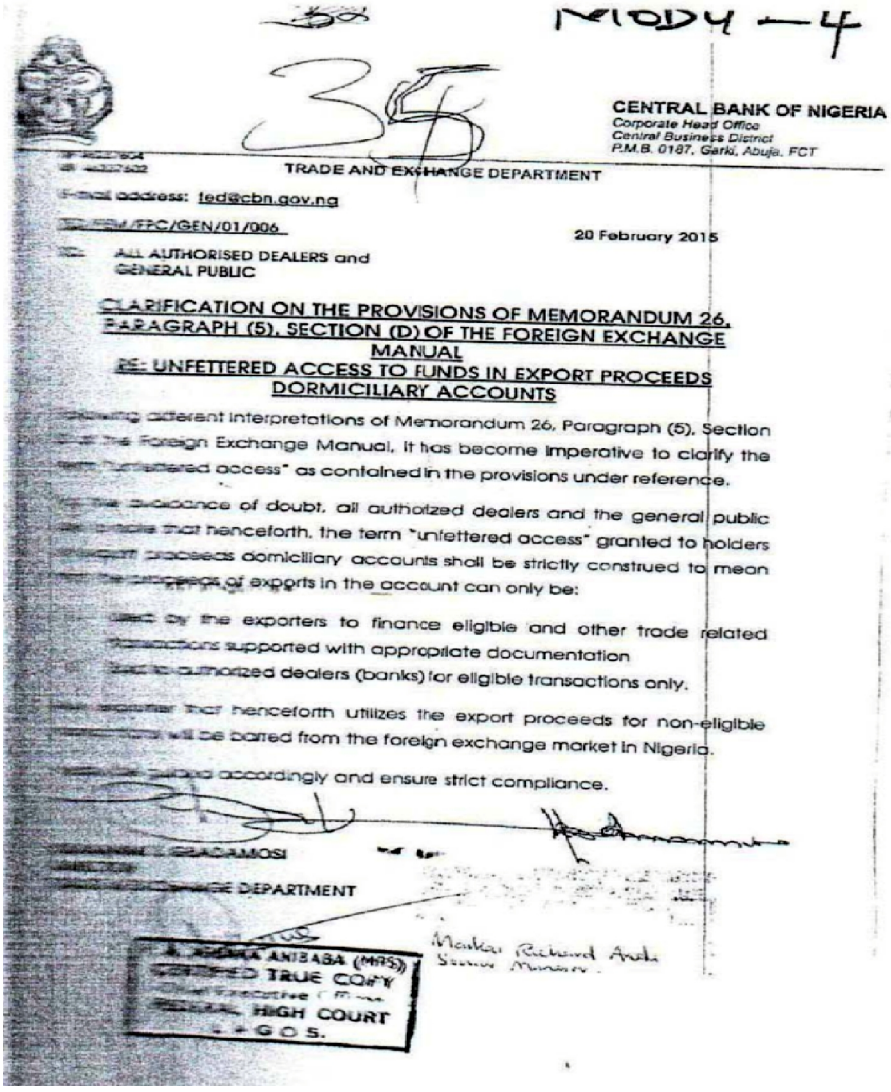
A continuing damage or injury may therefore arise from the repetition of acts or omissions of the same kind as that for which the action was brought and in such a case a fresh cause of action arises with every wrong. It depends on the nature of the particular obligation broken. The alleged breach to allow the respondent access to its domiciliary account with the 2nd respondent has not abated as there is no time limit placed in granting the Forex through the domiciliary account which is dependent on any time the 1st respondent complies with the condition laid down by the appellant.

In the instant case, therefore, the act continued so long as the 1st respondent did not satisfy the requirements of "appropriate" documentation for the forex transaction showing the refusal was conditional on the 1st respondent meeting the requirements of "appropriate" documentation introduced by the appellant. I accordingly tend to agree with the court below that there was continuance of damage or injury, an exception to the toxic effect of limitation laws, which saved the action from grief.

Exhibit MODU-2 is Memorandum 26 issued by the appellant on 13.05.15, captioned "FOREIGN CURRENCY DOMICILIARY ACCOUNTS" and is contained in pages 28 - 31 of the record and explains in paragraph 5(c) that when an account holder converts part of his funds in foreign currency to Naira, a sale of foreign currency is deemed to have taken place and such a transaction shall be at the prevailing inter-bank rate; Exhibit MODU-3 also dated 13.05.15 is contained in pages 32 - 34 of the record dealing with eligible transactions with the miscellaneous or omnibus clause that other or all transactions not listed, which are neither prohibited by law, nor suspended by current regulations, are also covered by Exhibit MODU-3; and

that in case of doubt about the eligibility and the documentation requirements of any transaction, reference should be made to the appellant, reassuring that prohibited items are subject to change from time to time.

The appellant through its Trade and Exchange Department issued clarification of Memorandum 26, Exhibit MODU-2, in Exhibit MODU-4 dated 20.02.15 and contained in page 35 of the record thus-



MODU – 4

35

CENTRAL BANK OF NIGERIA
Corporate Head Office
Central Business District
P.M.B. 0187, Garki, Abuja, FCT

TRADE AND EXCHANGE DEPARTMENT

E-mail address: fed@cbn.gov.ng

FEM/FPC/GEN/01/006

20 February 2015

ALL AUTHORISED DEALERS and GENERAL PUBLIC

CLARIFICATION ON THE PROVISIONS OF MEMORANDUM 26, PARAGRAPH (5), SECTION (D) OF THE FOREIGN EXCHANGE MANUAL
RE: UNFETTERED ACCESS TO FUNDS IN EXPORT PROCEEDS DORMICILIARY ACCOUNTS

[illegible] different interpretations of Memorandum 26, Paragraph (5), Section [illegible] the Foreign Exchange Manual, it has become imperative to clarify the [illegible] "unfettered access" as contained in the provisions under reference.

[illegible] avoidance of doubt, all authorized dealers and the general public [illegible] that henceforth, the term "unfettered access" granted to holders [illegible] proceeds domiciliary accounts shall be strictly construed to mean [illegible] proceeds of exports in the account can only be:

- [illegible] by the exporters to finance eligible and other trade related [illegible] supported with appropriate documentation
- [illegible] to authorized dealers (banks) for eligible transactions only.

[illegible] that henceforth utilizes the export proceeds for non-eligible [illegible] will be barred from the foreign exchange market in Nigeria.

[illegible] guided accordingly and ensure strict compliance.

[illegible] GBADAMOSI
[illegible]
[illegible] DEPARTMENT

Marker Richard Andi
Senior Manager

[illegible] ANIBABA (MRS)
CERTIFIED TRUE COPY
[illegible]
FEDERAL HIGH COURT
LAGOS.

Exhibit MODU-5 which is in pages 40 - 50 of the record contains an address by the Governor of the appellant on "RE-INTRODUCING AND OPERATIONALIZING NIGERIA'S FLEXIBLE EXCHANGE RATE MARKET" - a policy statement.

It is necessary to read a judgment corporately as one harmonious whole or as one component vide *Akaighe v. Idarna* (1964) All NLR (Reprint) 317 at 322, *Mbani v. Bosi* (2006) 11 NWLR (Pt. 991) 400 at 417, *Adegbuyi v. A.P.C.* (2014) All FWLR (Pt. 761) 1486 at 1504 following *Adebayo v. A.G., Federation* (2008) All FWLR (Pt. 412) 1195.

Read communally, issues 1 and 2 which were argued together in the written address of the 1st respondent in pages 151 - 155 of the record were considered together in the judgment in page 484 of the record; while issues 4 and 5 were argued together in the 1st respondent's written address in pages 163 -166 and 72 to 78 of the record were considered apiece in the judgment of the court below in page 488 of the record.

The judgment of the court below in page 492 also considered issue 7 which the 1st respondent had argued in paragraphs 8.1 to 8.6 and 10.2 of the written address; while the court below considered issue 8 in page 482 of the record by holding in its judgment that Exhibit MODU - 5 was a mere policy speech and cannot be reckoned with and no positive relief was granted covering it showing the court below made a finding on it.

Similarly, issue 6 was considered in the judgment of the court below in pages 475, 477, 479 - 480 of the record showing the court below considered all the issues properly raised and placed before it. And, in my respectful opinion, it is not mandatory for a trial judge to render separate holding on each issue. Suffice it that a corporate rendition of the holding on all the issues are made as in this case vide *NOSPETCO Oil and Gas Ltd. v. Prince Matiluko and Ors.* (2012) 10 NWLR (Pt. 1307) 115 at 153, *Etajata v. Oogbo* (2007) 16 NWLR (Pt. 1601) 554 and the cases of *Adebayo v. A.G., Ogun State* (2008) LPELR - 80, *Duzu and Anor. v. Yunusa and Ors.* (2010) LPELR - 8989 cited by the 1st respondent.

The kernel of the 1st respondent's grievance giving vent to the action is the portion of Memorandum 26 as explained by Exhibit MODU-5 thus –

> *"For the avoidance of doubt, all authorised dealers and the general public are to note that henceforth, the term 'unfettered access' granted to holders of export proceeds domiciliary accounts shall be strictly construed to mean that the proceeds of exports in the account can only be.*
>
> *1. Used by the exporters to finance eligible and other trade related transactions supported with appropriate documentation.*

2. Sold to authorised dealers (banks) for eligible transactions only."

The court below held that para. 5C of Memorandum 26, Exhibit MODU-2, contradicts section 9 of the Forex Act, while Appendix 1 of Memorandum 26, Exhibit MODU-3, and the appellants circular dated 20.02.15, Exhibit MODU-4 contradict and or is inconsistent with section 10 of the Forex Act.

Paragraph 5(c) of Exhibit MODU-2 reads –

"Where an account holder converts part of his funds in foreign currency to Naira, a sale of foreign currency is deemed to have taken place. Such a transaction shall be at the prevailing inter-bank rate".

Section 9 of the Forex Act provides that –

"9. Rate in the Market

The rate at which each transaction in the Market shall be executed shall be the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned."

While Para 5(c) of Exhibit MODU-2 leaves the transaction of conversion of foreign currency into Naira to be at the prevailing bank interest rate, section 9 of the FOREX Act stipulates that each transaction in the Market shall be at the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned. Para 5(c) of Exhibit MODU - 2 is not saying the same thing as section 9 of the Forex Act. Both of them bear polar posture. They clash, or both are in inconsistent as rightly held by the court below to the effect that Paragraph 5(c) of MODU - 2 is against the spirit (and may I add the letter) of section 9 of the Forex Act which allows buyers and sellers to freely negotiate as to the rate of interest vide part of the judgment of the court below in pages 485 - 486 of the record.

Section 10 of the FOREX Act provides –

"Subject to the provisions of paragraph (b) of section 11 of this Act and except where a transaction is prohibited by law, any transaction adequately supported by appropriate documentation shall, for the purpose of this Act, be an eligible transaction for the purchase of Foreign Exchange in the Market."

Paragraph (b) of section 11 of the Act provides –

"Nothing in this Act shall be construed –

(b) to imply that transactions relating to goods, services or items absolutely prohibited by any enactment or law may be conducted in the Market."

5 Appendix 1 of Memorandum 26, Exhibit MODU - 3 contained in pages 32 – 33 of the record reads –

"APPENDIX 1
ELIGIBLE TRANSACTIONS

Visible Imports (Except Imports under Absolute Prohibition).

Invisible Trade

i) Educational Expenses - Student Tuition and Maintenance

ii) Expatriate Personal Home Remittances

a. Monthly Remittance

b. Gratuity

c. Leave Pay

d. Final Balance

e. Bonus

f. Provident Fund

g. Company's share of provident/pension fund liabilities to expatriate staff

iii) Re-Insurance (all types)

iv) Insurance

v) Net Proceeds of International Air-ticket sales

vi) Aircraft Lease fees

vii) Charter fees for bunkering. Fishing and other vessels.

viii) Repairs and Maintenance of all shipping vessels and aircraft.

ix) Travels

a. Personal Travel Allowance (PTA)

b. Business Trip Allowance (ETA)

c. Medical Tours

d. Pilgrimage Conferences, Seminars and Training Courses

xi) In-service Training

xii) Contract Service Fees

a. Management & Technical Services

b. Service charges for work done in Nigeria by highly skilled expatriate personnel.

c. Service charges for repairs of machinery and equipment outside Nigeria

d. Consultancy fees

e. Directors' fees

xiii) Membership subscription and Examination fees

xiv) Single copies of book for personal use

xv) Subscription to periodicals

xvi) Correspondence Courses

xvii) Freight of Personal Effects for Returning Students

xviii) Profits and dividends

xix) Judgment Debit

xx) Commissions and Brokerages

xxi) Copyright, Patent and Royalties

xxii) Advertisement outside Nigeria

xxiii) Aerial Survey Photographs

xxiv) Demurrage

xxv) Mortgage payment (the monthly mortgage payments - to a maximum of US$5,000.00 servicing an existing mortgage) subject to appropriate documentations.

xxvi) Credit Cards settlement

xxvii) Investment in securities denominated in foreign currency

xxxviii) Others (This covers all transactions not listed, which are neither prohibited by law, nor suspended by current regulations. In case of doubt about the eligibility and documentation requirements of any transaction, reference should be made to the Central Bank).

N. B. Prohibited items are subject to change from time to time."

In my considered opinion, the MODU series of Exhibits are not legal notices as to constitute subsidiary legislation vide *Abubakar v. Bebeji Oil and Allied Products Ltd. and Ors.* (2007) 18 NWLR (Pt. 1066) 319 at 384; these MODU series of Exhibits are merely information and guidelines about governmental organisation and the exercise of discretionary powers and in themselves have no legal effect, having no statutory authority vide *Maideribe v. F.R.N.* (2014) 5 NWLR (Pt. 1399) 68 at 92 - 93.

I agree with the court below that Exhibits MODU - 3 and MODU - 4 are inconsistent with section 10 of the FOREX Act (supra). Only an enactment or law may prohibit transactions relating to goods, services or items to be conducted in the market, not by guidelines, circular, policy speech, regulation, or memoranda.

These do not supersede the Forex Act which prevails even over any other law vide section 37 (2) of the Forex Act which provides that-

"If the provisions of any other law, including the enactments specified in subsection (1) of this section (a) the Bill of Exchange Act," (b) the Central Bank of Nigeria Act,' (c) the Banks and Other Financial Institutions Act (BOFIA) (d) the National Economic Intelligence Committee (Establishment, etc.) Act.

are inconsistent with those of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void."

Section 3(2) of the Forex Act provides –

> *"No foreign currency imported pursuant to this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Federal or a State Government except as provided under this Act."*

While section 17(5) thereof provides –

> *"No money imported for the purpose of this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Federal or a State Government."*

There is also section 22 of the Forex Act which provides –

> *"22* ***Payments for certain goods***
>
> *1. Notwithstanding anything to the contrary contained in any enactment or law and except as provided in subsection (2) of this section, no person shall, in Nigeria, make or accept cash payment, whether denominated in foreign currency or not, for the purchase or acquisition of the following-*
>
> *(a) landed properties;*
>
> *(b) securities, including stocks, shares, debentures and all forms of negotiable instruments; and*
>
> *(c) motor cars, including other vehicles of any description whatsoever*
>
> *2. Payments for the items specified in subsection (1) of this section shall as from the commencement of this Act, be made by means of bank transfers or cheques drawn on banks in Nigeria only."*

The case of *Psychiatric Hospital Management Board v. Ejitagha* (2000) 6 SCNJ 263 states that policy speech cannot supersede the law or an enactment; likewise the case of *Katto v. C.B.N.* (1999) 5 SCNJ 1 to the effect that regulations do not take the place of legislation; also, it is trite that subordinate legislation is prima facie, utra vires if it is inconsistent with the substantive provisions of the statute by which the enabling power is conferred or on any other statute vide *I.G.P. v. Mobil Producing Nigeria Unlimited* (2018) 14 NWLR (Pt. 1639) 329 at 393; *Ewete v. Gyang* (1997) 3 NWLR (Pt. 496) 728 at 735; *Oloriegbe v. Omotosho* (1993) 1 NWLR (Pt. 270) 386; and, also the case of *Maideribe v. F.R.N.* (2013) 5 NWLR (Pt. 1399) at 68 to the effect that circular has no legal status.

Paragraph 14 a - q of the 1st respondent's affidavit supplied details of each request it made to the 2nd respondent for release of funds from its domiciliary account thus:

"a. Re-payment on 13/03/2015 towards liquidating the US$90,000,000.00 (Ninety Million United States Dollars) loan secured from HSBC for the purchase of a parcel of land at Eko Atlantic City in the name of one of their companies - Dayspring Property Development Company Limited (towards fulfilling an ongoing payment obligation which arose prior to the date of the circular);

b. Payment on 25/02/2015 of the sums of €11,820,000.00 (Eleven Million, Eight Hundred and Twenty Thousand Euros) and €8,274,000.00 (Eight Million, Two Hundred and Seventy Four Euros) towards the construction of a residential building in Lagos State in the name of one of their companies - AGDE Trading Corporation, by Julius Berger Nigeria International GmbH;

c. Payment on 23/03/2015 of the sum of US$6,961,930.00 (Six Million Nine Hundred and Sixty-One Thousand, Nine Hundred and Thirty United States Dollars) towards the purchase of properly at Centenary City - Abuja in the name of Dayspring Property Development Company Limited.

d. Payment on 23/02/2015 of the sum of US$10,000,000.00 (Ten Million United States Dollars) to Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff, as Directors drawings on earnings from the proceeds of the Plaintiff in anticipation of their share of profit,'

e. Payment on 23/02/2015 of the sum of US$5,000,000.00 (Five Million United States Dollars) to Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff, as Directors' drawings on earnings from the proceeds of the Plaintiff in anticipation of their share of profit;

f. Payment by Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff on 23/02/2015 of the sum of US$100,000.00 (One Hundred Thousand United States Dollars) though Skye Bank Plc being Mrs. Folorunso Alakija and my directors; expenses to Folake Ogbara;

g. Payment by Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff on 23/02/2015 of the sum of US$100,000.00 (One Hundred Thousand United States Dollars) though Skye Bank

Plc being Mrs. Folorunso Alakija and Rasaq Ogbara;

h. Payment by Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff on 23/02/2015 of the sum of US$100,000.00 (One Hundred Thousand United States Dollars) though Skye Bank Plc being Mrs. Folorunso Alakija and my directors; expenses to Olawale Ogbara;

i. Payment by Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff on 23/02/2015 of the sum of US$100,000.00 (One Hundred Thousand United States Dollars) though Skye Bank Plc being Mrs. Folorunso Alakija and my directors; expenses to Hakeem Ogbara;

j. Payment by Mrs. Folorunso Alakija and I, two (2) Directors of the Plaintiff on 23/02/2015 of the sum of US$100,000.00 (One Hundred Thousand United States Dollars) though Skye Bank Plc, being Mrs. Folorunso Alakija and my directors; expenses to Kazeem Ogbara;

k. Payment on 26/03/2015 of the sum of US$10,000,000 (Ten Million United States Dollars) to AGDE Trading Corporation being brokerage fee for the month of October 2014;

q. Transfer on 28/05/2015 of the total balance all accrued interest from the Plaintiffs domiciliary account to the Plaintiffs account in Sterling bank Plc."

All the Exhibits comprising MODU-2 to -8 were not regulations made by the Minister who is authorised by section 40 of the Forex Act after consultation with the appellant to make such regulations, not inconsistent with the provisions of the Forex Act, as may be required for carrying into effect the intendment of the Act.

I agree with the court below when it held in part of its judgment in page 492 of the record that –

"It is my view that none of these fall into the prohibitions spelt out by section 22 of the foreign exchange act. The Plaintiff cannot therefore be denied access to its account.

All said and done, the undisputed affidavit evidence before me is that the Plaintiff is not a Foreign Exchange market operator. It is not into the business of buying and selling foreign exchange. It is simply a depositor of oil export proceeds in a domiciliary account with the 2nd Defendant.

> *Therefore except where it is shown to have ventured into something unlawful, the Plaintiff in my view is protected by law to have unrestricted access to its funds with the 2nd Defendant. I refer in particular to the provisions of Section 3(2) and 17(5) of the Foreign Exchange Act."*

Section 1 of the Forex Act defines Market as –

> *"There is hereby established an Autonomous Foreign Exchange Market (in this Act referred to as the Market) where transactions in foreign exchange shall be conducted in accordance with the provisions of this Act."*

The Act goes on to state in section 41 thereof that an Autonomous Foreign Exchange Market is a market in which authorised dealers, authorised buyers, foreign exchange end-users and the Central Bank of Nigeria are participants and may include any other participant that the Government of the Federation may, from time to time recognize; while domiciliary account means a foreign currency account domiciled in Nigeria opened, maintained and operated with banks in Nigeria under this Act. And 'bank' is defined in section 41 of the Forex Act to have the meaning assigned to it by section 55 of the Central Bank Act which defines a bank as a bank licensed under the Banks and Other Financial Institutions Act (BOFIA) 1991 or under the repealed Banking Act or any other prior legislation.

The true interpretation of Exhibit MODU - 3 and Exhibit MODU - 4 is that as long as the transaction is lawful and appropriately documented it should not be restricted.

Regulations, circulars, memoranda, policy speech regulating the procedure of doing or abstaining from doing something comprising the MODU series of Exhibits were drawn from the Foreign Exchange Manual of September 2006 and issued in 2015 showing the MODU series of Exhibits and their life is rooted in the 2006 Foreign Exchange Manual and cannot be said to have retroactive effect on the 1st respondent's application of 2015; so the court below was, with respect, wrong to hold that the MODU series of Exhibits were retroactively used on the 1st respondent's application.

Had the court below grasped the fact that Exhibit MOOU - 2 and Exhibit MODU - 3 are part of the Foreign Exchange Manual made in September, 2006 vide page 486 of the record the issue of their retroactively would not have arisen as Exhibit MODU - 2 and Exhibit MOOU - 3 were made on 19.14.14 and 12.02.15, respectively, and are part and parcel of the Foreign Exchange Manual made in 2006; consequently, the court below should not have held that the information contained in the MODU series of Exhibits was retroactively made and applied on the 1st respondent.

It would appear Exhibit MODU - 4 clarified paragraph 50 of the Foreign Exchange Manual and did not create new rights and obligations and having been based on the Foreign Exchange Manual which came into force in 2006, the clarification of the said Foreign Exchange Manual was not retrospective application of Exhibit MODU - 4 as both Exhibits MODU 2, 3 and 4 draw their existence from the Foreign Exchange Manual showing the issue of retrospectivity did not arise in their application as wrongly held by the court below.

At any rate, circulars like the series of MODU Exhibits issued by the appellant normally affect pending matters in the same way procedural laws affect pending actions.

Even if the parties did not join issue on section 22 of the Forex Act, the materials before the court below justified it to take judicial notice of section 22 of the Forex Act and consider it in its judgment under section 122 (2) (a) of the Evidence Act read with the cases of *Omokuwajo v. F.R.N.* (2013) 9 NWLR (Pt. 1359) 300, *Gbagbarigha v. Toruemi* (2013) 31 W.R.N. 35, *USI Enterprises Ltd. v. The Kogi State Government and Ors.* (2005) 1 NWLR (Pt. 908) 494 at 517 - 518; moreover, the appellant did not establish miscarriage of justice from the utilization of section 22 of the Forex Act by the court below vide *Ogembe v. Usman* (2011) 17 NWLR (Pt. 1277) 638.

There is section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution) on compulsory acquisition of moveable property subject to payment of adequate compensation which was relief (e) of the originating action and which is the only constitutional provision nearest to moveable property. The contention that the issue was raised suo motu by the court is therefore untenable as relief (e) of the originating summons reflected it.

Having not shown by evidence that the appellant confiscated or compulsorily acquired or caused to be forfeited or seized the funds in the domiciliary account of the 1st respondent kept with the 2nd respondent, I do not see the breach of sections 42 and 44(1) of the 1999 Constitution, but only interference with the business life or transactions of the 1st respondent by the appellant with respect to the 1st respondent's access to the domiciliary account kept with the 2nd respondent. There was thus no constitutional infraction to warrant the granting of reliefs (e) and (f) of the originating summons by the court below.

Having found in its judgment inter alia in page 492 of the record that the "regulations" issued by the appellant "are not even applicable to the plaintiff anyway" which .was not a marketer of foreign exchange which is supported by the evidence, the court below was right in entering judgment for the 1st respondent on that leg of reasoning/holding and hereby uphold only the reliefs granted by the court below to the 1st respondent to the extent that the 1st respondent should have access to its domiciliary account kept with the 2nd respondent without let or hindrance by the

appellant as its documentation for the transaction was demonstrated by the evidence in the record to have qualified it for the transaction in the class of mere operators of domiciliary accounts, not marketers in the Forex market, in my modest view.

I am therefore satisfied with the avalanche of evidence in the record that the 1st respondent was lawfully and legally operating its domiciliary account which had no link or relevance with the series of MODU Exhibits issued by the appellant which covered other transactions not within the 1st respondent's sphere of business endeavour as rightly held by the court below.

Interference with business transactions of another as in this case would affect the source of livelihood of the person operating the business vide the Supreme Court case of *Ajao v. Ashiru and Ors.* (1973) N.S.C.C. 525 at 533 on the right of every person (natural and artificial), to go about his or her lawful business unhampered by anyone else, be it a Government functionary or a private individual; and the Supreme Court case of *Ibadan City Council v. Odukale* (1972) N.S.C.C. 531 at 542 citing the English case of *Nagle v. Fielden and Ors.* (1966) 12 Q.B. 633 at 644 to the effect that a man has a right to work at his trade, business, or profession without being unjustly excluded or shut out from it at the whim of those having authority over it.

The appeal accordingly has no merit and fails to the extent afore- stated in the discussion. I would dismiss it save to the extent that the other declarations and orders issued by the court below in its judgment with respect to alleged infraction of sections 42 and 44(1) of the 1999 Constitution are, with respects, far-fetched having regard to the discussion (supra) and are hereby set aside leaving intact the decision of the court below allowing the 1st respondent unfettered access to its domiciliary account with the 2nd respondent.

I find the award of ₦10 million damages manifestly high in the circumstances of the case as it did not take into consideration that the domiciliary account attracted interest in favour of the 1st respondent vide section 15 of the Banking Act CAP. 28 LFN which lessened the burden of the litigation on the 1st respondent, therefore I am disposed to disturb the award and vary it from ₦10 million to ₦5 million on the principle that where a right is infringed, a remedy must be provided. The appellant shall pay costs of ₦200,000 to the 1st respondent.

GARBA, JCA: After reading a draft of the lead judgement written by my learned brother Joseph Shagbaor Ikyegh, JCA, in this, I find that all the views expressed on the crucial issues which call for decision in the appeal are the same with mine and agree with the conclusion that the appeal is lacking in merit.

I join the lead judgement in dismissing the appeal in the terms set out therein.

TUKUR, JCA: My learned brother **JOSEPH SHAGBAOR IKYEGH JCA** afforded me the opportunity of reading in draft before today the lead Judgment just delivered and I agree with the reasoning and conclusion contained therein, adopt the Judgment as mine *with* nothing further to add.

