

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA.
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS –T.P. SALLAH & ORS
FCT/HC/CV/3058/19
DATE: 22/06/2020**

BETWEEN:

A. G. VISION CONSTRUCTION NIGERIA LTD CLAIMANT

AND

WORLD BANK GROUP DEFENDANT

AND

**1. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
2. INTERNATIONAL DEVELOPMENT ASSOCIATION** } **INTERVENERS/
APPLICANTS**

JUDGMENT

The Claimant herein commenced this suit against the Defendant by filing an Originating Summons on 27th September, 2019 seeking the determination of the following questions:-

1. Whether upon a true or proper construction of the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with contract Nos: CRS/NEWMAP/NCB/WORHS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No. AB/NEWMAP/CW/01/2013, the Defendant herein not a party to the said contracts can purport to audit the Claimant herein with respect to the contracts.
2. Whether upon a proper interpretation of the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management, with contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WOR

KS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013, the Defendant can investigate the Claimant with respect to the contract after the Claimant has executed the said contracts, issued with certificates of completion of the said contracts and made final payments in respect of them.

3. Whether, by proper interpretation of the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013 the Defendant herein can investigate the Claimant herein or invite them in respect of any matter connected to the said contract.
4. Whether upon a true/proper construction of Section 6(6) of the Constitution of the Federal Republic of Nigeria 2011 (as amended) which exclusively reserves/ vest judicial powers in Courts, the Defendant herein by purporting to conduct an investigation with respect to the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013 was not appropriating to itself judicial powers and thereby acting Ultra vires its powers.
5. Whether, having regard to the provisions of Section 6(6) of the Constitution of the Federal Republic of Nigeria 2011 (as amended) which confers/vest judicial powers in the Courts of law, the Defendant has powers to determine issues relating to the resolution of dispute, if any between the Claimant and the Cross Rivers State Nigeria Erosion and Watershed Management Project with contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013 on the other hand with respect to the contract agreement between the Claimant herein

and the Cross River State Nigeria Erosion and Watershed Management and that with the Abia State Nigeria Erosion and Watershed Management Project.

And the reliefs sought by the Claimant after the determination of the above questions are as to follows:-

1. A declaration that any issue arising from or in connection with the contract agreements between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013 is not a matter that can be investigated or audited by the Defendant as there is no privity of contract between the Claimant and the Defendant.
2. A declaration that the Defendant does not have the power and or right under the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with Contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/NCB/CW/01/2013 to summon the Claimant to appear before it or audit the accounts and records of the Claimant agents or privies with respect to the said contracts.
3. A declaration that, having regards to the provisions of Section 6(6) of the Constitution of the Federal Republic of Nigeria 2011 (as amended) which confers judicial powers on the Courts of law, the Defendant has no right and power to determine issues bordering on the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with Contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and

Watershed Management Project with Contract No:
AB/NEWMAP/CW/01/2013.

4. An order of perpetual injunction restraining the Defendant and/or by its servants, agents or any other person purporting to act on behalf of the Defendant from issuing any Report or acting on same with respect to any issue relating to the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with Contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013.

ALTERNATIVELY, an order declaring as null and void and setting aside any investigation and or report issued by the Defendant bordering on the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with Contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013.

5. An order of perpetual injunction restraining the Defendant and/or by its servants, agents or any other person purporting to act on behalf of the Defendant from sanctioning and/or ultimately debaring the Claimant acting upon a purported investigation and or report premised upon to the contract agreement between the Claimant herein and the Cross River State Nigeria Erosion and Watershed Management with Contract Nos: CRS/NEWMAP/NCB/WORKS/001/2015, CRS/NEWMAP/NCB/WORKS/004/2014 and that with the Abia State Nigeria Erosion and Watershed Management Project with Contract No: AB/NEWMAP/CW/01/2013.
6. An order for special damages for the re-imbusement of all incidental expenditure incurred by the Claimant in response/reaction to the action of the Defendant for unjustly meddling in the contract agreements dated 2nd June 2014,

13th May 2014 and 6th March 2015 and causing them unreasonable apprehension as detailed below:-

- i. The total sum of N28, 804, 255.00 (Twenty Eight Million, Eight Hundred & Four Thousand, Two Hundred and Fifty-five Naira) only being the expenses of Claimant in engaging the services of a solicitor-Norton Rose Fulbrigh in ONTARIO, CANADA to respond to the Defendant's allegation as well as travel expenses incurred as a result of the Defendant's action/investigations.
 - ii. The sum of N 5,000,000:00 (Five Million Naira) only being legal fees incurred by the Claimant in instructing its external solicitors- J & S Consults in Nigeria to prosecute this suit as evidenced by this suit.
 - iii. The total sum of N445,000.00 (Four Hundred and Forty-five Thousand Naira) only as financial/revenue losses/bidding expenses incurred by the Claimant in processing for advertised Nigeria Erosion and Watershed Management Projects (NEWMAP) and other Defendant's assisted projects in Akwa/Ibom State, Kogi State, Bauchi State, Delta State and Plateau State respectively, but which the Claimant withdrew/suspended further biddings as a result of the Defendant's action/investigations since 2018.
7. An order for general damages in the sum of N10,000,000,000.00 (Ten Billion Naira) only against the Defendant for unjustly meddling in the contract agreements dated 2nd June 2014, 13th May 2014 and 6th March 2015 and causing them unreasonable apprehension, leading to financial/revenue losses when the Claimant commenced the bidding processes for the Nigeria Erosion and Watershed Management Projects (NEWMAP) and other Defendant's assisted projects in Akwa/Ibom State, Kogi State, Bauchi State, Delta State and Plateau State respectively, but withdrew/suspended further biddings as a result of the Defendant's action/investigations since 2018.
8. The Defendant's action/investigations have further led the Claimant to lose a total sum of N445,000. 00 (Four Hundred and Forty-five Thousand Naira) only in bidding expenses

incurred in the above listed states following the acts of the Defendant.

9. Such additional or further Orders this Honorable Court may deem fit/just to make in the circumstance of this case.

In support of the Originating Summons, the Claimant filed a 25-paragraphs affidavit with documents marked as Exhibits AGV-1, AGV-2, AGV-3, AGV-4, AGV-5, AGV-7.2, AGV-7.3, AGV-7.4, AGV-7.5, AGV-7.6, AGV-7.7, AGV-7.8, AGV-9.0, AGV-9.1 and AGV-10. Also attached are Exhibits AGV/CRT-1, AGV/CRT-2, AGV/CRT-3 and AGV/CRT-4. The Claimant's Counsel also filed a written address as provided by the rules of this Honourable Court.

The Defendant was served with the originating processes on 17th October, 2019 and on 8th November, 2019 the Defendant filed a Memorandum of Conditional Appearance through its Counsel, the law firm of Aluko&Oyebode.

On 10th December, 2019, the 'International Bank for Reconstruction and Development' as well as the 'International Development Association' (describing themselves as 'Interveners/Applicants') jointly filed a Notice of Preliminary Objection No. M/1832/19 through their Counsel, the same law firm of Aluko&Oyebode. By the said Notice of Preliminary Objection, the 'Interveners/Applicants' seek the following reliefs:-

1. An Order granting the Applicants herein leave to intervene in these proceedings for the limited purpose of challenging the jurisdiction of this Honourable Court.
2. An Order dismissing this suit for lacking in jurisdiction.
3. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds for the Preliminary Objection are set out on the face of the notice and reproduced hereunder as follow:-

1. The Applicants are the International Bank for Reconstruction and Development and the International Development

Association as provided under the International Financial Organisations Act. Cap. 121 Laws of the Federation of Nigeria, 2004 (the "IFO Act").

2. The Originating Summons was issued against the World Bank Group which is not conferred with legal personality under the IFO Act or otherwise.
3. The Claimant cannot maintain an action against an entity that has no legal personality recognisable in law.
4. As international organisations, the Applicants are conferred with immunity from judicial process as long as they are performing the functions for which they were created (i.e. "Functional Immunity"), unless they expressly waive their immunity.
5. The Applicants have not waived their immunity for the purpose of the instant suit.
6. Consequently, this Honourable Court lacks the jurisdiction to entertain this suit.

In support of the Notice of Preliminary Objection, the Interveners/Applicants filed an affidavit of 13 paragraphs with one document marked Exhibit GN1 as well as their Counsel's written address dated 10th December, 2019 and filed the same date.

Opposing the Preliminary Objection, the Claimant's Counsel filed and relied on a counter affidavit of 8 paragraphs with one Exhibit marked as exhibit C1 and its Counsel's written address dated and filed on 16th December, 2019. In response, the Interveners/Applicants filed a Further Affidavit of 10 paragraphs and their Reply on Points of Law.

The substantive originating summons and notice of preliminary objection were heard together and adjourned for Ruling and possible Judgment. It is relevant to note that by a cover letter dated 9th March, 2020 (and filed on 12th March, 2020) which was copied to the Claimant's Counsel, the Interveners/Applicants' Counsel subsequently forwarded copies of Court of Appeal decisions to this Court.

In respect of the determination of the Interveners/Applicants' Preliminary Objection, their Counsel formulated two issues as follows:-

- a. Whether the Claimant can sustain a suit against a non-juristic entity.
- b. Whether this Honourable Court ought to dismiss this suit for want of jurisdiction in light of the Applicants' immunity.

The Claimant's Counsel, for his part distilled a sole issue for the determination of the preliminary objection thus:-

"Whether anone party to a suit can bring a notice of preliminary objection challenging the jurisdiction of Court without first applying to be joined in the same suit."

