IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 11TH DAY OF JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

SUIT NO. CV/2524/16

BETWEEN:

BOND INVESTMENT AND HOLDINGS LIMITED … … … CLAIMANT

AND

1. THE GOVERNMENT OF AKWA IBOM STATE
2. THE ATTORNEY GENERAL OF AKWA IBOM STATE } DEFENDANTS

JUDGMENT

The Claimant is a limited liability company with principal business engagement as financial management consultancy. The summary of her claim, as gathered from processes filed to commence the instant action, is that the 1st Defendant engaged her services to undertake reconciliation and recovery of all excess deductions or charges on the foreign loan facilities

taken by the 1st Defendant since her creation. In order to formalize the understanding between the two parties, letters of engagement were exchanged and they further executed series of Consultancy Agreements, commencing on 30th June, 2010, which encapsulated the understanding reached by both parties in respect of the services for which the 1st Defendant engaged the Claimant.

In the course of performing her obligations under the Consultancy Agreement, which involved liaising with the Debt Management Office (DMO) and the Federal Ministry of Finance (FMF), the Claimant discovered that although the 1st Defendant was not a party to the London Club Debt, she participated in the debt buy-backs and for which deductions had been made from allocations due and accruable to her from the Federation Account; and as such, made a case for refunds for the 1st Defendant. The Claimant equally

made a case for refunds to the 1st Defendant with respect of her Paris Club debt.

Whilst all of these exercises were ongoing, the Claimant continued to formally update the Defendants of the progress of work done; and by her letter of 9th December, 2010, she informed the 1st Defendant that the reconciliation exercise had yielded fruit in the sum of **USD61,277,096.07 (Sixty One Million, Two Hundred and Seventy Seven Thousand, Ninety-Six Dollars and Seven Cents)**, being amount deducted from revenue accruable to the 1st Defendant from the Federation Account at the material time with respect to the London Club Debt buy-back; which sum was eventually refunded to the coffers of the 1st Defendant by the Federal Government of Nigeria.

As it turned out, the 1st Defendant refused to honour her obligation under the Consultancy Agreement with the Claimant, which required her to pay to the

Claimant an amount representing **15%** of whatever sums recovered as her Consultancy Fee for the consultancy services rendered to the 1st Defendant, on the ground that the Claimant's purported recovery efforts was outside the purview of the Agreement she had with the 1st Defendant. Efforts of the Claimant to recover her claim from the 1st Defendant, including attempts at arbitration, were unsuccessful. As a result, the Claimant commenced the instant action in this Court, *vide* *Writ of Summons and Statement of Claim* filed on 15/09/2016, wherein she claimed against the Defendants reliefs set out as follows:

1. ***A declaration that the Plaintiff has performed its obligations under the Consultancy Agreement by ensuring/facilitating the recovery of the excess deductions/charges on foreign loan facilities taken by the Defendants since its creation to the tune of USD61,277,096.07 (Sixty One Million, Two Hundred***

and Seventy Seven Thousand, Ninety-Six Dollars and Seven Cents), from the Federal Republic of Nigeria.

2. ***A declaration that the Plaintiff is entitled to 15% of the sum of USD USD61,277,096.07 (Sixty One Million, Two Hundred and Seventy Seven Thousand, Ninety-Six Dollars and Seven Cents), which was recovered from the Federal Republic of Nigeria for the Defendants as provided for in the Consultancy Agreement.***

3. ***An order directing the Defendants to immediately pay to the Plaintiff the sum of USD9,191,564.41 (Nine Million, One Hundred and Ninety One Thousand, Five Hundred and Sixty Four Dollars and Forty One Cents) being 15% of the total refunded sum, which is the agreed consultancy fee as provided for in the Consultancy Agreement.***

4. ***The sum of ₦350,000,000.00 (Three Hundred and Fifty Million Naira) as general damages for breach of contract and cost of inconveniences, travelling,***

communicating with the Defendants in order to convince them to pay the Plaintiff its fees.

5. ***Interest on the above stated sum at the rate of 10% annually from the date of judgment till the same is liquidated.***

Expectedly, the Defendants contested the Claimant's claim. Their operative pleading is the Defendants *Further Amended Statement of Defence* filed with leave of Court, on 04/02/2019. The gist of the defence advanced by the Defendants to the Claimant's claim seems to be that even though the 1st Defendant appointed the Claimant to reconcile and recover all over deductions/charges on foreign loans applicable to Akwa Ibom State Government from its creation, and in particular the sum of **USD178,250,450.00** under the Paris Club Debt; but that the Claimant never recovered any funds till the Consultancy Agreements lapsed; that the facts about the over deduction from the 1st Defendant's revenue allocation were made

known to the Debt Management Office by the 1st Defendant itself and not the Claimant; that the statutory refund of the sum of **USD61,277,096.07** made to the 1st Defendant by the Federal Government of Nigeria, of which the Claimant claimed **15%** consultancy fees, did not result from her purported reconciliation efforts but through the normal workings of the agencies of the Federal Government of Nigeria; and that they did not act in breach of the Consultancy Agreements had with the Claimant.

At the plenary trial, the Claimant fielded three witnesses. The **CW1** is **Mrs. O. C. Ebere,** *Senior Legal Officer, Revenue Mobilization Allocation and Fiscal Commission (RMAFC)*. The witness was meant to tender certain documents on the basis of *subpoena* served on the Commission but was withdrawn by the Claimant's learned senior counsel.

The second witness (**CW2**) is **Hon. (Chief) Olabode Mustapha,** Executive Chairman of the Claimant company. He adopted the two *Statements on Oath* he deposed to with respect of the suit and he further tendered in evidence a total of **thirty-five (35)** documents in evidence in further support of the Claimant's claim.

The **CW3** is **Alfred Anukposi,** *Head of Department, Debt Recording and Settlement* of the *Debt Management Office (DMO)*. He testified *viva voce* on *subpoena* and tendered a total of **four (4)** documents in evidence in support of the Claimant's case. The **CW2** and **CW3** were subjected to cross-examination by the Defendants' learned counsel.

The Defendants in turn also fielded two witnesses in support of their defence. The **DW1** is **Rita Okolie (Mrs.),** an *Assistant Director, Federation Account Department, Office of the Accountant General of the*

Federation. Even though she was summoned by *subpoena*, she deposed to a *Statement on Oath*, which she adopted in support of the Defendants' case. She also tendered two (2) sets of documents in evidence to further buttress her testimony.

The **DW2** is **Mr. Xavier Etim Essien,** *Head, Debt Management Office in the Ministry of Finance* of the 1st Defendant. He adopted his *Statement on Oath* and identified some of the documents already tendered in evidence by the **CW1**. The Defendants' two witnesses were equally subjected to cross-examination by the Claimant's learned senior counsel.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses as prescribed by the **Rules** of this Court.