Cases cited in the Judgment

A.G. Bendel State v. A.G. Federation (1981) 12 NSCC 314
A.G. Rivers State v. A.G. Bayelsa State (2013) 3 NWLR (Pt.1340) 123
Abubakar v. Bebeji Oil and Allied Products Ltd. and Ors. (2007) 18 NWLR (Pt. 1066) 319
Adebayo v. A.G. Federation (2008) All FWLR (Pt. 412) 1195
Adebayo v. A.G. Ogun State (2008) LPELR – 80
Adegbuyi v. A.P.C. (2014) All FWLR (Pt. 761) 1486
Adepoju v. Oke (1999) 3 NWLR (Pt. 594) 154
Adesanoye v. Adewole (2000) 9 NWLR (Pt. 671) 127
Adighije v. Nwaogu (2010) 12 NWLR (Pt.1209) 419
Ajao v. Ashiru and Ors. (1973) N.S.C.C. 525
Akaighe v. Idarna (1964) All NLR (Reprint) 317
Alor v. Ngene (2007) 17 NWLR (Pt. 1062) 163
Alubankudi v. A.G. Federation and Anor. (2002) LPELR-11192
Amako v. State (1995) 6 NWLR (Pt.399) 11
Aremo II v. Adekanye (2004) 13 NWLR (Pt.891) 572
Arubo v. Aiyeleru and Ors. (1993) 3 NWLR (Pt.280) 126
Chukwuanu v. Uchendu and Ors. (2016) LPELR-41022
Duzu and Anor. v. Yunusa and Ors. (2010) LPELR - 8989
Ebokam v. Ekwenibe and Sons Trading Co. Ltd. (1999) NWLR (Pt. 622) 242
Egbe v. Adefarasin (1985) 1 NWLR (Pt. 3) 549
Etajata v. Ogbo (2007) 16 NWLR (Pt. 1601) 554
Ewete v. Gyang (1997) 3 NWLR (Pt. 496) 728
Fadiora v. Gbadebo and Anor. (1978) All NLR 42
Gbagbarigha v. Toruemi (2013) 31 W.R.N. 35
Guowere and Ors. v. Udeh and Ors. (2016) LPELR-41028
I.G.P. v. Mobil Producing Nigeria Unlimited (2018) 14 NWLR (Pt. 1639) 329
I.N.E.C. v. Ogbadibo Local Government and Ors. (2016) 3 NWLR (Pt.1498) 167
I.T.F. v. N.R.C. (2007) 3 NWLR (Pt. 1020) 28
Ibadan City Council v. Odukale (1972) N.S.C.C. 531
Ibrahim v. Judicial Service Committee, Kaduna State (1998) 14 NWLR (Pt. 584) 1
Ikpang v. Edoho (1978) 6 - 7 S.C. 221
Katto v. C.B.N. (1999) 5 SCNJ 1
Maideribe v. F.R.N. (2013) 5 NWLR (Pt. 1399) 68
Matari and Ors. v. Oangaladima and Anor. (1993) LPELR-1846
Mbani v. Bosi (2006) 11 NWLR (Pt. 991) 400
Nigeria Development Co. Ltd. v. Adamawa Water Board (2008) 9 NWLR (Pt.1 093) 498
Nkanu and Ors. v. Onum and Ors. (1977) 5 S.C. 11

NNPC v. Famfa Oil Ltd. (2012) 5 CLRN 1
NOSPETCO Oil and Gas Ltd. v. Prince Matiluko and Ors. (2012) 10 NWLR (Pt. 1307) 115
Nvene v. FRN (2016) LPELR-40948
Obasi Bros. Co. Ltd. v. M.B.A.S. Ltd. (2005) 9 NWLR (Pt. 929) 117
Obiefuna v. Okoye (1961) 1 All NLR 357
Ogembe v. Usman (2011) 17 NWLR (Pt. 1277) 638
Okafor v. Okafor and Ors. (2017) LPELR – 42092
Okhuarobo v. Aigbe (2002) 9 NWLR (Pt. 771) 29
Okugo and Anor. v. Nwokedi and Ors. (1997) 8 NWLR (Pt. 517) 467
Olatunji v. Adisa (1995) 2 NWLR (Pt. 376) 167
Olley and Ors. v. Tunji and Ors. (2013) 10 NWLR (Pt.1362) 275
Olomosola and Anor. v. Oloriawo and Anor. (2002) 2 NWLR (Pt. 750) 113
Oloriegbe v. Omotesho (1993) 1 NWLR (Pt. 270) 386
Omokuwajo v. F.R.N. (2013) 9 NWLR (Pt. 1359) 300
Onuora v. Ofomata (2012) LPELR - 19942
Onyeabuchi v. INEC (2002) 8 NWLR (Pt.769) 417
Oredoyin and Ors. v. Arowolo and Ors. (1989) 4 NWLR (Pt.114) 173
Oronto v. Onigbanjo (2004) 17 NWLR (Pt. 903) 601
Oshodi v. Eyifunmi (2000) 13 NWLR (Pt. 684) 298
O*zungwe v. Gbishe* (1985) 2 NWLR (Pt.11, Vol. 17) 914
Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) NSCC 477
Psychiatric Hospital Management Board v. Ejitagha (2000) 6 SCNJ 263
Re: Apeh (2017) 11 NWLR (Pt. 1576) 252
Sanda v. Kukawa Local Government (1991) 2 NWLR (Pt.174) 379
Savage v. Uwechia (1972) 3 SC 206
Shitta Bay v. A.G. Federation (1998) 7 SCNJ 264 at 287; (1998) 10 NWLR (Pt. 570) 392
U.T.B. (Nig.) v. Ozoemena (2007) 3 NWLR (Pt.1022) 448
Udo and Ors. v. Obot and Ors. (1989) 1 NWLR (Pt. 95) 59
Ugwu v. PDP (2013) LPELR-21356
Uma and Ors. v. Effiom and Ors. (2013) LPELR-21407
USI Enterprises Ltd. v. The Kogi State Government and Ors. (2005) 1 NWLR (Pt. 908) 494
Usman v. Abubakar (2001) 12 NWLR (Pt. 728) 685
Victino Fixed Odds Ltd. v. Ojo (2010) 8 NWLR (Pt.1197) 486

Foreign cases cited in the Judgment
Battishill v. Reed (1856) 48 CB 696
Khawaja v. Secretary of State for the Home Department (1984) AC 74
Nagle v. Fielden and Ors. (1966) 12 Q.B. 633
Re: Hassan (1976) 2 All ER 123

Statutes cited in the Judgment
Sections 1(1) and (3), 42 & 44(1) of the Constitution of the Federal Republic of

Nigeria 1999
Section 2(a) of the Public Officers (Protection) Act Cap. P41 LFN 2004
Sections 1(2), 3(2), 9, 10, 17(5), 22, 37(2) & 40 of the Foreign Exchange Act LFN 2004
Section 15 of the Banks and Other Financial Institutions Act, LFN 2004
Section 55 of the Central Bank Act, LFN 2004
Sections 122 (2) (a), 145(1) and (2) &168(1) and (2) of the Evidence Act 2011

Rules of Court cited in the Judgment
Order 19 rule 5(1) of the Court of Appeal Rules 2016

Book referred to in the Judgment
Black's Law Dictionary 7th & 8th Editions
Civil Procedure in Nigeria (2nd Edition) by Fidelis Nwadialo
Encyclopedia of the Laws of the Federation Republic of Nigeria (First Edition) Vol. 9
Halsbury's Laws of England (Constitutional and Administrative Law) Vol. 20, 5th Edition 2014

History:

HIGH COURT
Federal High Court (Lagos Division)
IDRIS, J.,

COURT OF APPEAL (Lagos Division)
Mohammed Lawal Garba, JCA ***(Presided)***
Joseph Shagbaor Ikyegh, JCA ***(Read the lead Judgment)***
Jamilu Yammama Tukur, JCA

Counsel:
Mr. A. Ogunro with I. Elumelu Esq. for the Appellant.
Mr. Enemosah with Mr. O. Timothy and T. Young Esq. for the 1st Respondent.

CRESTWOOD HOLDINGS LTD v. WEMA BANK PLC

COURT OF APPEAL
(LAGOS DIVISION)

CA/L/842/2011
THURSDAY 14TH FEBRUARY, 2019

(YAKUBU; TUKUR; KOLAWOLE, JJ.CA)

ADMIRALTY – Jurisdiction – The Federal High Court has exclusive jurisdiction to hear and determine claims bordering on admiralty matters.

LITIGATION – Jurisdiction – is fundamental and it is the power of a court to determine and hear a suit; and no matter how well conducted, proceedings without jurisdiction are a nullity.

LITIGATION – Jurisdiction – A court is competent to hear and determine a matter before it where it is properly constituted, the subject matter is within its competence and no feature prevents it from exercising jurisdiction and it initiated by due process of law.

LITIGATION – Jurisdiction – The claim determines whether a court has jurisdiction or not.

LITIGATION – Jurisdiction – Where a suit is commenced by originating summons, the reliefs and the averments in the affidavit determines the court's jurisdiction.

LITIGATION – Jurisdiction – It is the claim that invokes the constitutional right to judicial remedy.

LITIGATION – Jurisdiction – Superior courts of record are created by law which vests in them jurisdiction to hear and determine matters.

LITIGATION – Stare Decisis – Courts are to consider the ratio of a particular case where the facts are similar to the facts and circumstances of the case at hand.

STATUTE – Interpretation – The proviso to a section of an enactment limits and qualifies the essence of that section or give it a wider operation.

STATUTE – Interpretation – The proviso of a section must be interpreted in a manner that will fulfil the essence of the section.

DEFINITION – Maritime – means something connected with the sea or relating to sea navigation or commerce.

DEFINITION – Admiralty – a court that exercises jurisdiction over maritime claims.

Facts:

The appellant is a customer of the respondent. In 2003, the appellant applied for an import finance facility in the sum of ₦336,000,000.00 (Three Hundred and Thirty Six Million Naira) from the respondent for the importation of 10,000 metric tonnes of Automative Gas Oil (AGO). Part of the terms of the contract was that the 10,000 metric tonnes of AGO would be bought by a company, Jumlar Ltd, a nominee and customer of the respondent. It was also agreed that the AGO would be sold at ₦37.50 (Thirty Seven Naira, Fifty Kobo) per litre and that the entire cargo would be delivered into a tank nominated by Jumlar Ltd. In furtherance of the contract, the respondent opened a letter of credit on behalf of the appellant in favour of Vitol, an oil trading outfit to execute the contract. A bank guarantee was also issued by the respondent on behalf of Jumlar Ltd. and the bank was to have a lien on the cargo on arrival. The respondent made an undertaking to put in place another vessel, M/T Real Peace to pick the product from the mother vessel on arrival at the Lagos Port. The respondent took charge of procuring the vessels to lift the cargo and it gave the appellant assurance to that effect. Consequent upon the assurance, the appellant proceeded to pay the port charges and other approval fees before the arrival of the cargo.

The appellant alleged that when the product eventually arrived in Lagos, a notice of readiness was sent by the port authorities to it to pick up the cargo and that at that point, the respondent could not make available the vessel, M/T Real Peace. This situation, it was alleged, created anxiety and tension and that the appellant had to make provision for an alternative vessel to convey the cargo. The appellant filed a suit against the respondent at the High Court of Lagos alleging that in the course of transporting the product from one ship to another and to the tank farm, about 1,065, 863 (One Million, Sixty Five Thousand and Eight Hundred and Sixty Three) litres of the AGO went missing and could not be accounted for. The appellant further alleged that the respondent, after distributing the AGO to various buyers who were its customers, and receiving payment, the respondent failed to credit its account with the correct amount received from the sales. The appellant claimed several damages against respondent.

After being served with the originating process, the respondent filed an application in which it challenged the jurisdiction of the court to hear and determine the matter on the ground that the specific details of the transaction between the parties border on maritime and as such, the Federal High Court has the exclusive jurisdiction to hear and determine the matter under its admiralty jurisdiction. The appellant filed a counter affidavit and an address challenging the application. After hearing the parties on the application, the trial judge ruled in favour of the respondent and declined jurisdiction. The appellant was aggrieved and filed a notice of appeal at the Court of Appeal, Lagos Division. The sole issue for determination is whether or

not the lower court was right in declining jurisdiction to adjudicate over the appellant's suit on the ground that same constitutes an admiralty action.

Held ***(Unanimously dismissing the appeal):***

[1] ***Admiralty – Jurisdiction – The Federal High Court has exclusive jurisdiction to hear and determine claims bordering on admiralty matter.***

Instructively, by virtue of Section 251(1) (9) of the 1999 Constitution of the Federal Republic in Nigeria, as amended, which provides inter alia:

> "251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matter-
>
> (g) any admiralty jurisdiction, including shipping and navigation on the Rivers Niger or River Benue and their affluents and such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea;"

The Federal High Court, was constitutionally empowered of its exclusivity to exercise admiralty jurisdiction in all maritime causes and matters, which reinforces its exclusive admiralty jurisdiction conferred on it by the Admiralty Jurisdiction Act, 1991(AJA).

For the purposes of the instant case, Sections 251(1) (g) of the 1999 Constitution, as amended and Section 7(1) (g) of the Federal High Court Act, are apt. And by virtue of Section 1 of AJA, the admiralty jurisdiction of the Federal high court extends to and includes the determination of matters relating to:

a. Proprietary interest in a ship or aircraft;

b. Any proprietary or general maritime claim as specified in Section 2 of the Act;

c. Any other admiralty jurisdiction being exercised by any other Court in Nigeria before the commencement of the Act;

d. Any jurisdiction connected with any ship or aircraft which is vested in any other Court in Nigeria immediately before the commencement of the Act;

e. Limitation of liability by a ship owner or aircraft operator;

f. Limitation for oil pollution damage;

g. Shipping and navigation in inland waters;

h. Claims arising within Federal Ports or National Airports;

i. Claims for loss or damage to goods occurring between the offloading of goods across space from a ship or aircraft and their delivery at the consignee's premises;

j. Banking or Letter of Credit transaction involving importation or exportation of goods in a ship or aircraft to and from Nigeria;

k. Constitution and powers of all ports authorities, airport authorities and the National Maritime Authority (now the Nigerian Maritime Administration and Safety Agency - NIMASA);

l. Any criminal cause or matter arising out of or concerning any of the aforementioned matters.
(P. 90 lines 43 - 45; P. 91 lines 1 - 45; P. 92 lines 1 - 15)

[2] ***Litigation – Jurisdiction – is fundamental and it is the power of a court to determine and hear a suit; and no matter how well conducted, proceedings without jurisdiction are a nullity.***

Jurisdiction is the authority that a court has in order to decide any matter laid before it or even take cognisance of matters presented before it in a formal way for its decision on such matters. Therefore, where a court lacks the jurisdiction to try any matter presented before it, such a decision amounts to nothing as it will be tantamount to an exercise in futility. To underscore the criticality and quitessence of jurisdiction to adjudication, the Supreme Court in a plethora of decided authorities, one of which is *Hon. Ehioze Egharevba v. Hon. Crosby Osadulor Eribo & Ors* (2010) 9 NWLR (Pt. 1199) 411; (2010) LPELR - 9716 (SC); (2010) 3 SCNJ (Pt. 11) 441 at 453 - 454, re-echoed the law succinctly, per Adekeye, JSC that:

"Jurisdiction is a term of comprehensive import embracing every

kind of judicial action.

It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court, with control over the subject matter and the parties. Jurisdiction also defines the power of the court, to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which judges exercise their authority. Jurisdiction is equally to court, what a door is to a house. That is why the question of a court's jurisdiction is called a threshold issue, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remains a nullity however well-conducted and brilliantly decided they might have been. A defect in competence is not intrinsic but rather extrinsic to adjudication. *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) pg. 508; *Oloriode v. Oyebi* (1984) 1 SCNLR pg. 390, *Ezomo v. Oyakhire* (1985) 1 NWLR (Pt. 2) pg. 105; *Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd* (1992) 2 SCNLR pg. 341, *Barclays Bank v. Central Bank of Nigeria* (1976) 6 SC pg. 175, *African Newspapers of Nigeria v. Federal Republic of Nigeria* (1985) 2 NWL.R (Pt. 6) pg. 137, *Adeleke v. OSHA* (2006) 16 NWLR (Pt. 1006) pg. 608; *Attorney General Anambra State v. A.G. Federation* (1993) 6 NWLR (Pt. 302) pg. 692, *Saleh v. Mungono* (2003) NWLR (Pt. 801) pg. 221. The issue of jurisdiction being fundamental can be raised and challenged at any stage of the proceedings in the lower court, in the Court of Appeal or even for the first time in the Supreme Court. The issue of jurisdiction being so pivotal can be raised suo motu by the court so long as the parties are accorded the opportunity to react to the issue."

The eminent jurist and revered Mohammed Bello, C.J.N. (now of blessed memory) in the judicial words on marble on jurisdiction, in *Chief Utuedo Uttih & 6 Ors. v. Jacob U. Onoyivwe & 5 Ors* (1991) 1 SCNJ 25 at 49 had stated that:

"Jurisdiction is the blood that gives life to the survival of an action in a court of law and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing, blood into it, would be an abortive exercise."

The reason for this analogy is not farfetched. It is because the life of the flesh is in the blood. In other words, jurisdiction is the life in the act on, placed before the court, for adjudication. **(P. 83 lines 6 - 45; P. 84 lines 1 - 11)**

[3] ***Litigation – Jurisdiction – A court is competent to hear and determine a matter before it where it is properly constituted, the subject matter is within its competence and no feature prevents it from exercising jurisdiction and it initiated by due process of law.***

In *Madukolu & Others v. Nkemdilim* (1962) All NLR 581; (1962) 2 SCNL 341 at 587 - 590, the Federal Supreme Court held on jurisdiction and the competence of a court thus:

> "Put briefly, a court is competent when –
>
> a) It is properly constituted as regards members and qualification of the members of the bench, and no member is disqualified for one reason or another; and
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> b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and
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> c) The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

These three conditions stated above must co-exist before the court can be vested or clothed with proper competence and jurisdiction. See *The Military Administrator Benue State & 20 Ors. v. Captain Clement Abayilo (Rtd)* (2001) FWLR (Pt.35) page 604, (2001) 5 NWLR (Pt. 705) 19, *Ishala v. Ajiboye* (1994) 19 LRCN 35, (1994) 6 NWLR (Pt. 352) 506, *Matari v. Dan Galadima* (1993) LRCN 335, (1993) 3 NWLR (Pt. 281) 266; *A.G., Anambra State v. A.G. Federation* (1993) 6 NWLR (Pt. 302) page 692, *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) page 350.
(P. 84 lines 13 - 37)

[4] ***Litigation – Jurisdiction – The claim determines whether a court has jurisdiction or not.***

The jurisdiction of the court is determined by the cause of action of the plaintiff as endorsed on the writ of summons or from both the writ of summons and the statement of claim. **(P. 84 lines 39 - 42)**

[5] ***Litigation – Jurisdiction – Where a suit is commenced by originating summons, the reliefs and the averments in the affidavit determines the court's jurisdiction.***

Where however, an action is commenced by Originating summons then it

is the reliefs sought as well as the averments in the affidavit in support of the originating process that would be examined to discern if the court has jurisdiction. **(P. 84 lines 41 - 44)**

[6] ***Litigation – Jurisdiction – It is the claim that invokes the constitutional right to judicial remedy.***

These would be relied on if the facts placed before the court as contained in the statement of claim or the affidavit in the case of originating summons are clear and unambiguous to enable it determine the issue.

This is because it is the plaintiff who invokes the constitutional right for a determination of his right and accordingly the exercise of the judicial powers of the Constitution vested in the courts. *A.G. Oyo State v. NLC* (2003) 8 NWLR (Pt. 821) 1; *Akande & 2 Ors. v. Busari Alagbe & Anor.* (2001) FWLR (Pt. 38) page 1352, (2000) 15 NWLR (Pt. 690) 353; *A.G, Federation v. Guardian Newspaper Ltd. & 5 Ors.* (2001) FWLR (Pt. 32)93, (1999) 9 NWLR) Pt. 618) 187; *Messrs N.V. Scheep & Anor. v. The MV'S Araz & Anor* (2000) FWLR (Pt. 34) 556, (2000) 15 NWLR (Pt. 691) 622; *NEPA v. Atukpor* (2001) FWLR (Pt. 20) 626 (2000) 1 NWLR (Pt. 693) 96; *General Sani Abacha & 3 Ors. v. Chief Gani Fawehinmi* (2000) FWLR (Pt. 4) 557, (2000) 6 NWLR (Pt. 660) 228; *Okulate & 4 Or-so v. Awosanya & 2 Ors.* (2000) 2 NWLR (Pt. 646) 530- 536. **(P. 85 lines 1 - 15)**

[7] ***Litigation – Jurisdiction – Superior courts of record are created by law which vests in them jurisdiction to hear and determine matters.***

The law has remained well settled to the effect that since superior courts of record, are creatures of the Constitution and of statutes, it is the Constitution and the statutes which created them, that invest them with the jurisdiction to hear and determine causes and matters filed before them for adjudication. *Arjay Ltd. v. Airline Support Ltd* (2003) 7 NWLR (Pt. 820) 577 @ 635; *Garfar v. Government of Kwara State* (2007) 1 – 2 SC, 189 @ 216-217. **(P. 85 lines 1 - 15)**

[8] ***Litigation – Stare Decisis – Courts are to consider the ratio of a particular case where the facts are similar to the facts and circumstances of the case at hand.***

That a case is only an authority for the ratios cum facts it decides and can only form a binding precedent for subsequent cases with similar facts and courts of law have been admonished not to consider pronouncements made in earlier cases by even Justices of the Supreme Court in unnecessary isolation from the facts and circumstances of the particular case(s) at hand and apply them willy nilly to the case at hand. See the

case of *Adegoke Motors Ltd. v. Adesanya* (1989) 3 NWLR (Pt.109) 250 @ 256 – 266 and 275; *Okafor v. Nnaife* (1987) 4 NWLR (Pt. 6) 129.

Although the said phrase is of no relevance to the facts of this case, it is settled law that it is the ratio decidendi in a case that constitute binding judicial precedents. Appellant has not linked its case to ratio in the *Texaco v. Pedmar (supra)*. **(P. 93 lines 16 - 32)**

[9] ***Statute – Interpretation – The proviso to a section of an enactment limits and qualifies the essence of that section or give it a wider operation.***

The law is well settled to the effect that a "proviso" in an enactment qualifies and limits the essence of the particular section to which the proviso relates. The Supreme Court on the effect of a proviso to a section of an enactment had in *Nigeria Deposit Insurance Corporation (Liquidator of Allied Bank of Nigeria Plc) v. Okem* (2004) 10 NWLR (Pt. 880) 107; 2004 LPELR-1999 @ Pg 5 held that:

> ……. The object of a proviso is normally cut down or qualify exception to or relax in a defined sense the limitations imposed on powers conferred by a section of an enactment or document or to exclude some possible ground of interpretation of its extent, or modify the main part of a section of a statute to which it relates to restrain its absoluteness or generality."
> *per* Uwaifo, JSC.

Therefore, generally, a proviso to an enactment, limits the main provision in a preceding part of the enactment. Furthermore, a proviso in modifying the operation of an enactment, can instead of restricting its effect on the enactment, give it a wider operation.
(P. 94 lines 28 - 44)

[10] ***Statute – Interpretation – The proviso of a section must be interpreted in a manner that will fulfil the essence of the section.***

However, where the intendment of a proviso cannot be reasonably construed and where such construction will be at cross purposes with the main part of the enactment and lead to an absurdly, it would be more reasonable to construe the proviso, in order to make the main part of the enactment, self- fulfilling. In the instant case, having found that the appellant's claim borders on maritime and admiralty jurisdiction and not merely a banker - customer relationship, I am of the considered opinion that with the constitutional mandate vide Section 251(1) (g) of the 1999 Constitution, as amended, given to the Federal High Court, to exercise exclusive

jurisdiction in all maritime causes and matters, it would be absurd to construe the proviso to Section 251(1) (d) of the same Constitution, to the effect that the Court below, being the High Court of Lagos State, has equal or coordinate jurisdiction with the Federal High Court, in this matter and the absurdity becomes glaringly manifest against the backdrop of my finding earlier in this judgment that relief (d) of the appellant's claim is squarely premised on admiralty, which the court below cannot determine. It cannot be and it is not good law that an action be severed such that a part of it is tried and determined in one court, whilst the other part is heard and determined in another court, as there cannot be two judgments in respect of one case. *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517. **(P. 95 lines 1 - 19)**

[11] ***Definition – Maritime – means something connected with the sea or relating to sea navigation or commerce.***

The word "maritime", was defined by the learned author of Black's Law Dictionary, Eight Edition @ page 987, to simply mean:

> "1. Connected with or situated near the sea.
>
> 2. Of or relating to sea navigation or commerce."
> **(P. 90 lines 21 - 26)**

[12] ***Definition – Admiralty – a court that exercises jurisdiction over maritime claims.***

So also, the word "admiralty", defined by the same author of Black's Law Dictionary, Eight Edition @ page 50, as a noun, means:

> "1. A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offences. The federal courts are so called when exercising their admiralty jurisdiction, which is conferred on them by the U.S. Constitution.
>
> 2. The system of jurisprudence that has grown out of the practice of admiralty courts; MARITIME LAW.
>
> 3. Narrowly, the rules governing contract, tort, and workers' compensation claims arising out of commerce on or over navigable water."
> **(P. 90 lines 28 - 41)**

YAKUBU, JCA (Delivering the lead Judgment): This appeal is sequel to the decision of the Lagos State High Court of Justice, holden at Ikeja Division, rendered

on 22 June, 2011. The appellant, being the claimant at the court below, had claimed that it had obtained an import finance facility from the respondent, to the tune of ₦336,000,000.00 (Three Hundred and Thirty Six Million Naira) for the importation of 10,000 metric tonnes of Automative Gas Oil (AGO) which was to be picked up from the vessel - M/T Real Peace which had a capacity of 10,000 metric tonnes, offshore Nigeria. However, M/T Real Peace, did not pick up the said product and consequently, another vessel- M/T Maria was detailed to pick up the said product. That at various times, some other ships such as MT Bahamas, MT Current and MT Garnet, were also involved in picking the product aforementioned. The appellant, alleged that in the course of the transfer of the said product from one ship to the other, and upon conveyance of it to one Teknochem, a storage tank, about 1,065,863 litres of the Automative Gas Oil, in question, could not be accounted for. The parties filed and exchanged their respective pleadings.

The respondent felt that the appellant's claim, bordered on maritime and admiralty transactions, causes and matters. Hence, the respondent filed a motion on notice, to the effect that the court below had no jurisdiction to hear and determine the appellant's action and that the same should be dismissed or struck out. There was a written address filed in support of the motion on notice by respondent's learned counsel. The appellant's counsel in opposing the application, also filed a written address.

The learned trial judge in his decision, agreed with the respondent's counsel and declined jurisdiction. The appellant's action was consequently dismissed. Not unnaturally, the appellant, distraught with the decision, had to appeal against it to this court for a reversal of that decision.

The appeal was anchored on one ground of appeal. In order to activate the prosecution of the appeal, the appellant's brief of argument, dated 7th March, 2014, but filed on 30th May, 2014 was by this court, deemed properly filed on 30th September, 2016. On the other hand, the respondent's brief of argument, dated 5th May, 2015 and filed on 6th May, 2015, was deemed by this court, as properly filed on 6th February, 2018.

Babatunde Kehinde, Esq., who prepared the appellant's brief of argument, formulated a sole issue for the determination of the appeal, to wit:

Whether or not the lower court was right in declining jurisdiction to adjudicate over the Appellant's action on the ground that same constitutes an admiralty action and/or whether or not the Appellant's action as constituted is an admiralty action. The respondent's brief of argument, was settled by Olabode Olanipekun, Bolarinwa Awujoola, Winifred Igbokwe (Miss), Adebayo Majekolagbe and Khalid Abbas. In it, the sole issue nominated for the resolution of the appeal, is:

Giving the averments contained in the pleadings of the parties before the lower

court and, particularly the claims of the Appellant (as Claimant) therein, whether the lower Court was wrong to have declined jurisdiction in Suit no: 1D/1470/2005.

The sole issue(s) suggested by the learned counsel for the respective parties are virtually the same. Therefore, in my consideration and determination of the appeal, I will be guided by the Appellant's sole issue.

