IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE
DELIVERED ON THE ……DAY OF …….. 2020
SUIT NO. FCT/HC/CV/2005/2010

BETWEEN:

1. **AZMAN OIL AND GAS LTD** } **CLAIMANTS**
2. **MARRACHI ENGINEERING LTD** }

AND

1. **AIRTEL DTH SERVICES NIGERIA LIMITED…** **DEFENDANT/ COUNTERCLAIMANT**

(ORIGINAL ACTION)
AND

2. AIRTEL DTH SERVICES NIGERIA LIMITED…COUNTER-CLAIMANT

AND

1. **AZMAN OIL AND GAS LIMITED**
2. **MARRACHI ENGINEERING LTD**
3. **INCORPORATED TRUSTEES OF NNPC ESTATE RESIDENT ASSOCIATION…COUNTER-DEFENDANTS**

- **ADO MA'AJI ESQ. FOR THE CLAIMANTS WITH ALIYU ANAS**
- **U.P. ISIKUZO WITH EMMANUEL JONATHAN AND V.O. IGBEGBURAM FOR THEDEFENDANT/COUNTER-CLAIMANT**

JUDGMENT

The Claimants filed a Writ of Summons dated the 23rd day of May 2017 seeking the Following Reliefs against the Defendant: -

1. Mesne Profit in the Sum of N10, 000, 000.00 (Ten Million Naira) Only for Holding Over.
2. The Sum of N7, 000, 000.00 (Seven Million Naira) Only being the total loss suffered by the Plaintiffs as a result of the Defendant's Holding Over.
3. Damages.
4. The Cost of filing this Action and
5. Legal Fees and Expenses.

In response, the Defendant filed their Statement of Defence as well as a Counter-Claim, wherein they sought as against the Defendants to the Counter-Claim the following Reliefs: -

1. The Sum of N6, 666, 666.80 being the Rent Refund for Forty (40) Months of the Unexpired Lease Agreement between the Counter-Claimant and the 2nd Defendant to the Counter-Claim, paid to the 3rd Defendant to the Counter-Claim for the provision of site within the NNPC Estate, Garki Abuja for the construction of a Platform thereat in April 2009.
2. The Sum of N2, 000, 000.00 being the cost of erecting another Platform for the Counter-Claimant's Base Station with the NNPC Estate, Area 11, Garki, Abuja, which was paid to the 3rd Defendant to the Counter-Claim by the 2nd Defendant to the Counter-Claim
3. N100, 000, 000.00 as General Damages.

PW1, Mrs. Victoria Nlemigbo, a Director of the 2nd Claimant adopted her Witness Statement on Oath, and in essence testified that her Company leased its **Property Block No. SA 2 FLT 1-8 NNPC Quarters Abuja**, which is part of a Twin Blocks of Four (4) Apartments of Eight (8) Flats apiece to the Defendant under a Lease Agreement executed by both Parties. This Property was an uncompleted property and the Defendant

upon the lease, erected its GSM Base Station consisting of GSM Antennae and other facilities on the Roof Top of the Property.

According to her, during the pendency of the Lease Agreement, the 2nd Defendant decided to sell the Property and had made a first offer for sale to the Defendant, who declined the offer to purchase.

The Property was thereafter sold to the 1st Claimant on the agreement that the Lease Agreement with the Defendant should be terminated and the GSM Base Station be removed to enable the 1st Claimant take over proper possession.

The 2nd Claimant then engaged the Defendant in a discussion on the 16th of January 2009, whereupon it was mutually agreed to terminate their Agreement. On the 22nd of January 2009, the Defendant wrote the 2nd Claimant forwarding the Minutes of the Meeting held on the 16th.

On the 31st of March 2009, the Defendant again wrote demanding that the 2nd Claimant pay it the Sum of N8, 666, 666.80 Kobo (Eight Million,Six Hundred and Sixty-Six Thousand,Six Hundred and Sixty-Six Naira,Eighty Kobo) as consideration for the Termination of the Agreement. They also agreed to remove its Base Station immediately the Consideration is paid.

According to PW1, the 2nd Claimant paid the above stated Sum on the **3rd of April 2009** through a **Zenith Bank's Managers Cheque No. 00009880** in favour of Estate Management Committee Funds (SA/M) as requested by the Defendant, and a Representative of the Defendant, Mr. Kelechukwu Anakwe, acknowledged the Receipt. Therefore, by this Payment, the Lease Agreement was effectively terminated on the **4th of April 2009.**

Subsequently, all efforts to get the Defendants to remove the Base Station and cease from holding over the property proved unsuccessful and this delayed the handing over of the Property to the 1st Claimant for Six Months until the 4th of November 2009, thereby denying the 1st Claimant of his possession to the Property. This delay caused the Claimants a lot of financial loss.

She tendered into evidence the following Documentary Exhibitswithout objection: -

1. The Lease Agreement admitted as **EXHIBIT A**

2. The Minutes of Meeting and forwarding Letter as **EXHIBIT B**
3. Letter of Demand admitted as **EXHIBIT C**
4. Letter written forwarding the Draft admitted as **EXHIBIT D**
5. Letter written by the 2nd Claimant admitted as **EXHIBIT E.**

Under Cross-Examination by the Defence Counsel, PW1 confirmed that as Director, she signed the Voluntary Agreement entered into between her Company and the Defendant for the Lease of the Roof Top of an Uncompleted Building. She agreed that a problem later arose between the 2nd Claimant and the Defendant and the Legal Representation of both Parties attempted to resolve the issue by holding Meetings. In response to the question asked of whether after the sale of the Property by the 2nd Claimant to the 1st Claimant, there was a written document signed by the 2nd Claimant and the Defendant to alter their Lease Agreement,she replied that in their relationship, they had a Clause that empowered the 2nd Claimant the right to offer a 1st Right of Refusal, if they wished to sell the property. In consonance with this Clause, they had offered the Defendant the 1st right to purchase, but they declined this offer.

According to her, the Defendant embarked on a Fifteen Year Lease with the 2nd Defendant because of the nature of their business and she had previously seen the installation of Airtel Networks.

In response to whether there was any Termination Notice given to the Defendants, she stated that the Parties had agreed to the fact that the termination would be by the payment of a certain sum of money and upon payment to the Defendant of that agreed sum, the Defendant can be said to have notice of the Termination.

PW1 stated that she was not aware of how long it took for the Defendants to install the Mast. After the Sale of the Property to the 1st Claimant, they had total ownership of the Property. According to her, the 2nd Claimant had no business relationship with any Estate Association, even though she knew it existed. There was an understanding with the Defendant to move the Mast off the Property, but they did not do this immediately. She added that even before the Sale of the Property to the

1st Claimant, they had repeatedly asked the Defendant to remove the Mast but they refused to listen to them. The Property was unroofed at the time of the Lease, so erecting the Mast there in the first place was unacceptable but they were forced to accept the relationship.

According to PW1, she was not aware of any relationship with the NNPC Residents Association and was not an Agent of the Defendant.

PW2, Mr. Abdul Munafi Yunusa testified by affirmation and adopted his Written Statement on Oath, stating that he is the Chairman of Azman Oil and Gas. He identified the Photographs of the Property and tendered them into evidence without any objection as **Exhibits F1 to F24.** Also tendered were the **Estate Valuers Report, as Exhibit G; Letter of Engagement of Construction Contractor as Exhibit H1; Exhibits H2 and H3,** Letter in regard to the variations as well as the Letter of Demand from his Lawyer, admitted as **EXHIBIT I.**

PW2 finally urged the court to grant the reliefs sought.

Under Cross-Examination, he was shown the Pictures in **Exhibits F1 to F24,** whereupon he stated that he was present when the pictures were taken, and when a Truck was brought to the Property to uninstall the Base Station and remove its antenna. He stated that he saw the Antenna in place on the top of the Roof when he inspected and purchased the Property but did not go up to the 4th Floor where it was situated.

When he bought the Property, he had every right over it and he acknowledged his lawyer as his representative at that meeting. It is to be noted that his lawyer had indicated knowledge of the Mast at the Rooftop stating that it was not an encumbrance.

After he bought the Property, he had nothing to do with the 2nd Claimant and stated that even if there was a contract, he did not interfere, as it was between the 2nd Claimant and the Defendant. Finally, he was not aware of the Incorporated Trustees of NNPC.

There was no Re-Examination and with his testimony, the Claimants closed their case.

The Defence testified through a Sole Witness, Mr. Anthony Tom, a Staff of Airtel Networks Limited, in their Legal and Regulatory Department tendered into evidence without any objection, the following Documentary Exhibits: -

1. A Letter written by the Defendant dated the 27th of May 2009 to the Chairman of the 3rd Defendant in the Counter-Claim, the Incorporated Trustees demanding an amicable solution to the problem and the completion of works on the water tank, admitted as **EXHIBIT J1;**
2. A Letter written by the Incorporated Association dated the 10th of July 2009, directing the Defendant to remove all its communication equipment on the Rooftop of the Property, admitted as **EXHIBIT J2**;
3. Demand Letter dated the 29th of June 2009 regarding the relocation of the rooftop site, written by the Defendant to the NNPC Estate Association, admitted as **EXHIBIT J3;**
4. Another Demand Letter by Defendant's Counsel dated the 21st of October 2010 to the NNPC Resident Association admitted as **EXHIBIT J4.**

In essence, he acknowledged the Lease Agreement between his Company and the 2nd Claimant and stated that the Defendant still had an unexpired period in the Lease of Three Years and Eight Months in the 1st Cycle of Five Years when the Property was sold. The 2nd Claimant had demanded that his Company should vacate the Property contrary to the Terms of their Agreement and the Enabling Law. The Defendant had notified them that it would take a lot of time and cost to relocate its mast installed on the Base Station to another site since other sites of the Defendant depended on the particular mast in question.

