



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/472/2018

BETWEEN:

**1. RIOK (NIG) LIMITED)
2. DR. TED ISEGHOMI EDWARDS).....PLAINTIFFS
(Doing business under the name and Style of Edwards and Partners Law Firm)**

AND

**1. GLOBAL SERVICES CONSULTING LTD)
2. BIZPLUS CONSULTING SERVICES LTD)
3. ATTORNEY GENERAL OF THE FEDERATION).....DEFENDANTS
4. UNITED BANK FOR AFRICA (UBA))
5. CENTRAL BANK OF NIGERIA)**

JUDGMENT

The proceedings herein were commenced by the Plaintiffs against the Defendants by an Amended Originating Summons seeking the determination of the following issues:

- (1) Whether by virtue of memos dated 11/07/2018, 24/07/2018 and 14/09/2018 delivered as exhibits A, B and C the 1st and 2nd Defendants are entitled to any share of the sum of \$350,000,000.00 (Three Hundred and Fifty Million US Dollars) or any other money paid from the

\$350,000,000.00 approved by the President for payment of Legal/Consultancy fees, etc relating to Paris London Club Debt buy back refunds and if the answer is in the negative, then,

- (2) Whether the \$100,000,000.00 (One Hundred Million US Dollars) or any other money paid to the 1st and 2nd Defendants out of the \$350,000,000.00 for the payment of Legal/Consultancy fees, etc owed to the Plaintiffs but now domiciled and or warehoused in various accounts maintained with the 4th Defendant should not be paid to the Plaintiffs by the 4th Defendant.
- (3) Whether the 3rd Defendant ought to have authorized the payment of \$100,000,000.00 (One Hundred Million US Dollars) or its Naira equivalent out of the \$350,000,000.00 (Three Hundred and Fifty Million US Dollars) approved for Legal/Consultancy fees to the 1st and 2nd Defendants through the 5th Defendant contrary to exhibits A, B and C.

The Plaintiffs are seeking five (5) reliefs from this Court upon determination of the questions raised. They are:

- (i) A declaration that the 1st and 2nd Defendants are not entitled to share in the sum of \$350,000,000.00 (Three

Hundred and Fifty Million US Dollars) approved for payment of Legal/Consultancy fees, etc owed to the Plaintiffs relating to the Paris London Club Debt buy back over deductions refunds as per exhibits A, B and C.

- (ii) A declaration that LINAS INTERNATIONAL LIMITED (Consultants) having been paid the sum of \$224,000,000.00 (Two Hundred and Twenty Four Million US Dollars) or its equivalent plus \$17,000,000.00 (Seventeen Million US Dollars) paid to his counsel out of the said sum of \$350,000,000.00 (Three Hundred and Fifty Million US Dollars) the balance thereof shall be shared between the Plaintiffs to the exclusion of any other person.
- (iii) A declaration that the instruction given by the 3rd Defendant to the 5th Defendant to pay the sum of \$100,000,000.00 (One Hundred Million US Dollars) to the Nigerian Governors Forum is in error and contrary to exhibits A, B and C.
- (iv) An Order of Court restraining the 4th Defendant from payment to any other person other than the Plaintiffs the said sum of \$100,000,000.00 (One Hundred Million US

Dollars) or the N32 Billion received by the 1st and 2nd Defendants now domiciled in the accounts or any other accounts to which the money has been moved by the 1st and 2nd Defendants in the UBA or any other bank or financial institution in so far as the said funds are traceable to the sum of \$100,000,000.00 (One Hundred Million US Dollars) or its equivalent paid out of the \$350,000,000.00 (Three Hundred and Fifty Million US Dollars) approved by the President.

- (v) An Order directing the UBA the 4th Defendant to pay the said \$100,000,000.00 (One Hundred Million US Dollars) or the equivalent of the sum of N32, 000, 000, 000. 00 (Thirty Two Billion Naira) received from the 1st and 2nd Defendants (at N16.250 Billion Naira each) forthwith as part payment to the Plaintiffs in proportion to their due under exhibit B failure of which the UBA will be primarily liable directly to the Plaintiffs for the \$100,000,000.00 (One Hundred Million US Dollars) or the sum of N32, Billion Naira paid to 1st and 2nd Defendants.

Because of the nature of the claims and the need to preserve the res an application for Interim Order of Injunction was earlier presented and granted by this Court on the 13/12/2018.