Appellant's Arguments:

The appellant's learned counsel contended that the reliefs sought by the appellant in the writ of summons and statement of claim, which determine the jurisdiction of the court to adjudicate over the action, do not fall within the maritime/admiralty jurisdiction of the Federal High Court. And that the mere mention of vessels, letter of credit, term of carriage, demurrage, warehousing agents and agreements, importation of petroleum products, pricing of the products, bunkering, loading of vessels etc, in a statement of claim per se will not make an action a maritime or admiralty matter and cognizable only by the Federal High Court. He relied on *Onuorah v. KRPC* (2005) 2 SC (Pt.2) 1 @ 6-7; *Okoroma v. UBA* (1999) 1 NWLR (Pt. 587) 359; *NV, Scheep v. MVS Araz* (2000) 12 SC 164. He insisted that the appellant's action is cognizable by the court below and not the Federal High Court. Furthermore, he contended that it is the 1999 Constitution of the Federal Republic of Nigeria, which determines the scope and extent of the admiralty jurisdiction of the Federal High Court and not the Admiralty Jurisdiction Act, 1991 and that since the appellant's principal claims do not relate to carriage of goods by sea, the action does not fall within the admiralty jurisdiction of the Federal High Court. He placed reliance on *Texaco Overseas Nig. Petroleum Company Unlimited v. Pedmar Nig. Ltd.* (2002) 7 SC (Pt.11) 222.

The appellant's learned counsel, also contended that Section 1(1) (h) of the Admiralty Jurisdiction Act, 1991 is in conflict with the proviso to Section 251(1) (d) of the 1999 Constitution of the Federal Republic of Nigeria, to the extent that the former purports to confer exclusive jurisdiction on the Federal High Court in any matter having to do with banking or letter of credit transaction and notwithstanding that the transaction is between a bank and its customer. And, that to the extent of the inconsistency between the former and the latter, the former is void and of no effect. He placed reliance on *Ayman Enterprises Ltd v. Aluma Ind. Ltd.* (2003) 6 SC (Pt. 2) 44; *Trade Bank Plc v. Benilux Nig. Ltd.* (2003) 5 SC 1.

Respondent's Arguments:

The learned respondent's counsel submitted to the effect that it is a perusal of the appellant's claim in its entirety as it is reflected in the averments of facts contained in the statement of claim, which enables the court to determine its jurisdiction in determining the action placed before it. References were made to: *Adeyemi v. Opeyori* (1976) 9-10 SC 32 @ 49, 51-52; *FBN Plc v. Abraham* (2008) 18 NWLR

(Pt.1118) 172 @ 190; *Buhari v. INEC* (2008) 19 NWLR (Pt. 1120) 246 @ 402. He argued to the effect that from the averments in the appellant's statement of claim which revealed that there was an alleged loss of some quantity of its Automotive Gas Oil which was occasioned by the delay of its transfer from a mother ship offshore Nigeria to various other ships at different times, the appellant's claims, were clearly situated on the non-performances of the ships and the unworthiness of the ships involved in this matter. Therefore, the capacity, functionality, schedule and operations of the numerous ships in question having been put in issue which was effectively joined by the respondent, will need to be established at the trial, hence the action can only be determined by virtue of the Admiralty jurisdiction of the Federal High Court which has the exclusive adjudicatory power over such matters. And that the fulcrum of the appellant's claim is on carriage of goods by sea with the use of ships/vessels. Furthermore, it was his submission to the effect that the jurisdictional powers of the Federal High Court are donated to it not only under Section 251 (1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, but also under the Federal High Court Act and the Admiralty Jurisdiction Act. And with respect to the exclusive admiralty jurisdiction of the Federal High Court, he referred to Section 251(1) (g) of the 1999 Constitution and Sections 1 and 2 of the Admiralty Jurisdiction Act (AJA), the latter being an Act of the National Assembly by virtue of Sections 251(1) and 252 of the 1999 Constitution. Reliance was placed on *Messers NV Scheep v. The MV "S Araz"* (2000) 12 SC (Pt.1) 164 @ 183-189.

With respect to the appellant's contention that the learned trial judge ought to have considered the appellant's ancillary claims which it had power to determine and not the principal claim only, the respondent's learned counsel submitted to the effect that it is settled law that it is the court which has the jurisdiction to determine a principal claim and ancillary claims that is competent to determine all and not only some of the claims. *Okoroma v. UBA* (1999) 1 NWLR (Pt. 587) 359 @ 378- 389 and *Tukur v. Governor of Gongola State* (1989) 4 NWLR (Pt. 1117) 517 were relied upon. He insisted that the facts in *Texaco Overseas Nig. Petroleum Co. Unlimited v. Pedmar Nig. Ltd, supra*, relied upon by the appellant's counsel are not the same with the facts in the instant case, so the latter is inapplicable to the instant case.

The learned respondent's counsel, with respect to the appellant's contention that Section 1(1) (h) of the Admiralty Jurisdiction Act is inconsistent with Section 251(1) (d) of the 1999 Constitution, submitted to the effect that the combined effect of Sections 251(1) (9) of the 1999 Constitution and Section 1(1) (h) of the Admiralty Jurisdiction Act, is that admiralty jurisdiction exclusively vests in the Federal High Court, which cannot be whittled down by the proviso to Section 251(1) (d) of the same 1999 Constitution, such that it will be absurd to give preference to a proviso of a constitutional provision over a substantive constitutional provision, in order to defeat the purpose and spirit of the latter. He insisted that Section 1(1) (h) of the Admiralty Jurisdiction Act is consistent with Section 251(1) (g) of the 1999

Constitution and that the proviso to Section 251(1) (d) aforementioned, cannot override the object of the former, that is, Section 251(1) (g).

Resolution:

Jurisdiction is the authority that a court has in order to decide any matter laid before it or even take cognisance of matters presented before it in a formal way for its decision on such matters. Therefore, where a court lacks the jurisdiction to try any matter presented before it, such a decision amounts to nothing as it will be tantamount to an exercise in futility. To underscore the criticality and quitessence of jurisdiction to adjudication, the Supreme Court in a plethora of decided authorities, one of which is *Hon. Ehioze Egharevba v. Hon. Crosby Osadulor Eribo & Ors* (2010) 9 NWLR (Pt. 1199) 411; (2010) LPELR - 9716 (SC); (2010) 3 SCNJ (Pt. 11) 441 at 453 - 454, re-echoed the law succinctly, per Adekeye, JSC that:

> "Jurisdiction is a term of comprehensive import embracing every kind of judicial action.
>
> It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court, with control over the subject matter and the parties. Jurisdiction also defines the power of the court, to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which judges exercise their authority. Jurisdiction is equally to court, what a door is to a house. That is why the question of a court's jurisdiction is called a threshold issue, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remains a nullity however well-conducted and brilliantly decided they might have been. A defect in competence is not intrinsic but rather extrinsic to adjudication. *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) pg. 508; *Oloriode v. Oyebi* (1984) 1 SCNLR pg. 390, *Ezomo v. Oyakhire* (1985) 1 NWLR (Pt. 2) pg. 105; *Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd* (1992) 2 SCNLR pg. 341, *Barclays Bank v. Central Bank of Nigeria* (1976) 6 SC pg. 175, *African Newspapers of Nigeria v. Federal Republic of Nigeria* (1985) 2 NWL.R (Pt. 6) pg. 137, *Adeleke v. OSHA* (2006) 16 NWLR (Pt. 1006) pg. 608; *Attorney General Anambra State v. A.G. Federation* (1993) 6 NWLR (Pt. 302) pg. 692, *Saleh v. Mungono* (2003) NWLR (Pt. 801) pg. 221. The issue of jurisdiction being fundamental can be raised and challenged at any stage of the proceedings in the lower court, in the Court of Appeal or even for the first time in the Supreme Court. The issue of jurisdiction being so pivotal can be raised suo motu by the court so long as the parties are accorded the opportunity to react to the issue."

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> "Jurisdiction is the blood that gives life to the survival of an action in a court of law and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing, blood into it, would be an abortive exercise."

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These three conditions stated above must co-exist before the court can be vested or clothed with proper competence and jurisdiction. See *The Military Administrator Benue State & 20 Ors. v. Captain Clement Abayilo (Rtd)* (2001) FWLR (Pt.35) page 604, (2001) 5 NWLR (Pt. 705) 19, *Ishala v. Ajiboye* (1994) 19 LRCN 35, (1994) 6 NWLR (Pt. 352) 506, *Matari v. Dan Galadima* (1993) LRCN 335, (1993) 3 NWLR (Pt. 281) 266; *A.G., Anambra State v. A.G. Federation* (1993) 6 NWLR (Pt. 302) page 692, *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) page 350.

The jurisdiction of the court is determined by the cause of action of the plaintiff as endorsed on the writ of summons or from both the writ of summons and the statement of claim. Where however, an action is commenced by Originating summons then it is the reliefs sought as well as the averments in the affidavit in support of the originating process that would be examined to discern if the court has jurisdiction.

These would be relied on if the facts placed before the court as contained in the statement of claim or the affidavit in the case of originating summons are clear and unambiguous to enable it determine the issue.

This is because it is the plaintiff who invokes the constitutional right for a determination of his right and accordingly the exercise of the judicial powers of the Constitution vested in the courts. *A.G. Oyo State v. NLC* (2003) 8 NWLR (Pt. 821) 1; *Akande & 2 Ors. v. Busari Alagbe & Anor.* (2001) FWLR (Pt. 38) page 1352, (2000) 15 NWLR (Pt. 690) 353; *A.G, Federation v. Guardian Newspaper Ltd. & 5 Ors.* (2001) FWLR (Pt. 32)93, (1999) 9 NWLR) Pt. 618) 187; *Messrs N.V. Scheep & Anor. v. The MV'S Araz & Anor* (2000) FWLR (Pt. 34) 556, (2000) 15 NWLR (Pt. 691) 622; *NEPA v. Atukpor* (2001) FWLR (Pt. 20) 626 (2000) 1 NWLR (Pt. 693) 96; *General Sani Abacha & 3 Ors. v. Chief Gani Fawehinmi* (2000) FWLR (Pt. 4) 557, (2000) 6 NWLR (Pt. 660) 228; *Okulate & 4 Or-so v. Awosanya & 2 Ors.* (2000) 2 NWLR (Pt. 646) 530- 536.

In the instant case, the Appellant by a writ of summons and a statement of claim both dated 29th December 2005, had claimed against the Respondent, to wit:

(a) The sum ₦99.817,575 being the value of the outstanding balance of 1.330.901 litres given by the Defendant bank to Enplus @ ₦75/litre.

(b) The sum of ₦79.939,925 being the value of 1.065 863 litres @ ₦75/Litre of the product declared missing and/or unaccounted for of the product delivered to Technokem's tank.

(c) The sum ₦10,323,071 being the outstanding of the sum payable for the product taken by Jumlar on the guarantee by the Defendant bank dated 30/06/03.

d) The sum of ₦68,763,00 (Sixty-Eight Million Seven Hundred and Sixty-Three Thousand Naira) as special or specific damages.

Particulars of special damages

i. The sum of US$175,065 or ₦24,509,100 @ ₦140/dollar being the cost at hiring of M/T West Queen for 18 days (inclusive of demurrage).

ii. The sum of ₦2,880,900 being cost of hiring M/T Current.

iii. The sum of ₦290,000 being cost of hiring Fenders/ Houses/Transportation for M/T Current.

iv. The sum of $60,000 (USD) or ₦8,400,000 @ ₦140/dollar being the deposit against demurrage forfeited to Vital by reason of the delay in picking up the product.

v. The sum of ₦5,761,000 being the value of the 90 metric tons short delivered by Vital by reason of the delay in picking up the product.

vi. The sum of ₦20,000 being the amount paid to Doitram towards the bunkering of M/T Trade Wind Caribe.

vii. The sum of ₦26,722,000 being the value of the loss suffered by reason of the difference in the selling price of AGO when the L/C dated 5th May, 2004 and the selling price of AGO when the product was eventually delivered after 45 days delay in confirming the L/C.

(e) The sum of ₦50,000,000 being general damages.

The Appellant (Claimant), in its statement of claim, alleges it is a customer of the Respondent (Defendant) bank.

The Appellant (Claimant) also alleges, among others, a follows:

i. That on/or about July, 14 2003 the Appellant (Claimant) and the Respondent (Defendant) entered into a contract whereby the Respondent (Defendant) bank granted the Appellant (Claimant) a Trade Finance and/or warehousing Facility of ₦336,000,000 for the importation of Petroleum Products (i.e. 10,000 mt of Automotive Gas Oil) for 180 days with a cycle of 30 days per transaction.

ii. That the Respondent (Defendant) bank had Insisted that the granting of the facility would be conditioned on a buyer, by name Jumlar Ltd., (who also happened to be a customer of the Respondent (Defendant) bank) taking the entire stock of 10,000 mt of AGO at the rate of ₦37.50/litre and had ensured that a proviso to that effect was inserted in the said letter of offer.

iii. That the Respondent (Defendant) bank issued a bank guarantee dated 30th June, 2003 on behalf of the said Jumlar Ltd. to pick the product on arrival at the rate of ₦37.50/litre.

iv. That it was also part of the agreement that the entire 10,000 mt of the said product would be delivered into Eurafric tank, which the Appellant (Claimant) Company was made to understand had

earlier been nominated and/or programmed by Jumlar Ltd. to receive the said product on her behalf.

v. That on the strength of the agreement aforesaid, a letter of credit (no.999-030128) was opened on behalf of the Appellant (Claimant) company with Vitol, the second largest oil trading outfit in the world, for 10,000mt of AGO with a pricing formula based on Platt's on/or about 14th July, 2003.

vi. Respondent (Defendant) bank had undertaken to put in place and/or to programme a 10,000 M/T vessel (M/T Real Peace) to pick the product from the mother vessel on arrival at offshore Lagos in one run.

vii. That the Respondent (Defendant) bank had also held itself as being capable of ensuring that the said vessel would be available to pick the said product which was expected to arrive within 10 days of confirming the L/C).

viii. That the Respondent (Defendant) bank had maintained there would be no problem securing the vessel since the owners of the said vessel were also their customers.

ix. That the said M/T Real Peace was to pick the entire 10,000 mt of AGO in one run at a cost ₦1,165,000/metric ton as per the said letter dated 28th April, 2003 from the owners of M/T Real Peace, Magellan Transport Services.

x. That the Appellant (Claimant) Company also got a charter party dated 15th July, 2003 in respect of the said M/T Real Peace.

xi. That under the warehousing agreement, the Respondent (Defendant) bank was to have a right of lien over the product to be financed by them, on arrival.

xii. The Respondent (Defendant) bank thus undertook to get the said vessel in place all in a bid to ensure control over the product on arrival in view of their right of lien over the product and the name of M/T Real Peace was accordingly forwarded to Vitol as the nominated vessel to pick up the product.

xiii. That prior to the arrival of the product and based on the firm assurance of the Respondent (Defendant) bank that the vessel would be available, arrangement had been put in place by the Appellant (Claimant) Company to pay the port charges and obtain

the necessary approvals.

xiv. That the product arrived Lagos on 24th July, 2003 and a Notice of Readiness dated 25th of July, 2003 to that effect was dispatched to the Appellant (Claimant Company to pick up the 10,000m/t from M/T WS Challenger offshore Lagos.

xv. That M/T Real Peace was suddenly not available to pick the said product on arrival; a development which created immediate panic and anxiety in view of the contract with Vitol.

xvi. That the sudden non-availability of M/T Real Peace created so much panic and anxiety that in the process they had to start looking for a replacement/alternative in desperation.

xvii. That of the 4,031 tonnes (or 4,692,305.10 litres) delivered into Jumlar's tank at Eurafric, the Defendant/Applicant bank only credited their account with the sum of ₦165,712,864 (One Hundred and Sixty-Five Million, Seven Hundred and Twelve Thousand, Eight Hundred and Sixty Four Naira) which translates to ₦35.30/litre as against the ₦37.50/litre contained in the guarantee dated 30th June, 2003; thus leaving an outstanding shortfall balance of ₦10,323,071.4.

xviii. That the Respondent (Defendant) bank then took the total of ten tonnes (or 3,656,136.8 litres) of the said product from MT Maria and delivered it to Enplus (another customer of the Respondent (Defendant) bank).

xix. That the Respondent (Defendant) bank had promised to return the said product within 30 days therefrom, by which time Enplus would have gotten their own product (which was also being financed by the Respondent (Defendant) bank) from Addax.

xx. That on 31/03/04 (six months after the product swap), without any discussion or input from us, the Respondent (Defendant) bank unilaterally credited its account with the sum of ₦104,635,611.37 which merely represented payment for only 2,325,235.8 litres of the product taken at the prevailing price of ₦45/litre; leaving an outstanding balance of 1,330,901litres unaccounted for.

The learned trial judge in his ruling on the Respondent's application on the question of his jurisdiction to entertain and determine the Appellant's claim reasoned thus:

> "The facts of this case consist of 131 paragraphs in the Statement of Claim and involve a complex series of transactions between a number of shipping vessels, letters of credit, terms of carriage, demurrage, warehousing agents and agreements, importation of petroleum products, pricing of the products, bunkering, loading of vessels etc. These, I hold, are maritime issues that fall within the maritime jurisdiction of the Federal High Court."

Upon my perusal of the appellant's claim reproduced above, it is clear to me as crystal that the finding of the learned trial judge on the facts of this matter have not been faulted by the appellant.

The said findings are indisputably borne out of the appellant's writ of summons and statement of claim. For example, the appellant's averments in the statement of claim clearly show that the shortage or loss of the alleged unaccounted 1,330,901 litres of the Automotive Gas Oil in question was due to the delay of the transfer of the 10,000 metric tonnes of the products from M/T Real Peace, the mother ship offshore Nigeria, to various vessels at different times. The main grouse of the appellant against the decision of the learned trial judge, is that if his Lordship had considered only the appellant's principal claims and reliefs, and not the ancillary claims, it would have become obvious to him that the claims did not evince facts showing that it is in respect of carriage of goods by sea. The learned appellant's counsel at paragraph 4.0.7 of the appellant's brief of argument, itemized what he termed as the appellant's principal reliefs, to be:

(a) The sum ₦99,817,575 being the value of the outstanding balance of 1,330,901 litres given by the Defendant bank to Enplus @ ₦75/litre.

(b) The sum ₦79,939,925 being the value of 1,065,863 litres @ ₦75/ Litre of the product declared missing and/or unaccounted for of the product delivered to Technokem's tank .

(c) The sum ₦10,323,071 being the outstanding of the sum payable for the product taken by Jumlar on the guarantee by the Defendant bank dated 30/06/03.

The above reliefs are clearly reliefs (a), (b) and (c) of the appellant's claims, whilst relief (d) of the claims is what the appellant's learned counsel has now termed the appellant's ancillary reliefs. The appellant's claims and reliefs were not severed at the court below. The said claims and reliefs were tied together at the court below. It is in this court and in the appellant's brief of argument, that the surgical operation of severance, termed principal and ancillary reliefs, was ingeniously crafted by learned appellant's counsel. However, it is glaring to me that reliefs (a), (b) & (c) are monetary claims which arose from the maritime/admiralty transactions in the matter.

Therefore, the aforementioned reliefs are inextricably linked and tied to relief (d). Indeed relief (d) is squarely situated in admiralty. In effect, the appellant's claims and reliefs are inseparable, as they all relate to the maritime/admiralty transactions in this matter, which had to do with the issuance of letters of credit for the importation of the Automative Gas Oil in the instant case, by the instrumentality of ships/vessels. It does not require any hard thinking to understand that ships/vessels have nothing to do with land, but navigable sea transportation.

I am therefore, amazingly amused when the appellant's learned counsel contended to the effect that the appellant's claims had nothing to do with carriage of goods by sea. It is an incomprehensible submission, I must say.

The learned appellant's counsel, placed heavy reliance on the Supreme Court decision in *Texaco Overseas Nig. Petroleum Co. Unlimited v. Pedmar Nig. Ltd* (2002) 7 SC (Pt. 2) 222, to the effect that the mere fact that the appellant's claim made references to vessels, letter of credit, payment for certain port charges as well as payment to an insurance company in respect of the anticipated cargo, did not make the action an admiralty matter. I will return to the Texaco case later. What is a maritime or an admiralty matter?

The word "maritime", was defined by the learned author of Black's Law Dictionary, Eight Edition @ page 987, to simply mean:

> "1. Connected with or situated near the sea.
>
> 2. Of or relating to sea navigation or commerce."

So also, the word "admiralty", defined by the same author of Black's Law Dictionary, Eight Edition @ page 50, as a noun, means:

> "1. A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offences. The federal courts are so called when exercising their admiralty jurisdiction, which is conferred on them by the U.S. Constitution.
>
> 2. The system of jurisprudence that has grown out of the practice of admiralty courts; MARITIME LAW.
>
> 3. Narrowly, the rules governing contract, tort, and workers' compensation claims arising out of commerce on or over navigable water."

Instructively, by virtue of Section 251(1) (9) of the 1999 Constitution of the Federal Republic in Nigeria, as amended, which provides inter alia:

"251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matter-

(g) any admiralty jurisdiction, including shipping and navigation on the Rivers Niger or River Benue and their affluents and such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea;"

The Federal High Court, was constitutionally empowered of its exclusivity to exercise admiralty jurisdiction in all maritime causes and matters, which reinforces its exclusive admiralty jurisdiction conferred on it by the Admiralty Jurisdiction Act, 1991(AJA). The law has remained well settled to the effect that since superior courts of record, are creatures of the Constitution and of statutes, it is the Constitution and the statutes which created them, that invest them with the jurisdiction to hear and determine causes and matters filed before them for adjudication. *Arjay Ltd. v. Airline Support Ltd* (2003) 7 NWLR (Pt. 820) 577 @ 635; *Garfar v. Government of Kwara State* (2007) 1 – 2 SC, 189 @ 216-217. For the purposes of the instant case, Sections 251(1) (g) of the 1999 Constitution, as amended and Section 7(1) (g) of the Federal High Court Act, are apt. And by virtue of Section 1 of AJA, the admiralty jurisdiction of the Federal high court extends to and includes the determination of matters relating to:

a. Proprietary interest in a ship or aircraft;

b. Any proprietary or general maritime claim as specified in Section 2 of the Act;

c. Any other admiralty jurisdiction being exercised by any other Court in Nigeria before the commencement of the Act;

d. Any jurisdiction connected with any ship or aircraft which is vested in any other Court in Nigeria immediately before the commencement of the Act;

e. Limitation of liability by a ship owner or aircraft operator;

f. Limitation for oil pollution damage;

g. Shipping and navigation in inland waters;

h. Claims arising within Federal Ports or National Airports;

i. Claims for loss or damage to goods occurring between the offloading of goods across space from a ship or aircraft and their delivery at the consignee's premises;

j. Banking or Letter of Credit transaction involving importation or exportation of goods in a ship or aircraft to and from Nigeria;

k. Constitution and powers of all ports authorities, airport authorities and the National Maritime Authority (now the Nigerian Maritime Administration and Safety Agency - NIMASA);

l. Any criminal cause or matter arising out of or concerning any of the aforementioned matters.

I have earlier, in this judgment found that from my perusal of the averments in the appellant's statement of claim, I am unable to disagree with the learned trial judge, in his decision to the effect that, the said claim borders on maritime causes and matters which cannot be determined by him, but by the Federal High Court.

Let me now return to the contention of Appellant's learned counsel in respect the Texaco case, supra. For the ratio and decision in that case to avail the appellant, the facts of it and the instant case must be nearly the same. The learned respondent's counsel responded at paragraphs 4.21-4.22 of the respondent's brief of argument and distinguished that case from the instant case thus:

a) The Texaco case is *stricto sensu* about unpaid money, and interest for the charter of two ships MV Coastal Carrier and MV Brasil IV. It had nothing to do with banking or letter of credit transaction for the importation of goods into Nigeria in a ship; a monetary agreement and/or claim relating to carriage of goods by a ship; goods, materials or services supplied to a ship for its operation or maintenance.

b) Since the Texaco case did not have the state or status of cargo as its concern, there was no issue relating to loss of cargo or the worthiness of ships.

c) There was no issue of demurrage in the Texaco case and this is one of the claims in the instant matter.

d) In the Texaco case, Sections 1, 2 and 3 of AJA or any other provisions were not in issue, and hence, the Supreme Court did not adjudicate the matter in the light of the said provisions and

neither was the said provisions interpreted.

e) The dictum of the Supreme Court relied upon by the Appellant, gleaned from the Texaco case, to wit; "the admiralty jurisdiction of Federal High Court cannot be invoked once the goods carried by the ship have been discharged in the harbour or delivered to the point of destination of the cargo. In any event, for a claim in admiralty to arise, the cargo or goods must still be in the vessel" are in reference to charter contracts stricto sensu. However the instant matter is about the conveyance of good, what happened to the cargo, the incidences of transfer between ships, the purported demurrage incurred by parties, the condition and functionality of some of the ships and other issues that have been raised in previous paragraphs;

That a case is only an authority for the ratios cum facts it decides and can only form a binding precedent for subsequent cases with similar facts and courts of law have been admonished not to consider pronouncements made in earlier cases by even Justices of the Supreme Court in unnecessary isolation from the facts and circumstances of the particular case(s) at hand and apply them willy nilly to the case at hand. See the case of *Adegoke Motors Ltd. v. Adesanya* (1989) 3 NWLR (Pt.109) 250 @ 256 – 266 and 275; *Okafor v. Nnaife* (1987) 4 NWLR (Pt. 6) 129. Texaco's case was simply in respect of outstanding sums from charter of vessels which has no direct, proximate or remote bearing on and with the facts of this case. The phrase quoted by the respondent in paragraph 4.12 from Texaco's case is clearly inapplicable to this case, since there was no dispute as to the goods carried in the course of the charter. If the claim was as to the goods, the court would have had the opportunity to consider sections 1(1)(2) and 2(3) of the Admiralty Jurisdiction Act. Although the said phrase is of no relevance to the facts of this case, it is settled law that it is the ratio decidendi in a case that constitute binding judicial precedents. Appellant has not linked its case to ratio in the *Texaco v. Pedmar (supra)*.

I am afraid, the appellant's learned counsel, failed to demonstrate that the facts in the Texaco case, which he heavily relied upon, are the same or nearly the same as the instant case. On the other hand, I am satisfied that the facts in the Texaco case, as distinguished by the respondent's learned counsel, with whom, I agree, ex facie, shows that, that case has added no prosperity but poverty, to the appellant's contention.

I have considered the appellant's contention to the effect that Section 1(1) (h) of AJA is in conflict with Section 251(1) (d) of the 1999 Constitution, which provides thus:

251.-(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be

conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.

"(d) connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bill of exchange, letters of credit, promissory notes and other fiscal measures.

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank".

On the other hand, section 1(1) (h) of AJA, 1991, says:

(1) The Admiralty Jurisdiction of the Federal High Court (in this Court referred to as "the Court) includes the following

(h) any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or aircraft, whether importation is carried out or not and notwithstanding that the transaction is between a bank and its customer.

The law is well settled to the effect that a "proviso" in an enactment qualifies and limits the essence of the particular section to which the proviso relates. The Supreme Court on the effect of a proviso to a section of an enactment had in Nigeria Deposit Insurance Corporation (Liquidator of Allied Bank of Nigeria Plc) v. Okem (2004) 10 NWLR (Pt. 880) 107; 2004 LPELR-1999 @Pg 5 held that:

> ……. The object of a proviso is normally cut down or qualify exception to or relax in a defined sense the limitations imposed on powers conferred by a section of an enactment or document or to exclude some possible ground of interpretation of its extent, or modify the main part of a section of a statute to which it relates to restrain its absoluteness or generality." per Uwaifo, JSC.

Therefore, generally, a proviso to an enactment, limits the main provision in a preceding part of the enactment. Furthermore, a proviso in modifying the operation of an enactment, can instead of restricting its effect on the enactment, give it a wider operation.