In the final address filed on behalf of the Defendants on 17/01/2020, **Uwemedimo Nwoko, Esq.,** the Hon. Attorney General and Commissioner for Justice of

Akwa Ibom State (2nd Defendant), identified two issues for determination in this suit, viz:

1. ***Whether from the totality of the evidence adduced, there was any breach of contract by the Defendants?***

2. ***Considering the facts of this case, whether the Plaintiff is entitled to the reliefs sought?***

On the part of the Claimant, her written final address was filed on 10/02/2020, wherein her learned senior counsel, **Kehinde Ogunwumiju, Esq., SAN**, also distilled two issues as having arisen for determination in this suit, namely:

1. ***Whether or not the Plaintiff has proved on the balance of probabilities that the refund of the sum of $61,277,096.07 (Sixty One Million, Two Hundred and Seventy-Seven Thousand, Ninety-Six Dollars and Seven Cents) to the 1st Defendant being the London Club wrongful deductions was a result of the Plaintiff's efforts and actions in furtherance of the***

services it was obligated to render under the Consultancy Agreement?

2. ***Whether or not based on the evidence led in this case, the Plaintiff is entitled to the reliefs sought?***

The Defendants further filed a Reply on points of Law on 10/03/2020, in response to the Claimant's final address.

Upon a proper assessment of the state of the pleadings of the parties, the material evidence led at the trial, the final addresses filed by the contending parties, my view is that the focal issue that has arisen for determination in this suit, without prejudice to the issues formulated by the parties in their respective final addresses, could be recaptured as follows:

Whether or not the payment of the sum of $61,277,096.07 by the Federal Government of Nigeria to the 1st Defendant at the material time, resulted from the performance of; or is contemplated by the obligations

of the Claimant under the Consultancy Agreements executed with the 1st Defendant; and if so, whether the Claimant is not thereby entitled to an amount representing 15% of the said sum as her consultancy fee as agreed to under the Consultancy Agreements.

In determining this issue, I should also put on record that I had carefully considered and taken due benefits of the totality of the extensive arguments canvassed by learned counsel for the contending parties in their respective written submissions; and to which I shall endeavour to make specific reference as I consider needful in the course of this judgment.

TREATMENT OF SOLE ISSUE

WHAT WAS THE EXTENT OF THE CLAIMANT'S OBLIGATIONS UNDER THE CONSULTANCY AGREEMENTS?

From the evidence on record, it is stating the obvious to affirm, from the onset, that the relationship between

the Claimant and the 1st Defendant is delimited by agreement. This is clearly seen in that the Defendants, by *paragraph 1* of their *Further Amended Statement of Defence*, positively admitted the averments in *paragraphs 4, 5, 8, 9 and 11* of the Claimant's *Statement of Claim*. Proceeding from this position therefore, it will be right to find that parties are *ad idem* that the 1st Defendant engaged the Claimant to render certain services to her – the Akwa Ibom State Government. The **CW2, Hon. (Chief) Olabode Mustapha,** testified that the Claimant offered to provide financial consultancy services to the 1st Defendant for the reconciliation and recovery of all excess deductions/charges on the foreign loan facilities taken by the 1st Defendant since her creation. He tendered in evidence as **Exhibit C1,** copy of the said letter, dated 14th October, 2009, written by the Claimant to His Excellency, **Barr. Godswill Akpabio,** Governor of Akwa Ibom State (at the material time).

According to the **CW2,** parties held meetings and came to an understanding as to what the assignment entailed, resulting in the representative of the 1st Defendant writing to the Claimant *vide* letter dated 22nd April, 2010, conveying the approval of the Governor of Akwa Ibom State, to appoint the Claimant as the State's Consultant to reconcile/recover all over-deductions/charges on Foreign Loan applicable to Akwa Ibom State Government from inception. The **CW2** tendered the said letter in evidence as **Exhibit C2**.

In furtherance of **Exhibit C2,** the 1st Defendant drew up the first **Consultancy Agreement (CA)** which both parties duly executed on 30th June, 2010. The **CW2** tendered in evidence the said **CA** as **Exhibit C3**.

According to the **CW2** and by the tenor of **Exhibit C3,** the agreement was to run tentatively for one year duration, from 30/06/2010 – 29/06/2011, subject

to renewal upon the satisfactory performance of the Claimant's obligation thereunder.

It is to be further noted that parties were *ad idem* that in all, three **CAs** were entered into and executed by the two parties at all times material to this suit. Apart from and subsequent to **Exhibit C3,** parties executed another **CA** on 30th June, 2011, tendered in evidence by the **CW2** as **Exhibit C19;** and subsequent to **Exhibit C19,** parties further executed the third **CA,** dated 30th June, 2012, also tendered in evidence by the **CW2** as **Exhibit C20**. Effectively therefore, the **CA** between the 1st Defendant and the Claimant ran from 30/06/2010 – 29/06/2013, as revealed by **Exhibits C3, C19** and **C20** respectively.

It is further the case of the Claimant that during the pendency of the **CAs** in force between the Claimant and the 1st Defendant, the Federal Government of Nigeria credited the 1st Defendant with a total sum of

$61,277,096.07, as refunds of deductions made from the revenue allocation due to the 1st Defendant to fund the payment of the London Club debt buy-backs of 1992-2002 and the Exit of 2006.

The Defendants admitted receiving the payments but denied that the payment related to London Club Debt; or that the refund was within the purview of the Claimant's obligations under the **CAs**. As such, they denied the entirety of the Claimant's claims.

Now, the dispute between the parties having been clearly identified in the foregoing, the determination of the suit, in my view, would turn largely on the understanding of the purport of the obligations of the Claimant, in particular, under the **CAs**.

The first port of call is **Exhibit C3**. The recital thereof revealed the intention and desire of the 1st Defendant; and indeed her expectations from her relationship with the Claimant. It states, in part, as follows:

"WHEREAS

1. ***The Client is desirous of engaging the services of a Consultant to reconcile and recover all excess deductions/charges on foreign loan facilities taken by Akwa Ibom State Government since creation...."***

The Agreement went further to state the details of the obligations of and expectations from the Claimant with respect to the services for which she was contracted to render. I again reproduce the said obligations as follows:

"CONSULTANT'S OBLIGATIONS

3. ***(1) Examine and ascertain the actual foreign debt stock of the State since creation.***

   (2) Reconcile all legitimate debt deductions/repayments from source at Federation Account with the Debt Management Office, Abuja.

(3) Recover all excess deductions/charges on foreign loan facilities taken by Akwa Ibom State Government since creation.

(4) Liaise with the Debt Management Office, Abuja as well as the Federal Ministry of Finance on all Foreign Debts management issues on behalf of the State Government.

(5) Any other duty that will be required to ` ensure successful completion of the exercise."