On the return date for hearing of the Motion on Notice for Order of Interlocutory Injunction with Motion No. M/1295/18, the 1st and 2nd Defendants presented a Motion on Notice for an Order of this Court:

- (1) Discharging/Vacating the Order of Interim Injunction/Exparte Order made by the Court on the 13/12/2018 in favour of the Plaintiffs.

It was also discovered that the 5th Defendant had presented a Motion on Notice filed on the 04/02/2019 for:

- (1) An Order of this Honourable Court extending time within which the 5th Defendant/Applicant may file its memorandum of conditional appearance and Notice of Preliminary Objection to this suit as well as to extend time for the 5th Defendant to file counter affidavit to the Plaintiffs' Motion on Notice filed on the 06/12/2018 and 7th of January, 2019 respectfully.

The 5th Defendant also sought for a deeming Order that the said processes which were already separately filed as properly filed and served.

The learned counsel to the Plaintiffs sought for leave to move his application for Order of Interlocutory Injunction. It then became

expedient to abate the application of the 1st and 2nd Defendants for an Order of set aside.

The Motion on Notice for Interlocutory Injunction was taken but the proceedings in respect of it was set aside on the 05/03/2019 having been conducted in violation of the law that the issue of jurisdiction where it arise must be decided first before taking further step in the proceeding.

Meanwhile the Plaintiffs also filed a motion seeking leave to amend the Originating Summons. These processes i.e. the Notice of Preliminary Objection and the application for leave of Court to amend the Originating Summons and the substantive Originating Summons were set down for hearing cumulatively on the 27/3/2019.

However hearing could not proceed on that day as the 3rd Defendant was granted adjournment upon a successful application to file his counter affidavit to the Originating Summons.

In the same vein on the resumed sitting of the Court of the 29/03/2019 the learned counsel to the 5th Defendant informed the Court and abandoned his Notice of Preliminary Objection which challenged the jurisdiction of this Court over the 5th Defendant. The learned senior counsel to the 1st and 2nd Defendants also abandoned

his objection to the application for leave to amend the originating summons.

An amendment may be allowed if it is necessary to bring out the real issues in controversy between the contending parties. The Claimants have stated clearly that the amendment sought was necessitated by the fact that new facts relating to their claims have emerged after the suit was filed and that it was necessary to bring such facts before the Court to enable it effectively and completely decide all the issues between the parties. It is my view that such incomplete facts could be cured by amending the Originating Summons to bring in those facts more especially as the Defendants are not opposed to the grant of the amendment in any way.

See **HILL VS LUTEN CORPORATION (1951) 2 KB 387.**

In other words I do not see on what principle I could refuse the desired amendment. The application for amendment succeeds perforce and is hereby granted as prayed.

I will now consider the phenomenon and arguments agitated by the parties on the amended originating summons.

AMENDED ORIGINATING SUMMONS

At the beginning of this Judgment I set out in details the questions submitted by the Claimants for determination by this Court as well

as the reliefs sought. There is therefore no need to restate them here. However it is imperative to itemize the processes filed by the parties in the contest of this suit.

For the Plaintiffs, the following processes were filed:

- (1) The Amended Originating Summons,
- (2) Affidavit in support,
- (3) Further affidavit in support,
- (4) Further and better affidavit in support filed on the 29/03/2019.
- (5) 2nd further and better affidavit in response to the 1st and 2nd Defendants counter affidavit.
- (6) Written address.

On behalf of the 1st and 2nd Defendants the following documents were filed:

- (1) Counter affidavit to the Amended Originating Summons,
- (2) Further counter affidavit to the Amended Originating Summons both filed on the same day, the 22/03/2019, and
- (3) Written address.

For the 3rd Defendant a counter affidavit to the Amended Originating Summons was filed on the 28/03/2019.

Finally the 5th Defendant having abandoned its Preliminary Objection earlier was left with a counter affidavit in opposition to the Plaintiffs' Amended Originating Summons filed on the 28/03/2019.

The 4th Defendant in this suit namely United Bank for Africa (UBA) did not file any process and did not participate in the trial.

I am however satisfied from the hearing notices and affidavits of service filed by the bailiff of this Court that the 4th Defendant is at all times aware of the pendency of this case.