However, where the intendment of a proviso cannot be reasonably construed and where such construction will be at cross purposes with the main part of the enactment and lead to an absurdly, it would be more reasonable to construe the proviso, in order to make the main part of the enactment, self- fulfilling. In the instant case, having found that the appellant's claim borders on maritime and admiralty jurisdiction and not merely a banker - customer relationship, I am of the considered opinion that with the constitutional mandate vide Section 251(1) (g) of the 1999 Constitution, as amended, given to the Federal High Court, to exercise exclusive jurisdiction in all maritime causes and matters, it would be absurd to construe the proviso to Section 251(1) (d) of the same Constitution, to the effect that the Court below, being the High Court of Lagos State, has equal or coordinate jurisdiction with the Federal High Court, in this matter and the absurdity becomes glaringly manifest against the backdrop of my finding earlier in this judgment that relief (d) of the appellant's claim is squarely premised on admiralty, which the court below cannot determine. It cannot be and it is not good law that an action be severed such that a part of it is tried and determined in one court, whilst the other part is heard and determined in another court, as there cannot be two judgments in respect of one case. *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517.

Flowing from the above reasoning, I fail to see any conflict between Section 251(1) (d) of the 1999 Constitution and Section 1(1) (h) of the Admiralty Jurisdiction Act, 1991.

In sum, I resolve the sole issue in this appeal, against the appellant. Consequently, the appeal, stands dismissed. The ruling rendered by A.O. Adefope - Okojie, J., (as he then was) in Suit No: 10/1470/2005 on 22 June, 2011 at the Lagos State High Court of Justice, holden at Ikeja Division, is herby affirmed.

Each side shall bear own cost of the appeal.

TUKUR, JCA: My learned brother TOM SHAIBU YAKUBU, JCA afforded me the opportunity of reading in draft before today the lead Judgment just delivered and I agree with the reasoning and conclusion contained therein, adopt the Judgment as mine with nothing further to add.

KOLAWOLE, JCA: I have had the privilege to read in draft the judgment just delivered by my learned brother, Tom Shaibu Yakubu, JCA.

I whole heartedly agree with the analysis and reasoning of my Lord, Tom Shaibu Yakubu, JCA, on the facts of the instant case on appeal and the law of the admiralty Jurisdiction of the Federal High Court in maritime claims.

I agree that the appeal lacks merit and should be dismissed. I abide with the consequential order made that both parties should bear their respective costs

even though the area of the law on which the appeal was predicated, is a well worn path and clearly settled by extant judicial decisions on the admiralty jurisdiction of the Federal High Court in contrast with the State High Court on maritime matters or claims.

The appeal is also dismissed by me and the judgment of the High Court of Lagos State in Suit No. ID/1470/2005 delivered on 22/6/2011 is hereby affirmed.

Cases cited in the Judgment

A.G Federation v. Guardian Newspaper Ltd. & 5 Ors. (2001) FWLR (Pt. 32) 93 (1999) 9 NWLR) Pt. 618) 187
A.G. Anambra State v. A.G. Federation (1993) 6 NWLR (Pt. 302) 692
A.G. Oyo State v. NLC (2003) 8 NWLR (Pt. 821) 1
Adegoke Motors Ltd. v. Adesanya (1989) 3 NWLR (Pt.109) 250
Adeleke v. OSHA (2006) 16 NWLR (Pt. 1006) 608
Adeyemi v. Opeyori (1976) 9-10 SC 32
African Newspapers of Nigeria v. Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137
Akande & 2 Ors. v. Busari Alagbe & Anor. (2001) FWLR (Pt. 38) 1352; (2000) 15 NWLR (Pt. 690) 353
Arjay Ltd. v. Airline Support Ltd (2003) 7 NWLR (Pt. 820) 577
Attorney General Anambra State v. A.G. Federation (1993) 6 NWLR (Pt. 302) 692
Ayman Enterprises Ltd v. Aluma Ind. Ltd. (2003) 6 SC (Pt. 2) 44
Barclays Bank v. Central Bank of Nigeria (1976) 6 SC 175
Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246
Chief Utuedo Uttih & 6 Ors. v. Jacob U. Onoyivwe & 5 Ors (1991) 1 SCNJ 25
Ezomo v. Oyakhire (1985) 1 NWLR (Pt. 2) 105
FBN Plc v. Abraham (2008) 18 NWLR (Pt.1118) 172
Garfar v. Government of Kwara State (2007) 1 – 2 SC 189
General Sani Abacha & 3 Ors. v. Chief Gani Fawehinmi (2000) FWLR (Pt. 4) 557; (2000) 6 NWLR (Pt. 660) 228
Hon. Ehioze Egharevba v. Hon. Crosby Osadulor Eribo & Ors (2010) 9 NWLR (Pt. 1199) 411; (2010) LPELR - 9716 (SC); (2010) 3 SCNJ (Pt. 11) 441
Ishala v. Ajiboye (1994) 19 LRCN 35; (1994) 6 NWLR (Pt. 352) 506
Madukolu & Ors v. Nkemdilim (1962) All NLR 581; (1962) 2 SCNL 341
Matari v. Dan Galadima (1993) LRCN 335; (1993) 3 NWLR (Pt. 281) 266
Messrs N.V. Scheep & Anor. v. The MV S Araz & Anor (2000) FWLR (Pt. 34) 556; (2000) 15 NWLR (Pt. 691) 622
NEPA v. Atukpor (2001) FWLR (Pt. 20) 626 (2000) 1 NWLR (Pt. 693) 96
Odofin v. Agu (1992) 3 NWLR (Pt. 229) 350
Okafor v. Nnaife (1987) 4 NWLR (Pt. 6) 129
Okoroma v. UBA (1999) 1 NWLR (Pt. 587) 359
Okulate & 4 Ors v. Awosanya & 2 Ors. (2000) 2 NWLR (Pt. 646) 530
Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508
Oloriode v. Oyebi (1984) 1 SCNLR pg. 390

Onuorah v. KRPC (2005) 10 CLRN 1
Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd (1992) 2 SCNLR 341
Saleh v. Mungono (2003) NWLR (Pt. 801) 221
Texaco Overseas Nig. Petroleum Company Unlimited v. Pedmar Nig. Ltd. (2002) 7 SC (Pt.11) 222
The Military Administrator Benue State & 20 Ors. v. Captain Clement Abayilo (Rtd) (2001) FWLR (Pt.35) 604; (2001) 5 NWLR (Pt. 705) 19
Trade Bank Plc v. Benilux Nig. Ltd. (2003) 5 SC 1
Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517

Statutes cited in the Judgment
Sections 251(1), (d), (g) & 252 of the Constitution of the Federal Republic of Nigeria 1999
Sections 1(1), (2), 2(3) & 3 of the Admiralty Jurisdiction Act, 1991
Section 7(1) (g) of the Federal High Court Act, 2005

Book referred to in the Judgment
Black's Law Dictionary, Eight Edition

History:

HIGH COURT
Lagos State High Court (Ikeja Division)
A.O. ADEFOPE-OKOJIE, J.,

COURT OF APPEAL (Lagos Division)
Tom Shaibu Yakubu, JCA ***(Presided & Read the lead Judgment)***
Jamilu Yammama Tukur, JCA
Gabriel Omoniyi Kolawole, JCA

Counsel:
Babatunde Kehinde with Temitope Ekundayo & Michael Akinnade for the Appellant.
Bode Olanipekun, SAN, with Faith Adarighofua, Oshin Olushola & Yewande Badiru, for the Respondent.

FLOBBY ENTERPRISES NIGERIA LIMITED v. NIGERIAN DEPOSIT INSURANCE CORPORATION (N.D.I.C.) ***(Liquidator of Liberty Bank PIc);*** **ALHAJI MAHMOUD SHITTU; NAS SUPERMARKET** ***(Owner*** **of** ***Lafayat Supermarket)***

COURT OF APPEAL
(LAGOS DIVISION)

CA/L/77/2012
FRIDAY 8TH FEBRUARY, 2019

(GARBA; IKYEGH; TUKUR, JJ.CA)

BANKING – Debt Repayment – Debtor is required to furnish proof of repayment of debt either by bank teller or an acknowledgement by the bank of receipt of payment.

BANKING – Debt Repayment – General denial without specific details of repayment of facility is insufficient to prove repayment.

MORTGAGE – Power of Sale – In exercising the power of sale, a mortgagee is required to act in good faith most conducive to his benefit, to sell at a reasonable price and failure to sell at the best price will not vitiate the sale unless there is proof of fraud or collusion with the purchaser.

MORTGAGE – Power of Sale – Failure by a mortgagee to issue statutory notice in exercising a right of sale will not vitiate the sale, and persons who are aggrieved by the breach are entitled to damages and not setting aside.

MORTGAGE – Equity of Redemption – A mortgagor can only redeem a mortgage by repaying the debt on the due date.

MORTGAGE – Relief – Equitable relief cannot be granted to a mortgagor who failed to redeem.

MORTGAGE – Power of Sale – Non-registration of a deed of assignment will not vitiate the sale of mortgaged property by a mortgagee where it was done pursuant to a registered deed of legal mortgage.

COMMERCIAL LITIGATION – Jurisdiction – The claims in the originating process determine the court's jurisdiction.

COMMERCIAL LITIGATION – "Without Prejudice" – Documents marked 'Without Prejudice' in the course of a dispute or negotiations are confidential and inadmissible in evidence on grounds of public policy.

LITIGATION – Abuse of Process – occurs where there is more than one suit instituted and pending at the same time between same parties and over the same

subject matter.

PARTIES – Necessary Party – Failure to join a necessary party does not affect the court's jurisdiction.

EVIDENCE – Affidavit Evidence – is valid and admissible where the deponent gives sufficient information about his position and the fact that he has the consent and authority of the person on whose behalf the facts are deposed.

EVIDENCE – Withholding Evidence – occurs where the party accused is in possession of a piece of evidence and has refused or neglected to produce same after being served a notice or subpoena to produce it.

INTERPRETATION – "May" – When used in a contract or legislation means discretion, option or permission.

Facts:

The appellant was a customer of the defunct Liberty Bank. The 1st respondent is the liquidator of the defunct bank which acquired its assets and liabilities. In 1991, the respondent applied for and was granted a facility of ₦20,000,000.00 (Twenty Million Naira) by the defunct bank. Between the year 1991 and 1998, the appellant applied further for more facilities to the tune of ₦60,000,000.00 (Sixty Million Naira). The facility was secured by a deed of legal mortgage over a property situate at No. 25 Calcuta Crescent, Apapa, Lagos. The facility was not repayed as scheduled and continued to accumulate interest and by 2004, the appellant's total indebtedness had risen to ₦377,000,000.00 (Three Hundred and Seventy Seven Million Naira). By this time, the 1st respondent had taken over the defunct bank and made several unsuccessful attempts to recover the facility. Consequently, the 1st respondent exercised its right of sale and sold the mortgaged property to the 2nd respondent for the sum of ₦100,000,000.00 (One Hundred Million Naira). Details of the sale were communicated to the appellant and its tenants in possession at the material time.

The appellant, through its sister companies, refused to give up possession of the property to the 2nd respondent for two years after letting it out and collecting rents. Consequently, the 1st respondent applied to the Lagos State High Court for possession of the property. After hearing the parties, the trial court gave judgment in favour of the 1st respondent holding that it was entitled to possession and sale of the mortgaged property. The appellant was dissatisfied with the decision of the trial court and filed a notice of appeal at the Court of Appeal, Lagos division challenging it.

One of the issues raised by the appellant is that the High Court of Lagos State lacked jurisdiction to hear and determine the matter and that only the Federal

High Court has the requisite jurisdiction.

Held ***(Unanimously dismissing the appeal):***

[1] ***Banking – Debt Repayment – Debtor is required to furnish proof of repayment of debt either by bank teller or an acknowledgement by the bank of receipt of payment.***

Repayment of bank loan is usually demonstrated by showing entry of lodgments either by cheques or cash, or bank drafts by the customer or his agent in the account and honoured or credited by the bank; or by exhibiting bank tellers evidencing the lodgments to that effect. Thus it was held in the case of *Okpoko Community Bank Ltd. and Anor. v. Igwe* (2013) 15 NWLR (Pt. 1376) 167 at 186 per the lead judgment prepared by Okoro, J.C.A., (now J.S.C.) that the best way of proving payment of money into a bank account is by the production of a bank teller or an acknowledgement showing on the face of it that the bank received the payment; or that proof of payment may also be made where money is deposited in a bank and a certificate is issued to the customer and that the certificate when produced in evidence would suffice.
(P. 118 lines 38 - 45; P. 119 lines 1 - 3)

[2] ***Banking – Debt Repayment – General denial without specific details of repayment of facility is insufficient to prove repayment.***

The counter affidavit did not condescend to particulars as it failed to deal specifically and clearly whether the appellant owed the whole or part of the debt and in the latter case to be exact or specified part of the debt owed. The general denial that the appellant is not indebted to the 1st respondent's predecessor will not suffice, unless the grounds on which the appellant relied upon as showing that it is not owing are specifically stated in the counter affidavit vide by analogy the Supreme Court case of *Thor Ltd. v. First City Merchant Bank Ltd.* (2005) 14 NWLR (Pt. 946) 696 at 712-714.

Blanket or general denial of indebtedness and/or evasive deposition in an affidavit such as the counter affidavit of the appellant that repayment of the loan had been made would not suffice to prove repayment of the loan.
(P. 119 lines 5 - 16)

[3] ***Mortgage – Power of Sale – In exercising the power of sale, a mortgagee is required to act in good faith most conducive to his benefit, to sell at a reasonable price and failure to sell at the best price will not vitiate the sale unless there is proof of fraud or collusion with the purchaser.***

There was no evidence of fraud or of collusion of the 1st respondent with the purchaser of the property, the 2nd respondent, as particulars of fraud or collusion which are serious allegations requiring proof to the hilt or letter were not put in evidence, so the fact that the property was sold at ₦100 million without evidence of higher valuation by a valuer given by the appellant would not make the sale bad as undervalue per se even where proved does not vitiate the sale vide *A.C.B. Ltd. v. Ihekwoaba* (2003) 16 NWLR (Pt. 846) 249 at 269 - 270 where the Supreme Court held inter alia that the obligation on the mortgagee selling under power of sale is to act in good faith most conducive to his own benefit, provided he observes reasonable precaution to obtain a proper price, not the best price, as sale undervalue alone is not enough to vitiate the exercise of a mortgagee's power of sale, unless it is shown that the sale was made at a fraudulent or gross undervalue in collusion with the purchaser which was not the case here as collusion or fraud (grave allegations) or gross undervalue were not established.

It was further held in *A.C.B. Ltd. v. Ihekwoaba (supra)* that the court will not interfere even though the sale be very disadvantageous, unless the price is so low as in itself to be evidence of fraud following the case of *Ekaeteh v. Nigeria Housing Development Society Limited* (1973) 6 S.C. 183, which was not shown to be the case here.
(P. 116 lines 17 - 36)

[4] ***Mortgage – Power of Sale – Failure by a mortgagee to issue statutory notice in exercising a right of sale will not vitiate the sale, and persons who are aggrieved by the breach are entitled to damages and not setting aside.***

Breach of statutory notice to sell and, also, breach of the Conveyancing Act where a conveyance is made in the exercise of the power of sale would not vitiate the sale and the title of the purchaser cannot be impeached on the ground that no case has arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercises, but any person damnified by an unauthorised or improper or irregular exercise of the power of sale shall have his remedy in damages, not in the setting aside of the sale, so held the Supreme Court in the case of *A.C.B. Ltd. v. Ihekwoaba (supra)* at 271 - 272 following *Okonkwo v. Co-operative and Commerce Bank (Nig.) Plc* (2003) 8 NWLR (Pt. 822) 347 and *Sanusi v. Daniel* (1956) SCNLR 288.
(P. 116 lines 39 - 45; P. 117 lines 1 - 7)

[5] ***Mortgage – Equity of Redemption – A mortgagor can only redeem a mortgage by repaying the debt on the due date.***

The sale was made under a deed of legal mortgage which by its nature transferred the legal estate to the mortgagee, now the 1st respondent, and once a mortgage is created, it is always a mortgage and nothing but a mortgage leaving the mortgagor with the equity of redemption which can only be redeemed by repayment of the outstanding mortgage debt on the date the repayment must have fallen due, as a mortgagee cannot be compelled by a court order to part with the mortgaged security, unless there has been complete payment of the loan sum. **(P. 117 lines 5 - 11)**

[6] ***Mortgage – Relief – Equitable relief cannot be granted to a mortgagor who failed to redeem.***

An equitable relief cannot therefore be granted in the face of an outstanding debt on the mortgage; and, as the 2nd respondent paid the purchase price coupled with possession of the property it acquired an equitable interest in the property vide *Yaro v. Arewa Construction Limited and Ors.* (2012) 1 BFLR 718 at 740 -743, *Adetona and Anor. v. First Bank Plc* (2012) 3 BFLR 208. **(P. 117 lines 13 - 17)**

[7] ***Mortgage – Power of Sale – Non-registration of a deed of assignment will not vitiate the sale of mortgaged property by a mortgagee where it was done pursuant to a registered deed of legal mortgage.***

The fact that the deed of assignment was not registered would not vitiate the sale which would vest equitable interest in the 2nd respondent as the purchaser in possession vide *Okoye v. Dumez Nigeria Ltd.* (1985) 1 N.W.L.R. (Pt.4) 783 at 790 where the great jurist, Bello, J.S.C., (later CJN, now of blessed memory) delivering the lead judgment of the Supreme Court held inter alia (unedited) that -

> *"It is trite law that where a purchaser of land or a lessee is in possession of the land by virtue of a registrable instrument which has not been registered and has paid the purchase money or the rent to the vendor or the lessor, then in either case the purchaser or the lessee has acquired an equitable interest in the land which is as good as a legal estate and this equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. A registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase of money or rent: Savage v. Sarrough (1937) 13 N.L.R. 141, Ogunbambi v. Abowaba (1951) 13 W.A.C.A. 22, Fekoya v. St. Paul's Church, Shagarnu (1966) 1 All N.L.R. 74, Oni v. Arimoro (1973) 3 S.C. 163, Bucknor-MacLean v. Inlaks (1980) 8-11 S.C. 1 and Obijuru v. Ozinis S.C. 482984 delivered on 4th April 1985, unreported yet."*

Besides, the non-registration of the deed of assignment would not vitiate the sale itself as the sale was done under a registered deed of legal mortgage within the terms of the deed of legal mortgage.
(P. 117 lines 19 - 42)

[8] ***Commercial Litigation – Jurisdiction – The claims in the originating process determine the court's jurisdiction.***

The jurisdiction of a court is determined by the reliefs sought in the action by the claimant vide *National Union of Road Transport Workers and Anor. v. Road Transport Employers Association of Nigeria and Ors.* (2012) 10 NWLR (Pt.1307) -170 at 197 and 209 - 210 to the effect that the claim of the plaintiff determines the jurisdiction of the court and that in that case it was the claim in the originating summons of the appellant as initiated at the trial court that a court should examine to determine whether or not it has jurisdiction to entertain the action following the cases of *Adeyemi v, Opeyori* (1976) 9 - 10 SC 31, *Savannah Bank Ltd. v. Pan Atlantic* (1987) 1 NWLR (Pt.49) 212, *Ladoja v. I.N.E.C.* (2007) 12 NWLR (Pt. 1047) 119, *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290, *Anigboro v. Sea Trucks Nig. Ltd.* (1995) 6 NWLR (Pt.399) 35. See also *James v. I.N.E.C. and Ors.* (2015) 12 NWLR (Pt.1474) 538 at 584 and 586 following *A.G., Federation v. Guardian Newspapers Ltd.* (1999) 9 NWLR (Pt. 618) 187, *Uwaifo v. A.G., Bendel State* (1983) 4 NCLR 1, *Amaechi v. I.N.E.C.* (No.2) (2007) 18 NWLR (Pt.1 065) 98. **(P. 113 lines 20 - 33)**

[9] ***Commercial Litigation – "Without Prejudice" – Documents marked 'Without Prejudice' in the course of a dispute or negotiations are confidential and inadmissible in evidence on grounds of public policy.***

The Court sitting in Jos (coram: Rhodes-Vivour, Ndukwe-Anyanwu and Yahaya, JJ.C.A.) had cause to throw light on the phrase 'without prejudice' in the case of *Obands Obeya v. First Bank of Nigeria Plc* (2012) All FWLR (Pt. 636) 544 at 554 - 555 per the lead ruling prepared by Rhodes-Vivour, J.C.A., (now J.S.C.) thus-

> *"The rule is restricted only to cases where there is a dispute or negotiation and not to just any letter emanating from a legal practitioner's chambers. Letters marked, "without prejudice" are confidential overtures by the defendant to the plaintiff and are excluded from evidence in the court on the ground of public policy. Amicable settlement of a dispute would be difficult to attain if documents marked "without prejudice" are subsequently admitted in advance. The defendant would be prejudiced."*

The letter marked "without prejudice" which is in page 269 of the record, though from a third party or intermediary, was made in the course of negotiations between the appellant and the 1st respondent's predecessor, Liberty Bank Plc (IN LIQUIDATION), for amicable settlement, therefore based on *Obande Obeya (supra)* and *Fawehinmi v. N.B.A. (No.2) (supra)* it is inadmissible in evidence. **(P. 114 lines 29 - 45; P. 115 line 1)**

[10] ***Litigation – Abuse of Process – occurs where there is more than one suit instituted and pending at the same time between same parties and over the same subject matter.***

The parties in Suit No: LD/937/03 were the 1st respondent's predecessor, then Claimant, and the appellant plus one Madam Florence Anyamene, while the parties here are the appellant against the successor of the claimant in Suit No. LD/937/03 and one Alhaji Mahmoud Shittu as 2nd defendant, now 2nd respondent, and NAS SUPERMARKET (owner of Lafayat Supermarket).

The subject matter and the parties in both actions are therefore not the same or substantially the same, nor did the appellant demonstrate convincingly that Suit No. LD/937-03 is extant and going on simultaneously with the action now on appeal as to constitute an abuse of the process of the court.

In other words, it was not shown that Suit No. LD/937103 was still going on in court as no evidence was placed to indicate the date it was adjourned and the extant steps taken in it while the present action was fought at the court below. See *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 to the effect that an abuse of process would occur where two or more suits are instituted and pending simultaneously over the same subject matter/cause of action and with the same parties. See also *R-Benkay (Nig.) Ltd. v. Cadbury Nigeria Plc.* (2012) 9 NWLR (Pt. 1306) 579, *Dumez (Nig.) Plc. v. U.B.A. Plc* (2006) 14 NWLR (Pt. 1000) 515, *Fasakin Foods (Nig.) Ltd. v. Shosanya* (2003) 17 NWLR (Pt. 848) 237 at 247-248, *C.O.M. v. Cobham* (2006) 15 NWLR (Pt. 1002) 283, *Ohakim v. Agbaso* (2010) 19 NWLR (Pt. 226) 172. **(P. 115 lines 20 - 41)**

[11] ***Parties – Necessary Party – Failure to join a necessary party does not affect the court's jurisdiction.***

The appellant's contention that failure to join a necessary party in an action affects the jurisdiction of the court is untenable having regard to decision of the Supreme Court in the case of *Bello v. I.N.E.C. and Ors.* (2010) 2 -3 S.C. (Pt. 11) 128 at 156 to the effect that it does not affect the jurisdiction of the court. **(P. 115 lines 43 - 45; P. 116 line 1)**

[12] ***Evidence – Affidavit Evidence – is valid and admissible where the deponent gives sufficient information about his position and the fact that he has the consent and authority of the person on whose behalf the facts are deposed.***

The affidavit in support of the originating summons opened with these introductory words –

> *"I, Oluseun Odusanya, male, Christian and a Citizen of the Federal Republic of Nigeria whose address is NIPOST Building (6th Floor) Lafiaji, Lagos do hereby take oath and state as follows:*
>
> *1. That I am a Solicitor in the law firm of O. Osarenren & Co. solicitors to the Claimants in this matter.*
>
> *2. That by virtue of my position I am quite conversant with the facts of this case and I have the consent and authority of the Claimants to depose to this affidavit on their behalf."*
> *(My emphasis)*

The paragraphs of the affidavit (supra) are sufficient to credit the deponent with knowledge of the facts deposed to in the affidavit with the consent and the authority of the respondents, then claimants at the court below, which rendered the affidavit evidence admissible. The contention of the appellant that the affidavit offends section 77 of the Evidence Act is, accordingly, untenable and is hereby rejected vide *Sodipo v. Lemminkainen OY and Anor.* (1986) 1 S.C. 197 at 209.
(P. 113 lines 40 - 44; P. 114 lines 1 - 14)

[13] ***Evidence – Withholding Evidence – occurs where the party accused is in possession of a piece of evidence and has refused or neglected to produce same after being served a notice or subpoena to produce it.***

The presumption of withholding evidence under section 167(d) of the Evidence Act arises only where it is established that the party accused of withholding the evidence has the piece of evidence in his possession and refused or neglected to produce it upon service of subpoena or notice on him to produce the piece of evidence vide the cases of *Adisa v. State* (2015) 4 NWLR (Pt. 1450) 475 and *Aremu v. The State* (1991) 17 NWLR (Pt. 210) page 1. **(P. 114 lines 16 - 21)**

[14] ***Interpretation – "May" – When used in a contract or legislation means discretion, option or permission.***

The contention of the appellant that there was an infraction of the said permissive clause dealing with the appointment of a Receiver is therefore untenable and is hereby rejected vide *Ugwuanyi v. F.R.N.* (2012) 8 NWLR (Pt. 1302) 384, *Nigerian Navy v. Labinjo* (2012) 17 NWLR (Pt. 1328) 56 to the effect that where the word 'may' is used it is ordinarily construed to mean 'option' or 'permission', 'discretion'. **(P. 118 lines 19 - 23)**

IKYEGH, JCA (Delivering the lead Judgment): The appeal is from the judgment of the High Court of Justice of Lagos State (the court below) whereby it granted possession of property located at No. 25, Calcutta Crescent, Apapa, Lagos to the 1st respondent with perpetual injunction against the appellant and its agents, privies or assigns from collecting rent from tenants in occupation of the property.

The brief facts were that the appellant obtained a loan of ₦10million from Liberty Bank Plc (now in liquidation with the 1st respondent) on 07.03.91; the loan facility was increased at the instance of the appellant from tranches of ₦20million, ₦30million, ₦50million and ₦60million, respectively, over the years up until 13.03.98. The appellant did not repay the loan as scheduled; the loan accumulated to ₦377 million as at January, 2004; the 1st respondent after failed attempts to recover the outstanding loan exercised its right of sale contained in the registered deed of legal mortgage agreement contained in pages 49 - 56 or pages 299 - 307 of the record of appeal (the record) and sold the property used as security to the 2nd respondent which was communicated to the appellant and those in occupation of the property at the material time who were introduced to the 2nd respondent as the new owner of the property.

However, the appellant through its sister companies let out the property and refused to give up possession two years after the sale to the 2nd respondent vide pages 86 - 93 of the record; hence the action at the court below for possession of the property in which the court below decided on the merits or after plenary in its judgment that the 1st respondent established its case on the preponderance of evidence and issued an order granting the 1st respondent possession of the disputed property located at No. 25, Calcutta Crescent, Apapa, Lagos which is covered by Land Certificate Title No. MO 1556 and "an order of perpetual injunction restraining the appellant either by itself, or acting through its agents, privies or assigns from collecting or further collecting rent from the tenants in occupation of the premises or letting or further letting the premises or any part thereof to any person "whatsoever" vide page 434 of the additional record of appeal (additional record); upon which the 1st respondent sold the property to the 2nd respondent.

Aggrieved with the decision, the appellant filed a notice of appeal with sundry grounds of appeal followed by a brief of argument filed on 13.10.15, but deemed duly filed on 05.03.16. The appellant submitted in the brief that it had raised the issue of jurisdiction of the court below but the said court ignored it, therefore the Court should consider the issue on appeal.