No issue was formulated by any of the parties with respect to the substantive originating summons. The Claimant's Counsel did not formulate one in his address in support of the originating summons while no address at all was filed by the Defendant in respect of the originating summons.

I shall adopt the issues as formulated by the Interveners/Applicants in respect of the preliminary objection. In the absence of any issue formulated by parties, I shall formulate an issue for the determination of the substantive originating summons. The issues before this Honourable Court in respect of both the originating summons and preliminary objection are therefore as follows:-

1. Whether the Claimant can sustain a suit against a non-juristic entity.
2. Whether this Honourable Court ought to dismiss this suit for want of jurisdiction in light of the Applicants' immunity.
3. Whether the Claimant herein is entitled to judgment as per the reliefs sought in the originating summons.

I will now proceed to consider issues nos. 1 and 2 together which bothers on the jurisdiction of this Court to entertain the instant suit. The two issues are:-

(1) Whether the Claimant can sustain a suit against a non-juristic entity.

(2) Whether this Honourable Court ought to dismiss this suit for want of jurisdiction in light of the Applicants immunity.

By their affidavit in support of their Notice of Preliminary Objection, the Interveners/Applicants aver that they are International Organisations established in 1945 (the IBRD) and 1960 (the IDA) by the Articles of Agreement of the International Bank for Reconstruction and Development (as Amended on 27 June 2012) and the International Development Association Articles of Agreement for the purposes of, *inter alia*, assisting in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes. That Nigeria is one of the member countries that are signatories to both the IBRD Articles and the IDA Articles by virtue of Ordinance No. 47 of 20 September 1960, which is now the International Financial Organisations Act, Cap. 121, Laws of the Federation of Nigeria, 2004, under which the said Articles were domesticated and conferred legal personality on the Applicants in Nigeria. Exhibit GN1 is annexed to the affidavit in support as a copy of the IBRD and IDA Articles. The Interveners/Applicants aver that the purpose for which they were established include (i) to assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, (ii) to promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and (iii) to promoting economic development, increase productivity and thus raise standards of living in the less-developed areas of the world included within their membership as deposed to at paragraphs 6,7, 8 and 9 of the supporting affidavit.

They aver that at no time did they waive their immunity for the purpose of the instant suit and any derogation from the

Intervenors/Applicants immunity will impact on their ability to continue to operate in and provide assistance to Nigeria.

In their further affidavit in support of their application, the Intervenors/Applicants averred that pursuant to their functions under their Articles of Agreement, they financed the Erosion and Watershed Management Project with the Abia State and Cross River State Governments. Pursuant to the financing of the aforesaid projects, the Claimant was awarded contracts with both the Cross River State and Abia State Governments for construction of remediation works in IkotAnwatim Erosion gully, Calabar, Cross River State and remediation works in UmueukwuNsulu gully, Abia State respectively. The Intervenors/Applicants aver that the contracts, of which the Claimant seeks interpretation in this suit, was funded by the Intervenors/Applicants (particularly the 2nd Intervener/Applicant) and the Claimant knows this fact. They relied on Exhibit AGV-5 annexed to the Claimant's affidavit in support of its originating summons. It is the Intervenors/Applicants' averment that they possess separate legal personalities and the Defendant as described is not an independent legal personality with power to sue and be sued in Nigeria. That the Intervenors/Applicants are not employees of the Defendant who itself does not have legal personality and is not managed as an international private organisation. That it will be in the interest of justice to allow the Intervenors/Applicants to intervene in this proceedings for the purpose of preserving their rights and interests.

The Claimant's depositions in its Counter Affidavit to the Preliminary Objection is to the effect that the Intervenors/Applicants are administered by and under the control of the Defendant as an independent legal personality with power to sue and be sued respectively. That the Defendant is a financial institution that engages in financial transaction in several countries and carries on business in Nigeria from its office in Nigeria at Plot 102, Yakubu Gowon Crescent Asokoro Abuja where it maintains staff. The Claimant avers that the Defendant possesses an independent juristic personality as in the Canadian case of **WORLD BANK GROUP V.**

WALLACE wherein the Defendant sued and was ably represented as a juristic personality. That the Defendant draws ownership from member nations who subscribe to its share and its activities are managed as international private organization as can be seen in the Defendant's Organogram. A computer generated copy of said organogram was annexed to the Counter Affidavit as Exhibit C1. That the money with which the contract (subject matter of the substantive originating summons) was funded was borrowed or sourced from the Defendant and not the Interveners/Applicants by the Cross-River State Nigerian Erosion and Watershed Management Project (NEWMAP) and Abia State Nigerian Erosion and Watershed Management Project (NEWMAP) respectively. That the Defendant conducts business within jurisdiction with the name in which it has been sued in this suit. The Claimant avers that by the correspondences between the Claimant and the Defendant, the Defendant purported to act pursuant to the contract between the Cross-River State Nigerian Erosion and Watershed Management Project (NEWMAP) and Abia State Nigerian Erosion and Watershed Management Project (NEWMAP). It relied on Exhibit AGVI attached to the Originating Summons.

In respect of his first issue i.e. whether the Claimant can sustain a suit against a non-juristic entity, Counsel to the Interveners/Applicants argued in his address that there is no treaty or registered local treaty that confers the capacity to sue and be sued on the World Bank Group who is sued as the Defendant in this suit. He posited that the Interveners/Applicants are international organizations established in 1945 and 1960 by the Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) as Amended on 27th June, 2012 and the Articles of Agreement of the International Development Association (IDA). Counsel submitted that by virtue of the International Financial Organisations Act Cap. 121, Laws of the Federation of Nigeria 2004, the IBRD and IDA Articles (to which Nigeria is a signatory) have been domesticated in Nigeria. He argued that the legal personality of the Interveners/Applicants was conferred by Section 5(1) of the IFO Act and reference to 'the Bank' means the International Bank for Reconstruction and

Development while 'the Association' means the International Development Association and not the World Bank Group. He posited that the law is settled that for a suit to be properly constituted so as to activate the jurisdiction of the Court, there must be parties with the legal personality to sue and be sued before the Court. He contended that the Courts have held that the only valid way to sue a corporate body is to sue it in its corporate name. He relied on the cases of ***SPDC & ANOR V. PESSU (2014) LPELR-23325(CA) and REGISTERED TRUSTEES OF INTERNATIONAL ISLAMIC RELIEF ORGANISATION, KADUNA V. KEYSTONE BANK & ORS (2018) LPELR-45089(CA)***. He submitted that having sued 'World Bank Group', the Claimant's instant suit is incompetent and therefore robs this Court of jurisdiction to entertain same. He contended that this reason alone, without more, is sufficient for striking out this suit.

On the second issue which bothers on immunity of the Interveners/Applicants, learned Counsel to the Interveners/Applicants submitted that by virtue of the doctrine of functional necessity in international law, international organisations such as the Interveners/Applicants are accorded certain status, immunities and privileges to enable them carry out their functions in member countries without interference. He relied on Article VII Section 1 of the IBRD Articles and Article VII Section 1 of the IDA Articles. Counsel posited that the points to be noted from these provisions is that (i) such immunity must be interpreted in the light of the purposes for which they were enshrined, (ii) such immunity covers all acts necessary for the execution of the Interveners/Applicants' official functions and (iii) by signing the Articles and domesticating them, Nigeria has pledged to recognise the Interveners/Applicants' immunity in its territory. He argued that a refusal to recognise and enforce the functional immunity of the Interveners/Applicants will go to the very root of their ability to perform the functions for which 189 countries including Nigeria collectively established the Interveners/Applicants. He submitted that the immunity conferred on the Interveners/Applicants is a feature that prevents this Court from exercising jurisdiction in the instant suit. Counsel finally urged

this Court to hold that it lacks jurisdiction to entertain this suit and dismiss the suit with substantial cost.

Arguing against the grant of the reliefs sought vide the preliminary objection, learned Counsel to the Claimant submitted that the Interveners/Applicants are not parties to the originating summons and therefore lack the *locus standi* to file the application challenging the jurisdiction of the Court to hear the originating summons. He submitted that the joinder of the Interveners/Applicants is not necessary as they (Interveners/Applicants) never issued any threat to the Claimant of auditing the Claimant in respect of contracts with the Cross River State Nigeria Erosion and Watershed Management as well as the Abia State Nigeria Erosion and Watershed Management Project. He contended that since there is no issue between the Claimant and the Interveners/Applicants, there will be nothing for this Court to adjudicate upon. He submitted that the Interveners/Applicants have not shown in their affidavit in support of the preliminary objection that their presence in this suit is necessary. Counsel said the Claimant followed the proper procedure when it sued the Defendant in its corporate name with which it is known i.e. 'World Bank Group'. He relied on the case of **TAFF VALE RY V. AMALGAMATED SOCIETY OF RAILWAY SERVANTS (1910) A.C. 426. Relying on the case of GREEN V. GREEN (1987) 3 NWLR (PT. 61) P. 480**, Counsel posited that the Claimant should not be forced to sue a person against whom it does not have a cause of action.