Now, the testimony of the **CW3**, is that upon being engaged by the 1st Defendant as her Consultant, the Claimant swung into action. She wrote to the Director General, Debt Management Office (DMO), *vide* the letter dated 27th April, 2010, tendered as **Exhibit C37** (by the **CW3**), to inform the DMO of the Claimant's engagement by the 1st Defendant as her Consultants. She submitted details of the 1st Defendant's external debt payments from 1982-2007

and also profiled the deductions made within the same period; that she was able to make a case that notwithstanding the fact that the 1st Defendant had no London Club Debts, she had been wrongly servicing loans that she was not a party to; and that from reconciliations undertaken, the Claimant found that the 1st Defendant was entitled to a refund of **$178,250,450.00**, being over deductions from the 1st Defendant's revenue allocation. The **CW2** tendered in evidence as **Exhibit C4** (same as **Exhibit C38** tendered by the **CW3**), certified true copy of the letter dated 13th July, 2010, written by the Claimant to the Director General, DMO, detailing her findings with respect of deduction profile of the 1st Defendant; and further tendered in evidence as **Exhibit C5**, letter dated August 11, 2010, written on behalf of the Director General, DMO to the Claimant, to acknowledge the letter, **Exhibit C38**, and by which the

DMO assured the Claimant that it shall investigate the Claimant's requests and revert to her.

The **CW2** further testified that she updated the 1st Defendant with her engagement with the DMO; and further demanded for more information on the assignment from her officials. He tendered in evidence as **Exhibit C6**, letter dated 6th August, 2010, written in that regard to the Hon. Commissioner, Ministry of Finance, Akwa Ibom State; and also tendered in evidence as **Exhibit C7**, letter dated 26th August, 2010, response of the Hon. Commissioner for Finance to **Exhibit C6**.

The **CW2** further testified that by another letter dated 1st November, 2010, written by the Claimant to the 1st Defendant, she intimated the 1st Defendant of her efforts to reconcile the 1st Defendant's external debts with the DMO and the Federal Ministry of Finance and how the Claimant discovered that the 1st Defendant

had no London Club debt but took part in the payment of the buybacks of 1992-2002 and the exit of 2006; and further that, from her findings, the 1st Defendant was entitled to a refund of the total sum of $61,277,096.07. He tendered the letter in evidence as **Exhibit C8**.

The **CW2** further testified that the Claimant intimated the 1st Defendant of her ongoing efforts and her findings *vide* letters respectively dated 8th November, 2010 and 9th December, 2010, tendered in evidence as **Exhibits P9** and **P10** respectively.

The **CW2** further testified that it was *vide* **Exhibit C10** that the Claimant specifically intimated the 1st Defendant of her breakthrough with respect to London Club refunds and informed the 1st Defendant of her entitlement to the said sum of **$61,277,096.07** from the Federal Government.

The **CW2** further testified that by another letter dated 24th December, 2010, tendered as **Exhibit C11,** she further intimated the 1st Defendant that the President and Commander In Chief (at the material time) had approved the payment of the said sum of **$61,277,096.07** to the 1st Defendant and by the said letter enjoined her representatives to proceed to Abuja to complete documentations for the refunds.

The **CW2** further testified that by another letter dated 10th February, 2011, admitted in evidence as **Exhibit C13,** the Claimant again intimated the 1st Defendant of the payment to the State, the sum of **$12,255,419.21,** representing first instalment of **20%** of the total amount due to the State as stated in **Exhibit C11;** and further intimating the 1st Defendant that the next instalment shall be paid latest by middle of March, 2011.

The **CW2** further testified that the Claimant, by the said **Exhibit C13**, demanded from the 1st Defendant, payment of the sum representing **15%** of the first instalment paid to the State, as her Consultancy fee as agreed to by **Exhibit C3**.

The **CW2** further testified that the Claimant by another letter dated 14th February, 2011, admitted in evidence as **Exhibit C15**, demanded payment of the sum of **₦274,552,028.63k** being amount due to her from the sum so far refunded to the 1st Defendant; and that by another letter dated 1st March, 2011, admitted in evidence as **Exhibit C16**, the Claimant intimated the 1st Defendant of a further payment by the Federal Government of the sum of **₦3,667,066,537.21**, being a further **40%** of the total sum due to the State on the London Club refunds.

The **CW2** testified that by the letter, **Exhibit C16**, she further reminded the 1st Defendant of the payment of

her outstanding consultancy fees on the refunds so far made to her by the Federal Government.

The **CW2** further testified that by letter dated 28th February, 2011, admitted in evidence as **Exhibit C17**, the 1st Defendant wrote in response to **Exhibit C13**, to refute the Claimant's claim for entitlement to consultancy fees; and contended that the said refunds paid to Akwa Ibom State was not as a result of the Claimant's recovery efforts and as such that the Claimant was not entitled to any consultancy fee arising from the said refunds of the sum of **$61,277,096.07**.

The **CW2** further testified that the entire sum had been refunded to the 1st Defendant and that the 1st Defendant had continued to refuse to pay her the agreed consultancy fees of the amount representing **15%** of the sum recovered.

With respect to the efforts of the Claimant towards the reconciliation of the 1st Defendant's entitlements with respect to the Paris Club debt, the **CW2** testified that the Claimant had fulfilled all of her obligations for which the Federal Government was expected to refund the sum of **$178,250,450.00** to the 1st Defendant before the expiration of the last Consultancy Agreement, **Exhibit C20**, only awaiting actual payment by the Federal Government; and that the Claimant's obligations under the **CAs** was not restricted to reconciliations on over deductions with respect to the Paris Club debts alone. The witness tendered in evidence as **Exhibit C22**, letter dated 19th October, 2011, written to the Claimant by the DMO, assuring the Claimant that it was interfacing with other agencies with respect to the Claimant's claim for refunds to Akwa Ibom State Government on the Paris Club debt.

The **CW2** also testified that prior to being engaged by the 1st Defendant, that the Claimant had successfully rendered similar services to Ogun State Government for which she was duly paid her fees and tendered in evidence documents to that effect as **Exhibits C31 – C33** respectively, in that regard.

Whilst answering further questions under cross-examination by the 1st Defendant's learned counsel, the **CW2** maintained that the Claimant's obligations were expressly stated in **Exhibit C3**; that by **Exhibit C1**, the Claimant agreed on a **"No recovery no payment"** arrangement with the 1st Defendant; and it is for this reason the Claimant kept putting pressure on the DMO in order to achieve results; that the Claimant reconciled refunds accruable to the 1st Defendant under the London Club Debt, the Paris Club Debt and the Multilateral loans, according to her mandate; that the Claimant held several meetings with the DMO; that even though there were no minutes of meetings

because most of the meetings were informal, that what was important was the end result, which, according to him, the Claimant achieved with respect to the London Club Debt refunds.