It was pointed out by the appellant in the brief that there was evidence before the court below that Liberty Bank Plc was at all material times under liquidation by the 1st respondent qua Liquidator and that under section 417 of the Companies and Allied Matters Act (CAMA) the winding up of the appellant by order of Court, or the appointment of a Receiver action, could not proceed against the company except by leave of the court, or that no action shall be commenced against the company except by leave of the court, and that section 650 of CAMA defines 'court' as Federal High Court, Court of Appeal and Supreme Court.

It was therefore argued that applying and obtaining an order to substitute NDIC for Liberty Bank Plc was not enough as the 1st respondent ought to have proceeded to the Federal High Court to seek leave to institute the action before proceeding with the action in respect of liquidation of the appellant, but not at the court below which does not possess jurisdiction in a liquidation action; consequently, it was urged that the action should have been struck out for want of jurisdiction citing in support the cases of *Madukolu v. Nkemdilim* (1962) ANLR 587 at 595, *Ume v. Nigerian Renowned* (1997) 8 NWLR (Pt.516) 344, *NDIC v. A.G., Nasarawa State and Ors.* (2007) LPELR-4598, *Oke v. Oke* (2006) 17 NWLR (Pt.1 008) 224, *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt. 81) 31 - 32, *Saleh v. Monguno* (1988) 3 NWLR (Pt. 81) 31 - 32, *Saleh v. Monguno* (2006) 15 NWLR (Pt. 1001) 26 at 74, *Ezemo v. Oyakhire* (1985) 1 NWLR (Pt. 2) 195, *Umanah v. Oyakhire* (1985) 1 NWLR (Pt. 2) 195, *Umanah v . Attah* (2006) 17 NWLR (Pt.1 009) 503, sections 7(1)(a)(e), 8(1), 251(1)(1) and (e) and 253 of the Federal High Court Act.

The appellant submitted that there was indeed an existing suit No. LD/937/2003 between Liberty Bank Plc, now the 1st respondent, and the Appellant where the High Court had refused the 1st respondent's application for summary judgment and granted the appellant the leave to defend the action; that although on the prompting of the learned trial Judge, the 1st respondent claimed that the suit had been abandoned and struck out, but the 1st respondent never controverted the fact that the present action was instituted during the pendency of suit No. LD/927/2003 and that the purported sale of the appellant's property to the 2nd respondent was also made during the pendency of suit No. LD/937/2003 which was mala fide and amounted to an abuse of the process of the court citing in support the cases of *Ojukwu v. Lagos State Government* (1985) 2 NWLR (Pt.10) 807, *Arubo v. Aiyeleru* (1993) 3 NWLR (Pt.280) 126, *Sofekun v. Akinyemi* (1980) 5 - 7 S.C. 1 at 21, *Donaghey v. P. O'Brian and Co. and Orstime* (1966) W.L.R. 1170.

The appellant submitted that the court below erred in law when it granted the 1st and 2nd respondents possession of the property and, also, held that the power of sale had been properly exercised in that the court below relied on a letter marked "without prejudice" to hold that the appellant was indebted to the 1st respondent; that as the 1st respondent claimed he had sold the property to the 2nd respondent, the latter cannot maintain a claim for possession or injunction over the same property; that statutory notices which are a condition precedent to the landlord's

right of action to recover possession were not issued on the appellant, the 3rd respondent and the other tenants, therefore the court below lacked the jurisdiction to grant the claim of possession.

It was further argued that the court below failed to consider and rule upon and sustain the plea that the respondents were not able to prove that the power of sale had arisen and that the power was not exercised bona fide under the deed of legal mortgage as the appellant had denied the indebtedness in a counter affidavit in pages 317 - 351 of the record of appeal (the record) which was uncontroverted by the 1st respondent and amounted to an admission.

It was therefore argued that the 1st respondent made the sale in bad faith by carrying it out during the pendency of suit No. LD/937/2003 for ₦100 million far below the over ₦350 million value of the property showing it was sold at a ridiculous price which in itself was evidence of fraud intended to overreach the appellant citing in support the cases of *Iwuagolu v. Azyka* (1007) Vol. 29 WRN 102, *Akpokiniovo v. Air Liquide Nigeria Plc* (2012) LPELR-9582, *Nigerian Advertising Services and Anor. v. U.B.A. Plc and Anor.* (1999) LPELR-5954, *U.A.C. Ltd. v. Macfoy* (1962) AC 152, *Okeola v. Adeleke* (1999) 1 NWLR (Pt. 585) 55, *ACB Ltd. v. Ihekwoaba* (2003) 15 NWLR (Pt. 846) 249, *Vaswani v. Johnson* (2000) NWLR (Pt. 679) 582, *Gwani v. Ebule* (1990) 5 NWLR (Pt. 149) 201, *Iga v. Arnakiri* (1976) 11 SC 1; and that the deponent of the affidavit did not reveal the source of his information as he did not participate in any negotiations, so the affidavit offends section 77 of the Evidence Act read with the cases of *Ajiboye v. State* (1994) 8 NWLR (Pt. 364) 539, *Pharmacist Board of Nigeria v. Adegbesote* (1986) 5 NWLR (Pt.44) 707.

The appellant submitted that Exhibit 17 attached to the claimant's affidavit in pages 282 - 284 of the record which the 1st respondent provided as evidence of sale of the property to the 2nd respondent purport to be an unregistered Deed of Assignment which the court below ignored and held that the deed of legal mortgage itself was registered, therefore the appellant argued that the Deed of Assignment, Exhibit K17, cannot be pleaded admitted in evidence and relied upon by the court below to grant the respondents claim for possession citing in support section 15 of the Land Instrument Registration Law, Cap L58, Laws of Lagos State, *Savannah Bank v. Ibrahim* (2000) 6 NWLR (Pt. 662) 585 at 603, *Oyekola v. Marinho* (2000) 9 NWLR (Pt. 671) at 77, sections 22 and 26 of the Land Use Act, *Savannah Bank v. Ajilo* (1989) 1 NWLR (Pt. 97) 305, *Adetuyi v. Agbojo* (1997) 1 NWLR (Pt. 848) 705, *U.B.N. Plc v. Ayo Dare and Sons Nig. Ltd.* (2000) NWLR (Pt.676) 644.

It was also submitted that the series of Exhibit K were dated 06.07.06 while the payment of the purchase price was made on 28.07.04, nor was the payment of ₦10 million entered in the statement of account, Exhibit K16, showing the purchase by the 2nd respondent is unproven on the balance of probabilities which, according to the contention of the appellant, further justified the appellant's assertion that

the 1st and 2nd respondents mismanaged the accounts as shown in Exhibit A02; that the failure of the 1st - 2nd respondents to exhibit the instrument of payment for the property raised the presumption of law under section 167(d) of the Evidence Act that they withheld unfavourable evidence citing In support *Sonibare v. Ijale* (1960) SCNLR 384.

It was submitted that the deed of legal mortgage in pages 299 - 307 of the record excluded the provisions of section 20 of the Conveyancing and Property Act, 1881 and gives the bank the general power of sale exercisable through a Receiver properly appointed under clause 8 thereof; and that the combined effect of clauses 8, 9, 10, 11 and 12 of the deed of legal mortgage showed clearly that only a Receiver properly so appointed could sell the mortgaged property rendering the purported sale invalid and unenforceable.

The appellant submitted that by Exhibits K18, K19, K20 and K21 A-B showing there were other tenants in the property who were necessary parties in the action, their non-joinder robbed the court below of the jurisdiction to grant the claim for possession citing in support the case of *Awoniyi v. Registered Trustees, AMORC* (2000) 10 NWLR (Pt. 676) 522.

The appellant submitted that the court below predicated the finding of indebtedness on the appellant's letter, Exhibit K14, which was marked "without prejudice" vide page 269 of the record which was even rejected by the 1st respondent in Exhibit K15 dated 14.01.04, therefore Exhibit K14 which was written without prejudice should not have been relied upon by the court below to ground the liability of the appellant when such letter is inadmissible in evidence citing in support the cases of *Societe Commerciale de-L'Ouest Africains v. Michael Olusoga and Angr.* 13 N.L.R. 104 at 195, *Ashibuogwu v. A.G., Bendel State and Anor.* (1988) 1 SCNJ 130 at 161 - 162, *Chief Gani Fawehinmi v. N.B.A No.2* (1989) 2 NWLR (Pt.105) 358 at 622 - 633, *United World Ltd. Inc. v. MTS Ltd.* (1998) 10 NWLR (Pt. 568) 106 at 118, *U.B.N. Plc v. Okoro* (2002) 10 NWLR (Pt. 774) 1 at 11, Phipson on Evidence, 12th Edition, 295 paragraph 676.

It was submitted by the appellant that the court below failed to consider the weight of evidence and the persuasiveness of the Exhibits attached to the various affidavits of the parties showing the judgment is not only against the weight of evidence but that it is perverse and without necessary foundation citing in support Black's Law Dictionary, 9th Edition, section 341 (a) of the Evidence Act, 2011 (Evidence Act), *Ayeni v. Dada* (1978) 3 S.C. 35 at 61) *Abalogu v. The Shell Petroleum Development Company of Nigeria* (1999) 8 NWLR (Pt. 613) 544 at 622; upon which the appellant urged that the appeal should be allowed and the judgment of the court below set aside and the case at the court below be dismissed.

The 1st - 2nd respondents filed brief of argument on 23.11.16, but deemed as properly filed on 21.06.18, in which it was contended that the appellant did not show evidence

of repayment of the loan either by cheques or lodgments and being a banker-customer transaction tied to legal mortgage the parties were bound by the terms of the contract and the court below had the jurisdiction to entertain the action at the instance of the 1st respondent upon non repayment of the loan by the appellant; and that the 1st respondent properly exercised its right to re-possession and sale of the mortgaged property at the proper price of ₦100 million as the appellant did not state a contrary higher estate valuer's price of the property citing in support Order 51 rule 1 (d) of the High Court of Lagos State (Civil Procedure) Rules 2004 (the rules of the court below) and the cases of *Azubuike v. Government of Enugu State* (2014) 5 NWLR (Pt.1400) 410, *Idufueko v. Pfizer Products Ltd.* (2014) 12 NWLR (Pt.1420) at 132, *Golden Const. Co. Ltd. v. (Nig.) Ltd.* (2004) NWLR (Pt.1408) 195, *Eka-Eteh v. N.H.D.S. and Anor.* (1993) 6 S.C. 183, *All States Trust Bank v. Nsofor* (2004) All FWLR (Pt. 201) 1719, *N.H.D.S. v. Yaya Mumuni* (1977) 2 S.C. 57, *ACB Ltd. v. Ihekwoaba* (2003) 16 NWLR (Pt. 846) 249.

The 1st - 2nd respondents contended that clauses 8, 9, 10, 11 and 12 of the deed of legal mortgage make the appointment of a Receiver optional by the use of the word "may" in clause 8 thereof vide page 52 or 302 of the record; that the appellant was in possession of the property after its sale to the 1st respondent and was collecting rent therefrom vide Exhibits K18, K19, K20, K21A, K21B, K21C, K22A and K22B attached to the appellant's counter affidavit while Exhibits K18, K19 and K20, copies of letters from the 1st respondent's solicitors, informed the occupant(s) of the mortgaged property of the sale of the property to the 2nd respondent, while Exhibits K21A, K21B, K21C are letters of demand of rent from the appellant's proxies; that on the other hand, Exhibits K22A and K22B are receipts issued by the appellant's proxies for rent for up to 5 years in advance vide pages 86 - 93 and 285 - 292 of the record; upon which the 1st - 2nd respondents contended that the combined effect of Exhibits K18 - K22B indicated that the appellant was in possession of the mortgaged property long after it had notice of its sale to the 2nd respondent and "deliberately" held on to same by collecting rent from tenants several years in advance against the convention of their tenancy tenure"; therefore the 1st - 2nd respondents contended that the court below was right in granting possession of the property to the 1st - 2nd respondents.

The 1st - 2nd respondents added in argument that by the decision in the case of *Onwucheka v. N.D.I.C.* (2002) 5 NWLR (Pt.760) 371 at 393 section 417 of CAMA would not prohibit the company from proceeding against another person, but what the section prohibits, subject to the leave of the court, is proceedings against the company. Consequently, the 1st - 2nd respondents contended that the court below was right to assume jurisdiction and continue with the trial of the action despite the fact that a liquidator had been appointed over the assets of the appellant.

The 1st - 2nd respondents also contended that since the maker of the document marked 'without prejudice' was a third party who at the time of making it did not anticipate likelihood of dispute between the parties it was rightly admitted and

relied upon by the court below citing in support the case of *ACMEL (Nig.) Ltd. v. F.B.N. Plc* (2014) 6 NWLR (Pt. 1402) 156 at 181 following *Jadesimi v. Egbe* (2003) 10 NWLR (Pt. 827) 1.

The 1st - 2nd respondents contended that banking transactions are basically documentary and that in this case the 1st respondent exhibited documents showing letters of request, offer and acceptance of loan facilities, registered deed of legal mortgage, certified statement of accounts, demand letters for repayment of the loan, demand letters for rents and receipts issued by the appellant to tenants; while the appellant placed before the court below facts admitting taking the loan, documents complaining of bloated interest rate, account reconciliation and request for reversal of excess charges without placing materials showing he made repayment of the loan by copies of bank tellers to that effect.

The 1st - 2nd respondents therefore argued that it was based on these pieces of evidence that the court below assessed and entered judgment for the 1st - 2nd respondents against the appellant showing the court below property evaluated the evidence citing in support the cases of *Katto v. C.B.N.* (1991) 12 S.C.N.J. (no pagination), *Saba v. N.C.A.T.C.* (1991) 5 NWLR (Pt. 192) 388 and *Odunuke v. Ofomata* (1998) 6 NWLR (Pt. 607) 416 at 425, on account of which the 1st – 2nd respondents concluded by urging that the appeal should be dismissed and the judgment of the court below affirmed.

The reply brief filed on 26.06.18 stated that the 1st - 2nd respondents failed to address the fact that a previous attempt to establish indebtedness by affidavit evidence failed in Suit No. LD/937/2003 between the Bank and the Appellant and that the fact that the Rules permitted a mortgagor to initiate an action by originating summons was not sufficient to discharge the onus establishing a claim by credible and uncontested facts citing in support the case of *Obasanya v. Babafemi* (2000) 15 NWLR (Pt. 689) at 17.

It was also contended in the reply brief that the reference to a portion of the appellant's letter dated 18.08.2000 in page 125 of the record by the 1st - 2nd respondents failed to follow the rule of interpretation of documents that the document be read as a whole citing in support the case of *Akaighe v. Idama* (1964) All NLR 317 and that had the 1st - 2nd respondents considered the said letter as a whole they would not have dismissed as insignificant the excess interest rate and charges on C.O.T. totaling ₦1,625,402.25.

The reply brief further contended that contrary to the assertion of the 1st - 2nd respondents that the rate of interest is determined by cost of funds as obtained in the money market, the rate of interest is guided by the Central Bank Guidelines which, however, was not in evidence for the period for which the facilities were under review to justify the 1st respondent's claim of indebtedness; that no Commercial Bank can charge interest at its own whims and caprices; that nothing

was tendered to justify the "capricious" rate of interest charged; and that section 15 of the Banking Act Cap. 28 Laws of the Federation 1990 read with the case of *F.B.N. Plc. v. Uwada* (2003) 2 NWLR (Pt. 805) 485 at 504 regulate the interest rate at any given circumstance.

The reply brief further stated that the 1st - 2nd respondents' brief did not address the issue of failure to serve statutory notices on person(s) in possession, therefore the 1st - 2nd respondents are deemed to have conceded this point citing in support *Okongwu v. N.N.P.C.* (1993) 4 NWLR (Pt. 115) 296, *Fregene v. A.C. Nig. Ltd.* (1997) 3 NWLR (Pt. 493) 359, *Akanbi v. Alatede* (2000) FWLR (Pt. 11) 1928, *Onike Int. v. Ayi Electronics* (2005) All FWLR (Pt. 256) 1309, *N.E.P.A. v. Arobieke* (2006) 7 NWLR (Pt. 979) 245.

The reply brief finally contended that a document market "without prejudice" is inadmissible in evidence and extends to third parties who act as mediator with a view to enabling the parties to reach a settlement or compromise, whether or not the third party is a legal representative citing in support *Fawehinmi v. N.B.A.* (2) (1989) 20 NSCC (Pt. 11) 43; upon which the appellant urged that the appeal be allowed.

The reliefs sought in the originating summons are stated in pages 203 - 204 of the record as follows –

> *"1) AN ORDER of this Honourable Court granting the Claimants possession of the property situate at No. 25, Calcutta Crescent, Apapa, Lagos which is covered by Land Certificate No. MO. 1556.*
>
> *2) AN ORDER of this Honorable Court perpetually restraining the Defendant either by itself, or acting through its agents, proxies or assigns from collecting or further collecting rent from the tenants in occupation of the premises or letting or further letting the premises or any part thereof to any person whatsoever*
>
> *3) AN ORDER of this Honourable Court for the payment of sum of ₦8,400,000 (Eight Million Four Hundred Thousand Naira Only) by the Defendant to the 2nd Claimant being the rent collected by the Defendant from tenants occupying the property situate at No. 25, Calcutta Crescent, Apapa, Lagos which is covered by Land Certificate NO. MO. 1556 after having notice of its sale to the 2nd Claimant.*
>
> *4) ANY FURTHER ORDER or other orders as this Honourable Court may deem fit to make in the circumstances of the case.*
>
> *FURTHER TAKE NOTICE that the grounds for this application is that the*

Defendant mortgaged the property situate at No. 25, Calcutta Crescent to the 1st Claimant as security for a loan facility which it has refused to liquidate and has continued to occupy the premises and collect rent from other tenants after same has been sold to the 2nd Claimant".

The ground upon which the reliefs (supra) are sought is stated in page 204 of the record as follows –

"FURTHER TAKE NOTICE that the grounds for this applications is that the Defendant mortgaged to the claimant as security for a loan facility which it has refused to liquidate and has continued to occupy the premises and collect rent from other tenants after same has been sold to the 2nd claimant".

These reliefs and the ground upon which they are sought in the originating summons together with the affidavit in support of the action anchor on delivery of possession of the mortgaged property, or power-of-sale on the deed of legal mortgage, not proceedings for the winding-up of a company.

The jurisdiction of a court is determined by the reliefs sought in the action by the claimant vide *National Union of Road Transport Workers and Anor. v. Road Transport Employers Association of Nigeria and Ors.* (2012) 10 NWLR (Pt.1307) -170 at 197 and 209 - 210 to the effect that the claim of the plaintiff determines the jurisdiction of the court and that in that case it was the claim in the originating summons of the appellant as initiated at the trial court that a court should examine to determine whether or not it has jurisdiction to entertain the action following the cases of *Adeyemi v, Opeyori* (1976) 9 - 10 SC 31, *Savannah Bank Ltd. v. Pan Atlantic* (1987) 1 NWLR (Pt.49) 212, *Ladoja v. I.N.E.C.* (2007) 12 NWLR (Pt. 1047) 119, *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290, *Anigboro v. Sea Trucks Nig. Ltd.* (1995) 6 NWLR (Pt.399) 35. See also *James v. I.N.E.C. and Ors.* (2015) 12 NWLR (Pt.1474) 538 at 584 and 586 following *A.G., Federation v. Guardian Newspapers Ltd.* (1999) 9 NWLR (Pt. 618) 187, *Uwaifo v. A.G., Bendel State* (1983) 4 NCLR 1, *Amaechi v. I.N.E.C.* (No.2) (2007) 18 NWLR (Pt.1 065) 98.

The claim (supra) as disclosed is therefore within the original jurisdiction of the court below under section 272(1) of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution) read with Order 51 rule 1 (d) of the rules of the court below.

The affidavit in support of the originating summons opened with these introductory words –

"I, Oluseun Odusanya, male, Christian and a Citizen of the Federal Republic of Nigeria whose address is NIPOST Building (6th Floor) Lafiaji, Lagos do hereby take oath and state as follows:

> 1. *That I am a Solicitor in the law firm of O. Osarenren & Co. solicitors to the Claimants in this matter.*
>
> 2. *That by virtue of my position I am quite conversant with the facts of this case and I have the consent and authority of the Claimants to depose to this affidavit on their behalf."*
> *(My emphasis)*

The paragraphs of the affidavit (supra) are sufficient to credit the deponent with knowledge of the facts deposed to in the affidavit with the consent and the authority of the respondents, then claimants at the court below, which rendered the affidavit evidence admissible. The contention of the appellant that the affidavit offends section 77 of the Evidence Act is, accordingly, untenable and is hereby rejected vide *Sodipo v. Lemminkainen OY and Anor.* (1986) 1 S.C. 197 at 209.

The presumption of withholding evidence under section 167(d) of the Evidence Act arises only where it is established that the party accused of withholding the evidence has the piece of evidence in his possession and refused or neglected to produce it upon service of subpoena or notice on him to produce the piece of evidence vide the cases of *Adisa v. State* (2015) 4 NWLR (Pt. 1450) 475 and *Aremu v. The State* (1991) 17 NWLR (Pt. 210) page 1. Having not met these requirements the appellant cannot invoke the provisions of section 167(d) of the Evidence Act on the alleged withholding of evidence of the instrument of payment for the property.

Moreover, the appellant did not dispute the say-so of the 1st - 2nd respondents that the property was sold at ₦100 million; its grievance being it was sold at a ridiculous price.

The Court sitting in Jos (coram: Rhodes-Vivour, Ndukwe-Anyanwu and Yahaya, JJ.C.A.) had cause to throw light on the phrase 'without prejudice' in the case of *Obands Obeya v. First Bank of Nigeria Plc* (2012) All FWLR (Pt. 636) 544 at 554 - 555 per the lead ruling prepared by Rhodes-Vivour, J.C.A., (now J.S.C.) thus-

> *"The rule is restricted only to cases where there is a dispute or negotiation and not to just any letter emanating from a legal practitioner's chambers. Letters marked, "without prejudice" are confidential overtures by the defendant to the plaintiff and are excluded from evidence in the court on the ground of public policy. Amicable settlement of a dispute would be difficult to attain if documents marked "without prejudice" are subsequently admitted in advance. The defendant would be prejudiced."*

The letter marked "without prejudice" which is in page 269 of the record, though from a third party or intermediary, was made in the course of negotiations between the appellant and the 1st respondent's predecessor, Liberty Bank Plc (IN LIQUIDATION), for amicable settlement, therefore based on *Obande Obeya (supra)*

and *Fawehinmi v. N.B.A. (No.2) (supra)* it is inadmissible in evidence.

Moreover, the 1st respondent's predecessor rejected the offer vide paragraphs 22 and 23 of the affidavit in support of the action in pages 6 - 7 of the record as well as the 1st respondent's predecessor's letter in page 270 thereof insisting no to take the offer to have only the property at No.5, Calcuta Crescent Apapa, Lagos sold to satisfy the loan sticking to the stand that it was not enough, therefore the court below erred in relying on the said letter as evidence of admission of indebtedness by the appellant.

The present action was instituted at the court below for possession of property subject of a registered deed of legal mortgage and for rents on the mortgaged property together with a relief for perpetual injunction restraining the appellant and its proxies from collecting rent on the mortgaged Property vide pages 1 and 2 of the record. The other action in Suit No. LD/937/03 was a claim for ₦553,916,695.46 with 22% interest per annum on the aforesaid sum of money from 31st January, 2003 to the date of judgment and 20% interest post-judgment interest until full liquidation of the judgment debt against the appellant vide page 102 of the record.

The parties in Suit No: LD/937/03 were the 1st respondent's predecessor, then Claimant, and the appellant plus one Madam Florence Anyamene, while the parties here are the appellant against the successor of the claimant in Suit No. LD/937/03 and one Alhaji Mahmoud Shittu as 2nd defendant, now 2nd respondent, and NAS SUPERMARKET (owner of Lafayat Supermarket).

The subject matter and the parties in both actions are therefore not the same or substantially the same, nor did the appellant demonstrate convincingly that Suit No. LD/937-03 is extant and going on simultaneously with the action now on appeal as to constitute an abuse of the process of the court.

In other words, it was not shown that Suit No. LD/937103 was still going on in court as no evidence was placed to indicate the date it was adjourned and the extant steps taken in it while the present action was fought at the court below. See *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156 to the effect that an abuse of process would occur where two or more suits are instituted and pending simultaneously over the same subject matter/cause of action and with the same parties. See also *R-Benkay (Nig.) Ltd. v. Cadbury Nigeria Plc.* (2012) 9 NWLR (Pt. 1306) 579, *Dumez (Nig.) Plc. v. U.B.A. Plc* (2006) 14 NWLR (Pt. 1000) 515, *Fasakin Foods (Nig.) Ltd. v. Shosanya* (2003) 17 NWLR (Pt. 848) 237 at 247-248, *C.O.M. v. Cobham* (2006) 15 NWLR (Pt. 1002) 283, *Ohakim v. Agbaso* (2010) 19 NWLR (Pt. 226) 172.

The appellant's contention that failure to join a necessary party in an action affects the jurisdiction of the court is untenable having regard to decision of the Supreme Court in the case of *Bello v. I.N.E.C. and Ors.* (2010) 2 -3 S.C. (Pt. 11) 128 at 156

to the effect that it does not affect the jurisdiction of the court.

At any rate, the persons put in the property as tenants by the appellant's proxies were said to have occupied the property two years after it was sold to the 2nd respondent and were informed in Exhibits K18, K19 and K20, the copies of the letters from the 1st respondent's solicitors to the occupants of the premises, of the sale of the mortgaged property to the 2nd respondent.

The presence of the appellant in the action who brought the said persons on the premises through its proxies also covered the interest of said persons as privies in estate of the appellant and the decision in the action would be binding on them on that basis, therefore they were not necessary parties in the action, but desirable parties, consequently, the action could be determined effectually and completely without their presence as the appellant fought the action behind the hedge (so to speak) for them.

There was no evidence of fraud or of collusion of the 1st respondent with the purchaser of the property, the 2nd respondent, as particulars of fraud or collusion which are serious allegations requiring proof to the hilt or letter were not put in evidence, so the fact that the property was sold at ₦100 million without evidence of higher valuation by a valuer given by the appellant would not make the sale bad as undervalue per se even where proved does not vitiate the sale vide *A.C.B. Ltd. v. Ihekwoaba* (2003) 16 NWLR (Pt. 846) 249 at 269 - 270 where the Supreme Court held inter alia that the obligation on the mortgagee selling under power of sale is to act in good faith most conducive to his own benefit, provided he observes reasonable precaution to obtain a proper price, not the best price, as sale undervalue alone is not enough to vitiate the exercise of a mortgagee's power of sale, unless it is shown that the sale was made at a fraudulent or gross undervalue in collusion with the purchaser which was not the case here as collusion or fraud (grave allegations) or gross undervalue were not established.

It was further held in *A.C.B. Ltd. v. Ihekwoaba (supra)* that the court will not interfere even though the sale be very disadvantageous, unless the price is so low as in itself to be evidence of fraud following the case of *Ekaeteh v. Nigeria Housing Development Society Limited* (1973) 6 S.C. 183, which was not shown to be the case here. So the sale in this case was, in my considered opinion, proper and cannot be impeached on that ground.

Breach of statutory notice to sell and, also, breach of the Conveyancing Act where a conveyance is made in the exercise of the power of sale would not vitiate the sale and the title of the purchaser cannot be impeached on the ground that no case has arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercises, but any person damnified by an unauthorised or improper or irregular exercise of the power of sale shall have his remedy in damages, not in the setting aside of the sale, so held the Supreme

Court in the case of *A.C.B. Ltd. v. Ihekwoaba (supra)* at 271 - 272 following *Okonkwo v. Co-operative and Commerce Bank (Nig.) Plc* (2003) 8 NWLR (Pt. 822) 347 and *Sanusi v. Daniel* (1956) SCNLR 288.