Counsel to the Claimant further argued that the Interveners/Applicants have not placed any document or gazette before this Court showing that an order was made by the Minister of Foreign Affairs or any Nigerian Minister conferring the Interveners/Applicants with immunity against lawsuits in accordance with the provisions of Section 11 of the Nigerian Diplomatic Immunity and Privileges Act 1962. He submitted that the Interveners/Applicants cannot therefore claim any immunity. He relied on the case of **OLUWALOGBON & ORS V. THE GOVERNMENT OF UNITED KINGDOM**, a decision of the Court of Appeal Lagos Division delivered on 22nd July, 2005. He posited that

the immunity the Interveners/Applicants are relying on in Section 5(1) of the International Financial Organizations Act apply to the Interveners/Applicants and not to the Defendant. He submitted that it is preposterous for the Defendant to claim that it is immune from being sued in view of its act of trying to audit the Claimant in respect of contracts which the Defendant was not a party. He relied on the case of **CARLEN V. UNIJOS (1994) 1 NWLR (PT. 323) P. 631**. Counsel posited that it will not be fair to prevent the Claimant from suing the Defendant in the circumstances and cited the case of **INTERNATIONAL COMMITTEE OF THE RED CROSS V. OLABODE (2007) LPELR-8764**. He argued that the Defendant is a corporation for all intents and purpose and can be sued in its name i.e. World Bank Group. He referred this Court to Section 2 of the Interpretation Act on the definition of the word 'person'. He argued that Order 13 Rule 25 of the Rules of this Court permits the Claimant to sue the Defendant in the name and style it is carrying on business within jurisdiction.

Claimant's Counsel further posited that the Defendant's solicitor's entry of conditional appearance on its behalf amounts to a waiver by the Defendant as it was not misled nor did it object to the name in which it was being sued. He relied on the case of **HOPE DEMOCRATIC PARTY V. NATIONAL ELECTORAL COMMISSION (2008) 9 NWLR (PT. 1143) P. 297**. Counsel urged this Court to strike out the Notice of Preliminary Objection brought by the Interveners/Applicants because they are interlopers who are total strangers to the suit and the application itself is alien to our proceedings. He said that the Interveners/Applicants have no legal right to file any application challenging the jurisdiction of this Court to hear the originating summons as they are not parties to this suit. It is his argument that there are decisions of foreign Courts where the Defendant and Interveners/Applicants were held to have lost their functional or absolute immunity. That the immunity of international organizations will not apply if the claims against them arise from a purely commercial transaction as in the instant case. He referred this Court to the case of **JAM V. INTERNATIONAL FINANCIAL CORPORATION NO. 17.1011 U.S. SUPREME COURT delivered on 7/3/2019**. He also cited the

case of **DUPREE ASSOCIATE INC. V. OAS (1982) 63 ILR 92**. Counsel further referred this Court to the case of **WORLD BANK GROUP V. WALLACE (2016) SCC 15** where he contended the Defendant was sued as World Bank Group and not in the name of its functionary members. He also referred to documents attached to the affidavit in support of the originating summons where the Defendant had addressed itself as 'the World Bank' and 'the World Bank Group'. He referred particularly to Exhibit AGV4. He posited that there is nowhere the Interveners/Applicants' names were mentioned. He contended that the Defendant certainly has legal personality to be sued in its own name as it exhibited power of investigation over the Claimant. He argued that the Defendant cannot approbate and reprobate. He posits that the World Bank Group is distinct from the Interveners/Applicants with its staff as shown on its organogram. He finally urged this Court to disregard the notice of preliminary objection and strike same out.

Then by his Reply, on points of law the Interveners/Applicants' Counsel submitted that their preliminary objection is not to substitute or vary but to declare the Defendant as a non-juristic person that cannot be sued as there is no evidence before this Court of the Defendant's legal personality. He relied on the case of **NJOKU V. UAC FOODS (1999) 12 NWLR (PT. 632) P. 565** to posit that the Courts do not substitute the name of a juristic person for a non-juristic person. He contended that the Claimant's failure to name the right parties as Defendant is not a misnomer. He argued that a person whose rights and obligations are about to be decided by the Court of law may challenge the Court's jurisdiction and where such a person was not made a party to the suit, the proper procedure is an intervener application seeking to be heard. Counsel relied on the cases of **DAUGHTERS OF DIVINE LOVE CONGREGATION & ORS. V. UGWU & ORS (2013) LPELR-22896(CA)** and **PHILIP MORRIS INT'L MANAGEMENT SA V. A.G. OGUN STATE & ORS (2017) LPELR-42181(CA)**. He submitted that the Interveners/Applicants have an interest to protect in the instant suit as they have a duty to ensure that proceeds of any loans by them are used only for purposes for which it was granted. He argued that the Claimant cannot pretend not to know that

reference to the World Bank Group meant the Interveners/Applicants. He referred to Exhibits AGV/CRT-3 and AGV-5 attached to the Claimant's affidavit in support of the originating summons. Counsel posited that the case of **MOGAJI V. FABUNMI** is inapplicable to the instant case. He submitted that when a body is recognised by law as possessing legal personality and ability to sue and be sued, it can only sue or be sued in its corporate or statutory name and not in an alias. He relied on the case of **ZAIN NIGERIA LTD. V. ILORIN (2012) LPELR-9249(CA)**. He submitted that legal personality is not assumed or conferred by the mere fact that the parties exchanged correspondences using their business name. He said part of the responsibilities of a diligent claimant is to ensure that he names entities correctly and sues in accurate legal names. It is Counsel's submission that the Diplomatic Immunities and Privileges Act was made to enable the Minister confer immunities and privileges on international organizations who had hitherto not been conferred with such by their enabling law or statute. He contended that in view of provisions of the International Financial Organizations Act, the Interveners/Applicants do not need the pronouncement of the Minister of Foreign Affairs to be entitled to immunity from legal proceedings in Nigeria. Counsel to the Interveners/Applicants submitted that the Claimant's claim herein is not one that arises from a contract with the named Defendant. His position is that the filing of conditional appearance in this case does not amount to a waiver and sought to distinguish the case of **HOPE DEMOCRATIC PARTY V. INEC** relied upon by the Claimant's Counsel in his address. He reiterated that this Court lacks jurisdiction to hear this suit as the proper party known to law is not before it and the Interveners/Applicants enjoy immunity from being sued. Before I proceed to consider and determine the preliminary objection of the Interveners/Applicants, it is pertinent to mention that after hearing arguments on 4th March, 2020 by Counsel to the respective parties and the matter adjourned for ruling/judgment on 26th May, 2020, on the 17th March, 2020 the claimant filed a motion on notice seeking restraining or injunctive orders against the Defendant as contained on the face of the motion on notice filed on 17th March, 2020.

The motion with no. FCT/HC/M/6547/2020 was however withdrawn by the learned Counsel to the claimant and it was accordingly struck out.

Another process filed in this suit after arguments by Counsel had been taken and the case adjourned for judgment is a process filed on 12th March, 2020 by the Interveners/Applicants forwarding additional authorities as earlier mentioned, i.e.:-

(a) ECOTRADE LIMITED V ALHAJI (CHIEF) SIKIRU ALABI MACFOY & ORS (2015) LPELR 25205 (CA) pages 7,8,12 and 13

(b) ASSET MANAGEMENT GROUP LTD V GENESIS CORP LTD & ORS (2000) LPELR 12050 (CA) pages 3 & 4; and

(c) WORLD MISSION AGENCY INC V CHIEF OLUFEMI SODEINDO, (2012) LPELR 19738 (CA) pages 5,6 and 8

The letter of the Interveners/Applicants under reference appears to have been copied to the Claimant/Respondent's Counsel though no proof of service was filed. The process of the Interveners/Applicants Counsel is however, to my mind, harmless and as learned Counsel to the Interveners/Applicants put it, the forwarded authorities is to assist the Court. Thus, I thank the learned Counsel for the additional authorities and in the course of this judgment, the additional authorities would be referred to vis-a-vis the position of the law on the subject matter as it relates to the preliminary objection.

Now after a careful consideration of the affidavit evidence and written address of Counsel to the respective parties on the preliminary objection, the first relief by their Notice of Preliminary Objection, the Interveners/Applicants (the IBRD and the IDA) are seeking leave of this Court to intervene in this suit just for the purpose of challenging the competence of this suit on grounds that the name 'World Bank Group' who has been sued as the Defendant in this case is not a juristic name which can be sued and that, in any case, they (Interveners/Applicants) have immunity from lawsuits.

The question now is who is an intervener in a lawsuit? The resolution or answer to this question in the course of this

judgment will as well resolve the issue distilled for determination by the claimant's Counsel in this instant preliminary objection.

Thus an intervener is a person who was not originally a party in the suit but claims an interest in the subject matter, thus comes into the case to protect his right. He usually comes in at the discretion of the Court i.e. with leave of Court. See the case of **MR. SUNDAY ADEGBITE TAIWO V. SERAH ADEGBORO & ORS (2011) LPELR-3133(SC)**. See also the case of **AJOMAGBERIN & ORS v. AREGBE & ORS (2013) LPELR-22260(CA)** and **DAUGHTERS OF DIVINE LOVE CONGREGATION & ORS V UGWU, (2013) LPELR 22896 (CA)**.

In other words, by the above judicial authorities an intervener who is not originally a party in the suit but claims an interest in the subject matter, his/her primary duty is to come into the suit at the behest of the Court to protect his/her right in the property under consideration. In some jurisdictions, Rules of Court make provision for an intervener. However, by the Rules of this Court specifically provide for an intervener in probate matters (see **Order 9 Rule 6 of the FCT Abuja High Court Civil Procedure Rules 2018**) and that is not to say that this Court does not have inherent powers to grant an application of a party with interest who is not named in a suit to intervene in matters not involving probate. This Court possesses the inherent power to grant such an application in the interest of justice especially where such a party's interest is shown or evident to the Court to exist.

I have looked at the Interveners/Applicants' averments in support of their application. They alleged that they funded the contracts the subject matter of the Claimant's instant suit. Their allegation is that the instant suit is incompetent as the name 'World Bank Group' in which the instant suit has been brought against the Defendant is not a juristic name which can be sued.