According to his testimony in his Written Statement on Oath, after series of discussions, the 2nd Claimant appealed to them to find another site and gave them till the end of 2009 to relocate to that site and to ensure that the Lease was fully transferred to the Alternative Site.

Based on this Agreement inter parties, the Defendant entered into discussions with the Incorporated Trustees of NNPC Housing Estate Resident Association for a space within the Estate to place the base station and according to him, the Claimants were members of this Association. Subsequently, the Trustees agreed to provide a Platform and the Defendant communicated this intention to the 2nd Claimant in its letter dated the 31st of March 2009.

It is his evidence that the 2nd Claimant then agreed to transfer the lease to the Trustees of the Estate Association and paid the sum of N6, 666, 666.80 AND N2, 000, 000.00 to the Incorporated Trustees being the rent refund and cost of erecting another platform. They then commenced construction work on the water tank structure in which the site was to be located, but their work was disrupted by Residents of the Estate on spurious allegations that the base station is prone to emitting radioactive substance harmful to human health. Despite their efforts to disabuse their fears, they still met stiff opposition from the Residents.

DW1's testimony further narrated their interactions as well as theproblems encountered by the Defendant with the Estate Association and referred to the Correspondence written by both Parties over the matter. At the end of the day, the NNPC agreed to initiate a Refund Process of the money paid by them for the construction of the Base Station. It is said that the Defendant had no choice than remove the Base Station from the Estate, incurring losses and damages to the tune of N100, 000, 000.00 due to network breakdown as Customers within the range of the Mast could not access their Telecommunication Services.

Further, the Defendant was not a Party to any Agreement between the 1st and 2nd Claimant regarding the Subsisting Lease. According to DW1, the Defendant never agreed with the 2nd Claimant to terminate the Lease

Agreement, but it was mutually agreed by the 2nd Claimant and the Defendant to transfer the Lease Agreement to the Estate Association.

According to this Witness, the Defendant did not demand the sum of N8, 666, 666.80 as consideration for the Termination of the Lease as well as costs of relocating the Base Station, but stated that it was a sum given to transfer the Lease Agreement to the Estate Association. Further, the Lease Agreement was never effectively terminated on the 4th of April 2009 based on the payment made on the 3rd of April 2009, as they had up until the end of Year 2009 to relocate to a new site. More importantly, he stressed the point that it was a condition that they must first relocate before the Subsisting Lease would be effectively transferred to the Estate Association. This witness denied that the base station was removed on the 4th of November 2009 and also denied they held over on the Property. The Basis of the Standard Rent between them was fixed at N2, 000, 000.00 (Two Million Naira) and N166, 666.80 per month (One Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira Eighty Kobo),and this was the reason the Estate Association accepted the Lease Transfer.

DW1 disputed the Estate Valuers Report, stating that it misrepresented the true fact relating to the Rental Value of the Property in issue, most especially, as they **only** leased the rooftop of the Property. He also disputed the Claimant's loss for the period of Six Months, as they never denied them possession, even though their lease was still subsisting. He further disputed the cost of N7, 000, 000.00 (Seven Million Naira) being the revised rate of construction expenses contained in the renewed contract of construction.

Finally, DW1 stated that the date on the Pictures tendered into evidence was arbitrarily affixed to project the date of 4th of November 2009.

In regard to the Counter-Claim, DW1 rehashed all that he stated in the Main Claim, emphasizingthe point that the 1st Claimant, at the time of purchase, was aware of their existing lease of the property. It was based on the agreement they had with the 2nd Claimant that they entered into

discussion with the Estate Association. He relied on their letter to the 2nd Claimant dated the 31st of March 2009, wherein they narrated the state of their discussion regarding the new site. DW1 claimed that the 2nd Claimant agreed to transfer the Lease to the Estate Association and to this end, paid the sums of money directly to them. As a result of the disruption from Members of the NNPC Estate Association and the connivance of the Claimants, their relocation moves fell through, resulting in a loss to them of approximately N100, 000, 000.00 (One Hundred Million Naira) Only.

Therefore, he stated that the Claimants in the Main Claim are entitled to refund the Defendants the rent of N6, 666, 666.80 as well as the sum of N2, 000, 000.00 which are still outstanding, and which remain unpaid by the Resident's Association of NNPC Quarters despite several demands by the Defendant. He finally urged the Court to grant the Reliefs sought in the Counter-Claim.

Under Cross-Examination, he stated that he was not an employee of the Defendant at the time of the transactions but became aware of the issues when he went through the file. He stated that he read the Lease Agreement, especially the conditions set out therein for the termination of the Agreement by either side.This was that each party should give the other, one month's notice of termination. According to him, to the extent that the Defendant had the option to purchase or refuse the Property, the 2nd Claimant had the right to sell to any other person because it did not affect the Lease Agreement. He could not clearly remember, but was informed by his colleagues that the Mast was removed in July 2013 or so. When shown the pictures in **Exhibits F1-F24,** he did not have any knowledge of the building and could not recognize it.

When questioned on how the sum of One Hundred Million was arrived at as Damages, he stated that the Site was a Hub Site, it was Premium and therefore, if there were any issues with the Site, it would affect other Sites and naturally reduce the Revenue of the Defendant. He however did not know the clientele catch in that area as he did not work in the Network Unit, and did not know the daily income, as he did not work in

the Financial Unit. He could only say that it was an estimate, based on how much those Sites generated daily.

When questioned whether he knew that from the time the outstanding refund was made to the time of the removal of the Mast, (1st April 2009 to 1st November 2009) it took over Two Hundred Days (200), he replied that the Lease Agreement was never terminated but rather transferred from the 2nd Claimant to the Incorporated Trustees. It was when the Agreement between the 2nd Claimant and the Estate Association was in place, that they removed the Mast from the Premises of the 2nd Claimant to that of the Association premises sometime in July of that year.

When questioned who transferred the Lease between the 2ndClaimant and the Estate Association, this witness replied that it had to be that the 2nd Claimant transferred the Sub-Lease to the Estate Association.

DW1 was shown **Exhibit A,** the Lease Agreement between the Defendant and the 2nd Claimant, and told to indicate where it was stipulated any transfer of Lease, and he replied that **Paragraph 4.7**stated that the lease could be assigned or transferred but with the consent of the Lessor. He refuted the contention that the Incorporated Trustees of the Estate were an Affiliate or Associate of Airtel. According to him his Company sought the consent of the 2nd Claimant, adding that it was a Tripartite Agreement.

It was on this basis that the 2nd Claimant paid the refund to the Estate Association to cover for the unexpired part of the lease.When asked to produce this Tripartite Agreement, he responded that it was a verbal agreement and he was not present, and neither did he have any specific knowledge of the Representatives, the time and place the oral agreement was entered into. According to him, documents in his Office suggested that the Three Parties reached such an Agreement.

He was aware from documents in his Office that at the time of the lease, the property was fully inhabited when the Mast was placed on the Rooftop but he did not know whether subsequently to the placing of the Mast, it was inhabited. When questioned further, he could not state which document gave him this opinion but stated that from

Telecommunication Practice, Rooftop Masts are not installed in empty buildings, and would be surprised if his Company installed in an uncompleted building. He was then shown **Exhibits F1-F24,** to which he responded that he could see a window in an unpainted building and could also see cars presumably belonging to tenants in front of the Building.

DW1 stated that even though he could not accurately say what year the Mast was removed, he knew that steps were taken to remove their Antenna after the outstanding was paid to the Estate Association. He could not explain how he came to the knowledge of this fact, adding that he did not see any documents to this effect. He was also not in a position to know how much the Claimants would lose if they overstayed, assuming they overstayed. He did not know the number of flats in the property nor the prevailing rental rate for the property, as he was not an Estate Surveyor. He however acknowledged that they paid N2, 000, 000.00 for the space, and it was safe to assume this amount would be the prevailing rent. When questioned further, he replied that he was not in a position to know whether his Company gave out free seconds of airtime but he knew that his Company was incorporated to make profits.

Learned Counsel to the Claimants tendered through this Witness, **Exhibit K**, a Letter dated the 5th of January 2009, written by the Defendant to the 2nd Claimant, with particular reference to the Penultimate Paragraph. He was also referred to **Exhibit C**, a Letter dated the 31st of March 2009, and he responded that the relationship between the Defendant and the 2nd Claimant was regulated by the Agreement in **Exhibit A** and the rent for the property, could only be reviewed after the expiration of the first five years.

He was asked whether he was aware that the payment for the unexpired tenure was paid by the 2nd Claimant to the Estate Association at the Defendant's Request and Instruction, and he replied that he was only aware that money was paid to the Estate Association by the 2nd Claimant covering the unexpired period of the lease and he had no idea or knowledge of who gave the instruction, stating further that **Exhibit C** was not an instruction to the 2nd Claimant.

There was no Re-Examination of this Witness, and with his Testimony, the Defendant closed its defence.

On the 9th of March 2020, both Legal Counsel adopted their Final Written Addresses before the Court.