The sale was made under a deed of legal mortgage which by its nature transferred the legal estate to the mortgagee, now the 1st respondent, and once a mortgage is created, it is always a mortgage and nothing but a mortgage leaving the mortgagor with the equity of redemption which can only be redeemed by repayment of the outstanding mortgage debt on the date the repayment must have fallen due, as a mortgagee cannot be compelled by a court order to part with the mortgaged security, unless there has been complete payment of the loan sum.

An equitable relief cannot therefore be granted in the face of an outstanding debt on the mortgage; and, as the 2nd respondent paid the purchase price coupled with possession of the property it acquired an equitable interest in the property vide *Yaro v. Arewa Construction Limited and Ors.* (2012) 1 BFLR 718 at 740 -743, *Adetona and Anor. v. First Bank Plc* (2012) 3 BFLR 208.

The fact that the deed of assignment was not registered would not vitiate the sale which would vest equitable interest in the 2nd respondent as the purchaser in possession vide *Okoye v. Dumez Nigeria Ltd.* (1985) 1 N.W.L.R. (Pt.4) 783 at 790 where the great jurist, Bello, J.S.C., (later CJN, now of blessed memory) delivering the lead judgment of the Supreme Court held inter alia (unedited) that -

> *"It is trite law that where a purchaser of land or a lessee is in possession of the land by virtue of a registrable instrument which has not been registered and has paid the purchase money or the rent to the vendor or the lessor, then in either case the purchaser or the lessee has acquired an equitable interest in the land which is as good as a legal estate and this equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. A registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase of money or rent: Savage v. Sarrough (1937) 13 N.L.R. 141, Ogunbambi v. Abowaba (1951) 13 W.A.C.A. 22, Fekoya v. St. Paul's Church, Shagarnu (1966) 1 All N.L.R. 74, Oni v. Arimoro (1973) 3 S.C. 163, Bucknor-MacLean v. Inlaks (1980) 8-11 S.C. 1 and Obijuru v. Ozinis S.C. 482984 delivered on 4th April 1985, unreported yet."*

Besides, the non-registration of the deed of assignment would not vitiate the sale itself as the sale was done under a registered deed of legal mortgage within the terms of the deed of legal mortgage.

The clause in the deed of legal mortgage for the appointment of a Receiver is contained in page 52 of the record as follows:

"AT ANYTIME after the principal monies secured become payable to the Bank the Bank may by instrument in writing under the hand of any Director or Manager of the Bank in Lagos or elsewhere in the Federal Republic of Nigeria appoint any person or persons to be a Receiver or Receivers of the property charged by this security and may remove such Receiver or Receivers. Any Receiver or Receivers so appointed shall be deemed to be the Agent or Agents of the Bank and the Bank shall be solely responsible for his or their acts or defaults and for his or their remuneration and such Receiver or Receivers so appointed shall have powers."

The underlined phrase "may" is used two times in the clause on the appointment of a Receiver showing the phrase was deliberately used and in ordinary grammatical parlance following the standard canon of interpretation of contracts and other instruments the word 'may' (supra) would carry its plain meaning of discretion, option, permission or directory; consequently by the tenor of the clause (supra) the 1st respondent was not bound to appoint a Receiver in the circumstance: It had a discretion in the matter.

The contention of the appellant that there was an infraction of the said permissive clause dealing with the appointment of a Receiver is therefore untenable and is hereby rejected vide *Ugwuanyi v. F.R.N.* (2012) 8 NWLR (Pt. 1302) 384, *Nigerian Navy v. Labinjo* (2012) 17 NWLR (Pt. 1328) 56 to the effect that where the word 'may' is used it is ordinarily construed to mean 'option' or 'permission', 'discretion'.

Complaints on excessive bank charges and arbitrary interest on the account made by the appellant were not tied to any claim by the appellant and as such could not have affected the consequences of default in repayment of at least the capital of the loan by possession and sale of the mortgaged property in terms of the registered deed of legal mortgage covering it.

The counter affidavit challenging the originating summons which is in pages 317 - 320 of the record did not positively deny the appellant taking the loan from the 1st respondent's predecessor secured by registered deed of legal mortgage of property. Had the appellant fully repaid the loan it would have sought for the release of the property from the mortgagee. It did not do so, showing the loan was outstanding at the time the action was litigated at the court below.

Repayment of bank loan is usually demonstrated by showing entry of lodgments either by cheques or cash, or bank drafts by the customer or his agent in the account and honoured or credited by the bank; or by exhibiting bank tellers evidencing the lodgments to that effect. Thus it was held in the case of *Okpoko Community Bank Ltd. and Anor. v. Igwe* (2013) 15 NWLR (Pt. 1376) 167 at 186 per the lead judgment prepared by Okoro, J.C.A., (now J.S.C.) that the best way of proving payment of money into a bank account is by the production of a bank teller or an acknowledgement showing on the face of it that the bank received the

payment; or that proof of payment may also be made where money is deposited in a bank and a certificate is issued to the customer and that the certificate when produced in evidence would suffice.

The counter affidavit did not condescend to particulars as it failed to deal specifically and clearly whether the appellant owed the whole or part of the debt and in the latter case to be exact or specified part of the debt owed. The general denial that the appellant is not indebted to the 1st respondent's predecessor will not suffice, unless the grounds on which the appellant relied upon as showing that it is not owing are specifically stated in the counter affidavit vide by analogy the Supreme Court case of *Thor Ltd. v. First City Merchant Bank Ltd.* (2005) 14 NWLR (Pt. 946) 696 at 712-714.

Blanket or general denial of indebtedness and/or evasive deposition in an affidavit such as the counter affidavit of the appellant that repayment of the loan had been made would not suffice to prove repayment of the loan.

Indeed, the action was on the enforcement of the registered deed of legal mortgage by possession of the mortgaged property which depended on whether the appellant was indebted to the 1st respondent to entitle the 1st respondent to the reliefs sought. The indebtedness having not been effectively denied by the appellant, the court below was entitled to act on the materials placed before it by the 1st respondent to enter judgment for the 1st - 2nd respondents.

In summation, the appellant having not denied persuasively or frontally the indebtedness to the 1st respondent and, also, having not shown evidence of repayment of the legal mortgage debt, the court below was right in entering judgment for the respondents on the preponderance of affidavit evidence which was not irreconcilably in conflict.

On the whole, I see no merit in the appeal and hereby dismiss it and affirm the decision of the court below (Taiwo, J). The appellant shall pay ₦300,000 costs to the respondents.

GARBA, JCA: After reading a draft of the lead judgement written by my learned brother Joseph Shagbaor Ikyegh, JCA, agree that the appeal is lacking in merit and join him in dismissing it in the terms set out therein.

TUKUR, JCA: My learned brother JOSEPH SHAGBAOR IKYEGH JCA. afforded me the opportunity of reading before today a draft copy of the lead judgment just delivered.

I adopt the judgment as mine with nothing further to add.

Cases cited in the Judgment

A.C.B. Ltd. v. Ihekwoaba (2003) 16 NWLR (Pt. 846) 249
A.G. Federation v. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187
Abalogu v. The Shell Petroleum Development Company of Nigeria (1999) 8 NWLR (Pt. 613) 544
ACMEL (Nig.) Ltd. v. F.B.N. Plc (2014) 6 NWLR (Pt. 1402) 156
Adetona and Anor. v. First Bank Plc (2012) 3 BFLR 208
Adetuyi v. Agbojo (1997) 1 NWLR (Pt. 848) 705
Adeyemi v. Opeyori (1976) 9 - 10 SC 31
Adisa v. State (2015) 4 NWLR (Pt. 1450) 475
Ajiboye v. State (1994) 8 NWLR (Pt. 364) 539
Akaighe v. Idama (1964) All NLR 317
Akanbi v. Alatede (2000) FWLR (Pt. 11) 1928
Akpokiniovo v. Air Liquide Nigeria Plc (2012) LPELR-9582
All States Trust Bank v. Nsofor (2004) All FWLR (Pt. 201) 1719
Amaechi v. I.N.E.C. (No.2) (2007) 18 NWLR (Pt.1 065) 98
Anigboro v. Sea Trucks Nig. Ltd. (1995) 6 NWLR (Pt.399) 35
Anya v. Iyayi (1993) 7 NWLR (Pt. 305) 290
Aremu v. The State (1991) 17 NWLR (Pt. 210) 1
Arubo v. Aiyeleru (1993) 3 NWLR (Pt.280) 126
Ashibuogwu v. A.G., Bendel State and Anor. (1988) 1 SCNJ 130
Awoniyi v. Registered Trustees, AMORC (2000) 10 NWLR (Pt. 676) 522
Ayeni v. Dada (1978) 3 S.C. 35
Azubuike v. Government of Enugu State (2014) 5 NWLR (Pt.1400) 410
Bello v. I.N.E.C. and Ors. (2010) 2 -3 S.C. (Pt. 11) 128
Bucknor-MacLean v. Inlaks (1980) 8-11 S.C. 1
C.O.M. v. Cobham (2006) 15 NWLR (Pt. 1002) 283
Chief Gani Fawehinmi v. N.B.A No.2 (1989) 2 NWLR (Pt.105) 358
Dumez (Nig.) Plc. v. U.B.A. Plc (2006) 14 NWLR (Pt. 1000) 515
Ekaeteh v. Nigeria Housing Development Society Limited (1973) 6 S.C. 183
Ezemo v. Oyakhire (1985) 1 NWLR (Pt. 2) 195
Ezenwosu v. Ngonadi (1988) 3 NWLR (Pt. 81) 31
F.B.N. Plc. v. Uwada (2003) 2 NWLR (Pt. 805) 485
Fasakin Foods (Nig.) Ltd. v. Shosanya (2003) 17 NWLR (Pt. 848) 237
Fawehinmi v. N.B.A. (2) (1989) 20 NSCC (Pt. 11) 43
Fakoya v. St. Paul's Church, Shagamu (1966) 1 All N.L.R. 74
Fregene v. A.C. Nig. Ltd. (1997) 3 NWLR (Pt. 493) 359
Golden Const. Co. Ltd. v. (Nig.) Ltd. (2004) NWLR (Pt.1408) 195
Gwani v. Ebule (1990) 5 NWLR (Pt. 149) 201
Idufueko v. Pfizer Products Ltd. (2014) 8 CLRN 53
Iga v. Amakiri (1976) 11 SC 1
Iwuagolu v. Azyka (2007) Vol. 29 WRN 102
Jadesimi v. Egbe (2003) 10 NWLR (Pt. 827) 1
James v. I.N.E.C. and Ors. (2015) 12 NWLR (Pt.1474) 538
Katto v. C.B.N. (1991) 12 S.C.N.J.
Ladoja v. I.N.E.C. (2007) 12 NWLR (Pt. 1047) 119

Madukolu v. Nkemdilim (1962) ANLR 587
N.E.P.A. v. Arobieke (2006) 7 NWLR (Pt. 979) 245
N.H.D.S. v. Yaya Mumuni (1977) 2 S.C. 57
National Union of Road Transport Workers and Anor. v. Road Transport Employers Association of Nigeria and Ors. (2012) 10 NWLR (Pt.1307) 170
NDIC v. A.G., Nasarawa State and Ors. (2007) LPELR-4598
Nigerian Advertising Services and Anor. v. UBA Plc and Anor. (1999) LPELR-5954
Nigerian Navy v. Labinjo (2012) 17 NWLR (Pt. 1328) 56
Obands Obeya v. First Bank of Nigeria Plc (2012) All FWLR (Pt. 636) 544
Obasanya v. Babafemi (2000) 15 NWLR (Pt. 689) 17
Obijuru v. Ozinis S.C.482984 delivered on 4th April 1985 unreported
Odunuke v. Ofomata (1998) 6 NWLR (Pt. 607) 416
Ogunbambi v. Abowab (1951) 13 W.A.C.A. 22
Ohakim v. Agbaso (2010) 19 NWLR (Pt. 226) 172
Ojukwu v. Lagos State Government (1985) 2 NWLR (Pt.10) 807
Oke v. Oke (2006) 17 NWLR (Pt.1 008) 224
Okeola v. Adeleke (1999) 1 NWLR (Pt. 585) 55
Okongwu v. N.N.P.C. (1993) 4 NWLR (Pt. 115) 296
Okonkwo v. Co-operative and Commerce Bank (Nig.) Plc (2003) 8 NWLR (Pt. 822) 347
Okoye v. Dumez Nigeria Ltd. (1985) 1 N.W.L.R. (Pt.4) 783
Okpoko Community Bank Ltd. and Anor. v. Igwe (2013) 15 NWLR (Pt. 1376) 167
Oni v. Arimoro (1973) 3 S.C. 163
Onike Int. v. Ayi Electronics (2005) All FWLR (Pt. 256) 1309
Onwuchekwa v. N.D.I.C. (2002) 5 NWLR (Pt.760) 371
Oyekola v. Marinho (2000) 9 NWLR (Pt. 671) 77
Pharmacist Board of Nigeria v. Adegbesote (1986) 5 NWLR (Pt.44) 707
R-Benkay (Nig.) Ltd. v. Cadbury Nigeria Plc. (2012) 9 NWLR (Pt. 1306) 579
Saba v. N.C.A.T.C. (1991) 5 NWLR (Pt. 192) 388
Saleh v. Monguno (2006) 15 NWLR (Pt. 1001) 26
Sanusi v. Daniel (1956) SCNLR 288
Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156
Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt.49) 212
Savannah Bank v. Ajilo (1989) 1 NWLR (Pt. 97) 305
Savannah Bank v. Ibrahim (2000) 6 NWLR (Pt. 662) 585
Sodipo v. Lemminkainen OY and Anor. (1986) 1 S.C. 197
Sofekun v. Akinyemi (1980) 5 - 7 S.C. 1
Sonibare v. Ijale (1960) SCNLR 384
Thor Ltd. v. First City Merchant Bank Ltd. (2005) 7 CLRN 51
U.B.N. Plc v. Ayo Dare and Sons Nig. Ltd. (2000) NWLR (Pt.676) 644
U.B.N. Plc v. Okoro (2002) 10 NWLR (Pt. 774) 1
Ugwuanyi v. F.R.N. (2012) 8 NWLR (Pt. 1302) 384
Umanah v. Attah (2006) 17 NWLR (Pt.1 009) 503
Umanah v. Oyakhire (1985) 1 NWLR (Pt. 2) 195

Ume v. Nigerian Renowned (1997) 8 NWLR (Pt. 516) 344
United World Ltd. Inc. v. MTS Ltd. (1998) 10 NWLR (Pt. 568) 106
Uwaifo v. A.G. Bendel State (1983) 4 NCLR 1
Vaswani v. Johnson (2000) NWLR (Pt. 679) 582
Yaro v. Arewa Construction Limited and Ors. (2012) 1 BFLR 718

Foreign cases cited in the Judgment
Donaghey v. P. O'Brian and Co. and Orstime (1966) W.L.R. 1170
Savage v. Sarrough (1937) 13 N.L.R. 141
U.A.C. Ltd. v. Macfoy (1962) AC 152

Statutes cited in the Judgment
Section 272(1) of the Constitution of the Federal Republic of Nigeria 1999
Sections 7(1)(a)(e), 8(1), 251(1)(1) and (e) and 253 of the Federal High Court Act 2005
Section 15 of the Banking Act Cap. 28 Laws of the Federation 1990
Section 15 of the Land Instrument Registration Law, Cap L58, Laws of Lagos State 2003
Sections 77, 167(d) & 341(a) of the Evidence Act 2011
Sections 417 & 650 of the Companies and Allied Matters Act 1990
Section 20 of the Conveyancing and Property Act 1881
Sections 22 and 26 of the Land Use Act 1978

Rules of Court cited in the Judgment
Order 51 rule 1 (d) of the High Court of Lagos State (Civil Procedure) Rules 2004

Books referred to in the Judgment
Black's Law Dictionary, 9th Edition
Phipson on Evidence, 12th Edition

History:

HIGH COURT
High Court of Lagos State

COURT OF APPEAL (Lagos Division)
Mohammed Lawal Garba, JCA ***(Presided)***
Joseph Shagbaor Ikyegh, JCA ***(Read the lead Judgment)***
Jamilu Yammama Tukur, JCA

Counsel:
Mr. O. A. Owolabi with Mr. F. D. Oloruntoba for the Appellant.
Mr. O. Osarenren with Mr. A. C. Onuoha for the 1st - 2nd Respondents.

CHAWALEKS NIGERIA LIMITED *(In receivership);* **MR. OLANREWAJU AYODEJI WRIGHT; MR. CHARLES ADEPOJU v. NIGERIA DEPOSIT INSURANCE CORPORATION** *(Party substituted by Order of Court of 26/11/08);* **OLUSEGUN OLUMUYIWA**

COURT OF APPEAL
(LAGOS DIVISION)

APPEAL NO. CA/L/66/2014
WEDNESDAY 6TH FEBRUARY, 2019

(OGAKWU; OBASEKI-ADEJUMO; TOBI, JJ.CA)

LITIGATION – Jurisdiction – A court is competent and has jurisdiction to hear and determine a suit where it is initiated by due process after fulfilling any condition precedent.

LITIGATION – Jurisdiction and Competence – are related and dependent on each other and the jurisdiction of a court will be affected where it has the former but lacks the latter.

LITIGATION – Jurisdiction – is fundamental and no matter how well conducted, the proceedings of a court are a nullity where the court lacks jurisdiction.

LITIGATION – Court Process – Only a legal practitioner whose name is on the roll is qualified to sign a process.

LITIGATION – Court Process – Signing a Process is fundamental and indispensable to its validity and the name and signature of the legal practitioner must be endorsed on the process so as to authenticate and validate it.

LITIGATION – Court Process – Where a legal practitioner signs a process on behalf of a firm, he must state clearly his name and designation.

LITIGATION – Court Process – Where a legal practitioner writes his name clearly and legibly as signature over a firm's name, such process is valid since the legal practitioner is identifiable and his name is on the roll.

LITIGATION – Court Process – The effect of a wrongly signed process is that the suit will only be struck out and upon correction can be refiled if it is not caught up by statute of limitation.

LITIGATION – Issue – The court is not required to consider an issue that has become academic or hypothetical.

LEGAL PRACTICE – Legal Practitioner – Only a legal practitioner whose name is

on the roll is entitled to practice as barrister and solicitor.

LEGAL PRACTICE – Legal Practitioner – is a person who is entitled to practice as a barrister or solicitor either generally or for the purpose of any particular proceedings.

DEFINITION – Signature – is the act of authenticating and attesting to the validity of a process by a lawyer by putting his name and mark on it.

Facts:

The appellants were customers of the defunct City Express Bank Limited. The bank had extended a facility to the appellants and when it appeared to it that the appellants were unable or unwilling to repay the facility, the bank filed a suit at the Federal High Court against the appellants for the recovery of the debt. In the course of proceedings, the bank was substituted for the 1st respondent following the former's liquidation and take-over by the latter. The suit was commenced via originating summons but the process was not properly signed in accordance with the Legal Practitioner's Act. The appellants filed a counterclaim and after hearing the parties, the counterclaim was dismissed and the court held that the appellants were indebted to the 1st respondent to the tune of ₦47,135,498.15 (Forty Seven Million, One Hundred and Thirty Five Thousand, Four Hundred and Ninety Eight Naira, Fifteen Kobo) including other reliefs.

The appellants were aggrieved and filed a notice of appeal at the Court of Appeal, Lagos division urging the court to set aside the decision of the trial court. One of the issues is whether the court was right to have held that the originating process was duly signed in accordance with the provisions of the law concerning the signing of process.

Held ***(Unanimously allowing the appeal):***

[1] ***Litigation – Jurisdiction – A court is competent and has jurisdiction to hear and determine a suit where it is initiated by due process after fulfilling any condition precedent.***

As laid down in *Madukolu v. Nkemdilim* (1962) 2 NSCC 374 at 379 - 380, a court is competent, *inter alia,* when the case comes before the Court initiated by due process of law and upon the fulfilment of any condition precedent to the exercise of jurisdiction. The substantive provisions of *Sections* 2 and 24 of the *Legal Practitioners' Act* are such that in order for a case to be initiated by due process of law, the court process must have been issued and signed by a legal practitioner. Since the person who signed the process in this matter is unknown, the process is incurably bad. The law is ensconced like the Rock of Gibraltar on the effect of a

court process that is not signed in accordance with the provisions of Sections 2 and 24 of the Legal Practitioners Act. See *Okafor v. Nweke* (supra), *SLB Consortium Ltd v. NNPC* (supra), *First Bank Nig Plc v. Maiwada And Franphino Pharmaceutical Ltd v. Jawa International Ltd* (2012) LPELR (9713) SC, *Ogundele v. Agiri* (2009) 18 NWLR (Pt 1173) 219 at 246-247 and *Oketade v. Adewunmi* (supra) at 73-75. Such a process is incompetent. **(P. 137 lines 10 - 23)**

[2] ***Litigation – Jurisdiction and Competence – are related and dependent on each other and the jurisdiction of a court will be affected where it has the former but lacks the latter.***

The law would appear to be settled that the competence of a court and its jurisdiction to exercise its adjudicatory powers in respect of a matter before it are intertwined. A court could have the jurisdiction in respect of the subject matter, but lack the competence thereby vitiating the effect of the jurisdiction it has. Jurisdiction and competence of a court are complementary. They go hand in hand and are dependent on each other. In order to be properly seised of a matter, a court must have both jurisdiction and competence. Competence of the court is the handmaiden of the jurisdiction of the court. See *Ibeanu v. Ogbeide* (1994) 7 NWLR (Pt 359) 697 at 700-701, *Cotecna International Limited v. Ivory Merchant Bank Limited & Ors* (2006) All FWLR (Pt 315) 26 at 43 and *Sokoto State Govt v. Kamdex Nig. Ltd* (2007) LPELR (3093) 1 at 16. The authorities seem settled that where a court is not competent, it cannot exercise jurisdiction. Therefore since the originating summons in this matter is defective and incompetent, the lower court did not have the jurisdiction to entertain the action since it was not initiated by due process of law, and the incompetent process was a feature that prevented the court from exercising jurisdiction: *Madukolu v. Nkemdilim* (supra). **(P. 137 lines 25 - 40)**

[3] ***Litigation – Jurisdiction – is fundamental and no matter how well conducted, the proceedings of a court are a nullity where the court lacks jurisdiction.***

The issue of jurisdiction is very fundamental and goes to the competence of the court. Where a court is not competent, it is a waste of time to embark on a hearing and determination as whatever decision reached, no matter how brilliant, is a nullity since the defect is extrinsic to the adjudication. In the words of *Obaseki, JSC* in *Oloba v. Akereja* (1988) 3 NWLR (Pt 84) 508 at 520:

> *"If a court or tribunal is not competent to entertain a matter or claim or suit, it is a waste of time for the court to embark on hearing and determination of the suit, matter or claim ... There is*

no justice in exercising a jurisdiction where there is none. It is injustice to the law, the court and to the parties to do so."

The defective originating summons went to the root of the action and the conditions precedent to the exercise of the court's jurisdiction were not met: *Kida v. Ogunmola* (2006) LPELR (1690) 1 and *Braithwaite v. Skye Bank* (2012) LPELR (15532) 1 at 7-8. It was a waste of precious judicial time for the lower court to have gone the whole hog in hearing the action initiated by the defective and incompetent originating summons. The action is deserving of an order striking it out for being incompetent. In the diacritical circumstances, all the proceedings which rested on the incompetent Originating Summons are deemed not to have taken place in law. The Latin maxim is *ex nihilo, nihil fit:* out of nothing, nothing comes. See *Management Enterprises Ltd v. Otusanya* (1987) LPELR (1834) 1 at 74, In *Re: Otuedon* (1995) LPELR (1506) 1 at 16 and *Nzom v. Jinadu* (1987) LPELR (2143) 1 at 44. The incompetent originating summons could not spawn a competent trial.

The originating summons and accompanying processes in this case, (contained at pages 8-83 of the Records), having been found to be fundamentally defective, are hereby struck out for being incompetent and incapable of initiating the proceedings, thereby robbing the lower Court of the jurisdiction to hear and determine the action as initiated. See *SLB Consortium v. NNPC (supra)* and *Adewunmi v. Oketade* (2010) 3 SCNJ 368. **(P. 137 lines 42 - 45; P. 138 lines 1 - 27)**

[4] ***Litigation – Court Process – Only a legal practitioner whose name is on the roll is qualified to sign a process.***

The legal position is now settled beyond peradventure that it is only a legal practitioner qualified to practice law in *Nigeria* that can issue Court processes by virtue of the provisions of *Sections* 2 (1) and 24 of the *Legal Practitioners' Act.* This legal position has been settled since the decision in *Okafor v. Nweke* (2007) 10 NWLR (Pt 1043) 521 where it was held that for a person to be qualified to practice as a legal practitioner, he must have his name on the *Roll of Legal Practitioners* and that what the law provides for is that it is the name of the legal practitioner that is on the *Roll* and not his signature. In the circumstances of the *Okafor v. Nweke* case the process issued in the name of J. H. C. Okolo, SAN & Co. was set aside for being incompetent since J. H. C. Okolo, SAN & Co. was not a name on the *Roll of Legal Practitioners.* The decision in *Okafor v. Nweke* was followed by the Supreme Court in *Ogundele v. Agiri* (2009) 18 NWLR (Pt 1173) 219 at 246 - 247 where a process issued in the name of *Ajibola & Co.* was held to be incompetent. Also in *Oketade v. Adewunmi* (2010) 8 NWLR (Pt 1195) 63 at 73H - 75H, a process issued in the name of *Olujimi*

& *Akeredolu* was held to be incompetent. Furthermore, in *SLB Consortium v. NNPC* (supra) the *Supreme Court* set aside a process issued in the name of *Adewale Adesokan* & *Co.* **(P. 137 lines 42 - 45; P. 138 lines 1 - 27)**

[5] ***Litigation – Court Process – Signing a Process is fundamental and indispensable to its validity and the name and signature of the legal practitioner must be endorsed on the process so as to authenticate and validate it.***

A process prepared and filed in a court of law by a legal practitioner must be signed by the legal practitioner: *SLB Consortium Ltd v. NNPC* (2011) LPELR (3074) 1 at 16 (SC). The name and signature of a person signing a court process are fundamental and indispensable. The importance of signing a court process by the legal practitioner issuing it cannot be understated.

So the signing of a court process is an integral part of the issuance of the court process since it is by signing that the legal practitioner authenticates and validates the process as coming from him. It is not enough to merely scribble a signature without indicating the name and designation of such a person. See *Aromire v. Ajomagberin* (supra) and Appeal No. CA/572/05: *Peak Merchant Bank Ltd v. NDIC* (unreported) delivered on 14th May 2010. **(P. 134 lines 30 - 45; P. 135 line 1)**

[6] ***Litigation – Court Process – Where a legal practitioner signs a process on behalf of a firm, he must clearly state his name and designation.***

It seems to be an established principle that any person signing, endorsing or franking a court process on behalf of a firm or a senior in chambers is required to clearly state his name and designation to show that he is a legal practitioner. This is to avoid a situation where a Clerk, Messenger or Secretary would sign processes filed in Court on behalf of counsel in chambers. Put differently, the law is now certainly trite that where court processes are signed by a legal practitioner in their partnership or firm's names without indicating the name of the practitioner signing the process, such are incompetent and liable to be struck out. The name of the legal practitioner used in enrolling as a Solicitor and Advocate of the Supreme Court must necessarily be stated in the processes. It must also be emphasized, for the avoidance of any doubt, that there is a gulf of legal difference between the name of a legal practitioner simpliciter and the name of a firm of legal practitioners. They are not one and the same, but are different legal entities. **(P. 135 lines 3 - 15)**

[7] ***Litigation – Court Process – Where a legal practitioner writes his name clearly and legibly as signature over a firm's name, such***

process is valid since the legal practitioner is identifiable and his name is on the roll.