The witness was further referred to the letter, **Exhibit C4**, written to the DMO by the Claimant and he maintained that the issues discussed in the letter was with reference to both the London Club and Paris Club reconciliations. He further maintained that the DMO did not do any formal communication with the Claimant for the reconciliation period because the meetings had with the officials of the DMO were informal; that it was as a result of the Claimant's success with respect of the London Club deduction recoveries that caused the 1st Defendant to renew the **CA** with her to continue with the Paris Club reconciliations; that the Claimant, as a result of her consultations with the DMO, received information about the figures of final payments to the 1st

Defendant with respect to the London Club refunds; that it was incorrect for the 1st Defendant to allege that the Claimant used an insider with the DMO to attempt to swindle the 1st Defendant.

In further support of her case, the Claimant called on *subpoena* the DMO, represented by a senior staff, by name **Alfred Anukposi (CW3)**. He claimed to be a Deputy Director on Grade Level 16 and the *Head of Department of Recording and Settlement*. He gave *viva voce* evidence with respect to the case at hand.

He confirmed that the DMO received communication from and interacted with the Claimant with respect to the recovery of the London Club excess debt deduction on behalf of Akwa Ibom State Government.

His evidence, essentially, is that the DMO had no sufficient information on the London Club figure; that the DMO had to contact the office of the Accountant General of the Federation (AGF) for more information;

that the office of the AGF did not oblige the DMO with information until the Hon. Minister of Finance at the material time set up a Committee comprising the DMO, the office of the AGF, the Central Bank of Nigeri (CBN); and the Federal Ministry of Finance, to look into the agitations from many States of the Federation with respect to their refunds; that the Committee was given specific mandate to work on loans relating to London Club, Rural Electrification Projects and acquisition of buses.

The witness testified further that with respect to London Club, that the Committee discovered that some States had London Club debts and some did not; and that some had buy-backs that were not reflected on States' debt portfolio; that the Committee recommended the DMO to look into the debt buy-back and the source of the fund used in the buy-back.

The witness affirmed that at that time, it was the Claimant that submitted claims on behalf of Akwa Ibom State.

Under cross-examination by the Defendants' learned counsel, the witness confirmed, upon being shown the Claimant's letter to the DMO, **Exhibit C4**, and stated that the document was with respect to external debt which included London Club and Paris Club debts.

The witness further confirmed that there were no formal meetings with the Claimant, but that there were telephone interactions with the Claimant's Managing Director in the course of the Claimant's assignment; that he was a member of the Committee set up by the Hon. Minister of Finance to decide on the London Club debt.

The witness further testified, still under cross-examination by the Defendants' learned counsel, that even though the 1st Defendant had no London Club

loan; it was discovered that there were deductions from her revenue to fund the London Club debt buy-back.

I had also examined the testimonies of the witnesses fielded by the Defendants. The **DW1, Mrs. Rita Okolie,** was on *subpoena* to testify. She was an Assistant Director in the office of the Accountant General of the Federation (AGF); attached to the Federation Accounts Department. Even though she was *subpoenaed* to testify, the witness deposed to a *Statement on Oath*. She tendered in evidence as **Exhibits D2, D2A – D2C,** documents that the **CW2** had initially tendered in evidence as **Exhibits C14, C14A** and **C12** respectively.

The witness confirmed the testimony of the **CW3** that it was the office of the AGF, DMO and Federal Ministry of Finance who were charged to investigate, review and refund excess deductions to various States of the

Federation, including the 1st Defendant, such funds wrongfully deducted from the States' Federation Account Allocation, foreign and local loans. The witness further testified that the deductions and charges from the Federation Account Allocation are very transparent because the representatives of States, including the 1st Defendant, attended Federation Account Allocation Committee (FAAC) meetings on monthly basis where such deductions and charges were being discussed.

The witness confirmed that the Federal Government of Nigeria and twenty-six (26) States of the Federation, excluding the 1st Defendant, were indebted to the London Club creditors as at the time Nigeria exited from the debts in October, 2006; that the States that were indebted to the London Club agitated to benefit from the different buy-back exercises; that as a result of the agitations and representations made by the affected States during the 2005/2007 States' External Debt Reconciliation exercise with the

representatives of the Federal Ministry of Finance, the Debt Management Office (DMO), the office of the Accountant General of the Federation (AGF), the Central Bank of Nigeria (CBN) and the Revenue Mobilization Allocation and Fiscal Commission (RMAFC), that the Committee recommended that the debt buy-back should be extended to the States that were indebted to the London Club; and that the FGN representatives reconciled with the States officials and not with any Consultant; and that by the conclusion of the reconciliation in 2010, the allocation due to the 1st Defendant was the sum of **$61,277,096.07**; that the refunds were made on the submissions of the Hon. Minister of Finance and approvals of Mr. President as shown on **Exhibits D2** series.

The witness confirmed that the Naira equivalent of the sum due to the 1st Defendant was paid to her.

Under cross-examination by the Claimant's learned senior counsel, the witness confirmed that it was the 26 States that had London Club debts that made representations during the 2005-2007 reconciliation exercise; that it was these States that the Committee dealt directly with and not their Consultants; and that Akwa Ibom State was not part of the said twenty-six (26) States she referred to in her evidence in chief.

The witness further testified, still under cross-examination by the Claimant's learned senior counsel, that the 1st Defendant never wrote any letter to the office of the AGF with respect to the London Club deductions; and that she was also not aware that a Consultant wrote any letters to the DMO in respect of the debts.

The Defendants' **DW2** is **Mr. Xavier Etim Essien**. He claimed to be an Assistant Director and the Head of the Debt Management Office of the Ministry of

Finance of the 1st Defendant. The witness identified **Exhibits C18, D2** series, **C1, C2, C3, C4, C19, C21, C22** and **C17** as some of the documents already tendered in evidence by the **CW2,** which he had equally made reference to and relied on in his *Statement on Oath.* The witness confirmed the portion of the case of the Claimant, particularly as relating to her engagement by the 1st Defendant to render consultancy services to her with respect to the matters set out in **Exhibit C3.**

The crux of the testimony of the **DW2** is that the Claimant did not visit the office of the AGF, DMO and the Federal Ministry of Finance on behalf of the Defendants and did not reconcile or recover any funds on behalf of the Defendants under the terms of the **CA;** that the Claimant failed to disclose to the Defendants what constituted or what were and how she got the purported **"useful and classified information"** regarding the sum of **$178,250,450.00**

which she claimed to be available to the 1st Defendant under the Paris Club debt; that the Claimant's claim in her letter, **Exhibit C1**, was a fabrication and speculation to induce the 1st Defendant to appoint her as her consultant; that the Claimant deceived and misinformed the 1st Defendant when she claimed that the 1st Defendant was entitled to the sum of **$178,250,450.00** under the Paris Club which sum the Claimant had failed to recover for the 1st Defendant under any of the **CAs** signed with her; that the Claimant was not part of the Federation Account Allocation Committee meeting of 13 July, 2010, and that all the facts the Claimant gathered with respect to the London Club debt buy-back were information gathered from an informant in the DMO; that before the meeting of the FAAC of 13 July, 2010, some States, including the 1st Defendant had observed that their names were omitted from the London Club exit payment; that these States made request to the DMO;