It does not appear to be in dispute that the projects upon which the contracts (produced before this Court for interpretation) were funded with the assistance of the World Bank. The Claimant's grouse/case is that the World Bank Group (sued as Defendant) cannot investigate or audit it in view of the terms of said

contracts. I have also looked at Exhibit AGV-4 attached to the Claimant's affidavit in support of its originating summons. Exhibit AGV-4 is a letter purportedly written by the 'World Bank Group' (sued as Defendant in this case) to the Claimant in which the issue of audit of the Claimant in respect of the subject matter contracts was raised. Exhibit AGV-4 is on a letterhead carrying the following

"The World Bank, IBRD – IDA/ World Bank Group"

The Interveners/Applicants in this case are the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA). Having perused the grounds on the face of the preliminary objection and paragraphs 4 of the supporting affidavit as well as exhibits in this suit, I am of the opinion that the Interveners/Applicants have disclosed sufficient interest to be granted leave to intervene in this matter so as to determine the issue of whether 'World Bank Group' is a competent party legally capable of being sued as the Defendant in this suit. The Interveners/Applicants ought to be availed audience in such peculiar circumstances. The first relief of the Interveners/Applicants' application seeking leave is hereby granted in the circumstances and the issue for determination by the claimant becomes academic and it is resolved against the Claimant and in favour of the Applicants.

Having granted the first relief, the Interveners/Applicants contend that the instant suit is incompetent as the 'World Bank Group' is not a juristic entity that can be sued. I will come back to this later. Let me however quickly address the issue of waiver raised in the Claimant's Counsel's address.

The Claimant's Counsel has contended that any issue of irregularity in suing the Defendant has been waived by the Defendant entering conditional appearance to this suit against it.

I have said earlier that upon service of the originating processes in this case, a Memorandum of Conditional Appearance was filed by Counsel on behalf of the Defendant.

The entry of conditional appearance is an appearance under protest and it means an appearance to object to the Court's jurisdiction. The entry of unconditional appearance on the other hand conveys the clear impression that the party concerned has no objection to the suit such as the way the suit was commenced. – see the cases of **EMEKA V. OKADIGBO & ORS (2012) LPELR-9338(SC)** and **COMPAGNIE GENERALE DE GEOPHYSIQUE (NIGLT) CGG NIG LTD V. AMINU (2015) LPELR-24463(SC)**.

I have read the decision of the Supreme Court in the case of **HOPE DEMOCRATIC PARTY V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS. (2009) LPELR-1375(SC)** relied upon by Counsel to the Claimant to contend waiver. In that case, the 3rd respondent had entered conditional appearance in view of the fact that its name had been misspelt in commencing the suit against it. In doing so however, the 3rd Respondent *used its correct name*. It was under this peculiar circumstance that the Supreme Court held that such entry of appearance, albeit conditionally, amounts to a waiver.

In the instant suit, the Defendant entered conditional appearance *in the exact name it was sued in*. The Interveners/Applicants then followed up with a notice of preliminary objection whereby they applied for leave to intervene and object to the name in which the Defendant was sued on grounds that it's not a juristic person. In the circumstances, I do not believe that there is any waiver of the right to complain to the perceived irregularities in the instant suit. Claimant's Counsel's submissions on waiver ought to be discountenanced and it is accordingly dis countenanced.

Now back to addressing the issue of the Defendant's juristic personality.

The law is quite well settled that it is only persons (natural or artificial) with the requisite juristic personality that can initiate a legal action in Court to sue or be proceeded against by being sued. It is only such persons that have the legal capacity in law to be parties to an action initiated before a Court of law. No order or

judgment of the Court can be made against a non-juristic person. See the cases of **AKPAN & ORS. V. UMOREN & ORS. (2012) LPELR-7909(CA)** and **WORLD MISSION AGENCY INC. V. SODEINDE & ANOR (2012) LPELR-19738(CA)**.

It follows therefore that an action against a non-juristic person (where such a person is the sole Defendant) is incompetent and is ordinarily liable to be struck out. The name in which a party is sued must thus be a juristic one. In the case of **UBA PLC V. MOHAMMED & ANOR (2011) LPELR-5063(CA)** it was held that for an action to be properly constituted so as to vest jurisdiction on the Court, the parties before it must be competent and or juristic person, failure of which will lead to the action being struck out.

The Supreme Court put it very simply in the case of **THE REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA V. NAMA (2014) LPELR-22372(SC)**, where it held as follows:-

"It is now well settled that a non-existing person, natural or artificial cannot institute an action in Court, nor will an action be allowed to be maintained against a Defendant, who as sued, is not a legal person. Juristic or legal personality can only be donated by the enabling law. This can either be the Constitution or a Statute. If the enabling law provides for a particular name by way of juristic or legal personality, a party must sue or be sued in that name. He cannot sue or be sued in any other name."

See also the case of **SHELL PETROLEUM DEVELOPMENT COMPANY & ANOR V. DANIEL PESSU (2014) LPELR-23325(CA)**.

In the instant suit the Claimant's case, simply put, is that from the interpretation of the three contracts which it had executed with both the Cross River State Nigeria Erosion and Watershed

Management and the Abia State Nigeria Erosion and Watershed Management Project, the Defendant in this case cannot purport to audit, investigate or sanction the Claimant in respect of the said contracts. Now, the Defendant in this case is 'World Bank Group'. It does not appear to be in dispute that the projects upon which the contracts (produced before this Court for interpretation) were funded with the assistance of the World Bank.

It is such common knowledge (and as such a notorious fact which this Court can take judicial notice of) that the phrase 'World Bank Group' is a name generally used to refer to a number of closely related but independent international organisations created by treaty signed by member countries. They are:-

1. International Bank for Reconstruction and Development (IBRD)
2. International Development Association (IDA)
3. International Finance Corporation (IFC)
4. Multilateral Investment Guaranty Agency (MIGA)
5. International Centre for Settlement of Investment Disputes (ICSID)

Of these five, the first two i.e.the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), who are the Interveners/Applicants in this case, are more commonly jointlyreferred to as the World Bank. It is also common knowledge that Nigeria joined the membership of the IBRD and IDA by signing the IBRD Articles of Agreement on 30th March,1961 and the IDA Articles of Agreement on 14th November,1961 respectively. Whoever did not know all these facts before now... are welcome. All the foregoing information is also readily available on the internet via Google search and particularly on Wikipedia (a popular online encyclopaedia).

On the status of the IBRD, Sections 1 and 2 of Article VII of the IBRD Articles of Agreement (As amended effective June 27th 2012) provide for the full juridical personality and capacity to contract, acquire property and institute legal proceedings within the territories of member states (by extension Nigeria). The same

provision is made in respect of the status of the IDA via Sections 1 and 2 of Article VIII of the IDA Articles of Agreement (to which Nigeria is also a signatory). It is relevant to note that the copy of the IBRD Articles of Agreement which the Interveners/Applicants annexed to their affidavit as Exhibit GN1 appears to be the version as amended effective February 16th, 1989 which is however no longer effective. This Honourable Court is however bound to take judicial notice of the provisions of the extant IBRD Articles of Agreement (As amended effective June 27th, 2012) being a treaty to which Nigeria is a signatory. See the case of **JFS INVESTMENT LTD. V. BRAWAL LINE LTD. & ORS (2010) LPELR-1610(SC)**.

The position of the law however is that International treaties to which Nigeria is a signatory have no force of law in Nigeria and cannot bind the citizens of said Country unless and until they are enacted into law by the National Assembly. See the cases of **ABACHA & ORS V. FAWEHINMI (2000) LPELR-14(SC)**, **TOLANI V. KWARA STATE JUDICIAL SERVICE COMMISSION & ORS (2009) LPELR-8375(CA)** and **NNAJI V. NFA & ANOR (2010) LPELR-4629(CA)**. This is where the International Financial Organizations Act comes in.

The **International Financial Organizations (IFO) Act, Laws of the Federation of Nigeria 2004** is a law to enable Nigeria become a member of the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and the International Development Association (IDA). It is pertinent to note that the IBRD and IDA (the Interveners/Applicants herein) are referred to as the 'Bank' and the 'Association' respectively in the **IFO Act**. See **Section 2**.

Section 5(1) of the IFO Act further provides as follows:-

5. Status and Immunities of Organisations:-

(1) The juridical personality of the Fund, the Bank, the Corporation and the Association is recognised by the Federation and in particular the capacity to contract, to

acquire and dispose of immovable and movable property, and to institute legal proceedings; the provision regarding judicial process contained in section 3 of Article IX of the Fund Agreement, in section 3 of Article VIII of the Bank Agreement, in section 3 of Article VI of the Corporation Agreement and in section 3 of Article VIII of the Association Agreement respectively, shall have the force of law in Nigeria.

It is clear from the foregoing that the Interveners/Applicants are specifically accorded juristic/legal personality in Nigeria by virtue of the IFO Act, the IBRD Articles of Agreement and IDA Articles of Agreement. The same cannot however be said of the 'World Bank Group' which is the name the Claimant has sued as Defendant in the instant suit.

I have said earlier that the name 'World Bank Group' is a name commonly used to refer to a group of closely related but distinct international organisations including the Interveners/Applicants.

There is however nothing to show that the name 'World Bank Group' is a name that possesses juristic/legal personality such that it can sue or be sued in that name in any law Court in Nigeria. There is no international treaty creating the 'World Bank Group' nor is there any domestic statute establishing or recognising it as having juristic personality. This Court has been referred to none by the Claimant and indeed none exists. It follows that while the Interveners/Applicants have juristic personality to sue and be sued in their own legally recognized name, the 'World Bank Group' does not enjoy the privilege of being sued in that name.