Undoubtedly, in *Regd Trustees of Apostolic Church, Lagos Area v. Akindele (supra)* the apex court held that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of the firm in which he carries out his practice. But this decision has to be properly contextualised in order to appreciate the principle it established. The court process in that matter was issued in the name of *J. A. Cole & Co.,* a name, which like in this matter, is not on the *Roll of Legal Practitioners,* but the *Supreme Court* held that the court process was saved by the fact that even though *J. A. Cole & Co.* was not on *the Roll of Legal Practitioners, J. A. Cole, Esq.,* who practices in that name wrote his name as the signature on the court process.

So, it was held that the process having been signed by the name *J. A. Cole*, a duly registered legal practitioner written legibly on it, saved the court process. So in that case, the name written as signature was clear and was ascribed to a legal practitioner.

Recently in *Williams v. Adold/Stamm Int'l (Nig) Ltd* (2017) LPELR (41559) 1 at 15-17 the apex court per Kekere-Ekun, JSC held:

> *"There is no doubt that it has been held in a plethora of decisions of this Court and it is now firmly settled that a Court process that is not signed by a legal practitioner whose name appears on the Roll of legal practitioners and who is entitled to practice as a Barrister and Solicitor as provided for in Sections 2 and 24 (2) (1) of the LPA Cap. 111 LFN 2004 is incompetent and liable to be struck out. See: Oketade v. Adewunmi (supra); Okafor v. Nweke (supra); F.B.N. Plc. v. Maiwada (2013) 5 NWLR (Pt. 1348) 1.433. In S.L.B. Consortium Ltd. v. N.N.P.C. (2011) 9 NWLR (Pt. 1252) 317 @ 331. B-332A, this Court affirmed its earlier decision in Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele (1967) NMLR 263 and held that a process prepared and filed in Court by a legal practitioner must be signed by the legal practitioner, and it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice.*
>
> *On page 14 of the applicant's written address, at the bottom of the page, the handwritten name, LADI WILLIAMS appears above two names, Chief Ladi Rotimi Williams, SAN and Chris I. Eneje... the name LADI Williams, though handwritten, is very clear and legible. The respondents are not contending that Chief Ladi Rotimi*

Williams, SAN is not the same person as LADI WILLIAMS who signed the process or that the person who Signed the process is not a legal practitioner whose name is on the roll of legal practitioners entitled to practice law in Nigeria. I am satisfied that there is no doubt as to who signed the process and that he is a legal practitioner whose name is on the roll."

Therefore on the state of the authorities, it seems that where the name of a legal practitioner is clearly and legibly written as signature over a firm name, it would serve to save the process.

In *Aromire v. Ajomagberin* (supra), the process in that case was issued in the name of *Kayode Sofola, SAN.* Somebody signed on behalf of *Kayode Sofola, SAN.* The person who signed did not indicate his name and designation and this court held that the court process which was signed by an unknown person for *Kayode Sofola, SAN* was incompetent. Equally, in *Peak Merchant Bank Ltd v. NDIC (supra)* the court process in that case was issued in the names of *Babajide Koku, Esq.* and *L.* O. *Iluyomade, Esq.* The person who signed the process was not indicated and this court held that the process was incompetent. The cases of *Aromire And Peak Merchant Bank Ltd* seem to be on all fours with the facts of the instant matter. The question remains, who is the signatory? Is the signatory a legal practitioner? There is no way it can be ascertained if the signature belongs to a legal practitioner as the signature is not legible. By *Sections* 2 (1) and 24 of the *Legal Practitioners' Act,* only a legal practitioner can sign court processes. The importance attached to the signing of a court process is such that where it cannot be said who signed a court process; the court process is incurably bad. A signature without the name of the counsel appending the signature is incurably bad - per *Rhodes-Vivour, JSC* in *SLB Consortium Ltd v. NNPC* (supra).
(P. 135 lines 28 - 45; P. 136 lines 1 - 45; P. 137 lines 1 - 20)

[8] ***Litigation – Court Process – The effect of a wrongly signed process is that the suit will only be struck out and upon correction can be refiled if it is not caught up by statute of limitation.***

It must however be stated for added emphasis that, as in *Okafor v. Nweke* (supra), the effect of this is not to shut out the aggrieved litigants from further ventilating their grievances before the hallowed courts of justice. It merely presents them with an opportunity to present a proper claim before the court of trial, if they so wish, and to pursue it to its logical conclusion. Happily, by the provisions of Section 44 of the Nigeria Deposit Insurance Corporation Act, the statute of limitation does not run in an action by the 1st Respondent to recover a debt owed a failed insured financial institution like City Express Bank Limited, the original 1st Plaintiff in the action at the

lower court. The right of action in respect of the cause of action therefore remains extant. **(P. 135 lines 27 - 36)**

[9] ***Litigation – Issue – The court is not required to consider an issue that has become academic or hypothetical.***

In the light of all the above and since this Court does not act in *vain,* there is no further need to consider the substantive issues raised in the Appeal as they have been rendered hypothetical and/or academic. See *Nigerian Army v. Samuel* (2013) LPELR (20931) (SC). **(P. 138 lines 39 - 42)**

[10] ***Legal Practice – Legal Practitioner – Only a legal practitioner whose name is on the roll is entitled to practice as barrister and solicitor.***

Now, Section 2 (a) of the Legal Practitioners Act provides:

> "2. (1) *Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor, if and only if, his name is on the Roll."*
> **(P. 133 line 44; P. 134 lines 1 - 3)**

[11] ***Legal Practice – Legal Practitioner – is a person who is entitled to practice as a barrister or solicitor either generally or for the purpose of any particular proceedings.***

Equally, Section 24 of the Legal Practitioners Act defines a *legal practitioner* as meaning:

> *"a person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings."*
> **(P. 134 lines 5 - 10)**

[12] ***Definition – Signature – is the act of authenticating and attesting to the validity of a process by a lawyer by putting his name and mark on it.***

The verb *'sign'* denotes the identification of a document/ record, *et al,* by means of a signature mark or other symbol with the intent to authenticate it as an act or agreement of the person identifying it. Similarly, the noun *'signature'* is defined as denoting the act of putting one's name at the end of an instrument to attest its validity: See Black's Law Dictionary (8th Edition), *Onward Enterprises Ltd v. Olam Int'l Ltd* (2010) All FWLR (Pt 531) 1503 at 1512 and *Aromire v. Ajomagberin* (2011) LPELR (3809) 1 (CA). **(P. 134 lines 34 - 40)**

OGAKWU, JCA (Delivering the lead Judgment): This appeal was spawned by the action at the Federal High Court, Lagos Division in **SUIT NO. FHC/L/CS/405 2000: CITY EXPRESS BANK LIMITED & ANOR VS. CHAWALEKS NIGERIA LIMITED & ORS.** The action was for the recovery of the amount outstanding on the facility which was granted to the Appellants herein, who were the Defendants at the lower court. City Express Bank, the original 1st Plaintiff at the lower court was in the course of the proceedings at the lower court substituted with Nigeria Deposit Insurance Corporation, the 1st Respondent on record.

The action was commenced by Originating Summons which is at pages 8-9 of Volume I of the Records. However, the lower court later ordered parties to file and exchange pleadings. The Appellants then set up a counterclaim. The matter went to trial and after the *inter partes* hearing at which testimonial and documentary evidence was adduced, the lower court entered judgment in favour of the Respondents. The Appellants were dissatisfied with the decision of the lower court and appealed against the same. The judgment of the lower court which was delivered on 20th March 2014 is at pages 1382 to 1410 of Volume III of the Records, while the Notice of Appeal is at pages 1411 to 1418 of Volume III of the Records.

The Records of Appeal having been compiled and transmitted, the parties filed and exchanged briefs of argument. The Appellants Brief of Argument was filed on 29th September 2014, while the Respondents Brief of Argument was filed on 6th May 2016, but deemed as properly filed on 6th May 2018. At the hearing of the appeal, the Appellants, though duly served with a hearing notice, were absent, consequent upon which the court invoked the provisions of Order 19 Rule 9 (4) of the Court of Appeal Rules, 2016, to treat the appeal as having been argued by the Appellants. The Respondents Counsel then identified the relevant briefs and urged the court to dismiss the appeal.

The Appellants distilled six issues for determination as follows:

> *"1. Whether considering the decision in the case of Emmanuel Okafor & Ors v. Augustine Nweke (2007) 3 S.C. (Pt. II) 15, the learned trial Judge was right to have held that the originating process dated 26th April, 2000 was properly filed within the context of section 2(1) of the Legal Practitioners Act.*
>
> *2. Whether the learned trial judge was right to have found the Deed of Debenture to be competent and held the Appellants liable under the Deed of Debenture?*
>
> *3. Whether the learned trial judge was right to have entered judgment in favour of the Respondents and found the Appellants liable to pay the judgment in the sum of ₦47,135,498.15 amongst other orders.*

4. *Whether the learned trial judge was right to have held that the 1st Respondent was by the wording of **Exhibit NDIC 3** entitled to have charged compound interest in light of the case of UBN v. Ozigi (1994) 3 [sic] (Pt.333) 385.*

5. *Whether, in the face of **Exhibit NDIC 5** the learned trial judge ought to have granted the Respondents' 1st relief with interest and subsequently granted the alternative relief in anticipation of if the Appellants do not abide by relief 1 of the claim which the court had already granted.*

6. *Whether the failure of the learned trial judge to determine the Appellants' Counterclaim in one way or the other amounts to a breach of the Appellants' right to fair hearing?"*

The Respondents on their part formulated five issues for determination, namely:

"1. Whether the learned trial judge was right when he held that the Originating Process dated 26th April, 2000 satisfied the requirement of S.2 Legal Practitioners Act, and therefore is valid in law.

2. *Whether in view of the pleadings and uncontroverted evidence before the trial court, the learned trial judge was right to hold that the 1st Appellant is indebted to the 1st Respondent, and liable to pay the sum of ₦47,135,498.15 to the 1st Respondent being the outstanding amount due under the Facility Agreement.*

3. *Whether having regard to the Facility Agreement (exhibit NDIC 2) and the Debenture Deed (exhibit NDIC 3), the learned trial judge was right to hold that the 1st Respondent could charge compound interest on the credit facility granted to the 1st Appellant.*

4. *Whether having regard to the Facility Agreement (exhibit NDIC 2) and Chawaleks Nigeria Limited's Statement of Account exhibit NDIC 5, the learned trial judge was right to have granted the 1st and 2nd Respondents' relief with interest and the alternative reliefs if the Appellants do not abide by the 1st and 2nd Reliefs.*

5. *Whether the learned trial judge considered and determined the Appellants' counter-claim."*

The starting point in the consideration and resolution of the disceptation in this appeal is issue number one distilled by the parties. The said issue number one even through differently worded by the parties is threshold in nature as it challenges

the originating process by which the action was initiated at the lower court. On account of its being succinct, the formulation of the issue by the Respondent will be our guide. The manner of resolution of the said issue will be the desiderata with respect to the other issues raised. This is so because a resolution of the said issue number one in favour of the Appellants will mean that the action is incompetent, and it will have the consequence of rendering otiose and academic the other issues raised.

ISSUE NUMBER ONE

Whether the learned trial judge was right when he held that the Originating Process dated 26th April, 2000 satisfied the requirement of Section 2 of the Legal Practitioners Act, and therefore valid in law.

SUBMISSIONS OF THE APPELLANTS' COUNSEL

The Appellants submit that having challenged the competence of the Originating Summons, the lower court held that the name *"Shakira Odogwu"* was written over and above *Messrs Kayode Sofola's* Chambers on the Originating Summons and that it has not been shown that the said *"Shakira Odogwu"* is not a person that can practice law in Nigeria. The Appellants maintain that the Originating Summons was not signed by a legal practitioner whose name is on the Roll as required by Sections 2 (1) and 24 of the Legal Practitioners Act. The cases of *Peak Merchant Bank Ltd v. NDIC* Appeal No. CA/L/572/2005 *(unreported)* delivered on 14th May 2010, *ACB v. Haston (Nig) Ltd* (1997) 8 NWLR (Pt 515) 110 at 125-126, *Braithwaite v. Skye Bank* (2012) 12 SC (Pt 1) at 13 to 16 and *FBN v. Maiwada* (2013) 6 CLRN 26 were referred to. It was conclusively submitted that the effect of the originating processes not having been signed by a legal practitioner is that the processes are a nullity *ab initio,* and that being incurably bad, nothing can be built on it vide *Macfoy v. UAC Ltd* (1962) AC 152 at 160.

SUBMISSIONS OF THE RESPONDENTS COUNSEL

The Respondents assert that the Originating Summons is valid and competent having satisfied the requirement of the law as the same was signed by *"Shakirah Odogun",* a legal practitioner in *Kayode Sofola's* Chambers, by writing her name on the process. The cases of *SLB v. NNPC* (2011) 9 NWLR (Pt 1252) 317 and *Regd Trustees of Apostolic Church Lagos Area v. Akin Dele* (1967) NMLR 263 were relied upon. It was opined that it could be verified from the Roll of Legal Practitioners whether the name of the signatory in issue is that of a qualified legal practitioner.

RESOLUTION

Now, Section 2 (a) of the Legal Practitioners Act provides:

"2. (1) *Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor, if and only if, his name is on the Roll."*

Equally, Section 24 of the Legal Practitioners Act defines a *legal practitioner* as meaning:

"a person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings."

The legal position is now settled beyond peradventure that it is only a legal practitioner qualified to practice law in *Nigeria* that can issue Court processes by virtue of the provisions of *Sections* 2 (1) and 24 of the *Legal Practitioners' Act.* This legal position has been settled since the decision in *Okafor v. Nweke* (2007) 10 NWLR (Pt 1043) 521 where it was held that for a person to be qualified to practice as a legal practitioner, he must have his name on the *Roll of Legal Practitioners* and that what the law provides for is that it is the name of the legal practitioner that is on the *Roll* and not his signature. In the circumstances of the *Okafor v. Nweke* case the process issued in the name of J. H. C. Okolo, SAN & Co. was set aside for being incompetent since J. H. C. Okolo, SAN & Co. was not a name on the *Roll of Legal Practitioners.* The decision in *Okafor v. Nweke* was followed by the Supreme Court in *Ogundele v. Agiri* (2009) 18 NWLR (Pt 1173) 219 at 246 - 247 where a process issued in the name of *Ajibola* & *Co.* was held to be incompetent. Also in *Oketade v. Adewunmi* (2010) 8 NWLR (Pt 1195) 63 at 73H - 75H, a process issued in the name of *Olujimi* & *Akeredolu* was held to be incompetent. Furthermore, in *SLB Consortium v. NNPC* (supra) the *Supreme Court* set aside a process issued in the name of *Adewale Adesokan* & *Co.*

A process prepared and filed in a court of law by a legal practitioner must be signed by the legal practitioner: *SLB Consortium Ltd v. NNPC* (2011) LPELR (3074) 1 at 16 (SC). The name and signature of a person signing a court process are fundamental and indispensable. The importance of signing a court process by the legal practitioner issuing it cannot be understated. The verb *'sign'* denotes the identification of a document/ record, *et al,* by means of a signature mark or other symbol with the intent to authenticate it as an act or agreement of the person identifying it. Similarly, the noun *'signature'* is defined as denoting the act of putting one's name at the end of an instrument to attest its validity: See Black's Law Dictionary (8th Edition), *Onward Enterprises Ltd v. Olam Int'l Ltd* (2010) All FWLR (Pt 531) 1503 at 1512 and *Aromire v. Ajomagberin* (2011) LPELR (3809) 1 (CA). So the signing of a court process is an integral part of the issuance of the court process since it is by signing that the legal practitioner authenticates and validates the process as coming from him. It is not enough to merely scribble a signature without indicating the name and designation of such a person. See *Aromire v. Ajomagberin* (supra) and Appeal No. CA/572/05: *Peak Merchant Bank Ltd v. NDIC*

(unreported) delivered on 14th May 2010.

It seems to be an established principle that any person signing, endorsing or franking a court process on behalf of a firm or a senior in chambers is required to clearly state his name and designation to show that he is a legal practitioner. This is to avoid a situation where a Clerk, Messenger or Secretary would sign processes filed in Court on behalf of counsel in chambers. Put differently, the law is now certainly trite that where court processes are signed by a legal practitioner in their partnership or firm's names without indicating the name of the practitioner signing the process, such are incompetent and liable to be struck out. The name of the legal practitioner used in enrolling as a Solicitor and Advocate of the Supreme Court must necessarily be stated in the processes. It must also be emphasized, for the avoidance of any doubt, that there is a gulf of legal difference between the name of a legal practitioner simpliciter and the name of a firm of legal practitioners. They are not one and the same, but are different legal entities.

The originating summons in this matter is shown at page 9 of the Records to have been taken out by ***MESSRS KAYODE SOFOLA'S CHAMBERS.*** It is not disputed that this is a firm name which is not on the Roll of Legal Practitioners. The crux of the disceptation is whether the name of a legal practitioner was written as signature above ***MESSRS KAYODE SOFOLA'S CHAMBERS*** on the Originating Summons. For the lower Court, the said signature is the name, ***Shakira Odogwu.*** The Respondents on their part contend that the said signature is the name, ***Shakirah Odogun.*** Already, from the name ascribed to the signature by the lower court and that ascribed to it by the Respondents, it is apparent that the signature which appears on the process is not legible enough to be ascribed a clear name.

Undoubtedly, in *Regd Trustees of Apostolic Church, Lagos Area v. Akindele (supra)* the apex court held that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of the firm in which he carries out his practice. But this decision has to be properly contextualised in order to appreciate the principle it established. The court process in that matter was issued in the name of *J. A. Cole & Co.,* a name, which like in this matter, is not on the *Roll of Legal Practitioners,* but the *Supreme Court* held that the court process was saved by the fact that even though *J. A. Cole & Co.* was not on *the Roll of Legal Practitioners, J. A. Cole, Esq.,* who practices in that name wrote his name as the signature on the court process.

So, it was held that the process having been signed by the name *J. A. Cole*, a duly registered legal practitioner written legibly on it, saved the court process. So in that case, the name written as signature was clear and was ascribed to a legal practitioner.

Recently in *Williams v. Adold/Stamm Int'l (Nig) Ltd* (2017) LPELR (41559) 1 at 15-17 the apex court per Kekere-Ekun, JSC held:

"There is no doubt that it has been held in a plethora of decisions of this Court and it is now firmly settled that a Court process that is not signed by a legal practitioner whose name appears on the Roll of legal practitioners and who is entitled to practice as a Barrister and Solicitor as provided for in Sections 2 and 24 (2) (1) of the LPA Cap. 111 LFN 2004 is incompetent and liable to be struck out. See: Oketade v. Adewunmi (supra); Okafor v. Nweke (supra); F.B.N. Plc. v. Maiwada (2013) 5 NWLR (Pt. 1348) 1.433. In S.L.B. Consortium Ltd. v. N.N.P.C. (2011) 9 NWLR (Pt. 1252) 317 @ 331. B-332A, this Court affirmed its earlier decision in Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele (1967) NMLR 263 and held that a process prepared and filed in Court by a legal practitioner must be signed by the legal practitioner, and it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice.

On page 14 of the applicant's written address, at the bottom of the page, the handwritten name, LADI WILLIAMS appears above two names, Chief Ladi Rotimi Williams, SAN and Chris I. Eneje... the name LADI Williams, though handwritten, is very clear and legible. The respondents are not contending that Chief Ladi Rotimi Williams, SAN is not the same person as LADI WILLIAMS who signed the process or that the person who Signed the process is not a legal practitioner whose name is on the roll of legal practitioners entitled to practice law in Nigeria. I am satisfied that there is no doubt as to who signed the process and that he is a legal practitioner whose name is on the roll."

Therefore on the state of the authorities, it seems that where the name of a legal practitioner is clearly and legibly written as signature over a firm name, it would serve to save the process. I have undertaken an insightful, methodical and painstaking examination of the Originating Summons on page 9 of the Records, I am unable to make out the signature thereon to be the name *Shakira Odogwu* as found by the lower court, or *Shakirah Odogun* as contended by the Respondents. *Paucis verbis,* the signature on the Originating Summons is not sufficiently legible in order for it to be ascertained whether the signatory is a legal practitioner or not as the *Roll of Legal Practitioners* contains names and not signatures.

In *Aromire v. Ajomagberin* (supra), the process in that case was issued in the name of *Kayode Sofola, SAN.* Somebody signed on behalf of *Kayode Sofola, SAN.* The person who signed did not indicate his name and designation and this court held that the court process which was signed by an unknown person for *Kayode Sofola, SAN* was incompetent. Equally, in *Peak Merchant Bank Ltd v. NDIC (supra)* the court process in that case was issued in the names of *Babajide Koku, Esq.* and *L.* O. *Iluyomade, Esq.* The person who signed the process was not indicated and this court held that the process was incompetent. The cases of *Aromire And Peak Merchant Bank Ltd* seem to be on all fours with the facts of the

instant matter. The question remains, who is the signatory? Is the signatory a legal practitioner? There is no way it can be ascertained if the signature belongs to a legal practitioner as the signature is not legible. By *Sections* 2 (1) and 24 of the *Legal Practitioners' Act,* only a legal practitioner can sign court processes. The importance attached to the signing of a court process is such that where it cannot be said who signed a court process; the court process is incurably bad. A signature without the name of the counsel appending the signature is incurably bad - per *Rhodes-Vivour, JSC* in *SLB Consortium Ltd v. NNPC* (supra).

As laid down in *Madukolu v. Nkemdilim* (1962) 2 NSCC 374 at 379 - 380, a court is competent, *inter alia,* when the case comes before the Court initiated by due process of law and upon the fulfilment of any condition precedent to the exercise of jurisdiction. The substantive provisions of *Sections* 2 and 24 of the *Legal Practitioners' Act* are such that in order for a case to be initiated by due process of law, the court process must have been issued and signed by a legal practitioner. Since the person who signed the process in this matter is unknown, the process is incurably bad. The law is ensconced like the Rock of Gibraltar on the effect of a court process that is not signed in accordance with the provisions of Sections 2 and 24 of the Legal Practitioners Act. See *Okafor v. Nweke* (supra), *SLB Consortium Ltd v. NNPC* (supra), *First Bank Nig Plc v. Maiwada And Franphino Pharmaceutical Ltd v. Jawa International Ltd* (2012) LPELR (9713) SC, *Ogundele v. Agiri* (2009) 18 NWLR (Pt 1173) 219 at 246-247 and *Oketade v. Adewunmi* (supra) at 73-75. Such a process is incompetent.

The law would appear to be settled that the competence of a court and its jurisdiction to exercise its adjudicatory powers in respect of a matter before it are intertwined. A court could have the jurisdiction in respect of the subject matter, but lack the competence thereby vitiating the effect of the jurisdiction it has. Jurisdiction and competence of a court are complementary. They go hand in hand and are dependent on each other. In order to be properly seised of a matter, a court must have both jurisdiction and competence. Competence of the court is the handmaiden of the jurisdiction of the court. See *Ibeanu v. Ogbeide* (1994) 7 NWLR (Pt 359) 697 at 700-701, *Cotecna International Limited v. Ivory Merchant Bank Limited & Ors* (2006) All FWLR (Pt 315) 26 at 43 and *Sokoto State Govt v. Kamdex Nig. Ltd* (2007) LPELR (3093) 1 at 16. The authorities seem settled that where a court is not competent, it cannot exercise jurisdiction. Therefore since the originating summons in this matter is defective and incompetent, the lower court did not have the jurisdiction to entertain the action since it was not initiated by due process of law, and the incompetent process was a feature that prevented the court from exercising jurisdiction: *Madukolu v. Nkemdilim* (supra).

The issue of jurisdiction is very fundamental and goes to the competence of the court. Where a court is not competent, it is a waste of time to embark on a hearing and determination as whatever decision reached, no matter how brilliant, is a nullity since the defect is extrinsic to the adjudication. In the words of *Obaseki,*

JSC in *Oloba v. Akereja* (1988) 3 NWLR (Pt 84) 508 at 520:

> *"If a court or tribunal is not competent to entertain a matter or claim or suit, it is a waste of time for the court to embark on hearing and determination of the suit, matter or claim ... There is no justice in exercising a jurisdiction where there is none. It is injustice to the law, the court and to the parties to do so."*

The defective originating summons went to the root of the action and the conditions precedent to the exercise of the court's jurisdiction were not met: *Kida v. Ogunmola* (2006) LPELR (1690) 1 and *Braithwaite v. Skye Bank* (2012) LPELR (15532) 1 at 7-8. It was a waste of precious judicial time for the lower court to have gone the whole hog in hearing the action initiated by the defective and incompetent originating summons. The action is deserving of an order striking it out for being incompetent. In the diacritical circumstances, all the proceedings which rested on the incompetent Originating Summons are deemed not to have taken place in law. The Latin maxim is *ex nihilo, nihil fit:* out of nothing, nothing comes. See *Management Enterprises Ltd v. Otusanya* (1987) LPELR (1834) 1 at 74, In *Re: Otuedon* (1995) LPELR (1506) 1 at 16 and *Nzom v. Jinadu* (1987) LPELR (2143) 1 at 44. The incompetent originating summons could not spawn a competent trial.

The originating summons and accompanying processes in this case, (contained at pages 8-83 of the Records), having been found to be fundamentally defective, are hereby struck out for being incompetent and incapable of initiating the proceedings, thereby robbing the lower Court of the jurisdiction to hear and determine the action as initiated. See *SLB Consortium v. NNPC (supra)* and *Adewunmi v. Oketade* (2010) 3 SCNJ 368. It must however be stated for added emphasis that, as in *Okafor v. Nweke* (supra), the effect of this is not to shut out the aggrieved litigants from further ventilating their grievances before the hallowed courts of justice. It merely presents them with an opportunity to present a proper claim before the court of trial, if they so wish, and to pursue it to its logical conclusion. Happily, by the provisions of Section 44 of the Nigeria Deposit Insurance Corporation Act, the statute of limitation does not run in an action by the 1st Respondent to recover a debt owed a failed insured financial institution like City Express Bank Limited, the original 1st Plaintiff in the action at the lower court. The right of action in respect of the cause of action therefore remains extant.

Concomitantly, this issue number one must ineluctably be resolved in favour of the Appellants. In the light of all the above and since this Court does not act in *vain,* there is no further need to consider the substantive issues raised in the Appeal as they *have* been rendered hypothetical and/or academic. See *Nigerian Army v. Samuel* (2013) LPELR (20931) (SC). In a summation, the appeal therefore succeeds and the Respondent's action which is incompetent is hereby struck out. The parties are to bear their respective costs of this appeal.

ADEJUMO, JCA: I have had the advantage of reading in draft the judgment delivered by my learned brother, UGOCHUKWU ANTHONY OGAKWU, JCA in this appeal.

I agree that the appeal is meritorious having been unable to make out the signature on the originating summons as to whether it is 'Shakira Odogwu' as found by the lower court or 'Shakirah Odogun' as contended by the Respondents.

There is a stark distinction between the name made out by the High Court Judge and on the record; this has been compounded by the Respondent counsel in his brief, leading to a pointer that the signature or name is not identifiable as a legal practitioner and therefore not traceable to the roll of call. It would amount to sheer speculation or conjecture to hold a contrary view.

This issue therefore goes to the competence of the originating summons and also affects the jurisdiction of the Court to exercise its adjudicatory powers.

This court therefore has no choice than to agree with the lead judgment and to strike out the originating summons and the accompanying documents for being incompetent.

For this and the fuller reasons contained in the lead judgment, the appeal accordingly succeeds. I also abide by all consequential orders in the lead judgment.

TOBI, JCA: My learned brother, **Ugochukwu Anthony Ogakwu, JCA** obliged me his lead judgment which I had the privilege of reading in draft. I agree with the reason and conclusions reached therein.