that their requests were looked into and observations forwarded to the office of the AGF under the Federal Ministry of Finance for investigation and reconciliation of the affected States; that the work was basically carried out at the office of the AGF and resulted in the refund of the said sum of **$61,277,096.07** to the 1st Defendant as one of the States that were omitted during statutory refunds; that the Defendants communicated the true position with respect to the refund to the Claimant *vide* the **Exhibit C17**; that the Claimant was not the catalyst to the investigation, review and actual refund of the London Club debt buy-back pay exit and derivative fund excess deductions and neither was any correspondence between the Claimant and the DMO or any other Agency of the FGN, caused the DMO or any other Agency of the FGN to investigate, review and eventually refund the deductions from the London Club buy-back to the 1st Defendant; that the 1st Defendant

had a clear picture of what was due to her from the office of the AGF during the FAAC meeting of 13 July, 2010; but that the Claimant engaged in guess work and wild goose chase throughout the duration of the 3 **CAs** signed with her; that the Claimant was categorically engaged to reconcile and recover the alleged sum of **$178,250,450.00** under the Paris Club debt which she never did and as such failed to accomplish her obligations under the **CA** despite the same being renewed twice; and as such is not entitled to the consultancy fee claimed; that the Claimant's demand for **15%** consultancy fees was rejected on the ground that the refunds were not due to the efforts of the Claimant but was due entirely to the initiatives and efforts of the 1st Defendant.

The **DW1** further testified that by virtue of the Consultancy Agreement, **Exhibit C3**, the Claimant was never contracted or consulted to recover for the Defendants the statutory allocations from the buy back

and derivation indices that accrued to the 1st Defendant.

Under cross-examination by the Claimant's learned senior counsel, the witness was shown severally the Claimant's letters, **Exhibits C8, C10** and **C11** respectively, written to the 1st Defendant and stated that he was unable to confirm if there was a direct response to the letters by the 1st Defendant; that he was not aware of any letter written by the Defendants to the Claimant to disclose the sources of the information she gathered under the **CAs**; that he was not aware of any letter written by the Defendants to the DMO where the issues of the London Club debt deductions were discussed.

The witness was further shown the **CA**, **Exhibit C3** and he admitted that **"Paris Club Debt"** was not specifically mentioned there; that he had no minutes of meetings held by the said **Albert Bassey** team of

officials of the 1st Defendant that interfaced with the Committee set up by the Federal Minster of Finance, as stated in *paragraph 38* of his *Statement on Oath*; that it was after the Claimant sent a Bill for payment of **15%** of the amount recovered that the 1st Defendant, for the first time, objected to the Claimant's work. The witness further agreed that the Claimant's letter, **Exhibit C8**, written to the Defendants on 1st November, 2010, predated the representation made by the Minister of Finance to **President Jonathan**, *vide* **Exhibit C12**, written on December 10, 2010.

Now, from the totality of the testimonies of the witnesses on record, it is clearly established that even though the 1st Defendant had no London Club debt portfolio; she however participated in the debt buy-back in that the Federal Government deducted funds accruing to her from the Federation Accounts to undertake the debt buy-backs at the material time.

The Defendants' learned counsel had argued that the obligations of the parties as outlined in the **CA**, **Exhibit C3**, already set out in the foregoing, are simple and straightforward. The Court totally agrees with this submission. Whether or not the Court agrees with the Defendants' learned counsel's interpretation or understanding of the **CA** is a different issue entirely.

Learned Defendants' counsel had hinged his arguments, strenuously so, on the his understanding of the Claimant's obligations under the **CA**, which, according to him, is restricted only to recovery of excess deductions from the revenue of the 1st Defendant with respect to foreign loans taken by her from creation; but not with respect to any loan not taken by the 1st Defendant. In other words, the exercise of the Claimant's obligations under the **CA** must relate strictly to **"foreign loans taken"** by the 1st Defendant; and no more, according to the Defendants' learned counsel.

In my view, the learned Defendants' counsel's arguments with respect of his interpretation and understanding of the Claimant's obligations under the **CA** appears to be a far too narrow and simplistic representation or explanation of the compass or extent of the Claimant's obligations under the **CA**.

I refer specifically **Clause 3(2)** of the **CA**. It mandated the Claimant to "***Reconcile all legitimate debt deductions/repayments from source at Federation Account with the Debt Management Office, Abuja.***" This clause made no reference to foreign loan taken by the 1st Defendant. By my understanding therefore, "*debt deductions/repayments from source*" is not and cannot be limited or restricted to foreign loans taken by the 1st Defendant only. I so hold.

Now, I had considered the argument that the 1st Defendant did not obtain any foreign loan; but that she only participated in the buy-back of the London

Club loan. The question however is whether the incidence of a buy-back could arise where there was no loan in the first instance. In other words, if the **twenty-six (26) States** referred to by the **DW1** in *paragraph 13* of her *Statement on Oath*, did not take London Club loans, would the funds accruable to the 1st Defendant from the excess crude account of the Federation be expended or deployed to buy-back the loans? Or is there any evidence on record that the Federal Government sought and obtained the consent of the 1st Defendant before deducting funds accruable to her from source to fund the London Club loan buy-back?

The term **"Debt buy-back"** has been defined as:

> ***"The process where either a borrower or a related party of the borrower (an affiliate, parent or investor) purchases the borrower's debt from its lender (or lenders) and usually at a discount to par value."***

See the online *Thomson Reuters Practical Law* (http://uk.practicallaw.thomson reuters.com).

In the instant case therefore, even though the 1st Defendant was not amongst the **twenty-six (26)** States of the Federation that obtained the London Club loan; evidence on record revealed that she participated, as an affiliate, so to say, in purchasing the debt, thereby being part of the efforts made by the Federal Government to exit the debt in 2006, as revealed by evidence.

As such, when parties, by **Clause 3(2)** of the **CA**, **Exhibit C3**, mandated the Claimant to reconcile all legitimate debt deductions or repayments from source at Federation Account, that mandate could not have excluded the London Club debt buy-back in which the 1st Defendant's allocations were deducted by the Federal Government of Nigeria to fund. In other words, on the peculiar facts and circumstances of the

instant case, both the London Club debt and the London Club debt buy-back cannot be severed or as it is said of Siamese twins, both the London Club debt and the buy-back processes are intricately co-joined. I so hold.