In their Final Written Address dated 14th of January 2020, Learned Counsel representing the Defendants raised Three Issues for Determination, namely: -

1. From the facts presented, whether the Defendant can be held liable to the Claimants in holding over the Leased Property?
2. From the facts presented, whether the Claimants are entitled to the Reliefs sought in their Statement of Claim? And
3. From the facts presented, whether the Defendant/Counter-Claimant is entitled to succeed in its Counter-Claim and therefore being granted with the Reliefs sought.

In their Response, Learned Counsel to the 1st and 2nd Claimants filed their Written Address dated the 25th of February 2020 wherein they equally raised essentially the same Three Issues as set out above for Determination.

After a careful consideration of the evidence adduced throughout this Trial and a thorough perusal of the Documentary Exhibits tendered before the Court, the Court will determine on these Issues: -

1. ***Whether the Lease Agreement in Exhibit A was validly terminated and in the instance that it was not, whether the Lease Agreement was successfully transferred to the Incorporated Trustees of NNPC Estate Resident Association as Assignees.***
2. ***Whether the Claimants are entitled to the Reliefs sought in their Statement of Claim and finally,***

3. ***Whether the Reliefs sought in the Counter-Claim are meritorious.***

For the Purposes of this Judgment, and for ease of reference, the Parties will be identified throughout the Main Claim and the Counter-Claim, by their Designation set out in the Main Claim. The only difference would be the reference to the Incorporated Trustees of NNPC Estate Resident Association, who are the 3rd Defendant to the Counter-Claim.

It is initially important to determine the Agreements entered into by all the Parties before the Court, in order to decide whether there **was ONLY One** Prevailing Written Lease Agreement or whether there was in existence, another Oral Agreement transferring the Lease to a 3rd Party, or yet still, whether yet another Separate Oral/Written Agreement was entered into between the Defendant and the 3rd Defendant to the Counter-Claim, who are the Incorporated Trustees of the NNPC Estate Residents Association.

A Tenancy Agreement must be given its plain, natural, ordinary and simple interpretation. Reference is made to the Case Law Authorities of **FALOUGHI VS FIRST IMPRESSION CLEANERS LTD (2014) 7 NWLR PT 1406 AT PG 355;OGWUCHE VS BSCSC (2014) 7 NWLR PT 1406 AT PG 374 AND AKUBUIRO VS MOBILE OIL (NIG) PLC (2012) 14 NWLR PT 1319 AT 42.**

It is clear that by virtue of **Exhibit A**, a Lease Agreement for the Base Station was duly executed between Marachi Engineering Limited and Vee-Network Limited (Celtel Group) on the 9th day of August 2007 for the purpose of "*installing its Cellular Equipment in furtherance of its Telecommunication Business.*"

The Tenure was set at Fifteen Years Certain commencing from the 1st day of March 2007, with thePayment of Rents in Three Installments of Five Years each. The Lessor was given the Option to Review the Rent after each Instalmental Payments at Certain Percentage Increases. The 2nd

Claimant was also obligated to give the Defendant the First Option to purchase the Property,not at the Prevailing Market Rate, but at an Appropriate Discounted Rate, in consideration of the Rent already paid and improvements carried out on the Leased Property. It was finally stated in **Clause 6** that any Variation to the Agreement must be reduced into writing and signed by the Parties.

It remained unchallenged that during the Pendency of this Tenancy, and on the18th of February 2008, the 2nd Claimant, in line with the Terms of their Agreement,notified the Defendant of their intention to sell the Leased Property and offered the Defendant the First Right to Purchase the Property, but the Defendant turned down this Offer.

The 2nd Claimant then made the Offer open to the Public and the 1st Claimant purchased the Property in issue after being aware of the Existing Lease Agreement.

Through **Exhibit K**dated the 5th of January 2009, the Defendants wrote the 2nd Claimant requesting for a Meeting to be convened so that both Parties could work out the possibility of continuing the cordial relationship with the New Owners during the Lease Renewal Period.

The Parties subsequently met and the Defendants prepared the Minutes of Meeting in **Exhibit B,** and forwarded it to the 2nd Claimant. A careful perusal of the Minutes of the Meeting held by the Representatives of the Defendant, the 2ndClaimant and the 1st Claimant's Observer, would show that Parties had acknowledged that the New Owner was ready to commence work at the Site. The Minutes then stated thus: ***"As a result of this, the Agreement executed between Marachi Engineering Limited and Celtel Nigeria Limited in respect of the said property is HEREBY DETERMINED and that CNL is giving 30 days Notice from the date of the Letter to dismantle its Antennae from the rooftop of the Demised Property".***

From this Meeting, the PW1, Mrs. Victoria Nlemigbo, the Managing Director of the 2nd Claimant, stated that the New Owner was aware of the Defendant's Interest and was ready to commence work on the roof of the property and the CNL Mast must be removed before the work could

commence. She also stated that her Company would return the Rent for the Unexpired Term to CNL, the Defendant's Parent Company.

The Representative of the 1st Claimant at that Meeting confirmed being aware of the presence of the Mast on the rooftop, stating that it was not an encumbrance. He was only there as an Observer. He was told by one of the Defendant's Representative that they had no back up plan and maintained that the Company had a safe period of Five Years it had invested into the Property and had a projected return on its investment, and as such could not remove or alter the present location of the Site. It would also cost them a huge amount of money to remove the Mast, adding that some Sites were dependent on this Particular Mast, such that the removal of the Mast would cause a Strong Network Breakdown and Monumental Loss of Revenue to them.

The Representative of the New Owner was asked to suggest a way out of this Problem but he replied that he could not suggest anything because his Client was ready to commence work on the roof of the house and this could not be done with the presence of the Mast on the roof. The only solution to the problem was to remove the Mast and as the Lessor had said, they were prepared to Refund the Rent for the Unexpired Term.

The Conclusive Paragraph of the Memo decided that both the 2nd Claimant and the 1st Claimant should formally communicate their intention to the CNL in order to enable the Company take a decision on the Matter.

There followed a Series of Correspondences between the 2nd Claimant and the Defendant, as seen through the Documentary Exhibits tendered, which demonstrated the moves explored by the Parties to cure the impasse and solve the question of a peaceful resolution.

The Witness for the Defence had strongly contended a "Transfer/ Assignment" of the Lease on the Property in question by the 2nd Claimant to the Incorporated Trustee of the NNPC Estate Residential Association, and had also argued that the Lease in **Exhibit A**, was still subsisting.

Now, the Court can see that **Exhibit A**was dated the 9th day of August 2007 and was to be for a period of Fifteen (15) Years **Term Certain** with Rent payable in Three Installments of Five Years each, which would naturally have terminated at the End of the Tenure. However, the issue of Rent Payments was a Rolling Term, in that, for every Installmental Period of Five Years, the Rent Payable was subject to Graduated and Fixed Interest Rates.

From **Exhibit A,** there was no Specific Termination/Discharge Clause and the closest to it, can be gleaned from **Paragraph 4.1,** which states: -

"*Should the Lessor at any time during the Term of this Agreement decide to sell all or any part of the Leased Premises, the Lessee shall be given the First Option to buy the piece of Land/Property on which the Equipment stands at the Prevailing Market Price but at an appropriate discounted rate in consideration of the rent already paid by the Lessee and improvements carried out on the Leased Premises*."

The Main Contention between the Parties is whether this Lease Agreement in Exhibit A was Validly Transferred by Assignment to a Third Party or whether the Relationship between the Parties was Duly Determined.

The only way to decipher this Contention is upon a thorough examination of the Facts, Circumstances and Documentary Exhibits adduced during the Trial.

It is clear that the Contract in **Exhibit A** could only be discharged through the following: -

1. By **Performance** in doing all that is required to be done;
2. By **Agreement**, if both Parties have mutually agreed to put an end to their Contractual Relationship and this Agreement could even be Oral;
3. By **Frustration**, if some event outside the control of the Parties takes place, making performance impossible; and

4. By **Breach**, when the Party in Default may be liable for Damages and where the Innocent Party is relieved of any past or future liabilities.

Reference is made to the Cases of **TSOKWA OIL MARKETING COMPANY VS BON LIMITED (2002) 11 NWLR PART 777 AT PAGE 163 (SC).**

Now, from the facts and circumstances of this Case, **Exhibit A**, if discharged, was not discharged as a result of any Breach, Frustration or even by Performance but was discharged by Agreement. The Contract was clearly Executory, in that, both sides still had their duties and obligations to fulfill for the duration of Fifteen Years. In this instance, the Consideration for the discharge of **Exhibit A** is found in the Relinquishment by each Promisee of its Right to Performance.

The Agreement to Discharge the Contract must therefore be supported by other Considerations such as Accord and Satisfaction. In other words, the Discharge of a Contract in return for a Consideration, which consists in some Satisfaction other than the Performance of the Original Obligation.

In essence, it is the Purchase of a Release from an Obligation whether arising under Contract or Tort by means of any Valuable Consideration, not being the Actual Performance of the Obligation itself. The Accord is the Agreement by which the Agreement is discharged. The Satisfaction is the Consideration, which makes the Agreement Operative. See the Case of **STEEDS VS STEEDS (1889) 22 QBD PAGE 537.**

Once the Accord is Reached and Executed,that equates to Satisfaction. The Original Obligation or Claim is discharged from the Date the Promise is accepted. If the Promisor fails to perform its Promise, the Promisee's only remedy, is to sue for Breach of the Promise but it cannot return to the Original Obligation or Claim. Reference is made to the Case of **BRITISH RUSSIAN GAZETTE AND TRADE OUTLOOK LIMITED VS ASSOCIATED NEWSPAPERS LIMITED (1933) 2 KB PAGE 616, 643, 634 PER SCRUTTON LJ.**

In this instant case, **Exhibit K,** is a Letter dated the 5th of January 2009 written by the Defendant to the 2nd Claimanttitled, "**RE- SALE OF OUR NNPC BLOCK OF FLATS AND NOTICE OF THE TERMINATION OF LEASE AGREEMENT"**

Here, the Defendant made reference to the 2nd Claimant's Letter of the 24th of December 2008, which Letter is not before the Court.