This Court has been referred to the Canadian case of **WORLD BANK GROUP V. WALLACE, 2016 SCC 15, (2016) 1 S.C.R. 207**. I have looked at that case. The 'World Bank Group' was sued as Defendant in that case and further appealed to appellate Courts. The Court in that case recognized that the 'World Bank Group' composed of five separate international organizations including the Interveners/Applicants herein. The issue of the juristic personality

of 'World Bank Group' however was neither raised nor determined in that suit. I therefore find that the mere fact that the issue was not raised in that suit does not mean the 'World Bank Group' has juristic personality to sue or be sued in Courts of law in Nigeria.

This Court has also been referred to documents showing that the World Bank Group' acted in that name and has staff under its employment. This however is insufficient to prove juristic/legal personality of the 'World Bank Group' in the absence of a treaty or statute establishing it. The position of the Supreme Court in the case of **FAWEHINMI V. N.B.A. (NO 2) (1989) 2 NWLR (PT. 105) P. 558** is that the mere fact that an entity has been dealt with by others as an existing entity does not confer on it legal capacity to sue and be sued.

It is however trite law that although suits can be commenced against those who are competent i.e. persons with a juristic existence, there are exceptions to the general rule under the various rules of Courts which make it a possibility of citing as Defendant an unincorporated body. See the case of **ATAGUBA & COMPANY V. GURA NIG. LTD. (2000) LPELR-12003(CA)**.

My attention is drawn to the notorious fact that the Interveners/Applicants are commonly known together as the World Bank. The Claimant averred in its counter affidavit that the Defendant carries on transactions with its office address at Plot 102 Yakubu Gowon Crescent Asokoro, Abuja. My attention is also drawn to Exhibit AGV-4 attached to the Claimant's affidavit in support of its originating summons which carries the letterhead "*The World Bank, IBRD – IDA/ World Bank Group*" written by the Defendant to the Claimant. It appears that the Interveners/Applicants cannot be separated from the "World Bank Group" (which is the entity the Claimant sued as Defendant). The Interveners/Applicants have been carrying on activities in the name "World Bank Group". In fact, the Defendant's address within jurisdiction for service of the originating Court processes issued in this case is 'World Bank Group, 102 Yakubu Gowon Crescent, Asokoro, Abuja'. Upon being served with the said processes at the

said address, the Defendant received and stamped/endorsed same on 17th October, 2019 in the name 'World Bank Office, Abuja'.

From the nature of the relationship of the Interveners/Applicants, it is clear that although they are distinct legal entities from each other, they have been carrying on activities together in the name of the Defendant within the jurisdiction of this Court.

Now **Order 13 Rule 25 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** provides as follows:-

"Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firms, if any, of which they were partners when the cause of action arose and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Court may direct."

Interpreting provisions of rules of Courts similar to the above Rule of this Court, the Supreme Court, per Uwaifo JSC (delivering the lead Judgment) in the case of **IYKE MEDICAL MERCHANDISE V. PFIZER INC. & ANOR (2001) LPELR-1579(SC)**, held thus:-

"I think the provision in Order 4 rule 6 of the Federal High Court (Civil Procedure) Rules 1976 is clear that a firm composed of two or more partners may sue or be sued in the firm's name i.e. eo nomine. The said rule reads:-

"6. Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were, when the cause of

action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Court may direct."

As has been said, the law, by this provision, allows partners to sue, when they claim any relief to which they may be entitled as partners, or be sued, when they are alleged to be liable as partners, and in either case such action may be in the name of the firm in which they were partners at the time the cause of action arose. When action has thus been taken against that firm, the plaintiff or any other party to the action may apply to the Court for a statement of the names and addresses of the persons who were partners in the firm at the time the cause of action arose. This is an information a plaintiff may wish to avail himself of after the action has been filed. One of the purposes this serves the plaintiff is the legal consequence that a judgment against the firm has the same effect that a judgment against all the partners had formerly."

It was also held by the Court of Appeal in the case of **SOCIETAL GENERALE FONDATION NIG. LTD. V. EMMOL NIGERIA ENTERPRISES (2006) LPELR-11770(CA)** as follows:-

"The truth of this matter as upheld by the learned trial Judge is that the traditional capacity of the juristic person to sue and be sued in its name has now been extended to firms and capacity to be sued extended to business names other than personal names by virtue of the provisions of Order 11 Rules 9 and 26 of the High Court (Civil Procedure) Rules Cross River State 1987".

It is then left for any party to an action to apply to the Court for a statement of the names and addresses of the persons who were partners in the firm at the time the cause of action arose under Order 11 R 9. Thus Order 11 Rule 9 which deals with "partners" simpliciter says:-

"Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose, and any party to an action may in such case apply to the Court for a Statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise as the Court may direct."

Order 11 Rule 26 on the other hand deals with the situation of a single person trading as a firm, the Rule unlike Rule 9 counters only a capacity to be sued and not for the person to sue in his business name. It reads:-

"Any person carrying on business within the jurisdiction in a name or style to her than his own name may be sued in such name or style as if it were a firm name, and so far as the nature of the case will permit, all Provision relating to proceedings against firms shall apply"

The position of the law is that while two or more persons who carry on business as partners may be sued in the name in which they carry (or carried) on the business as partners, a sole owner of a business can only be sued as "... trading under the name and style of...". See the cases of **IYKE MEDICAL MERCHANDISE V. PFIZER INC. & ANOR (supra)**, **UBA PLC V. MOHAMMED & ANOR (2011) LPELR-5063(CA)** and **SOCIETAL GENERALE FONDATION NIG. LTD. V. EMMOL NIGERIA ENTERPRISES (supra)**.

In the instant case, it is evident and I hold the view that the Interveners/Applicants can be sued in the name of the Defendant in which name they jointly carry on their activities and/or business (as partners) within the jurisdiction of this Court and I so hold. This is the purport and effect of the provisions of **Order 13 Rule**

25 of the extant Civil Procedure Rules of this Court and to find and hold otherwise would occasion outright injustice in the peculiar circumstances of this case.

Thus, while I agree with the Interveners/Applicants that the name 'World Bank Group' which has been sued as Defendant in this case is not (by itself) a juristic name connoting juristic personality, I must hold however that the Interveners/Applicants are juristic persons capable of being sued in that name as partners who carried on activities in that name at the time the acts complained of by the Claimant occurred and I so hold. Accordingly I hold the view that the Interveners/Applicants have therefore been competently sued in that name 'World Bank Group' in the instant suit and I so hold.

Another ground of objection raised to the competence of the instant suit vide the Interveners/Applicants' preliminary objection is their immunity from legal proceedings in a Court of law.

Now **Section 5(2) of the International Financial Organisations Act (IFO Act)** provides as follows:-

"Without prejudice to the powers conferred by section 3 of the Diplomatic Immunities and Privileges Act, the President shall by order make such provisions as are necessary for carrying into effect any of the provisions of the Fund Agreement, the Bank Agreement, the Corporation Agreement and the Association Agreement, relating to the status, immunities and privileges of the Fund, the Bank, the Corporation and the Association and their respective governors, executive directors, directors, alternates, officers and employees, or any of the provisions of the Fund Agreement as to the unenforceability of exchange contracts."

Article VII of the IBRD Articles of Agreement (as amended effective June 27, 2012) and Article VIII of the IDA Articles of

Agreement provide for the immunities and privileges of the Interveners/Applicants.

Section 3 of Article VII of the IBRD Articles of Agreement (as amended effective June 27, 2012) provides that:-

"Actions may be brought against the Bank only in a Court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association."(Underlining is mine for emphasis).

Section 3 of Article VIII of the IDA Articles of Agreement provides as follows:-

"Actions may be brought against the Association only in a Court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association."(Underlining is mine for emphasis).

It would appear, from a combined reading of the provisions of the IFO Act, the IBRD Articles of Agreement and the IDA Articles of Agreement above, that while the Interveners/Applicants can be competently sued in this Court within the territory of Nigeria, such an action cannot lie where the claim is by member states, persons

acting for or deriving claims from member states. The mere fact that the Interveners/Applicants can be sued in a competent Court of law means that their immunity from being impleaded is not absolute and does not apply in all cases. The only question to ask is who is suing the Interveners/Applicants and for what purpose.

Counsel to the Claimant has however posited that the Interveners/Applicants (sued in the name of the Defendant) cannot claim immunity against lawsuits as there is nothing to show that they were granted immunity in accordance with the provisions of Section 11 of the Nigerian Diplomatic Immunity and Privileges Act 1962.

I have read the provisions of the **Nigerian Diplomatic Immunity and Privileges Act** (hereafter referred to as the **NDIP Act**). **Section 11** of the said Act applies to immunity of 'certain' international organisations. **Section 11(1)** specifically provides as follows:-

11.

(1) This section shall apply to any organisation declared by the Minister by Order to be an organisation the members of which are sovereign powers (whether foreign sovereign Powers or Commonwealth countries) or the government or governments thereof.

Section 11, in its following subsections, then proceeds to authorise the Minister (of Foreign Affairs) to make Orders in the Federal Gazette providing for the legal capacity, immunities and privileges of certain classes of persons and organizations.