To further underscore this point, I make reference to the document relied upon by the two contending sides, **Exhibit C12** and **D2C** respectively. This was the letter dated December 10, 2010, written by **Olusegun O. Aganga**, the Hon. Minister of Finance at the material time to His Excellency, **Dr. Goodluck Ebele Jonathan, GCFR**, President, Federal Republic of Nigeria (at the material time). The letter is titled **"REQUEST FOR REFUNDS TO STATES ON SAVIEM BUSES, RURAL ELECTRIFICATION PROJECTS AND THE LONDON CLUB (PAR BOND) DEBTS BUY-BACK."** Relevant portion of the letter states as follows:

> ***"18. It is important to note that the London Club debts were serviced in full as and when due by the***

FGN despite the fact that there were instances where debt service deductions from States at FAAC were not adequate to service their London Club debts after servicing their Multilateral debts. In such cases, the FGN provided the balance, which made it possible for debt service due to be made to the creditors.

19. The implications of the above expositions are the issue of interest payments on the state debt stocks from 1992 – 2006 including what is deemed to be excess interest paid from 2002 to 2006 in respect of the buy-back. This is in addition to the refund being sought for the difference between the principal amounts of the 2002 buy-back and the exit payment made in 2006 by the states. The FGN on the other hand had actually suffered specific exit costs on behalf of the states as well as servicing costs in respect of states that were unable to meet such obligations as at and when due."

The inference that must be drawn from this portion of the letter, by my understanding, is to the effect that at some points when the States that took the London Club loans were unable fulfil their obligations, the FGN came to their aid, expending part of the revenue accruing to other States that did not take the loans, including the 1st Defendant.

The point to be made here therefore is that contrary to the vehement contentions of the Defendants' learned counsel that the Claimant's obligations were restricted to reconciliation and recovery of deductions only on foreign loans specifically taken by the 1st Defendant, the London Club debt and the buy-back deductions cannot be severed. If the FGN did not deploy revenue allocation accruable to the 1st Defendant from the Federation Account to buy-back the London Club debts of the **twenty-six (26)** States that specifically took the loan, the issue of refund of the sum of **$61,277,096.07**

in context would not have arisen in the first place. I so hold.

I therefore hereby firmly hold, that the obligations of the Claimant under the **CA**, **Exhibit C3**, as set out in *paragraph 3* thereof included and covered the London Club debt buy-back. It is needless, contrary to the arguments canvassed by the Defendants' learned counsel, to seek for the understanding of the clear obligations of the Claimant under the **CA** in the recital to the contract, since, in my view, there is no ambiguity in the obligations of parties to the contract. I further hold.

DID THE CLAIMANT CARRY OUT HER OBLIGATIONS UNDER THE CONSULTANCY AGREEMENT?

Having determined that the Claimant's obligations under the **CAs** did not exclude the determination of the 1st Defendant's London Club debt buy-back entitlements, the next inquiry to make, on the basis of

the evidence led on the record, is as to whether indeed the Claimant played any roles whatsoever in the overall realization of the refunds made to the 1st Defendant to have entitled her to the consultancy fees claimed.

In determining this point, I must first reckon that there is nothing in the **CA, Exhibit C3,** that placed any obligation whatsoever on the Claimant to avail the 1st Defendant with the intricate details of how she went about carrying out her assignment or to disclose the sources of the information she gathered in the course of undertaking the consultancy services.

This point is further underscored by **Clause 3(4)** of **Exhibit C3,** which only required the Claimant to liaise with the Debt Management Office (DMO), Abuja, as well as the Federal Ministry of Finance in undertaking her assignment under the Agreement. The clause did not mandate the Claimant to make every detail of her

liaison with the DMO known to the 1st Defendant other than complying with **Clause 7** of the **CA**, which is to submit progress report to the 1st Defendant's Commissioner of Finance.

Indeed the **DW2**, official of the Defendants, testified on this point under cross-examination by the Claimant's learned senior counsel. He stated as follows:

> ***"I agree that there is no letter written by the Defendants to the Claimant, requesting the Claimant to disclose the sources of information in the way she went about carrying out her functions under the contract, except as I earlier stated as in Clause 3.2 of Exhibit C3."***

As correctly submitted by the Claimant's learned senior counsel, evidence of the Claimant's liaison with the DMO is clearly established on the record. Learned senior counsel made reference to the letter of 27th April, 2010, **Exhibit C37**, by which the Claimant introduced herself and her assignment on behalf of the

1st Defendant, to the DMO. Learned senior counsel also made reference to the letter of 13th July, 2010, **Exhibit C4**, by which the Claimant made submissions to the DMO, outlining some of her findings with respect to the 1st Defendant's external debt portfolios and deductions made from her revenue allocation.

Learned senior counsel further referred to the letter of 1st November, 2010, **Exhibit C8**, written by the Claimant to the 1st Defendant, where she informed the 1st Defendant of her findings that even though the 1st Defendant had no London Club debt, but that the State participated in the buy-backs of 1992-2002 and the Exit of 2006.

The said letter, **Exhibit C8**, written by the ostensibly in compliance with the requirement of **Clauses 3(2)** and ***7*** of **Exhibit C3**, states in part:

> ***"During the course of our work, we discovered that Akwa-Ibom State had no London Club debt but took***

part in the payment for the buy backs of 1992, 2002 and the Exit of 2006.

Please find below our findings for the refund on the London Club debt to Akwa-Ibom State. The share of Akwa-Ibom State in the buy-backs of 1992, 2002 and at exit in 2006 were $14,435,410.99; $4,762,037.99 and $42,079,647.09 respectively totalling $61,277,096.07 (Sixty One Million, Two Hundred and Seventy Seven Thousand, Ninety Six US Dollars and Seven Cents). The total refund to Akwa-Ibom State was based on the Federation Account Revenue Sharing Formula.

We have made our findings known to the two Agencies and expect the sum of $61,277,096.07 (Sixty One Million, Two Hundred and Seventy Seven Thousand, Ninety Six US Dollars and Seven Cents) to be refunded to Akwa-Ibom State when the London Club exercise is completed by the Federal Ministry of Finance."

Apart from tendering the documents, **Exhibits C4** and **C8**, the **CW2** also gave oral evidence of the role played by the Claimant in rendering consultancy services to the 1st Defendant as charged by **Exhibit C3**. Under cross-examination by the 1st Defendant's learned counsel, the **CW2** testified further as follows:

> ***"Our responsibility was to liaise with the DMO, reconcile the accounts. When we make claims and the claims are found to be genuine, the DMO will forward the recommendation to the Hon. Minister of Finance, who in turn will seek the approvals of the President, Commander-In-Chief for such monies to be paid to the State concerned.***
>
> ***…In Exhibit C4, we requested for $178 million from the DMO as owed to the 1st Defendant. When we threw in the figure of $178 million, we were asked if we had additional information and we wrote to the 1st Defendant to furnish us with any information they could have. When we got nothing from the Defendants, we had to go back because at that time,***

DMO was telling us that their (1st Defendant's) claim was not as much as $178 million.

… Our last paragraph of Exhibit C4 refers to London Club loan. The letter states that the 1st Defendant had no London Club debts and because of that deductions should not have been made from the State's allocation to the tune of $178 million.

… I cannot give the fine details of how the amount of about $61 million was arrived at. The fine details are in possession of the DMO."