The matter proceeded to hearing on the 29/03/2019 wherein parties adopted their written addresses. The Plaintiffs' counsel and the learned counsel to the 1st and 2nd Defendants also adumbrated the points made in their written addresses to throw some light on their arguments.

I have studied carefully all the affidavit depositions and arguments of counsel and it would appear to me that both the 3rd and 5th Defendants have argued respectfully that this case has not disclosed any reasonable cause of action against them and that the claims against them should be struck out or their name be deleted as the case could be successfully decided without them.

It is trite law that in determining whether or not a suit has disclosed a reasonable cause of action it is the pleadings of the Plaintiff that should be scrutinized. This suit being one that is commenced by way of originating summons it is the questions sought, reliefs claimed and the affidavits filed in support of the originating summons that together form the pleadings.

In that regard I have painstakingly gone through the questions submitted for determination by the Plaintiffs and it is my respectful view that question number 3 is questioning the propriety of the authority given by the 3rd Defendant to the 5th Defendant to pay the 1st and 2nd Defendants the disputed sum of \$100,000,000 (One Hundred Million US Dollars).

The Plaintiffs are also seeking in their reliefs 3 a declaration that the instruction given by the 3rd Defendant to the 5th Defendant to pay the sum of \$100,000,000.00 (One Hundred Million US Dollars) to the Nigerian Governors Forum is in error and contrary to exhibits A, B and C.

There is also no doubt that from the averments in paragraphs 4(v) to 7 of the affidavit in support of the Amended Originating Summons enough facts have been disclosed to establish the obligation of the

3rd and 5th Defendants to the Plaintiffs in the entire circumstances and their infractions on the plaintiffs' right to the alleged funds.

I have decided to reproduce the said paragraphs to throw some light:

4(v) That following the said litigations series of meetings were called by the Hon. Attorney General of the Federation, the 3rd Defendant during which meetings the Hon. Attorney General agreed to do a memo to Mr. President advising the settlement of the Judgment Debts

4(vi) Following 5 above a memo dated 11/07/2018 was made to the President through the Chief of Staff. The memo is delivered as exhibit "A".

4(vii) In response to exhibit "A" Mr. President advising that parties in litigation be paid by deducting the Judgment Debts from the balance of \$2,725,704.118 accruing to the States, Local Governments from the Paris London Club Debt buy back over deduction. Memo from Mr. President to Hon. Attorney General is delivered as exhibit B.

5. Following exhibits A and B the Hon. Attorney General of the Federation made a proposal as to how these debts could be settled.

6. That following the proposals Mr. President approved the sum of \$350,000,000.00 (Three Hundred and Fifty Million US Dollars) for the settlement of the debts which gave rise to the litigations. Memo of the Hon. Minister of Finance authorizing the warehousing of the said sum in the Central Bank of Nigeria is delivered as exhibit C.
7. That rather than distributing the fund in proportion to the Judgment of each of the three litigants. i.e. Linas International Limited, Riok Nigeria Limited and Dr. Ted Edwards the Hon. Attorney General of the Federation only paid Linas International Limited the sum of N224,000,000.00 as his consultancy service and the sum of \$100,000,000. which is part of the \$350,000,000 approved by the President and from Linas was paid which ought to be distributed between the 1st and 2nd Plaintiffs was paid to the 1st and 2nd Defendants who were total strangers to the \$350,000,000.00 approved by Mr. President per exhibits A, B and C..

From the above averments the Plaintiffs have disclosed their entitlement to the disputed fund and the responsibility of the 3rd and 5th Defendants to ensure payment to the Plaintiffs as prescribed by exhibits A, B and C attached to the affidavit in support and the

failure of the 3rd Defendant to adhere to the payment instruction which led to the wrongful payment to the 1st and 2nd Defendants.

In the case of **CHIEF AFOLAYAN VS OBA OGUNRINDE AND 3 ORS (1990) 1 NWLR (PT. 127) 369 at 371** KABIRI WYTE JSC stated that a cause of action means:

- “(a) a cause of complaints,**
- (b) a civil right or obligation for determination by a Court of law,**
- (c) a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine.”**

There is a long line of decided cases on the meaning of a reasonable cause of action which I need not bother myself further.

The point is that from the analysis given so far it is clear to me that the submission of both the 3rd and 5th Defendants that the case does not disclosed reasonable cause of action against them is bereft of substance. They are overruled on the point for being misconceived and lacking in merit.