From this **Exhibit K**, the Defendant debunked any inference that their Lease Agreement with the Defendant had been terminated making reference to **Paragraph 3.1** of their Lease Agreement. They made the point that the 2nd Claimant had the liberty to sell the Leased Property, but it was up to them to explore the possibility of continuing a cordial relationship with the New Owners during their Lease Renewal Period.

In the Concluding Paragraph, they proposed a Scheduled Meeting between them, the 2nd Claimant and the New Owners.

The outcome of the Scheduled Meeting was **prepared by the Defendants** and sent to the 2nd Claimant in a Letter dated the 22nd of January 2009, which encased the Minutes of the Meeting held on the 16th of January 2009 and was admitted as **Exhibit B**.

In the Minutes, it was stated that, "*As a result of this, the Agreement executed between Marachi Engineering Limited and Celtel Nigeria Limited in respect of the said Property is* ***HEREBY DETERMINED****and that CNL is giving (sic) 30 days Notice from the date of the Letter to dismantle its Antenna from the rooftop of the Demised Property."*

It is also apparent from the Minutes that Mrs. Victoria Nlemigbo, the Managing Director of Marachi Engineering Limited, notified the Defendants of the need to remove the Mast, as the New Owner was ready to commence work on the roof of the Property.

The Report of the Minutes concluded that both Marachi Engineering Limited (the Original Owner of the Property) and the New Owner should communicate their intention on the matter formally to CNL in order to enable the Company take a decision on the matter.

One Mr. Kehinde Ogunlade, a Legal Specialist, who apparently was not a Specialist at writing Logical Minutes, prepared the Minutes.

This is because he yo-yoed between making definite pronouncements on the final determination of the Lease Agreement and then leaving the matter open for further decisions on the removal of the Mast and the Rent. Therefore, the Court has to look at other Documentary Evidence on Record to shed more light on whether this Lease Agreement was actually terminated.

In **Exhibit C**, the Defendant wrote to the 2nd Claimant another Letter dated the 31st of March 2009 titled, "**RE: SALE OF YOUR NNPC BLOCK OF FLATS AND NOTICE OF TERMINATION OF LEASE AGREEMENT; SITE CODE N0. ABJ 100",** wherein they referred to the 2nd Claimant's Letter of the 24th of December 2008 as well as the various Meetings and Discussions that were held towards resolving the issues pertaining to the Termination of the Lease and Relocation of their Base Station.

Further in the Letter, the Defendant stated that they had entered into Discussion with the Authorities of NNPC Estate, who agreed to provide them with an Alternative Space within the Estate to place their Facility.

The Defendants therein stated the Balance Sum of their Unexpired Lease and claimed to be entitled to a Rent Refund of N6, 666, 666.80, which was the Sum Total of Forty Months at the Rate of N166, 666.80 Monthly.

It is crucial to note here,that the Defendant recognized the fact that the Tenancy had been determined, albeit prematurely and went on to demand the Cost of Erecting another Platform for their Facility within the Estate at a Cost of approximately N2, 000, 000.00.

They categorically urged the 2nd Claimantto make a Cheque available in the Sum of N8, 666, 666.80 payable to the Estate Management Committee Funds (SA/M), which they counted as effectively transferring the Lease to the Authorities of the Estate.

It is important to also note, that the Last Part of this Statement in regard to a Transfer was a Unilateral Statement, as there is no evidence outside

of this Letter to demonstrate that Marachi Engineering Limited professed to have any Right to Transfer their Property Lease Agreement to any Party. In any event, by this Date of the 31st of March 2009, they had no such authority as they had already sold off the Property to the 1st Claimant.

There was no other Extrinsic Evidence indicating that the 2nd Claimant had any Proprietary Rights over the newly acquired Site for the Base Station. There was also no Affiliation to show that the Estate of NNPC Residence had Joint Ownership of the Marachi Engineering Limited's Property to justify Oneness or Unity of Purpose and Common Interest. There were simply no Legal or Equitable Ties between the 2nd Claimant and his Interests on the one hand and the Estate and their Interests on the other hand.

This Exhibit illustrates the fact that the Defendant were negotiating the Acquisition of another Site within the Estate to situate their Base Station and this could only occur if they were acting in furtherance of the Meetings and Correspondences to relocate their Base Station elsewhere. They would not have been looking for another Site had they not agreed to terminate their Lease Agreement. This Action speaks louder than words.

The Exhibit also requested a Rent Refund and more particularly, the Cost of Erecting another Platform ***"BASED ON THE PREMATURE DETERMINATION OF THE LEASE."***

There was, however, the suggestion that the Payment demanded was for an effective Transfer of the Lease. There is a presumption that it is the same or another Legal Specialist of the Defendant that drafted this Letter because it contained a double-speak. It recognized the Determination of the Lease Agreement in one breath and then imputed a Transfer of the Determined Lease to the Authorities of the Estate in another breath.

Again, this is not a definite indication that there was a Premature Determination of the Lease.

The next recourse must be had to **Exhibit D**; the Letter dated the 3rd day of April 2009 written by the 2nd Claimant to the Defendant in regard to the Sale of the Leased Property. This Exhibit had referred to an Earlier Correspondence from the Defendant dated the 31st of April 2009 and had noted with delight the fact that the Defendant stated therein that they had concluded arrangements to amicably remove their Base Station from the rooftop of the Property.

This Exhibit went to show that the Defendant in their Letter had demanded as Refund, the Sum of N6, 666, 666.80 representing the Unexpired Residue of the **TERMINATED LEASE AGREEMENT.** The 2nd Claimant also agreed to bear the Cost of Demobilization and Erection of the Equipment at the Newly Acquired Site in the Sum of N2, 000, 000.00 and a Zenith Bank Draft, dated the 2nd of April 2009 evidenced this fact. The Copy of the Draft was attached to this Letter.

A little over a Month away on May 25th, another Letter was written as seen in **Exhibit E,** wherein the 2nd Claimant also wrote setting out the history of their relationship and further set out the Terms under which the Defendant was to remove their Base Station. It stated also that they had complied with the Defendant's Conditions but noted that the Defendant was yet to fulfill its own side of the bargain. It discussed the damages currently incurred by the New Owner due to the non-removal of the Base Station and notified them that Mesne Profit would be incurred on a daily basis at the Rate of Four Hundred Thousand Naira (N400, 000) per day.

Exhibit I is a Demand Letter written by Counsel representing both Claimants and it re-echoed the fact that the Lease Agreement had been **properly terminated**. It stated that the Lease was **terminated** on the 3rd of April 2009 when the Refund was acknowledged as "Received". There is nothing before the Court by way of Counter Evidence from the Defendant to dispute the Contents of this Letter. It would have been so easy to rebut this fact.

Also telling are **Exhibits J1 to J4,** the Series of Correspondences between the Defendant and the Incorporated Trustees of NNPC Estate Resident

Association, which evidenced the fact of Identification of a New Site with the Estate Management, their Negotiations and Payment for the Site.

Exhibit F1 to F24, the Pictures of the Leased Premises showing the Removal of the Base Station and the Date therein, is also evidence of the Finality of the relationship between the 2nd Claimant and the Defendant because if there had not been a Mutual Understanding and Consent, the Base Station would not have been removed in the very first place. It is pertinent to refer to **Exhibit A**, where it was clearly stated in its Preamble that the Leased Premises was for the purpose of installing the Defendant's Cellular Equipment in furtherance of its Telecommunication Business.

Therefore, if this same Cellular Equipment was removed from the Premises, and if the Defendant demanded and received money for its removal, then clearly there was an Active Determination of the Lease Agreement between the Parties. There can be no stronger proof of determination than this!!! There is no Police Report made by the Defendant indicating that their Base Station was illegally removed and there is no evidence of any Court Action for Recovery of Monies paid by the 2nd Claimant or even any Court Action by the Defendant that they were fraudulently or tortuously deceived to remove their Base Station.

Such elaborate steps of removal of the Base Station would surely have elicited some form of reaction from the Defendant had their Lease been in existence.

Now, turning to the Oral Evidence adduced before the Court, PW1, Mrs. Victoria Nlemigbo, the Witness for the Claimant stated that following the Joint Discussion of the 16th of January 2009, the Parties MUTUALLY AGREEDto terminate their Agreement. The Defendant had on the 31st of March 2009 written to them demanding Refund of the Unexpired Lease and Cost of Relocation. The Agreement was for the Defendant to remove their Base Station immediately after payment was made. It is her view that the Lease Agreement was effectively terminated on the 4th of April 2009.

Under Cross-Examination, she responded that there was no Termination Notice due to the fact that Parties had agreed that the Termination would be by Payment of a Certain Sum and upon Payment of that Agreed Sum, the Defendant could be said to have Notice of the Termination.

It is important to note that after the Sale of the Property to the 1st Claimant, they had no more business with the Property. Further, she had no relationship with the Estate Association and neither was she an Agent of the Defendant, but only hadan understanding that the Defendant would remove its Mast.