While **Section 11 of the NDIP Act** applies to organisations which have been declared by Order of the Minister as being so constituted by sovereign powers or Commonwealth Countries, there is nothing under that provision that makes such declaration a condition precedent to any organization claiming immunity. I have read the case of **OLUWALOGBON & ORS V. THE GOVERNMENT OF UNITED KINGDOM & ANOR (2005) LPELR-**

11319(CA) relied upon by Counsel to the Claimant and I must state that the Court of Appeal made no such pronouncement in that case. What the Court of Appeal held in that case in respect of **Section 11 of the NIDP Act** is that the provision specifically applies to organizations declared by the order of the Minister as being so constituted by sovereign powers or Commonwealth Countries, but does not provide immunity for States as it does not apply to States.

The conclusion which must be reached is that an international organization claiming status of legal personality, privileges or immunity in Nigeria has to provide evidence of such status before the Court. This could be by treaty signed by Nigeria and domesticated under Nigerian laws (as is the situation in this case) or by Gazetted Order of the Minister of Foreign Affairs in compliance with the provisions of **Section 11 of the NDIP Act**.

It is beyond doubt that the **IFO Act** already recognises the legal capacity/status, immunities and privileges accorded the Interveners/Applicants (collectively sued in the name of the Defendant herein) as provided by the provisions of the IBRD Articles of Agreement and the IDA Articles of Agreement. **Section 5(2) of the IFO Act** specifically provides for the recognition of such immunity 'without prejudice' to powers conferred under the **NDIP Act**. Where steps are taken in compliance with provisions of the **NDIP Act**, then it strengthens the issue of immunity of the Interveners/Applicants. That is however not to say that the Interveners/Applicants cannot enjoy immunity from legal proceedings. They can by virtue of provisions of the **IFO Act**, the IBRD Articles of Agreement and the IDA Articles of Agreement already examined in this Judgment.

I have already mentioned that the Interveners/Applicants' immunity from legal proceedings is not absolute. It is not applicable in all cases. The determining factor is who is suing and why the party is suing the Interveners/Applicants.

Considering a long line of decided cases on the issue of immunity, the Court of Appeal in the case of **OLUWALOGBON & ORS V. THE GOVERNMENT OF UNITED KINGDOM & ANOR** (*supra*) held the position that the central point, where objection on the ground of immunity is raised, is the nature of the transaction and the role of the party claiming immunity that gave rise to the action.

As a persuasive authority, the Claimant's Counsel has directed this Honourable Court's attention to the case of **JAM V. INTERNATIONAL FINANCE CORP., 586 U.S.** (docket No. 17-1011) which I have read thoroughly. It is a decision of the United States of America Supreme Court delivered on 27th February, 2019 which drastically changed the concept of immunity of international organisations in the United States of America. In that case, the United States Supreme Court ruled that International Organizations such as the International Finance Corporation (IFC), the financing arm of the World Bank Group, could be sued in US Courts for conduct arising from their commercial activities. The United States Supreme Court specifically found that although international organizations may, in their charters, specify that they have **absolute** immunity from lawsuits, the International Finance Corporation's charter does not include such a clause.

Thus, therefore as I have already stated that from a reading of the provisions of the IBRD Articles of Agreement and the IDA Articles of Agreement on the immunity of the Interveners/Applicants, they have not been accorded 'absolute' immunity from being sued in law Courts. Hence, they can therefore be competently sued in a Nigerian Court. Their immunity only applies under certain circumstances. The question is; can the Interveners/Applicants' immunity apply in the instant case?

In the case of **AFRICAN REINSURANCE CORPORATION V. J.D.P. CONSTRUCTION (NIG.) LTD (2007) LPELR-216(SC)**, the Supreme Court held the position that a claim of immunity by an international organisation cannot avail it in commercial transactions.

What then is the Claimant's claim against the Defendant (through which name the Interveners/Applicants have been sued) in this case?

Briefly put, the Claimant's case is that it entered into three respective contract agreements with the Cross River State Nigeria Erosion and Watershed Management as well as the Abia State Nigeria Erosion and Watershed Management Project for the construction of remediation works in Cross River State and Abia State. That after due completion of the contracts, the Defendant wrote to the Claimant that it would be conducting an audit of the Claimant's accounts and records in respect of the contracts. That the Defendant subsequently wrote to the Claimant making criminal accusations against the Claimant, purported to have investigated it and threatened to sanction and blacklist the Claimant from bidding for all contracts financed by it. It is the Claimant's case that under the contract agreements however, the right to audit the Claimant's books and account with respect to the contracts lies with the Cross River State Nigeria Erosion and Watershed Management as well as the Abia State Nigeria Erosion and Watershed Management Project. The Claimant by this suit seeks an interpretation of the three contract agreements to determine whether the Defendant can audit or investigate the Claimant in respect of the said contracts.

I have looked at Exhibit AGV-4 annexed to the Claimant's affidavit in support of its originating summons. It is a letter allegedly written by the Defendant to the Claimant on issue of audit. The Defendant referred extensively to the three contracts and even appears to rely on specific provisions/clauses of the contracts for its audit of the Claimant in respect of the contracts.

Now, while it does not appear to be in dispute that the three contracts subject matter of this suit were funded with the assistance of the Defendant, the Claimant's claim is simple enough. It is that by virtue of the provisions of the contracts entered into by the Claimant, the Defendant cannot purport to

audit or investigate the Claimant in respect of the said contracts. The question is, can the Defendant interfere in the issues of the Claimant's contracts? The Claimant neither acts for nor derives its claim in this suit from the Federal Government of Nigeria (or any other member of the Interveners/Applicants for that matter). The instant suit is simply for interpretation of commercial contracts under which the Defendant is alleged to have purported to act. The circumstances for the application of the Interveners/Applicants' immunity against legal proceedings therefore does not arise in the instant case. Consequently, the Interveners/Applicants (sued jointly in the name of the Defendant) are not entitled to the immunity provided for under the IBRD Articles of Agreement and the IDA Articles of Agreement.

Thus, in whole I hold the view that the instant suit has been competently instituted in the name of the Defendant against the Interveners/Applicants and I so hold. This Honourable Court therefore has the requisite jurisdiction to entertain same hence the issue for determination of the Interveners/Applicants' preliminary objection are thus resolved against the Interveners/Applicants and in favour of the Claimant. The Interveners/Applicants' notice of preliminary objection to the jurisdiction of this Honourable Court to entertain this suit fails and it is accordingly dismissed.

Having considered and dismissed the preliminary objection of the Interveners/Applicants, the coast is now cleared for me to consider and determine the questions raised in the originating summons as well as the reliefs sought by the claimant. The issue earlier distilled for determination is:-

Whether the Claimant herein is entitled to judgment as per the reliefs sought in the originating summons.

And the issue deals with the merits of the substantive suit.

Pursuant to my earlier position in the determination of the foregoing issues under the Preliminary objection, it is established that the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) are

collectively known as the World Bank and compose of the Defendant. I would therefore simply refer to them as the Defendant which is the name in which they have been collectively sued in this case.

The brief facts of the substantive case as averred in the Claimant's affidavit in support of its originating summons is that the Claimant is a company incorporated in Nigeria with registered office in Abuja while the Defendant is an international financial institution. The Claimant averred that it entered into three contract agreements namely:-

- i. Contract No. CRS/NEWMAP/NCB/WORKS/001/2015 with Cross Rivers State Nigeria Erosion and Watershed Management Project (sometime in March 2015) for the construction of remediation works in IkotAnwatim Erosion Gully, Calabar Cross River State. A copy of the said contract agreement is annexed to the affidavit in support as Exhibit AGV-1.
- ii. Contract No. CRS/NEWMAP/NCB/WORKS/004/2014 with Cross Rivers State Nigeria Erosion and Watershed Management Project (sometime in June 2014) for the construction of remediation works in EdimOtop Gully, Calabar, Cross Rivers State. The Claimant attached a copy of this also as Exhibit AGV-2.
- iii. Contract No. AB/NEWMAP/CW/01/2013 with Abia State Nigeria Erosion and Watershed Management Project (sometime in May 2014) for the construction of remediation works in UmueukwuNsulu Gully, Abia State. A copy is annexed as Exhibit AGV-3.

The Claimant averred that it diligently executed all the works in compliance with the contract agreements covered by Exhibits AGV-1, AGV-2 and AGV3 and final payments were made and certificates of completion were issued to the Claimant. Exhibits AGV/CRT-1, AGV/CRT-2 and AGV/CRT-3 were annexed to the affidavit in support of the originating summons as copies of certificates of completion demand for issuance of certificate of

compliance and payment statement. It is the Claimant's averment that Section 3 Clause 3 of Exhibits AGV-1, AGV-2 and AGV-3 provides that in the event that a corrupt practice is discovered, the Claimants shall be accorded the opportunity by the Cross River State Nigeria Erosion and Watershed Management Project and the Abia State Nigeria Erosion and Watershed Management Project to give explanations. That the said three contracts Exhibits AGV-1, AGV-2 and AGV-3 also provides that if the Claimant is found to be involved in any corrupt, fraudulent, collusive, coercive or obstructive practices the Claimant will be dealt with by the Cross River State Nigeria Erosion and Watershed Management Project for the contracts executed in Cross Rivers State while the Abia State Nigeria Erosion and Watershed Management Project will deal with the Claimant in respect of the contract works executed in Abia State. That neither of the parties i.e. the Cross River State Nigeria Erosion and Watershed Management Project or the Abia State Nigeria Erosion and Watershed Management Project ever alluded to any act of corrupt practice against the Claimant during the procurement/bidding process and throughout the execution of the three contracts. That by virtue of Clauses 8.1 and 8.2 of Exhibits AGV-1, ACV-2 and AGV-3 the contracts are to be interpreted in accordance with the laws of the Federal Republic of Nigeria and all disputes arising therefrom are to be settled amicably failing which parties shall be referred to arbitration.