In his written address in support of the Originating Summons the learned senior counsel for the Plaintiffs submitted one issue as arising for determination of this case. The issue is:

“Whether having regard to exhibits A, B and C the Plaintiffs are not the only parties entitled to the balance of \$125.4 Million US Dollars (out of the sum of \$350 Million US Dollars) provided for the settlement of the parties named in exhibit A.”

In his own written address filed in opposition to the Originating Summons the senior counsel to the 1st and 2nd Defendants is of the view that the only issue for determination of this case is:

“Whether the Plaintiffs are entitled to the reliefs sought in the originating summons.”

The 5th Defendant on its part adopted the issue raised by the Plaintiffs.

I have already treated the issue raised by the 3rd Defendant as a preliminary issue. I need not restate it here in order not to sound repetitive.

However I have given a careful and insightful consideration to the issues distilled in the written addresses filed on behalf of the parties which are not markedly dissimilar. The focal point of the Plaintiffs claims is that based on exhibits A, B and C attached to the originating summons they are the ones entitled to the \$100,000,

000.00 (One Hundred Million US Dollars) paid to the 1st and 2nd Defendants to the exclusion of any other person.

That been the case I am inclined and I hereby adopted the issue submitted by the Plaintiffs and adopted by the 5th Defendant as the right issue to determine this case. The issue is reframed thus:

“Whether having regard to the intendment of exhibits A, B and C attached to the originating summons the Plaintiffs are not entitled to the payment of \$100,000,000.00 released to the 1st and 2nd Defendants to the exclusion of any other person.”

Now the facts of this case as could be gathered from the affidavits in support are very straight forward. The Plaintiffs got Judgments against the Federal Government and the Central Bank of Nigeria over non-payments for the contract executed for the Association of Local Governments of Nigeria and Legal/Consultancy fees in respect of services rendered by the 2nd Plaintiff to ALGON in the recovery of Paris London Club Debt Buy Back Deductions.

Worried by this Judgment the Attorney-General held meetings with the Judgment Creditors which include Linas International Limited to explore how the disputes could be resolved. As a result the Attorney-General of the Federation, the 3rd Defendant raised a memo to Mr. President wherein he gave an update on the Federal

Government indebtedness to the Plaintiffs and Linas International Limited and advised on the need to comply with the Judgment they have got against the Federal Government and have them settled. This is the purport of exhibit A. The Federal Government accepted the advise of the Honourable Attorney-General vide exhibit B and directed that the payments be made. As a result of this development the Honourable Minister of Finance directed the 5th Defendant to release the sum of \$350 Million US Dollars in the escrow account domiciled with the 5th Defendant for onward payment to the Plaintiffs and Linas International Limited.

Rather than carrying out the payments in accordance with the intendments of exhibit A and B, the 3rd Defendant wrongfully instructed the 5th Defendant to pay the 1st and 2nd Defendants.

The 1st and 2nd Defendants have in defence to the claims of the Plaintiffs averred that the payment of \$100,000,000 (One Hundred Million US Dollars) made to them was for Legal/Consultancy services which they offered to the various State Governments and that exhibit 10 attached to the counter affidavit of the 1st and 2nd Defendants has put their entitlement to the disputed \$100 Million US Dollars beyond controversy.

The 3rd Defendant while claiming that the Plaintiffs have no cause of action against him has conceded to the facts that he is aware of the

claims and Judgments of the Plaintiffs against the Federal Government and the 5th Defendant.

That the Hon. Minister of Finance's memo Reference No. FMF/HMF/PRES/PC/FINAL/18 of 05/07/2018 seeking Mr. President's approval for \$350 Million US Dollars to pay Legal/Consultancy fees in Paris/London Club related Federal Government refunds was motivated by the Plaintiffs claims.

That he became involved in the claims of the Plaintiffs in order to avoid a situation where the Federal Government would become liable for the obligations of ALGON who engaged the Plaintiffs by writing to Mr. President on the need for amicable settlement of the claims.

That the \$350 Million US Dollars approved by Mr. President for settlement of Legal/Consultancy fees was a direct response to the above stated memo of the Hon. Minister of Finance to Mr. President that he decided to direct payment of the disputed funds to the Governors Forum because of the ongoing litigation and investigation by the EFCC and after obtaining an undertaking from the Forum to fully indemnify the Federal Government of Nigeria against all claims that may arise from the Plaintiffs.