The evidence of PW2, Abdul Munafi Yunusa, was that he purchased the Property. Under Cross-Examination, he knew of the presence of the Antenna at the Point of Sale and was also present when it was removed. He too stated that he was not an Agent of the Incorporated Trustees of NNPC Estate Resident Association.

The Defence Witness, Mr. Anthony Tom, stated that there was still an Unexpired Period of the Lease of Three Years and Eight Months when the Property was sold. The 2nd Claimant had appealed to them to find another Site, giving them up to the end of 2009 to relocate and to ensure that the Lease was fully transferred to the Alternative Site.

According to him, the Defendant acted based on this Agreement and the Refund Money was directly paid to the Incorporated Trustees of NNPC Estate Resident Association, who agreed to provide a Platform. They had also communicated this fact to the 2nd Claimant, who he claimed carried out the Payment and transferred the Lease to the Incorporated Trustees of NNPC Estate Resident Association. He further denied agreeing to Terminate their Agreement in **Exhibit A**but mutually agreeing to Transfer.

He had stressed the point that the Parties had agreed that the Defendant would first relocate before the Subsisting Lease would be effectively transferred to the Estate Association.

According to him, the Dates on the Pictures indicating the 4th of November 2009 were arbitrarily affixed.

Now, the Court finds that this Statement is contrary to his Earlier Assertions that the Defendant was given up till the End of the Year to relocate, and also contrary to his Reply under Cross-Examination when he stated that he could not clearly remember, but was informed by his colleagues that the Mast was removed in July 2013 or so.

Further, it is also contrary to the back and forth Letters they had with the Incorporated Trustees of NNPC Estate Resident Association in the **Exhibit J Series** of Documentary Evidence, because there was no mention of Transfer or Assignment of any Existing Lease.

Secondly, there was no Timeframe set in these Correspondences and had there been a synergy between the 2nd Claimant and the Incorporated Trustee of NNPC Estate Resident Association on Assignment, there would surely have been an indication or emphasis as to time. This is so because the New Buyer was anxious to take over possession and renovate the Property.

From the length and breadth of their Discussions with the Incorporated Trustees of NNPC Estate Resident Association, there was no mention of the 1st or 2nd Claimants except in **Exhibit J3,** dated the 29th of June 2019 where they had referred to the 2nd Claimant, as their "Present Landlord".

Now, this was a false representation because upon Sale and the presence of New Ownership, they **knew** their New Landlord. This is more so, in view of **Exhibit B**, the Minutes dated the 16th day of January 2009, when they acknowledged the New Ownership and expressed an expectation of a cordial relationship with the New Owner and this was as far back as January 2009.

Further corroborating the above, is the Defendant's Letter in **Exhibit K**dated the 5th of January 2009, wherein they stated that it was now left to them to explore the possibility of continuing the cordial relationship with the New Owners during the Lease Renewal Period and welcomed the opportunity of meeting the Claimant and the **NEW LANDLORD** to further enhance that New Relationship.

With this knowledge of a New Landlord, how possible then could it be that an Assignment of the Lease or Transfer occurred?

The 2nd Claimant after the Sale of the Leased Property had no Dominion over the Property of another. Even before the Sale, they still had no such Dominion or Power over NNPCEstate's Site such as to assume the right to offer the Site out for Let or for exchange.

To argue that there was a Transfer/Assignment must be to argue logically and sensibly. It means the Defendant has the burden to prove on the Balance of Probabilities, that there was a Definite, Positive and Irresistible Legal Link/Tie between the 2nd Claimant and the Incorporated Trustees of NNPC Estate Resident Association. Mere Ownership of a Property within an Estate can never be equated with Communal or Joint Property, such that one House Owner could effectively transfer the Lease of his house to an Independent and Separate Owner just because they live in the same Estate.

This has got to be one of the most infantile arguments the Court has ever heard of, and it is completely bonkers. The argument was probably made after receiving Legal Advice from their Legal Specialist!!

If as the Defendant claim, they are entitled to a Refund from the Incorporated Trustees of NNPC Estate Resident Association for failing to give up the New Site, then by their arguments, they could legitimately have also requested the 2nd Claimant to repay this Sum.

Under Cross-Examination, all Mr. Anthony Tom's testimony was gathered from Company Files, as he was not in the employ of the Defendant at the time of the Transaction. He acknowledged One Month's Notice for Termination, and also the fact that the 2nd Claimant had the Right to sell their Property to anyone.

According to him, it was when the Agreement between the 2nd Claimant and the Incorporated Trustees of NNPC Estate Resident Association was in place, that the Mast was removed into the New Premises sometime in July of that Year. This, the Court finds, is also contrary to his earlier statement that they were given up to the end of the year to remove their Base Station. It was also contrary to the fact that the pictorial evidence showed that the Base Station was removed in November 2009. For the Defence to argue that the dates on the Pictures were arbitrarily placed in them, they need to show Beyond Reasonable Doubt that this was so. They could easily have produced their own documents, pictorial or

otherwise to assert the contrary. This allegation has a Criminal Burden of Proof to discharge and cannot be made relying on Air.

The DW1 did not know who transferred the Lease between the 2nd Claimant and the Incorporated Trustees of NNPC Estate Resident Association and surmised that it had to be the 2nd Claimant that transferred the Sub-Lease to the Incorporated Trustees of NNPC Estate Resident Association. According to him, it was a Verbal Tripartite Agreement and it was on this basis, that Payment was made directly to the Incorporated Trustees of NNPC Estate Resident Association.

Now, when Parties have reached a Binding Oral Agreement, the Express Terms of that Agreement will normally consist of any Promise made by either Party during the Course of their Negotiations that is not withdrawn before the Final Agreement.

At least Three Questions may arise: -

1. Did the Particular Statement amount to a Promise?
2. If the Statement was a Promise, what was being promised? And
3. Did the Oral Contract incorporate a Set of Written Terms, printed on a Notice, Ticket, Minutes or any Document whatsoever?

The Statement/Promise is the Importance Factor. If the Statement is about something that is critical to the other Party, it is likely to be treated as a Term of the Contract.

Now, the Defence Witness was not present, did not have any specific knowledge of the Representation present when the Oral Tripartite Agreement was entered into and also could not tell the Time and Place that Agreement was entered into. He was only aware of all he was saying through Documents in his Office, even though he could not state which particular Document gave him this opinion. From his experience, it was Telecommunication Practice for Mast to be installed in occupied Buildings and would be surprised if it were not so.

He also did not have an idea as to the Person in the Defendant's Company that gave and effected the Instruction for the Demand of the Rent Refund and for the Relocation Expenses, especially as he denied that their Letter in **Exhibit C** was an Instruction.

It is clear that the 2nd Claimant came to the Knowledge of the existence of any of the Defendant's dealing with NNPC Estate, through the Defendant's Letter that notified them of an arrangement for a new site within the Estate.

In fact, the Second Paragraph in **Exhibit C** says it all and it reads thus: -

"In the light of the above, <u>we</u> have entered into discussion with the Authorities of NNPC Estate and <u>they</u> have <u>agreed</u> to provide us an <u>alternative space</u> within the Estate to place the facility"

This Notification Letter from the Defendants referred to themselves as "we" and the Estate Management Committee as "they" and also evidenced the fact that they agreed with a Third Party, independent of the 2nd Claimant on a New Relationship. If the 2nd Claimant had been in the know, or had been a Participant/Contributor, there would not have been a needto inform them. The Letter did not state that the NNPC Estate **<u>AND</u>** the 2nd Claimant agreed to provide an Alternative Space. It simply said the "Authorities of NNPC Estate".

Contractual Liability is based on a Parties failure to perform an Undertaking or Promise, which may be expressed or inferred from the circumstances. A Promise is one of the Essential Elements of Contractual Liability, and if the Court finds that there was no Promise, then there can be no Contractual Liability.

It is clear that had there been a Transfer or Assignment of the Lease Agreement between the 2nd Claimant and the NNPC Estate, there ought to have been Evidence of the Promise made by the 2nd Claimant to Transfer the Unexpired Lease. Further, the Defendant ought to have sought out the 2nd Claimant as well, for a refund in regard to the failed transaction. **Exhibits J1 to J4,** was strictly between the Defendant and the Incorporated Trustees of NNPC Estate Resident Association and there was no mention of the 2nd Claimant.

Reinforcing this fact is **Exhibit J2**; the Letter dated the 10th of July 2009 written by the NNPC Housing Estate Residents' Association to the Defendant. It can be deduced from this Letter that even the NNPC Estate Management Committee **<u>did not</u>** have the Mandate of their Congress to authorize the Defendant to construct a Steel Platform to erect a Telecommunication Mast within the NNPC Estate. This Letter also

acknowledged the fact that they received the Payment and were in the process of initiating a Refund Process to the Defendant.

There was no Reference whatsoever to the 1st or 2nd Claimants and the allegation of the Defendant that the 1st and 2nd Claimants interfered with the Acquisition of their Site is unfounded. The fact that they are Property Owners within an Estate, has not imposed upon them the Duty to be part of the Management or Congress of that Estate. A Contract between Two Parties to an Agreement cannot confer or impose Obligations arising under it on any Person, except the Parties to it. A Stranger to a Contract cannot sue or be sued on the Contract. Reference is made to the cases of **IDUFUEKO VS PFIZER PRODUCTS LTD (2014) 12 NWLR PT 1420 AT 96 AND MAKWE VS NWUKOR 14 NWLR PT 733 AT 356.** The Defendant needed to show positively how the 1st and 2nd Claimants participated in the Rejection of their Lease in the Estate.