It is the Claimant's further averment that the Defendant informed the Claimant via letter dated 26th September, 2018 (Exhibit AGV-4) that it (Defendant) will be conducting an audit of the Claimant's accounts and records regarding the contracts covered by Exhibits AGV-1, AGV-2 and AGV-3. That in February 2019, the Defendant wrote a letter dated 7th February, 2019 (EXHIBIT AGV-5) to the Claimant wherein it made several criminal accusations against the Claimant and further threatened to suspend and blacklist the Claimant from bidding for all contracts financed by the Defendant. In the said letter, the Defendant purported to have investigated the Claimant for fraudulent audited financial statements and collusive practice and arrived at its own findings and conclusion without hearing from the Claimant. That the Defendant

also threatened to sanction the Claimant and declare it non-responsible and ineligible for future contracts that might be awarded by the Defendant. It is the Claimant's averment that the right to inspect or audit books/account of the Claimant with respect to the contracts lies with the Cross River State Nigeria Erosion and Watershed Management Project and the Abia State Nigeria Erosion and Watershed Management Project as employers under clause 3.6 of the General Conditions of Contract. That upon receipt of Exhibit AGV-5, the Claimant incurred several expenses (in respect of the matter) which it detailed and supported with documents as follows:-

- a. Expenses of engaging the services of a solicitor Norton Rose Fulbrigh in Paris, France to respond to the Defendant's allegations. Exhibits AGV-7.2, AGV-7.3, AGV-7.4 and AGV-7.5 are letters/opinions issued by the law firm of Norton Rose Fulbrigh and Invoices/receipts for the payment of the total sum of N28,804,255 (Twenty Eight Million, Eight Hundred and Four Thousand, Two Hundred and Fifty-five Naira) only.
- b. The Claimant's Director Mr. Abou Ghazale's travel expenses totalling the sum of N1,967,600 when he made several visits to the law office of Norton Rose Fulbrigh at Paris-France where they engaged in series of meetings in connection with the Defendant's allegations. Exhibits AGV-7.6, AGV-7.7 and AGV.7.8 are attached as SilverWings Invoices for flights between Abuja and Paris on various dates.
- c. Payment of the sum of N5,000,000 to engage the consortium of the law firms of Ifeanyi Anago & Co. and J & S Consults in Nigeria to prosecute this suit. Exhibits AGV-9.0 and AGV-9.1 are letters of instruction and receipts of payment respectively.

It is the Claimant's averment that it also incurred further financial/revenue losses when it commenced the processes for Nigeria Erosion and Watershed Management Projects (NEWMAP) and other Defendant's assisted projects in Akwa-Ibom, Kogi, Bauchi, Delta and Plateau States of Nigeria since 2018, but withdrew/suspended further biddings as a result of the Defendant's action/investigations. That the Defendant's

action/investigations have further led the Claimant to lose a total sum of N445,000 in bidding expenses incurred in the above listed states. Exhibit AGV-10 are copies of the summaries and payment receipts for the bids withdrawn/suspended.

Arguing in support of the grant of the Claimant's reliefs as per its originating summons, learned Counsel to the Claimant submitted that it is not in dispute that parties to the contracts contained in Exhibits AGV-1, AGV-2 and AGV-3 are only the Claimant herein with Cross Rivers State Nigeria Erosion and Watershed Management Project and Abia State Nigeria Erosion and Watershed Management Project. Counsel posited that it is an indisputable fact that the Defendant is not a party to Exhibits AGV-1, AGV-2 and AGV-3 as it never executed any of them. He submitted that the law is trite that only parties to a contract can exercise any right or enjoy any benefit under the said contract and this is based on the principle of privity of contract. He relied on the cases of **A.G. FEDERATION V. A.I.C. (1990) 6 SC 175 and AIDC V. LGN (2000) 2 SC 57**. He also referred to Volume 8 of Halsburys Laws of England 3rd Edition at page 66 paragraph 110. Counsel contended that by virtue of Clause 3 of Exhibits AGV-1, AGV-2 and AGV-3, the power to audit/investigate or exclude the Claimant from participating in the contract or to declare the Claimant ineligible from participating in the contract in the event that the Claimant is discovered to have engaged in corrupt, fraudulent, collusive or obstructive practices is vested in Cross Rivers State Nigeria Erosion and Watershed Management Project and Abia State Nigeria Erosion and Watershed Management Project being the employers of the Claimant.

Counsel further submitted that even if the Defendant is a party to the contracts, clause 82 makes adequate provision for settlement of dispute arising from the contracts to wit; amicable settlement and arbitration by an adjudicator and the place of arbitration shall be Calabar, Cross River State as per Exhibits **AGV-1 and AGV-2. Relying on the case of OLATUNDE V. O.A.U. (1998) 4 SC 91**, he contended that the words and language used in Exhibits AGV-1, AGV-2 and AGV-3 are plain and should be given their

ordinary meaning. That it was never the intention of parties to the contracts that the Defendant should usurp the position of "employer" or be part of the contracts. Referring this Court to Exhibits AGV-1, AGV-2 and AGV-3, Counsel posited that the 'employer' are Cross Rivers State Nigeria Erosion and Watershed Management Project and Abia State Nigeria Erosion and Watershed Management Project. He reiterated that the right to inspect the books of account of the Claimant as requested in Exhibit AGV-4 does not lie with the Defendant but with the "Employer". He submitted that the Claimant had completed the contracts, been issued with completion certificate and final payment had been made to it in respect of the contracts. He referred this Court to Exhibits AGV/CRT-1, AGV/CRT-2 and AGV/CRT-3.

Learned Counsel further submitted that it is an infringement of the cardinal principle of fair hearing for the Defendant to constitute itself into prosecutor and judge in the allegation levied against the Claimant. He contended that the Defendant accused the Claimant of fraudulent audit report and collusive practice and is the one investigating the allegation which will lead to the Claimant being sanctioned by the Defendant. Counsel submitted that this should be resisted by this Court. Counsel posited that the allegations against the Claimant by the Defendant are criminal in nature and codified in the laws of the land. He argued that the judicial power to resolve the dispute with respect to issuance of fraudulent audited accounts with respect to the contracts in question or whether the Claimant engaged in collusive practice therewith lies with the Court and not with the Defendant. He submitted that it is the duty of the Judiciary to protect and guide the contracts entered into by parties and not to allow a party who did not execute the contract to exercise any right under the contract as the Defendant is trying to do in the instant case. Counsel finally urged this Court to grant the reliefs contained in the originating summons.

It is relevant to note at this stage that the originating processes in this suit was served on the Defendant in the name in which the

International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) were sued i.e. the World Bank Group. The endorsement copies show that the Defendant received and endorsed the processes in that same name in which the IBRD and IDA carry on business within the jurisdiction of this Court. Upon being served, the Defendant filed conditional memorandum of appearance and the partners in the Defendant i.e. the IBRD and the IDA filed a notice of preliminary objection in their own name to the competence of the suit. The said preliminary objection has however been dismissed. The Defendant never filed a counter affidavit to the Claimant's affidavit in support of the substantive originating summons despite being served with the originating processes.

The facts adduced by the Claimant in its affidavit in support of its originating summons thus stands unchallenged as the Defendant has failed to file any counter affidavit to challenge same. The law on the implication of failure of a party to file a counter-affidavit to controvert the averments in the affidavit filed in support of an originating summons against him is that he is deemed to have admitted the facts deposed to in such affidavit and such unchallenged and uncontroverted facts are treated as established. – see the cases of ***INAKOJU V. ADELEKE (2007) 4 NWLR (PT. 1025) P. 423, THE GOVERNOR OF KOGI STATE & ORS V. OBA S. A. MOHAMMED (2008) LPELR-5013(CA) and AYALA V. DANIEL & ORS (2019) LPELR-47184(CA)***. The facts alleged by the Claimant in support of its originating summons in the instant case are therefore deemed admitted and thus established.

Although the Defendant did not file a counter affidavit to deny or controvert the claimant's affidavit, I have looked carefully at the affidavit evidence and the documents in support before this Court and then determine whether the claimant is entitled to the reliefs claimed.

Now exhibits AGV-1 and AGV-2 are contract agreements executed between the Claimant and 'Cross Rivers State Nigeria Erosion and Watershed Management Project (CRS-NEWMAP), World Bank

Assisted'. Under Exhibits AGV-1 and AGV-2 the said Cross Rivers State Nigeria Erosion and Watershed Management Project contracted the Claimant to carry out construction of remediation works in IkotAnwatimErosion Gully and EdimOtop Erosion Gully respectively in Calabar (Cross River State). Exhibit AGV-3 on the other hand is acontract agreement between the Claimant and 'Abia State Nigeria Erosion and Watershed Management Project (NEWMAP)' by which the former was contracted by the latter to carry out construction of remediation works in UmuezeukwuNsulu Gully Erosion Works. The established fact before this Court is that the Claimant completed the works required under the three contracts as deposed at paragraph 7 and evidenced by exhibits AGV/CRT-1, AGV/CRT-2 and AGV/CRT-3, which are certificate of completion of works in accordance with the contract agreements.

The undisputed facts, as it were, before this Court is that the Defendant wrote Exhibits AGV-4 and AGV-5 to the Claimant purporting to audit and investigate the Claimant in respect of the three aforementioned contracts.