Now it is my view that the foregoing facts from the 3rd Defendant is highly definitive in the resolution of this case. Quite contrary to the

claims of the 1st and 2nd Defendants that the payment of the disputed funds has nothing to do with exhibits A, B and C it has become clear from the evidence supplied in the counter affidavit of the 3rd Defendant that the fund was meant for the settlement of the Plaintiffs Legal/Consultancy fees.

If the approval of the President to pay \$350 Million US Dollars was based on the memo written by the Hon. Minister of Finance and the Hon. Minister requested for the funds to pay the Plaintiffs and Linas International Limited as identified and prescribed in exhibit A what other evidence does one need to show that the disputed fund was meant to be paid to the Plaintiffs.

To me the 3rd Defendant has not denied or controverted the evidence of the Plaintiffs that the disputed fund was meant to be paid to them. He is quite conscious of this when he had to extract undertaking from the Governors Forum to be indemnified against claims from the Plaintiffs.

The 3rd Defendant knows that the Plaintiffs' entitlement is to be deducted from source from the entitlement of the Governors Forum. He ought not to have under any circumstance paid what is due to the Plaintiffs to the Forum. This is particularly so as the \$350 Million US Dollars was a deduction from the final entitlement of the Governors Forum before payment was made to it.

To me it is illogical to deduct something from what is the entitlement of the Governors Forum only to end up paying same to it through a later memo.

The \$350 Million US Dollars deducted from the fund of the Forum was clearly meant for payment as Legal/Consultancy fees.

The Governors Forum does not have any business with the fund. Exhibit 10 attached to the 1st and 2nd Defendants counter affidavit is very clear on the fact that the money is for payment of Legal/Consultancy fees and no more.

From the facts of this case the payment of the disputed sum to the Governors Forum is as a result of a collusion between the 1st, 2nd, 4th and 5th Defendants.

I agree with the learned counsel to the 3rd Defendant that those parties should be held responsible for the wrongful payment and to have the payment revised in favour of the Plaintiffs as the rightful owners.

As a matter of fact the 3rd Defendant was emphatic in his counter affidavit that he did not authorize payment of the disputed fund to the 1st and 2nd Defendants.

At the end of this case the three questions raised for determination by the Plaintiffs are resolved in favour of the Plaintiffs. The reliefs

sought have on the balance of evidence established and they are accordingly granted.

From the pleadings in the originating summons and the Attorney-General's memo (exhibit A) the Plaintiffs are to share the \$100 Million US Dollars in the ratio of their claim as follows:

- (1) 1st Plaintiff (Riok International Limited) 40% of \$318,807,950.596 which translates to \$127,523,180.23)
- (2) 2nd Plaintiff (Dr. Ted Iseghohi Edwards) \$318,000,000. which amount to \$300,000,000.
- (3) Sharing ratio \$127,523,180.23(28.62 %) \$318,000,000 (71.38%)

In the final analysis I make the following declarations:

- (1) It is hereby declared that the 1st and 2nd Defendants are not entitled to a share in the sum of \$350 Million US Dollars approved for Legal/Consultancy fees.
- (2) It is hereby declared that the instruction given by the 3rd Defendant to the 5th Defendant as contained in exhibit 10 to pay \$100 Million US Dollars to the Governors Forum was wrong and in error.

- (3) The 4th Defendant (UBA) is hereby Ordered to pay the 1st Plaintiff, Riok Nigeria Limited the sum of \$28,620,000 forthwith,
- (4) The 4th Defendant (UBA PLC) is also hereby Ordered to pay the 2nd Plaintiff (Dr. Ted Iseghohi Edwards) the sum of \$71,380,000 as part payment for their claims against the Federal Government of Nigeria in the Paris London Club related refunds failure of which the 4th Defendant (UBA PLC) and the (5th Defendant CBN) automatically become the primary debtors to the Plaintiffs for the disputed fund and execution shall lie against both the UBA and or the 5th Defendant Central Bank of Nigeria forthwith.
- (5) It is hereby further Ordered that pursuant to Order 39(4) of the Rules of this Court the \$100,000,000 shall attract post Judgment interest of 10% from the date of Judgment till the entire \$100 Million US Dollars is paid.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
03/04/2019