Further reference is made to the Defendant's Letter in **Exhibit K** dated the 5th of January 2009 tagged, "**RE: SALE OF OUR NNPC BLOCK OF FLATS AND NOTICE OF THE TERMINATION OF LEASE AGREEMENT**", wherein Reference was made to the 2nd Claimant's Letter dated the 24th of December 2008. The Defendant had termed the inference that their Lease had been terminated due to their Non-Interest in the Offer to Purchase the Property as absurd. Further regard is had to the 2nd Claimant's Letter dated the 20th of January 2009 and the Defendant's Reply Letter both 'tagged', "**RE: SALE OF OUR NNPC BLOCK OF FLATS, AND NOTICE OF TERMINATIONOF LEASE AGREEMENT SITE CODE N0 ABJ 100**".

These Two References connotes that there must have been a debatable issue regarding the Notice of Termination not before the Court. This issue must have been resolved between the Parties somewhat, because there was no Allegation of Breach of Contract by the Defendant. Had the Contract not been validly terminated at some point, or had there been the absence of the Settlement on the Question of Termination, there would have been more dust raised in this Case. The 2nd Claimant had testified through its Witness that Payment of the Refund would signify an effective Termination of their Relationship and because the Defendant

did not specifically dispute this contention, the Court must assume that was the State of Affairs between the Parties.

If the Defendant did not agree to Payment of Refund and Relocation Expenses, as terminating the Lease Agreement, then why did they calculate what was due, why did they receive it or rather, why did they direct where it was to be remitted. In **Exhibit C**, their Letter to the 2nd Claimant, they stated that based on the **PREMATURE DETERMINATION OF THE LEASE**, the 2nd Claimant were to bear the Cost of Erecting another Platform within the Estate for their Facility and this would cost about N2, 000, 000.00. "***Therefore, kindly made (sic) available a Cheque in the Sum of N8, 666, 666.80 payable to ESTATE MANAGEMENT COMMITTEE FUNDS (SA/M). This Payment will effectively Transfer the Lease to the Authorities of the Estate.***"

It is worth noting that calling a Cat a Dog does not make it a Dog even where stated a million times over, it still remains a "Cat". The fact of stating that the Lease was Transferred or Assigned a million times would not constitute a Transfer or Assignment if the Legal Requirements and Ingredients were not present to justify a Transfer. This is because of the Latin Maxim, **NEMO DAT QUO NON HABET**; you cannot give what you do not have.

Finally, there is **Exhibit J4,** dated the 21st day of October 2010 written by the Legal Representation of the Defendant to the Incorporated Trustees of NNPC Estate Residents Association. In it, it stated that the Defendant had paid the Sum of N8, 666, 666.80 for the provision of a Site within the NNPC Estate, which Site they did not produce and neither did they refund the money to them. The Letter alleged not only a Breach of Contract but also a Case of Pure Conversion, "**THEFT**", of which they ought to be aware of the Legal Consequences and urged for Payment. This Letter obviously was issued after a Series of Reminders for the Refund of their money.

As regards whether there was any Subsequent Oral Contract in existence, the Court must have an in depth look to decipher whether there was in existence an Oral Contract, or Implied Contract between the 2nd Claimant

and the Defendant to discharge **Exhibit A**, and also whether there was a Separate Contract between the 2nd Claimant and the Incorporated Trustees of NNPC Estate.

It is the contention of Learned Counsel representing the Defendant that the 'Intendment of the Agreement between the 2nd Claimant (MARACHI ENGINEERING LTD) and the Defendant was a Transfer of the Lease from the 1st Claimant (AZMAN OIL & GAS LTD) to the Incorporated Trustees of the NNPC Estate Residents Association… and not to terminate it'.

In the first instance, this argument is preposterous for the simple reason that both Parties to this so-called Agreement are agreeing when they have no right to compel Azman Oil and the NNPC Estate to deal with each other. They had no such right as Marachi Engineering no longer had any Proprietary Rights over the Property they sold the Previous Year, and NNPC Estate Association had not been identified as a Subsidiary or Part and Parcel of Marachi Engineering. The Legal Specialist advising the Defendant got it wrong once again!!

The Law takes an Objective rather than a Subjective View of the Existence of an Agreement and so its starting point is the Manifestation of Mutual Assent by two or more persons to one another. An Agreement is not a Mental State but an Act, and as an Act, it is a matter of inference from Conduct. The Parties are to be judged not by what is in their minds but by what they have said, written down or done. See the case of **AJAGBE VS IDOWU (2011) 17 NWLR PT 1276 AT 422.**

The Court also has the duty to construe the surrounding circumstances including Written or Oral Statements so as to discover the intention of Parties. See **AFROTEC TECH SERVICES (NIG) LTD VS MIA & SONS LTD (2000) 15 NWLR PT 692 AT 730; OWONIBOYS TECHNICAL SERVICES LTD VS UBN (2003) 15 NWLR PT 844 AT 545**.

Ordinarily, an Unsigned Document is not binding on a Party unless he is aware that the document contained Contract Terms or that the other Party had taken reasonable steps to bring the terms to his notice. When either Party does not sign a Contract, it might be valid, if there is other evidence that both sides intended for it to go into effect. The evidence

might be Letters, Memoranda, Minutes or even the beginning of Performance by one or by the other.

It is possible for a Contract to emerge from Series of Correspondences between two persons. But it must be apparent when the correspondences exchanged are read together, that the Parties have come to an Agreement. See the case of **OGBONNA VS K.S.D. & P. CO. LTD (2014) 11 NWLR PT 1417 AT PAGE 185.** The Contract could then be inferred from the Conduct of Parties, although they had not made a Contract in so many words. See **TANNER VS TANNER (1975) 3 ALL ER 776, COURT OF APPEAL**; **DASPAN VS MANGU LOCAL GOVT COUNCIL (2013) 2 NWLR AT 203 AND NNEJI VS ZAKHEM CONSTRUUCTION (NIG) LTD (2006) 12 NWLR PT 994 AT 297; BFI GROUP CORP VS BPE (2012) 18 NWLR PT 1332 AT 209 AND SHELL PETROLEUM CO DEV LTD VS JAMMAL ENG (NIG) LTD (1974) 4 SC AT 33.**

Whether Parol or Written, the Parties to any Agreement as well as the Court, are bound by the Terms or Conditions in a Contract, between the Contracting Parties, which is known as the Sanctity of Contracts, expressed in the maxim, *Pacta Sunt Servanda*, which means the Non-Fraudulent Agreement of Parties must be observed. Reference is made to the cases of **GOLDEN COUNST CO LTD VS STATECO (NIG) LTD (2014) 8 NWLR PT 1408 AT PG 171; KOIKI VS MAGNUSSON (1999) 8 NWLR PT 615 AT 492 BILANTE INT'L LTD VS NDIC (2011) 15 NWLR PT 1270 AT 407; AG RIVERS STATE VS AG AKWA IBOM STATE (2011) 8 NWLR PT 1248 AT 31.**

The normal test for determining whether the Parties have reached Agreement is to ask whether an Offer has been made by one Party and accepted by the other. See **AKINYEMI VS ODU'A INVESTMENT CO LTD (2012) 17 NWLR PAGE 209; SC.**

To constitute an Acceptance, the Assent to the Terms of the Offer must be absolute and unqualified. The Offeree must unreservedly and without any variance of any sort, assent to the Terms proposed by the Offeror. See **MIKANO INT'L LTD VS EHUMADU (2014) 1 NWLR PT 1387 AT PAGE 100 AND ORIENT BANK VS BILANTE INT LTD (1997) 8 NWLR PT 515 AT 37 AND LAWAL VS UBN PLC (1995) 2 NWLR PT 378 AT 407**

In this Case under reference, Learned Counsel to the Defendant in his Final Written Address, had sashayed between the Continued Existence of the Lease Agreement in **Exhibit A**, to a Transfer, to an Assignment, to Frustration of the Contract, to Termination, to Conditionality and then Non-Fulfillment of the Conditions. Unless the Court wants to enter into the Dance Floor with him, he ought to have settled with one or two of these Flags, instead of trying to wave all Flags at the same time. This can certainly cause Vertigo, a dizzying sensation of tilting within a stable surrounding or being in tilting or spinning surroundings!

One thing is clear, there were Communication Mistakes and certainly the Defendant had Mistaken Expectations between the 2nd Claimant and the Defendant. It is clear that where there has been no Misrepresentation, and where there is no ambiguity in the Terms of the Contract, the Defendant cannot be allowed to evade the Performance of it by the Simple Statement that he made a Mistake. Were such to be the Law, the Performance of a Contract could rarely be enforced upon an unwilling Party who was also unscrupulous. It is hard to hold a man to a bargain entered into under a Mistake, but hardship on the other side must be considered. If the Defendant had Mistaken Expectations, and if unknown to the 2nd Claimant, it has no effect unless the 2nd Claimant contributed to the Defendant's Misapprehension. See the case of **SCRIVEN BROS & CO VS HINDLEY & CO (1913) 3 KB 564. See also SMITH VS HUGHES (1871) LR 6QUEEN'S BENCH AT 597**

In TAMPLIN VS JAMES (1880) 15 CH D 215 PER BAGGALLAY LJ HELD that Unintentional Misrepresentation or Ambiguity of the Agreement, where none is present, the Defendant cannot be allowed to evade the Performance of an Agreement as where there has not been a Misrepresentation, there cannot be any ambiguity in the Terms of Contract or Agreement.