I have also carefully read Exhibits AGV-4 and AGV-5 written by the Defendant. The subject matter of Exhibit AGV-4 dated 26th September, 2018reads "Re: World Bank-financed Contracts Awarded to A.G. Vision Construction Nigeria Ltd. in the Federal Republic of Nigeria". By thesaid Exhibit AGV-4the Defendant informed the Claimant that it would be auditing the accounts and records of the Claimant in respect of the bid, negotiation and performance of the three contracts (i.e. Exhibits AGV-1, AGV-2 and AGV-3). The Defendant specifically referred to the provisions of Section 3 Clause 3.6 of each of the three contracts and requested that the Claimant provide access to all its relevant accounts, records and documents related to the said documents.

Exhibit AGV-5 dated 7th February, 2019 written by the Defendant to the Claimant has as its subject matter "Re: Nigeria: Erosion and Watershed Management Project financed by the International Development Association (IDA) Loan Number 5105-NG". By Exhibit AGV-5 the Defendant informed the Claimant of its

administrative inquiry into the contracts and requested the Claimant to show cause why the Defendant should not seek sanctions against it in view of its findings (in the course of its investigation) of fraudulent, corrupt and collusive practices against the Claimant contrary to its procurement guidelines.

Now in Exhibit AGV-4 to the Claimant, the Defendant relied on clause 3.6. Of the three contracts in respect of its intended audit of the Claimant's records. The provisions of Clause 3.6 of each three contracts in Exhibits AGV-1, AGV-2 and AGV-3 are the same. It reads as follows:-

"3.6 The Contractor shall permit the Employer to inspect the Contractor's accounts and records and other documents relating to the submission of tender and contract performance, and to have them audited by auditors appointed by the Employer, if so required."

'The Employer' in the case of the contracts Exhibits AGV-1 and AGV-2 is the 'Cross Rivers State Nigeria Erosion and Watershed Management Project (CRS-NEWMAP), World Bank Assisted' while 'the Contractor' is the Claimant. These are the parties who executed the contract. In the case of Exhibit AGV-3, 'the Employer' refers to 'Abia State Nigeria Erosion and Watershed Management Project (NEWMAP) while 'the Contractor' is still the Claimant. It is clear from the contract documents Exhibits AGV-1, AGV-2 and AGV-3 that the Defendant is not party to the three contracts having not executed any part thereof. It follows therefore that under the three contracts, the party that can exercise the right to inspect and audit the Claimant's accounts and records in relation to the contracts are 'Cross Rivers State Nigeria Erosion and Watershed Management Project (CRS-NEWMAP)' and 'Abia State Nigeria Erosion and Watershed Management Project (NEWMAP)'.

Clause 3.6 of the three contracts however empowers the Employer to appoint an auditor for the purpose of carrying out the audit of the Claimant. The Defendant did not indicate in any of its letters

that it obtained the authority of 'Cross Rivers State Nigeria Erosion and Watershed Management Project (CRS-NEWMAP)' and 'Abia State Nigeria Erosion and Watershed Management Project (NEWMAP)' to carry out the intended audit of the Claimant. I note that this issue was raised in the Claimant's solicitor's letter Exhibit AGV-7.2 dated 18th September, 2019 to the Defendant. I must therefore find that as the Defendant is not the 'Employer' who is entitled to exercise the right to audit the Claimant in respect of the contracts, nor has the Defendant shown anything to establish that it was duly appointed by the said Employer to carry out such an audit, the Defendant cannot purport to rely on clause 3.6 of the three contracts to audit the Claimant in respect of the contracts.

With respect to the investigation conducted by the Defendant and its findings therefrom regarding the Claimant and the three contracts, Clause 3 of Exhibits AGV-1, AGV-2 and AGV-3 provide for the position in case any corrupt, fraudulent, collusive or coercive practice comes to the knowledge of the Employer. Under that clause, the Employer has the right to query the Claimant, exclude the Claimant from and also declare the Claimant ineligible from participating in procurement proceedings where the Employer determines such conducts against the Claimant. Thus, it is the 'Cross Rivers State Nigeria Erosion and Watershed Management Project (CRS-NEWMAP)' and 'Abia State Nigeria Erosion and Watershed Management Project (NEWMAP)' that reserve the authority to take steps against the Claimant for such conducts in relation to the contracts.

The simple position of the law which the Claimant has relied on and which I entirely agree with as applying to the instant case is that a third party who is a stranger to a contract can neither claim rights nor be subjected to obligations there-under. The principle is one of privity of contract. – see the cases of **U.B.A. V. FOLARIN (2003) 7 NWLR (PT. 818) P. 18** and **SANYINNA V. AFRICAN INTERNATIONAL BANK (2001) 4 NWLR (PT. 703) P. 355**.

The Supreme Court in the case of **REBOLD INDUSTRIES LTD V. MAGREOLA & ORS (2015) LPELR-24612(SC)** dealt extensively

with the doctrine of privity of contract and made key pronouncements on the principle. The Supreme Court held that as a general rule, a contract cannot confer rights or impose obligations on strangers to it and that a contract cannot be enforced by a person who is not a party to same even if made for his benefit. That the import of the doctrine of privity of contract is that a contract or an agreement cannot bind a person who is not a party to it nor can such person take or accept liabilities under the contract or agreement nor benefit thereunder. In other words, only parties to a contract can enforce it. A person who is not a party to a contract or an agreement cannot sue on same even if the contract or agreement was made for his benefit. The Supreme Court further held that a plaintiff who has no privity of contract with the Defendant will fail to establish a cause of action for breach of contract as he will simply not have a *locus standi* to sue the Defendant on the contract. See also the Court of Appeal decision in **JOHN DAVIDS CONSTRUCTION CO. LTD V. RIACUS CO. LTD & ANOR (2019) LPELR-47588(CA)**.

In the case of **MAI-KIRI V. YAHAYA (2018) LPELR-46595(CA)** the Court of Appeal also relied on the aforesaid Supreme Court decision to hold that

"Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefit."

I agree that since the Defendant is not a party to the three contracts Exhibits AGV-1, AGV-2 and AGV-3, it cannot therefore seek to enforce rights or obligations conferred under the terms of the contracts against the Claimant.

In the same breath, the claimant has no privity of contract with the Defendant and that means the claimant has no cause of action against the Defendant. In the case of **REBOLD INDUSTRIES LTD V MAGREOLA (supra)**, the Supreme Court of Nigeria, per John Inyang Okoro J.S.C (delivering the leading judgment) held thus:-

"I must state clearly that there is in the law of contract what is referred to as privity of contract. It is always

between the contracting parties who must stand or fall, benefit or loss from the provisions of their contract. That is to say, their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit thereunder. Put differently, only parties to a contract or an agreement can enforce it. A person who is not a party to it cannot do so even if the contract was made for his benefit as in this case."

The Court further held:-

"Even though it was the Respondent herein who was engaged by Mandilas Group Limited to draft this sublease agreement, he was not a party to the agreement, by the well-established principle of privity of contract, the Respondent had no locus standi to sue under the said agreement.

That is the simple truth in this matter. Let me state for emphasis that only parties to a contract can maintain an action under the said contract even where a clause of the contract agreement is made for the benefit of a third party, the said third party cannot sue under the contract"

See also ***EBHOTA V PLATEAU INVESTMENT & PROPERTY DEV. CO. LTD (2005) 15 NWLR (pt948) page 266 and A.G OF THE FEDERATION V AIC LTD (2000) 10 NWLR (pt675) page 293.***

In the instant case, by the affidavit evidence and exhibits AGV1, AGV2 and AGV3, I had already found that there is no privity of contract between the claimant and the Defendant. Then if there is no privity of contract between the claimant and the Defendant, the question now is whether the claimant has a justiciable cause of action against the Defendant? Certainly the law is trite as stated in the case of ***REBOLD INDUSTRIES LTD (supra)*** that a Plaintiff who has no privity of contract with the Defendant will fail to establish a cause of action for breach of contract as he will simply not have a locus standi to sue the Defendant on the contract.

Thus, therefore in the instant case, the contract agreements exhibit AGV1, AGV2 and AGV3 are simply contract agreements between the Cross Rivers State Nigeria Erosion and Watershed

Management Project (CRS-NEWMAP) and Abia State Nigeria Erosion and Watershed Management Project (NEWMAP) and the Claimant. The Defendant is not a party to the contract agreements and the Defendant cannot therefore evoke clauses 3.2,3.3 and 3.6 of exhibits AGV1,AGV2 and AGV3 to audit the books of account of the Claimant. Conversely, having established the non- existence of a privity of contract with the Defendant, the claimant also has no justiciable cause of action against the Defendant. Therefore, both the claimant or the Defendant cannot maintain an action against one another in respects of contract agreements, exhibits AGV1, AGV2 and AGV3.

In conclusion therefore, no matter from which angle one view the suit of the claimant having failed to establish a cause of action or that the claimant has no cause of action against the Defendant then the claimant has no locus standi to sue the Defendant and subsequently to raise the five questions in her originating summons for the determination of this Court. This Honourable Court cannot therefore determine the questions or grant the reliefs of the claimant as it would be lacking in jurisdiction to do so. Thus, the instant suit is hereby struck out.

That is the position of this Honourable Court.

HON. JUSTICE D. Z. SENCHI
(PRESIDING JUDGE)
22/06/2020

Parties:- Absent.

Jacob Ifere:-With me is Isaac Onah for the Claimant.

CephasC. Caleb:-For the Interveners/Applicants.

Claimant:- We have filed two motion i.e one motion Exparte and one motion on notice. We apply to withdraw the two motions

Cephas:- No objection.

Court:- The two motions i.e motion exparte No. M/6547/2020 and motion on notice No. M/6548/2020 having been withdrawn the two motions are hereby struck out.

HON. JUSTICE D. Z. SENCHI
(PRESIDING JUDGE)
22/06/2020