I have nothing to add as my learned brother has sufficiently covered the field on the subject of the incompetence of the originating process in the matter.

I also allow the appeal and struck out the originating process on ground of incompetence. I abide by the order of cost.

Cases cited in the Judgment

ACB v. Haston (Nig) Ltd (1997) 8 NWLR (Pt 515) 110
Adewunmi v. Oketade (2010) 3 SCNJ 368
Aromire v. Ajomagberin (2011) LPELR (3809) 1 (CA)
Braithwaite v. Skye Bank (2012) 12 SC (Pt 1) 13
Cotecna International Limited v. Ivory Merchant Bank Limited & Ors (2006) All FWLR (Pt 315) 26
Emmanuel Okafor & Ors v. Augustine Nweke (2007) 3 S.C. (Pt. II) 15
FBN v. Maiwada (2013) 6 CLRN 26
Franphino Pharmaceutical Ltd v. Jawa International Ltd (2012) LPELR (9713) SC
Ibeanu v. Ogbeide (1994) 7 NWLR (Pt 359) 697
Kida v. Ogunmola (2006) LPELR (1690) 1

Madukolu v. Nkemdilim (1962) 2 NSCC 374
Management Enterprises Ltd v. Otusanya (1987) LPELR (1834) 1
Nigerian Army v. Samuel (2013) LPELR (20931) (SC)
Nzom v. Jinadu (1987) LPELR (2143) 1
Ogundele v. Agiri (2009) 18 NWLR (Pt 1173) 219
Okafor v. Nweke (2007) 10 NWLR (Pt 1043) 521
Oketade v. Adewunmi (2010) 8 NWLR (Pt 1195) 63
Oloba v. Akereja (1988) 3 NWLR (Pt 84) 508
Onward Enterprises Ltd v. Olam Int'l Ltd (2010) All FWLR (Pt 531) 1503
Peak Merchant Bank Ltd v. NDIC Appeal No. CA/L/572/2005 *(unreported)* delivered on 14th May 2010
Re: Otuedon (1995) LPELR (1506) 1
Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele (1967) NMLR 263
S.L.B. Consortium Ltd. v. N.N.P.C. (2011) 4 CLRN 1
Sokoto State Govt v. Kamdex Nig. Ltd (2007) LPELR (3093) 1
Williams v. Adold/Stamm Int'l (Nig) Ltd (2017) LPELR (41559) 1

Foreign case cited in the Judgment
Macfoy v. UAC Ltd (1962) AC 152

Statutes cited in the Judgment
Sections 2(1) (a) and 24 (2) (1) of the Legal Practitioners Act Cap. 111 LFN 2004
Section 44 of the Nigeria Deposit Insurance Corporation Act, 2006

Rules of Court cited in the Judgment
Order 19 Rule 9 (4) of the Court of Appeal Rules, 2016

Book referred to in the Judgment
Black's Law Dictionary (8th Edition)

History:

HIGH COURT
Federal High Court (Lagos Division)

COURT OF APPEAL (Lagos Division)
Ugochukwu Anthony Ogakwu, JCA ***(Presided & Read the lead Judgment)***
Abimbola Osarague Obaseki-Adejumo, JCA
Ebiowei Tobi, JCA

Counsel:
A.O. Wahab, Esq. with Opeyemi Bello, Esq. and Ms. Tobiloba Adebayo for the Respondents.

MR IKE OKEKE v. MR. NWAKA INEM; INEM VENTURES LTD; CITIZENS INVESTMENT AND SECURITIES LTD; ENTERPRISE BANK LIMITED.

HIGH COURT OF LAGOS STATE
(IKEJA DIVISION)

SUIT NO: LD/1779/2005
TUESDAY 13TH FEBRUARY, 2018

(BANKOLE-OKI [MS], J)

COMPANY LAW – Legal Personality – A parent company and its subsidiary have separate legal personalities and the act of one cannot be imputed to the other except where one acted as an agent for the other.

CONTRACT – Offer and Acceptance – In the absence of a definite offer and acceptance, parties cannot be bound by a promise based on a contingency or an event which is yet to crystalize.

CONTRACT – Guarantee – is an undertaking by a third party to pay a debt or do an act where the debtor fails to perform its obligation to the creditor.

LIMITATION LAW – Debt Recovery – A claim for recovery of debt is statute barred if initiated after six years from the date the cause of action accrued.

Facts:

In 2004, the claimant advanced a loan of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) to the 1st defendant in order to import certain goods. The parties agreed that the loan was to attract 34% interest rate per annum and that the loan was to be paid back in two months. The goods were imported in the 2nd defendant's name. The 1st and 2nd defendants defaulted in repayment of the loan after it fell due and the claimant filed a suit against them and the 3rd defendant at the High Court of Lagos State to recover the total sum of ₦3,698,333.00 (Three Million, Six Hundred and Ninety Eight Thousand, Three Hundred and Thirty Three Naira) being the principal sum and the accrued interest. The case of the claimant against the 3rd defendant was that it owned the warehouse where the goods were kept and that it made an undertaking, after it became aware of the 1st and 2nd defendants' indebtedness to the claimant that it was going to guarantee payment to it. The 3rd defendant was also a creditor of the 1st and 2nd defendants which secured its interest in the goods by being in possession of the goods and coordinating its sale.

After being served with the originating process, the 1st and 2nd defendants did not file any defence. The 3rd respondent however filed a defence. The claimant applied to join a 4th defendant (Enterprise Bank Limited) alleged to have received and was

in possession of the proceeds of the sale of the goods. The court granted the application. Summary judgment was entered against the1st and 2nd defendants in the amount claimed. The claimants sought an order of the court to make the 3rd defendant and Enterprise Bank Limited liable for the indebtedness of the 1st and 2nd defendants. The claimant's position was predicated on the allegation that the 4th defendant is a shareholder in the 3rd defendant and as such should be liable to it for the indebtedness of the 1st and 2nd defendants.

Held ***(Granting the claims against the 1st and 2nd defendants and dismissing the claims against the 3rd and 4th defendants):***

[1] ***Company Law – Legal Personality – A parent company and its subsidiary have separate legal personalities and the act of one cannot be imputed to the other except where one acted as an agent for the other.***

In the case of: *Union Beverages Ltd v. Pepsicola International Ltd & Ors* (1994) LPELR-3397(SC), a case relied on by the learned counsel, the Court held that the act of a subsidiary company cannot be imputed to the parent company, nor can the act of the parent company, be imputed to the subsidiary company.

The Court went on to hold that each of the Defendants were corporate bodies having their own separate legal personalities capable of suing or being sued in their own name, unless one of them was acting as agent to the other one. **(P. 152 lines 25 - 33)**

[2] ***Contract – Offer and Acceptance – In the absence of a definite offer and acceptance, parties cannot be bound by a promise based on a contingency or an event which is yet to crystalize.***

An intention or even a promise based on a contingency or an event, cannot constitute a contract. See the case of: *Ajayi Obe v. Executive Secretary* (1975) 3 S.C 1, where the Court held that one of the most elementary rules of the law of contract is that there must be a definite offer by the offeror and a definite acceptance by the offeree"

Also see the case of: *Nneji v. Zakhem Con. (Nig) Ltd* (2006) 12 NWLR (Pt 994) @ 293. **(P. 150 lines 35 - 42)**

[3] ***Contract – Guarantee – is an undertaking by a third party to pay a debt or do an act where the debtor fails to perform its obligation to the creditor.***

A Guarantee has been defined as a promise to answer for the payment of

some debt or the performance of some duty, in case of the failure of another who is liable in the first instance. Thus it is an undertaking to do something" See the case of: *Olam Nig Ltd v. Intercontinental Bank Ltd* (2009) LPELR-8275 CA. **(P. 151 lines 19 - 22)**

[4] ***Limitation Law – Debt Recovery – A claim for recovery of debt is statute barred if initiated after six years from the date the cause of action accrued.***

It is trite that by virtue of the Limitation Law, in an action for debt recovery, the Claimant must file the Suit within six years of the cause of action arising. **(P. 152 lines 4 - 5)**

JUDGMENT (Delivered by BANKOLE-OKI [MS], J): This Suit was commenced by a Writ of Summons and Statement of Claim dated 14th October, 2005.

The Claimant claimed against the three Defendants, jointly and severally, for the following reliefs:

1. The sum of ₦3,698,333.00 (Three Million, Six Hundred and Ninety Eight Thousand, Three Hundred and Thirty Three Naira) being money payable by the Defendants to the Claimant being the sum of ₦3,500,000.00 lent by the Claimant to the 1st Defendant on 15th March, 2004 and interest thereon in the sum of ₦198,333.00 for two months at the rate of 34% per annum which the Defendants agreed to pay.

2. Interest on that total sum at the rate of 34% per annum beginning from the 15th day of March, 2004 until judgment and thereafter at the rate of 10% until judgment sum is fully paid.

3. An Order for an account by the 3rd Defendant of all sums of money so far realised from the sale of the goods and the stock of the goods financed with the loan given to the 1st Defendant by the Claimant and warehoused by the 3rd Defendant in the name of the 2nd Defendant.

4. An Order of injunction restraining the Defendants jointly and severally from taking delivery of the three container loads of goods in the name of the 2nd Defendant presently lying at the Apapa Ports pending the hearing and determination of this suit OR :

5. IN THE ALTERNATIVE: AN ORDER that the proceeds from the sale of the goods in the three containers imported by the Defendants presently lying at Apapa Port be paid into an interest

yielding account with the First Bank of Nigeria PLC Marina, Lagos or United Bank For Africa PLC, Marina Lagos in the name of the Claimant to be jointly operated by the 1st Defendant and the Claimant pending the hearing and determination of this suit.

6. An Order of Court that the Defendants shall pay to the Claimant, the total cost of this action assessed at ₦50,000.00 (Fifty Thousand Naira).

The 1st and 2nd Defendants did not file any processes in this Suit.

The 3rd Defendant however sought to have its name struck out from the Suit on the grounds that there was no cause of action against it. The Application was refused.

During the course of the proceedings, Summary Judgment, was entered on the 12/12/2006, in favour of the Claimant, against the 1st and 2nd Defendants in this Suit, for the amount claimed together with the interest.

The Claims against the 3rd Defendant were thereafter set down for trial.

On the Application of the Claimant, the 4th Defendant (Enterprise Bank Limited) was joined as 4th Defendant in this Suit.

Trial in this Suit commenced against the 3rd and 4th Defendants, on the 13th May, 2014. The 3rd Defendant did not give evidence in this Suit until the trial was concluded and the other parties had filed their Final Written Addresses. The Court, however at a later stage, granted leave to re- open the trial to enable the 3rd Defendant to participate in the trial.

The Claimant gave evidence as CW1, and adopted his Witness Statement on Oath dated 12th November, 2012 as his evidence in chief.

CW1 testified that he was a lawyer and Assistant General Manager and Head of Legal at FSB International Bank Plc.

It is the case of the Claimant that sometime in 2004, he gave a loan to the 1st Defendant for the amount of ₦3,500,000.00 (Three Million Five Hundred Thousand) to enable him to procure his goods which were ready for shipment from abroad.

That it was agreed that the money would be paid back within 2 months and there would be an interest of 34% per annum. That, consequently, the money to be paid back after two months was to be ₦3,698,333.33. (Three Million Six Hundred and Ninety Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo)

The Claimant avers that the goods were imported in the name of the 2nd Defendant,

the Company of which the 1st Defendant, was the Managing Director. That he was also aware that the 3rd Defendant also extended credit facilities to the 1st Defendant, for the importation of the said goods, which were warehoused with the 3rd Defendant.

The Claimant states that the 3rd Defendant had acknowledged his security interest in the amount that he had loaned the 1st Defendant and had given an undertaking that once its own facility had been paid off, the Claimant's own interest would be paid off as a priority.

The Claimant avers that the 3rd Defendant made an undertaking to pay off the 1st Defendant's debt from future sales of goods from its warehouse, but that it has refused to pay any money back.

That the 3rd Defendant has since recovered its own ₦2,000,000 (Two Million Naira) Loan, but has refused to pay him back, whilst attempting to recover its second loan advanced to the 1st Defendant.

Under cross examination, learned counsel to the 4th Defendant asked the Claimant whether in his Deposition, the name of the 4th Defendant was mentioned. CW1 said no.

When he was further asked what wrong the 4th Defendant did, he responded that the 4th Defendant, owned the 3rd Defendant, together with all its assets and liabilities.

He admitted that the cause of action arose in 2004, but said that the Suit was initially against 3 parties, until 2012, when the 4th Defendant was joined.

CW1 tendered Exhibits B – J in support of his case.

The 4th Defendant opened its case, with one Chidiebere Opurum, giving evidence as DW1. DW1 adopted his Witness Statement on Oath dated 21/8/14 as his evidence in this Suit. He testified that he was a legal officer in the Enterprise Bank.

It is the position of the 4th Defendant as can be seen in the Deposition and Statement of Defence that it has no relationship whatsoever with the Claimant. Furthermore, that the 4th Defendant is not involved with the business of the 3rd Defendant, neither did the 3rd Defendant pay any money to it, apart from the account held with the 4th Defendant operating in the ordinary course of business. That the 4th Defendant is only a shareholder in the 3rd Defendant.

The 4th Defendant, denies all the averments in the Statement of Claim, and particularly states that the 3rd Defendant is a separate entity from the 4th Defendant.

The 4th Defendant finally, pleads that the cause of action against it is statute–barred,

since it arose in 2004.

DW1 tendered the Search Report on the 3rd Defendant, obtained from the Corporate Affairs Commission, admitted as Exhibit J.

Under cross examination, DW1 stated that he did not know if the 3rd Defendant's office was located in the premises of a branch of the 4th Defendant. He admitted that the 3rd Defendant was no longer a going concern.

He admitted that the 3rd Defendant was a subsidiary of the 4th Defendant.

The 3rd Defendant opened its case on the 28th November, 2016. Cecilia Awaji gave evidence on behalf of the 3rd Defendant as DW2.

DW1 adopted her Witness Statement on Oath dated 9/12/15 as her evidence in chief.

She testified that she was a staff of the 3rd Defendant Bank and that the 4th Defendant was one of the shareholders of the 3rd Defendant. But that the 4th Defendant did not fully own the 3rd Defendant.

She denied that the 3rd Defendant had any knowledge of the terms of the loan transaction between the Claimant and the 1st and 2nd Defendants. That the 3rd Defendant was notified of the Claimant's interest in the imported goods and as such, a letter to that effect was written by the 3rd Defendant to the Claimant.

The 3rd Defendant denies that any amount of ₦3,500,000 (Three Million, Five Hundred Thousand Naira) received from the Claimant by the 1st Defendant was paid into its account. The 3rd Defendant agrees that it was to manage and control the sale of the 1st Defendant's goods that were imported and warehoused with it, but that it was not privy to the transaction between the Claimant and the Defendants, save for acknowledging the Claimant's interest in the said goods.

That the said acknowledgment was without any liability or commitment. That it made it clear to the Claimant that it would hand over any security to the Claimant, only after the 3rd Defendant had collected its own security from the 2nd Defendant.

The 3rd Defendant denies that it had agreed to place the priority of the Claimant's security over its own. That a promise was made to pay the sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) and ₦1,100,000.00 (One Million, One Hundred Thousand Naira) to the Claimant from future sales, and such promise was without any consideration.

The 3rd Defendant denies guaranteeing the said payment, neither did it agree to place a lien on the goods of the 2nd Defendant.

That the letter of 16th March, 2004, from the 3rd Defendant to the Claimant was just to acknowledge the interest of the Claimant in the goods and not a guarantee for payment.

DW1 tendered Exhibits K-K6 in support of her case.

Under cross examination, learned counsel to the Claimant showed DW1 her Exhibit K1, where the 2nd Defendant informed the 3rd Defendant about the loan it took from the Claimant. She replied that the letter stated so. She thereafter reiterated that the 3rd Defendant was not privy to the loan agreement, but was informed about it later.

She stated that she did not know if the Claimant was paid the ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira), pursuant to Exhibit H, letter of 27/1/2005.

She further explained that letter, Exhibit H, was a fresh obligation made for peace sake. She stated that the 3rd Defendant by the minutes of a meeting, told the Claimant that he could take goods equivalent to his exposure.

She stated that Exhibits K2 and K3, were authorisations to allow payments to be made to the Claimant, from monies in the account, but not instructions to pay.

She agreed that a further advancement was given to the 2nd Defendant, after the 3rd Defendant had become aware of the Claimant's interest.

At the close of the trial, learned counsel filed their respective Final Written Addresses. Learned counsel to the 3rd Defendant in his Final Written Address dated 3rd March, 2017, formulated two issues for determination:

a. Whether from the facts and circumstances of this case, there is privity of contract between the Claimant and the 3rd Defendant.

b. Whether the 3rd Defendant's letter of 27th January, 2005 constituted an enforceable contract between the 3rd Defendant and the Claimant.

Learned counsel to the 4th Defendant, in his Final Written Address dated 12th December 2014, formulated two issues for determination:

a. Whether the Claimant's Suit discloses any reasonable cause of action against the 4th Defendant.

b. Whether the Claimant's claim against the 4th Defendant is not statute-barred.

Learned counsel to the Claimant in his Final Written Address dated 31st March, 2017, formulated one issue for determination:

> *"whether the 3rd Defendant and 4th Defendant, pursuant to the guarantee posted by the 3rd Defendant, are not jointly and severally liable to pay to the Claimant the sum of ₦3,698,617.00 (Three Million, Six Hundred And Ninety Eight Thousand, Six Hundred And Seventeen Naira) due to him from the 1st and 2nd Defendants with interest at the rate of 34% per annum agreed by the Claimant and the 1st Defendant from the 14th day of May, 2004 until judgment and thereafter the rate of 10% per annum until the judgment sum is fully paid".*

From the combination of all three sets of issues for determination, I have formulated the following as the relevant issues:

1. Whether there is privity of contract between the Claimant and 3rd Defendant and whether the 3rd Defendant guaranteed payment of the amount loaned to the 1st & 2nd Defendants.

2. Whether there is a cause of action against the 4th Defendant.

3. Whether the claim against the 4th Defendant is not statute-barred.

All these issues will be considered together, since they are interrelated.

Before I proceed, it is to be noted that there are certain facts which are not in dispute.

It is a common fact that the Claimant loaned the 1st & 2nd Defendants, the amount of ₦3,500,000 (Three Million, Five Hundred Thousand Naira). Furthermore that there was an agreed interest rate of 34% per annum on the said amount.

Judgment against the first two Defendants has already been granted.

It is also not in dispute that the amount of ₦3,500,000 (Three Million, Five Hundred Thousand Naira), was paid into the account of the 1st & 2nd Defendant domiciled with the 3rd Defendant.

The 3rd Defendant admits this fact and furthermore admits that it had indeed acknowledged the interest of the Claimant with respect to the loan of ₦3,500,000 (Three Million, Five Hundred Thousand Naira).

Learned counsel to the Claimant submits that the 3rd Defendant had not only acknowledged the said interest, but had guaranteed the payment of same to the Claimant from the proceeds of the sale of the goods imported. He further submits

that the 3rd Defendant cannot deny having any knowledge of the terms of the loan agreement between the Claimant and the 1st & 2nd Defendants.

Learned counsel has referred the Court to Exhibit K1 and Exhibit E.

It is necessary to examine these two documents carefully.

Exhibit K1, a letter dated 13th March, 2004, is clear and unambiguous. The 2nd Defendant is notifying the 3rd Defendant of its obligation to the Claimant. The crucial words in the letter are however:

> *"As a comfort to Mr Okeke, we hereby authorise you to recognise his interest to the tune of ₦3,695,617.00 being the principal and interest in the goods that will be warehoused and managed with you in line with the credit approval we have with you."*

It is clear from this letter that the 3rd Defendant was aware that the figure stated included both principal and interest on the said loan. I however find, that this is the only information supplied by the 2nd Defendant. There are no details as to the interest rate or other terms of the agreement, such as the loan tenor.

The 3rd Defendant has admitted this much in her Statement of Defense, and indeed DW1 deposed to the same facts.

It is to be noted that under cross examination, DW1 made it clear that the words "recognise his interest" did not translate into meaning that the 3rd Defendant was obliged to pay the money, but that it was noted that there was the interest of a creditor in the said sum deposited by the 2nd Defendant.

Similarly, Exhibit E, is a letter from the 3rd Defendant to the Claimant acknowledging the financial accommodation to the 2nd Defendant and acknowledging the security interest of the Claimant in the goods warehoused.

It is clear from these two letters that the 3rd Defendant was aware of the amount borrowed including the interest element. Also, the 3rd Defendant acknowledged the Claimant's interest.

To this extent, I agree with the Claimant's counsel that the 3rd Defendant was quite aware of the loan and the interest which was included in the secured interest.

I am however unable to agree with learned counsel to the Claimant, that there was any other information provided by the Claimant or the 2nd Defendant.

Learned counsel to the Claimant further submits that Exhibit K2, a letter from the 2nd Defendant to the 3rd Defendant, was a clear instruction to pay the amount

borrowed to the Claimant.

DW1 under cross examination explained that the phrase *"allow payments"* was not an instruction to pay, but that the money in possession of the 2nd Defendant should be allowed to be paid out to the Claimant.

Learned counsel to the 3rd Defendant, submits that in any event, there is no Privity of Contract between the Claimant and the 3rd Defendant. That at the time the loan was granted to the 1st Defendant, the 3rd Defendant was not privy to the transaction.

He further submits that there was no undertaking or guarantee given by the 3rd Defendant. That the contract between the Claimant and the 1st & 2nd Defendants did not confer any rights or impose any obligations on the 3rd Defendant.

With respect to the letter of 27th January, 2005 (Exhibit H), he submits that it could not represent a firm contract since there was no consideration furnished by the Claimant. The letter of 27th January, 2005, states as follows:

> *"We refer to our letter of March 16, 2004, November, 22, 2004 and our meeting of 30/1/04 in respect of the above subject matter and confirm our willingness to pay you the sum of ₦2,500,000 (Two Million, Five Hundred Thousand Naira) from future sales proceeds of Inem Ventures Ltd/Nwaka Inem's warehoused goods. The balance of ₦1,100,000 (One Million, One Hundred Thousand Naira), will also be paid from future sales proceeds in the proportion of outstandings to CISL and yourself"*

As rightly submitted by learned counsel to the 3rd Defendant, these words do not constitute an Agreement. The letter is at its best, an intention and willingness to pay the amount of ₦3,600,000 (Three Million, Six Hundred Thousand Naira) to the Claimant, contingent on the future sales proceeds.

The said payment was furthermore subject to the outstanding due to the 3rd Defendant from the 2nd Defendant.

An intention or even a promise based on a contingency or an event, cannot constitute a contract. See the case of: *Ajayi Obe v. Executive Secretary* (1975) 3 S.C 1, where the Court held that one of the most elementary rules of the law of contract is that there must be a definite offer by the offeror and a definite acceptance by the offeree"

Also see the case of: *Nneji v. Zakhem Con. (Nig) Ltd* (2006) 12 NWLR (Pt 994) @ 293.

Still on the issue of contract, learned counsel to the Claimant submits that the combination of Exhibits E, H, and K5, letters of 27/1/2005, 16/3/2004 and 22/11/

04, constitute a firm and irrevocable guarantee by the 3rd Defendant that it shall pay to the Claimant his security interest.

It is necessary to examine Exhibit K5, the letter of 22/11/04. The 3rd Defendant informs the Claimant that after it has recovered its own exposure from the 1st & 2nd Defendants, it will not hand over the warehouse to the Defendants until the Claimant has also recovered his investment.

In my view, the 3rd Defendant is reiterating its position that after it has recovered all the money it advanced to the 1st & 2nd Defendants, then the Claimant could recover his own investment.

These assertions cannot constitute a guarantee.

It is to be noted that if indeed the 3rd Defendant had executed a guarantee in favour of the Claimant, it would have been legally bound to pay the said amount owed to the Claimant, after recovering its own investment.

A Guarantee has been defined as a promise to answer for the payment of some debt or the performance of some duty, in case of the failure of another who is liable in the first instance. Thus it is an undertaking to do something" See the case of: *Olam Nig Ltd v. Intercontinental Bank Ltd* (2009) LPELR-8275 CA.

The 3rd Defendant's obligation would have been certain, irrespective of whether it was privy to the loan agreement between the Claimant and the 1st & 2nd Defendants.

From the evidence before the Court, I can find no inference of a Guarantee from the 3rd Defendant to pay the said ₦3,600,000 (Three Million, Six Hundred Thousand Naira) to the Claimant.

In the circumstance, I find that the 3rd Defendant cannot be held liable to pay the amount of ₦3,600,000 (Three Million, Six Hundred Thousand Naira) to the Claimant.

CLAIM AGAINST THE 4TH DEFENDANT.

In view of the findings made above in favour of the 3rd Defendant, it stands to reason that the 4th Defendant cannot be held liable for the amount owed to the Claimant by the 1st & 2nd Defendants.

However, in the interest of completeness, I will proceed to consider briefly, the issues raised by counsel in respect of the Claim against the 4th Defendant.

The 4th Defendant contends that the cause of action against it is statute–barred since the cause of action arose in 2004.

Learned counsel to the 4th Defendant submits that it was joined in this Suit as Defendant in 2012, whilst the cause of action arose in 2004.

It is trite that by virtue of the Limitation Law, in an action for debt recovery, the Claimant must file the Suit within six years of the cause of action arising.

It is in evidence that Enterprise Bank, the 4th Defendant acquired the majority shares of the 3rd Defendant in 2012.

The effect of this occurrence is that until 2012, there could not have been any cause of action against the 4th Defendant at the time this Suit was filed. The 4th Defendant would have only incurred a liability (if any) from the date of acquiring the majority shares in 2012, since it was not privy to the contract between the other parties.

I agree with learned counsel to the Claimant that the cause of action against the 4th Defendant is not statute-barred.

The next issue to be considered is the issue of the whether the 4th Defendant ought to have been joined as a Defendant in this Suit.

Learned counsel to the 4 Defendant submits, and rightly so, that the 3rd Defendant and the 4th Defendant have their separate legal personalities. That the 3rd Defendant was the party that had transactions with the 2 other Defendants. That it was not privy to the transaction, the subject matter of this Suit. In the case of: *Union Beverages Ltd v. Pepsicola International Ltd & Ors* (1994) LPELR-3397(SC), a case relied on by the learned counsel, the Court held that the act of a subsidiary company cannot be imputed to the parent company, nor can the act of the parent company, be imputed to the subsidiary company.

The Court went on to hold that each of the Defendants were corporate bodies having their own separate legal personalities capable of suing or being sued in their own name, unless one of them was acting as agent to the other one.

In the instant case, this is not the situation. The Claimant has not sued the 3rd Defendant, as agent to the 4th Defendant.

The fact that the 4th Defendant holds majority shares in the 3rd Defendant is of no moment.

Finally, I find that the 4th Defendant would not have been liable to the Claimant, even if the Court had found the 3rd Defendant liable for the amount due to the Claimant.

In concluding, I find that the Claims against the 3rd and 4th Defendants fail in their

entirety and are hereby dismissed accordingly.

Cases cited in the Judgment
Ajayi Obe v. Executive Secretary (1975) 3 S.C 1
Nneji v. Zakhem Con. (Nig) Ltd (2006) 7 CLRN 1
Olam Nig Ltd v. Intercontinental Bank Ltd (2009) LPELR-8275 CA
Union Beverages Ltd v. Pepsicola International Ltd & Ors (1994) LPELR-3397(SC)

History:

HIGH COURT
High Court of Lagos State
F. BANKOLE-OKI [MS], J

Counsel:
Chinasa Obi (Mrs) with Chinwe Onwuoha (Mrs) for Claimant.
O. Asogwa (Esq) for 4th Defendant.