The Circumstances in this Case can be likened to the Apple in the Garden of Eden. There is nothing to say to the contrary that the Apple Tree was the only Apple Tree in that Garden, and Eve may have as well plucked the Apple from any other Apple Tree, except the Apple from the Tree of the Knowledge of Good and Evil.

Adam's punishment or liability arose because he KNEW that the Apple came from the Forbidden Tree and he still ate. Had he not asked the origin, and had Eve not told him the Origin, but had he believed that it came from any other Tree, but the Forbidden Tree, perhaps Mankind would have been saved.

Since Eve did nothing to deceive Adam as to the Origin, then she was not bound to prevent Adam from deceiving himself as to the Consequences of his Actions, and their Understanding would still hold.

The Misapprehension by Adam as to the extent of Eve's Promise, if unknown to Eve, has no effect on Eve, unless Eve caused or contributed to Adam's Misapprehension.

LORD DENNING Master of the Rolls,in W J ALAN & CO LTD VS EL NASR EXPORT AND IMPORT CO (1972) 2 ALL ER 127, COURT OF APPEAL held on Principle of Waiver that "If one Party, by his Conduct, leads Another to believe that the Strict Rights arising under the Contract will not be insisted on, intending that the Other should act on that belief, and he does act on it, then the First Party will not afterwards be allowed to insist on the Strict Legal Rights when it would be inequitable for him to do so. There may be no Consideration moving from him who benefits by the Waiver. There may be no detriment to him by acting on it. There may be nothing in writing. Nevertheless, the one who waives his Strict Rights cannot afterwards insist on them."

Learned Counsel representing the Defendant had in his Written Address contended that there was a Transfer of the Lease from the 1st Claimant to the Estate Association, and had gone on to define what 'Transfer' was, according to the Black's Law Dictionary.

Now, in the Case of**INYANG & ORS VS EBONG PER EDOZIE, JCA (P48, Para F-G),** reference was made to **Black's Law Dictionary, 6th Edition Page 119**, where Assignment is defined as "A Transfer or Making Over to Another of the whole of any Property, Real or Personal in Possession or in Action or of any Estate or Right therein.

In ASHIBUOGWU VS AG BENDEL STATE & ANOR (1988) LPELR-578 (SC) PER AGBAJE, JSC (PP 38-40, Paras F-C) His Lordship referred to the Definition of Novation and its Scope in **Halsbury's Laws of England 3rd Edition Volume 8 Page 262 - 3**where Novation is, in effect, a form of Assignment in which, by the Consent of all Parties, a New Contract is substituted for an Existing Contract. Usually, but not necessarily, a New Person becomes Party to the New Contract, and some Person who was Party to the Old Contract is discharged from further liability.

For Novation to ensue, there must be not only the Substitution of some other Obligation for the Original One, but also the Intention or Animus Novandi. Since Novation is a New Contract, it is essential that the Consent of all Parties shall be obtained, and in this necessity for Consent, lies the essential difference between Novation and Assignment. Such Consent may be inferred from Conduct without Express Words. Valuable Consideration is necessary and as a General Rule, the Rescission of the Former Agreement of itselfconstitutes Sufficient Valuable Consideration.

In addition to the Consent of all Parties being obtained, it is necessary that the New Contract should comply with all other requirements of an Original Contract. Writing is unnecessary,as a Promise to answer for the Debt of another, because the Original Debt no longer exists. Similarly, where the Original Contract was in writing, but before Breach thereof, a New Oral Contract has been entered into in substitution for it, evidence of such New Oral Contract may be admitted, for, the Old Contract being annulled, the New Contract does not vary it, even though the New Contract may adopt some of the Provisions of the Old One. **See alsoACB VS AJUGWO (2012) 6 NWLR PAGE 97 (CA)**

Had there not been a Termination, there would not have been the need to negotiate for a New Site to locate their Base Station. Had the 2nd Claimant been involved in this New Relationship, their Names would have been mentioned in this Letter of Counsel, who set out the facts of their Agreement.

Therefore, it is clear to see that upon the Payment of the Refund of the Unexpired Term of the Lease Agreement between the 2nd Claimant and the Defendant, and upon the Acknowledgement of the Refund and upon

the Payment of the Cost of Relocation, the Relationship between the 2nd Claimant and the Defendant had ended and one does not need to be a Rocket Scientist to see it as such.

The whole purpose of their Relationship was to provide a Space for their Base Station, and the minute they agreed to relocate the Base Station and the minute they received the Payments for its removal and relocation, the Relationship had ended because the Lease Agreement specifically referred to the Base Station.

There was also no Question of the Refund of the Refunded Money by the Defendant to the 2nd Claimant and therefore, they had no Plank to stand on to justify their continued existence on the Leased Property.

From all the above analysis, it is plain to see that even though there was no Formal Letter of Termination before the Court, the Documentary Exhibits are indicative of a Termination of the Relationship of Parties in **Exhibit A.**

Had the Defendant not demanded and received a refund from Marachi Engineering then he may be able to argue in line with the Cases of **REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORPORATED V EMENIKE & ORS (2017) LPELR-42836 (CA); OBIJURU VS OZIMS (1985) LPELR-2173-SC; GBADAMOSI RTD VS AKINLOYE (2013) VOL 7 MJSC (PT1) PG1; MAKIRU VS NWUFOR (2001) VOL 6 MJSC 179 AT 188-189.** They could have taken out an Action in Court against Marachi for Breach of the Contract in **Exhibit A**, but by their Conduct and by their Request for Refund and Relocation Expenses, the door is firmly shut against them. The Defendant is estopped from seeking refugeon the premise that the Transfer of Title between Marachi and Azman was subject to their Existing Lease Agreement, where Title would only have passed after the expiration of the pending Lease Agreement in **Exhibit A**.

By Preponderance of Evidence, both Oral and Documentary, the Court is satisfied that the Lease Agreement in **Exhibit A**was determined by the

Subsequent Agreement, as both Parties are found to have Mutually Agreed to put an End to their Contractual Relationship and their Agreement to terminate **Exhibit A**can be seen through their Oral Communication, Documents and most especially, by their Conduct.

Whether there a Transferred Lease Agreement entered into between the Azman Oil, Marachi Engineering, Airtel DHS and the Incorporated Trustees of the NNPC Estate Residents Association.

Now, it is plain to see from the **J Series** of Documents that the negotiation for the Provision of a Site within the NNPC Estate was carried out strictly between the NNPC Estate's Residents Association and the Defendant. The Contract for the erection of the Defendant's Mast fell through and failed due to the insistence of the Residents that it was unsafe to place the Mast in their Estate. From **Exhibits J1, J2, J3 and J4**, there was no mention in any form whatsoever of the 1st and 2nd Claimants, except for the delusional referral to the 2nd Claimant as the Defendant's 'Present Landlord' in **Exhibit J3**, and even at that, the Claimants were never copied these Letters. In stating the obvious, the Claimants never participated on record in their discussions.

The Letter written by the Defendant's Lawyer in **Exhibit J4**, is particularly instructive in indicating that whatever Breach of Contract existed between the Defendant and the NNPC Estate, had nothing to do with the Claimants on Record. The Lawyer never sought for a refund from Marachi Engineering or Azman Oil, and did not threaten them with a Court Action, as he did for NNPC Estate.

In fact, it is a Classic Case of Karma, because the NNPC Estate appeared to have held on to the Defendant's Money for a very long time, just as the Defendant held on to the 1st Claimant's Property for a long period of time, after receiving Full Funds for Refund and Relocation.

Had this been a Linked Contract, or a Novation, these Letters in the **J Series** of Exhibits would have indicated so. Not only that, the Defendant would have sought to retrieve its funds from the Claimants also. This is

because, the Defendant struggled, albeit fruitlessly, to impute a Cooperation and an Affiliation between the Claimants and the Estate. As earlier stated, mere Ownership of a Property within an Estate, can never and will never amount to Joint or Shared Ownership of all the Properties in the Estate.

Now, the Contract Agreement between the NNPC Estate and the Defendant is not before this Court, and therefore the only thing the Court will safely state is that there was a Separate Contract in existence between the NNPC Estate and the Defendant.