The evidence of the **CW3,** a senior staff of the DMO, is also instructive with regards to the engagement of the Claimant with the DMO with respect to the assignment undertaken on behalf of the 1st Defendant. The witness, in his *viva voce* evidence in chief stated as follows:

"I cast my mind back to the year 2010 and 2011 with respect to my official interactions with the Claimant in relation to the recovery of the London

Club exit debt deductions from Akwa Ibom State Government. We received a letter from the Claimant asking for a refund to Akwa Ibom State of about $178 million, but then in that letter, Akwa Ibom State did not have London Club in their portfolio. The letter was not specific on London Club per se. We did not have enough information on the London Club figure, we had to make requests from the office of the AGF. The office of the AGF did not oblige us until the Hon. Minister of Finance set up a Committee made up of the DMO, the AGF office, CBN and Federal Ministry of Finance. This was because there were many agitations from States on these refunds. … The Committee was given specific directive on London Club, Rural Electrification Project and acquisition of Buses.

In the case of London Club, the Committee discovered that some States had London Club and some States do not. Some had buy-backs that were not reflected on States debt portfolio.

The Committee recommended the DMO to look into the buy-back and the source of the fund used in the buy-back before any application for refunds by the States can be entertained. <u>At that point in time, it was the Claimant that submitted claims on behalf of Akwa Ibom State</u>."

(Underlined portion for emphasis)

The **CW3's** illuminating testimony reproduced in the foregoing was not dislodged under cross-examination, particularly on the point that it was the Claimant that made claims on behalf of Akwa Ibom State, as correctly submitted by the Claimant's learned senior counsel and I so hold.

It is to be noted furthermore, that under cross-examination, the **CW3** more or less confirmed his testimony in his evidence in chief and that of the **CW2.** He further confirmed that he was a member of the Committee set up by the Minister of Finance referred to in his evidence in chief, which made

recommendations with respect to the London Club debt.

The **CW3** further testified, still under cross-examination by the Defendants' learned counsel, as follows:

> ***"I was a member of the Committee to make a decision on the London Club debt. It is agreed that there must be evidence of debt buy-back which was found out to have been funded from the excess crude Account. As such, it could be said that there were deductions on the London Club debt from Akwa Ibom. It is correct that the FGN bought back the London Club debt through the excess crude Account. Even though the 1st Defendant did not have London Club loan, but there were deductions from her revenue to buy back the loan"***

On the very important aspect of the testimony of the **CW3,** which is part of the kernel of the case of the Claimant that it was the Claimant that made claims for the 1st Defendant with respect to the London Club debt

buy-backs refunds; I make reference to the testimony of the Defendant's witness, **DW1,** a staff in the office of the AGF. She had mentioned in *paragraph 13* of her *Statement on Oath* that only twenty-six (26) States of the Federation took the London Club loan and she stated the names of the States, excluding the 1st Defendant. She further testified that following the agitations and presentations of the affected States during the 2005/2007 External Debt Reconciliation Exercise, it was recommended by the Committee comprising of the Federal Ministry of Finance, the Debt Management Office, the office of the AGF, the CBN and the Revenue Mobilization Allocation and Fiscal Commission that the debt buy-back should be extended to the States that were indebted to the London Club.

The **DW1** further testified categorically in *paragraph 17* of her *Statement on Oath* that ***"the FGN***

representatives reconciled with the States officials and not with any Consultant."

However, under cross-examination by the Claimant's learned senior counsel, the witness had this to say:

> ***"I can see the depositions in paragraphs 13-17 of my Statement on oath. It is correct that I listed 26 States that took loan from the London Club…. The buy backs were not credited to these States, after the exit from the debt in 2006. These States began to agitate for their credits.***
>
> ***It was these 26 States that made representations during the 2005-2007 reconciliation exercise. The Committee I referred to in paragraphs 15 and 16 was set up because of the agitation of these 26 States. It is correct that we dealt directly with these States during the meetings of the Committee. We did not deal with Consultants employed by the States. It is correct that Akwa Ibom was not part of the 26 States I referred to in paragraphs 13 – 17 of my Statement on Oath."***

The implication here is that the testimony of the **DW1** is largely irrelevant to the case of the Claimant; and the fact that the context of her testimony to the effect that the FGN representatives reconciled with the States officials and not Consultants had no bearing to Akwa Ibom State and her relationship with the Claimant. I so hold.

I had also examined the testimony of the **DW2,** who tended to give evidence of the fact that the payment of the said sum of **$61,277,096.07** was a direct effort of the 1st Defendant and had nothing to do with the assignment given to the Claimant *vide* **Exhibit C3**. The **DW1,** Head of Debt Management Office in the Ministry of Finance of Akwa Ibom State testified in *paragraphs 37, 38 and 39* of his *Statement on Oath* as follows:

> ***"37. That the Defendants aver that in the meantime, following the agitations and representations by the States in respect of deductions in the London Club***

buy-back exit payment deal and Derivative funds, the DMO presented its report to the FAAC sometime in 2010 setting forth the list of States that, in its opinion, had made out a case for refund on the London Club Debts and Derivative funds. The 1st Defendant's name was not included in the DMO's Report.

38. That following this development, the 1st Defendant together with other affected States complained to the FAAC as to how the DMO arrived at its report. The complaint resulted in the constitution of a Review Committee comprising representatives of the office of the Accountant General of the Federation, the Federal Ministry of Finance and the DMO to holistically review the Report submitted to the DMO, the States' officials liaised directly with the Committee in the review exercise. In respect of the 1st Defendant, the then Honourable Commissioner for Finance, Mr. Bassey Albert Akpan led the team of the 1st Defendant's

officials that made representations and directly interfaced with the committee on behalf of the 1st Defendant.

39. That the review committee concluded its assignment sometime in the last quarter of 2010 and the 1st Defendant was included in the report as being entitled to a refund and actually refunded the sum of $61,277,096.07 (sixty one million, two hundred and seventy seven thousand, ninety six dollars, seven cents) being excess deduction on buy-back exit payment on the London Club deal and Derivative funds. This was the reason why the Plaintiff made a demand payment of consultancy fee or commission on the amount refunded vide letter dated 10th February, 2011. The 1st Defendant's letter vide letter …. of 28th February, 2011 informed the Plaintiff that it is not entitled to any fee/commission in respect of the $61,277,096.07 (sixty one million, two hundred and seventy seven thousand, ninety six dollars, seven

cents) refunded to the 1st Defendant and accordingly refused to pay."

However, under cross-examination, the Claimant's learned senior counsel clearly discredited the testimonies of the **DW2** reproduced in the foregoing as largely hearsay evidence on which the Court, by law cannot rely. The witness had this to say:

"I started working with the Ministry of Finance, Akwa Ibom State, in 2018. As at 2010, I was a Chief Planning Officer in the Debt Management Department of the State Ministry of Finance….