As regards the 2nd Issue of the Claimants' Claim, and in specific regard to Mesne Profit, in the Case of **ODUTOLA VS PAPERSACK NIG. LTD (2007) and COBRA LTD VS OMOLE ESTATE INVESTMENTS LTD (2005) 5 NWLR PART 655 @ PAGE 1 @ 15 – 16,** it was held thatMesne Profit is paid by the Defendant who holds over the premises after the expiration of his tenancy without paying. The Action for Mesne Profits does not lie unless either the Landlord has recovered possession or the Tenant's Interest in the Land has come to an end or his Claim is joined with a Claim for Possession. See further the Case of **IBEKWE VS NWEKE(2013) LPELR-22021 (CA) Per AUGIE, JCA (AS SHE THEN WAS, NOW JSC) AT (Pp. 38-39, PARAS B-D)**

It also means the Rents and Profits, which a Tenant who holds over after Lawful Termination or Expiration of his Tenancy or a Trespasser has or might have received during his Occupation of the Land or Premises in issue, and which he is liable to pay as Compensation to the Person entitled to Possession of such Land or Premises.See also **DEBS VS CENICO NIGERIAN LTD (1986) 3 NWLR (PT 32) 846; AYINKE VS LAWAL & ORS (1994) 7 NWLR (PT. 365) 263, Per IGUH, JSC**, who referred to the dictum of **GODDARD LJ,**in the Case of **BRAMWELL VS BRAMWELL (1942) 1 KB 370,** that*"the expression is another term for damages for trespass arising from the particular relationship of landlord and tenant. It is the name given for the intermediate profits or value for the use and occupation of land during the time it is held by one who is in wrongful possession or who has not agreed on any rents with the landlord,*

even though such an occupier cannot strictly speaking be described as a trespasser. They may, therefore, only be claimed as from the date when a tenant ceased to hold the demised premises as tenant and has become a trespasser". See further **OPUTA, JSC**in**AHMED DEBS & ORS VS CENICO NIG LTD (1986) 3 NWLR (PT 32) 846 AT 851 - 856,** and**ARIWOOLA, JSC** in **ABEKE VS ODUNSI & ANOR (2013) LPELR-20640 (PP 28-29, Paras E-B)**; and **NNAEMEKA-AGU, JSC** in **AG BENDEL STATE &ORS VS AIDEYAN (1989) LPELR-3158 (PP. 43-44, PARAS D-F)**

Learned Counsel for the Defendant had submitted on the Probative Value of the Photographs in**Exhibit F1-F24**, even though during the Trial they did not object to its Admissibility. He urged the Court to expunge the Photographs based on **Section 84 (4)(c) of the Evidence Act**, and on the fact they constituted Hearsay Evidence.

Now, the Court can see a Certificate of Compliance in **Exhibit F1**, whereby PW2, who tendered the Photographs before the Court, was the very same Person that produced the Pictures from his Samsung Phone and Samsung Camera. The Court is satisfied with the Pictures and will not expunge them from Evidence.

From the Facts, and Pictorial Evidence it can be clearly seen that Payment of the Refund and Relocation Fund on the 2nd of April 2009 was acknowledged as received by the Defendant on the 3rd of April 2009.

During his Testimony in Cross-Examination, DW1, Mr. Tom could not say accurately when the Base Station was removed, and he yo-yoed again between July and November 2009. The only positive evidence of the actual relocation is that of the Pictures.

From that moment of discharge till the 4th of November 2009, when the Base Station was removed, the Defendant held over the Property without due cause, and are liable for Payment of Mesne Profit in the Sum of Two Million, Five Hundred Thousand Naira (N2, 500, 000.00) annually, multiplied by Eight Flats, Calculated on a Monthly Basis. The Court has had a careful look at **Exhibit G,** which estimates the Market Value of the Property. In view of this, the Amount stated to be Ten Million Naira (N10, 000, 000.00) for the Holding Over Period is found meritorious.

As regards the Claim for Seven Million Naira (N7, 000, 000.00), the 1st Claimant had tendered **Exhibits H1-H3**, which demonstrated the Contract Agreement between the 1st Claimant and a Contractor for renovation of the purchased property. It is said that due to the fact that the Defendant did not give vacant possession of the rooftop for the period of the holding over, the cost of completion increased, thereby entailing extra expenses of Seven Million Naira (N7, 000, 000.00), a figure 6% above the Total Cost of Renovation.

The Court has had a look at **Exhibits H1-H3** and finds them to be Credible Documentsevidencing the engagement of a Contractor, the Application for Variation of Contract, as well as the Approval of that Variation. In the absence of any Evidence to the contrary, this Claim is found to be meritorious.

As regards the Claim for Damages sought by the Claimants, it is clear that for the Period that the 1st Claimant did not have access to his Property, he suffered loss and delay. The Defendant did not disconnect the Antenna/Base Station and therefore, were still providing Telecommunication Services, as a Hub Station, all the way to the 4thof November 2009, when they finally removed the Base Station. The Defendant had acknowledged receiving the Refund and Relocation expenses, which means they were utilizing the Mast Rent-Free for a period after the Termination of their Lease Agreement.

Upon the demand and collection of the Unexpired Period of Rent, they lost every moral platform to enjoy the benefit of the space and make money while still in unauthorized possession. Therefore, the Claim for Damages is found meritorious.

As regards the Claims in the Counter-Claim, the Court notes that practically the whole Claim is based on the Contract between the Defendant and the NNPC Estate, which is not related to the Claim of the 1st and 2nd Claimants. The attempt to link the 1st and 2nd Claimants to this Contract between the Defendant and the NNPC Estate is futile as explained above in the Main Claim. The Defendant needed to have produced Positive Evidence of the Tripartite Oral Agreement as well as

Company Incorporation Document showing the connection between NNPC Estate Association and Marachi Engineering.

More importantly, the Documents the Defendant relies upon to justify his Claims in the Counter-Claim, are in the **Exhibit J Series of J1 to J4**. The Court can see that there are disparities between the figures claimed in **J1 and J3**, and that claimed in **Exhibit J4**.

Exhibits J1 and J3, sought for a refund of Seven Million, Five Hundred Thousand Naira (N7, 500, 000.00), which was for Five Years rent, at the Rate of One Million, Five Hundred Thousand Naira (N1, 500, 000.00) per year. Whilst **Exhibit J4**, sought for the Sum of Eight Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Eighty Kobo (N8, 666, 666.80).

This discrepancy in the figures needed to have been explained by the Defendants, in view of the facts that from **Exhibit D**, the Court can clearly see the Zenith Bank Manager's Cheque dated the 2nd of April 2009, in sum of Eight Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Eighty Kobo (N8, 666, 666.80), payable to the Estate Management Committee Funds (SA/M). Original Signed and Collected by Kenechukwu Arodiwe on the 3rd of April 2009.

A close look at **Exhibit J1**, dated the 27th of May 2009, addressed to the Chairman, NNPC Estate, it states "*We note with utter consternation and serious reservation that after we had made a Payment of about N7, 500, 000.00 (Seven Million, Five Hundred Thousand Naira Only) to the Estate Resident Association for the purpose of relocating our existing and operational Roof Top Site inside the Estate to another location within the Estate as agreed, this exercise is yet to be completed*".

From **Exhibit J3**, dated the 29th June 2009, also addressed to the Chairman, NNPC Estate, it states "*It is now three (3) months that your Association collected the Sum of N7, 500, 000.00 (Seven Million, Five Hundred Thousand Naira Only) being Five Years Rent, from our Present Landlord, Marachi Engineering Limited to provide a platform for the installation of Zain's Base Transceiver Station (BTS)*".

The above is contrary to the Figures stated in **Exhibit J4**, wherein the Total Sum in the Draft was stated as being due for Repayment.

The Question now is, why the disparity? It can be seen that the Draft was made payable to theEstate Management Committee Funds (SA/M), for the Full Sum of Money refunded. How then did this amount suddenly become N7, 500, 000.00 (Seven Million, Five Hundred Thousand Naira Only)?

It is clear that the Recipient in the Cheque is not the same as the Author of **Exhibit J2**, which is the Incorporated Trustees of NNPC Housing Estate Resident Association. This Author had distanced itself from the Actions taken by the Estate Management Committee, as they did not have the Mandate of their Congress to authorize the Construction of a Telecommunication Mast within the Estate. The Defendant was asked to "*Confirm in Writing and with Documentary Evidence, the payments they reportedly made, in order for Verification and Initiation of a Refund Process.*"

As earlier stated, aside of the Cheque and Letters, the Contract Document between the Defendant and the NNPC Estate is not before the Court, and therefore until the disparity is satisfactorily explained, the Court cannot grant the Prayer for a Refund from the NNPC Estate Association.

The Defendant certainly have no Right of Claim against the 1st and 2nd Claimants, as there was no longer any Lease Agreement between them, and the 2nd Claimant having successfully passed Title to the 1st Claimant, had certainly no Right under the Doctrine of Privity of Contract to commit the 1st Claimant under the Law, especially in regard to an Unenforceable Commitment.

As regards their Claim for General Damages, there is no justification on Record for the Sum of One Hundred Million Naira (N100, 000, 000.00). DW1 had stated that they Defendant was making over N100Million, but under Cross-Examination, had no clue as to how this amount was arrived at.

Besides, for the Period the Mast still remained on the Roof, the Defendant was still trading in their business, and had to have made some money during this period. How much they made, is up in the air and how much they should have made, is also up in the air.

Therefore, the Court finds the Reliefs sought under the Counter-Claim to be unmeritorious and they fail accordingly.

In Conclusion:

1. **The Court orders Mesne Profit in the Sum of Ten Million Naira for the Six Month Period of Holding Over to be paid by the Defendant to the 1st Claimant forthwith**

2. **The Defendant is to pay up the Sum of N7, 000, 000.00 (Seven Million Naira Only) as the Expense incurred by the 1st Claimant as a result of the Defendant's Delay in handing over the Property.**

3. **Damages in the Sum of Five Million Naira (N5, 000, 000.00) are awarded in favor of the 1st and 2nd Claimants.**

4. **Cost of filing the Suit is awarded in the Sum of One Million Naira (N1, 000, 000.00)**

5. **As regards the Counter-Claim, the Defendant failed to establish with precision, their entitlement before this Court of the amount claimed.**

6. **The Claim by the Counter-Claimant for Damages in the Sum of One Hundred Million Naira (N100, 000, 000.00) also fails**

HON. JUSTICE A.A.I. BANJOKO

JUDGE