I do not know whether any letter exists written by the Defendant directly to the DMO raising the issues of the London Club debts buy-back…

I can see paragraph 38 of my Statement on oath. Members of the Albert Bassey Akpan's team to the DMO were the Accountant General and the Commissioner for Finance. They were the only two members of the team. I was not a member of the

team. I do not have minutes of meetings attended by Albert Akpan's team."

The effect to the totality of the testimony of the **DW2** in *paragraphs 37 – 39* of his *Statement on Oath*, apart from his reference to the letters, **Exhibits C8** and **C17**, is that, not being a member of the said **Albert Akpan**'s team, he could not have had personal knowledge of the information he deposed to therein. Having also failed to tender official documents to back up his oral accounts, the evidence, his testimony is at best hearsay evidence, which by the provision of **s. 37** and **38** of the **Evidence Act,** is inadmissible in evidence. As such, the Court hereby accords no probative value whatsoever to the testimony of the **DW2** in *paragraphs 37 – 39* of his *Statement on Oath* save for reference to letters already in evidence.

This being so, I must hold that the totality of the contention of the Defendants' learned counsel that it was the efforts of the officials of the Defendants that

resulted in the payment of the refunds to the 1st Defendant as submissions not supported by evidence on record.

It is again very significant to evaluate some of the letters written by the Claimant to the 1st Defendant, already referred in the foregoing, and their legal effect on the basis of the surrounding circumstances of this case.

The evidence before the Court is that the Claimant broke the news of her breakthrough on her findings with respect to the 1st Defendant's legitimate entitlement to refund of the sum of **$61,277,096.07** on the London Club buy-backs by her letter of 1st November, 2010, **Exhibit C8**, significant portion of which is reproduced in the foregoing (**@ page 50**).

I must pause here to say, at first, that there is no evidence on record to suggest that as of the time of writing this letter, this information regarding the 1st

Defendant's discovery of deductions made in her revenue allocation by the Federal Government to buy back the London Club debts of other States and her entitlements for refund was already in the public domain as the Defendants' learned counsel contended in his written submissions.

Exhibit C8 was addressed to the Commissioner of Finance of Akwa Ibom State, the same **Bassey Albert Akpan** who signed the **CA, Exhibit C3** on behalf of the 1st Defendant; and who, the **DW2** claimed to have led a team of the 1st Defendant's officials to a review committee meeting that resulted in the payment of the refunds to the 1st Defendant.

It is however interesting to find that as important as the letter, **Exhibit C8** was, the Defendants did not deem it needful to respond thereto. In my view, failure of the Defendants to refute the contents of **Exhibit C8** or respond thereto in any manner whatsoever; seems to

me to be totally incongruent with the Defendants' deafening and belligerent contentions that they were involved or solely handled the issue of the London Club debt buy-backs.

My further view is that **Exhibit C8** ought naturally to have provoked an instant refutal by the Defendants, if indeed it was true that at the material time that the letter was written, they were already aware of the contents of the letter; or were aware that it was their sole efforts and not that of the Claimant's that yielded the dividends recorded in **Exhibit C8**. I so hold.

On the heels of **Exhibit C8,** were the other letters, **Exhibits C10** and **C11,** written by the Claimant on 9th December, 2010 and 24th December, 2010 respectively to the 1st Defendant, through the Hon. Commissioner for Finance, further intimating the Defendants on further steps with respect to the formal approval by the President, Commander In Chief, for

payment of the said sum of **$61,277,096.07** to the 1st Defendant. The Defendants equally failed to respond to these letters.

It is trite, as correctly submitted by the Claimant's learned senior counsel, that where a party fails to respond to a business letter which by the nature of its contents requires a response or a rebuttal of some sort, the party will be deemed to have admitted the contents of the letter. See *Gwani Vs. Ebule [1990] 5 NWLR (Pt. 149) 201; Trade Bank Plc Vs. Chami [2003] 13 NWLR (Pt. 836) 158; Zenon Petrol & Gas Vs. Idrissiya Ltd. [2006] 8 NWLR (Pt. 982) 221; Nagebu Co. (Nig.) Ltd. Vs. Unity Bank Plc. [2014] 7 NWLR (Pt. 1405) 42; Bagobiri Vs. Unity Bank Plc [2016] LPELR-41161(CA); Doyin Motors Ltd. Vs. SPDC (Nig.) Ltd. & Ors. [2018] LPELR-44108(CA).*

The decision of the Court of Appeal in *Doyin Motors Ltd. Vs. SPDC (Nig.) Ltd. (supra)*, cited by the

Claimant's learned senior counsel, is particularly instructive and clearly applicable to the circumstances in this case with respect to the veracity of **Exhibits C8, C10** and **C11** respectively, to which the Defendants offered no response. It was held as follows:

> ***"...business letters such as Exhibit P4, for example, not replied to by the recipient are deemed to be acceptance by conduct of what is contained therein by the recipient; and that the default to reply such correspondence can be presumed that the recipient had no objection to the proposals contained therein."***

In the instant case therefore, I must hold that the failure of the Defendants to respond to **Exhibits C8, C10** and **C11** respectively must raise a presumption in favour of the Claimant that the Defendants had no objection to the issues raised in the letters and must be deemed to have accepted the same. I so hold.

I have noted the arguments of the Defendants' learned counsel that it is not in all circumstances that failure to

respond to a business letter amounts to an admission by the adverse party; however, in the peculiar circumstances of the instant case, it was fundamentally imperative for the Defendants to respond to **Exhibit C8**, if the defence they put up is anything to reckon with. I so hold.

Again, the Defendants had the opportunity to cross-examine the **CW2**, to shed more light especially as to how the Claimant obtained the informed conveyed by **Exhibit C8**, but this was not to be. It is trite law that failure to cross-examine a witness upon a material matter in dispute is a tacit acceptance of the truth of the evidence of the witness. See *Gaji Vs. Paye [2003] 8 NWLR (Pt. 823) 583; Amadi Vs. Nwosu [1992] 5 NWLR (Pt. 241) 273; Ola Vs. State [2018] LPELR-44983 (SC)*.

The Court of Appeal expatiated on the need for cross-examination of a material issue or document in *Patani*

& Ors. Vs. Ibedangha [2018] LPELR-2265(CA), where it was held, *per* **Jombo-Ofor, JCA**, as follows:

> ***"Now there is Exhibit 'A' which is a certified true copy of the Statement of Defence of the 1st set of Defendants in suit No. YHC/2/91. This document was tendered by the PW1 and same was admitted in evidence at the lower Court. Throughout the cross-examination of the said PW1, no single question touching on Exhibit A and or on its content was asked of him by the appellants. This is to say that the learned counsel for the appellants did not cross examine the PW1 on Exhibit A. It is settled law that where an adversary or a witness called by him testified on material fact in controversy in a case, the other party should if he does not accept the witness' testimony as true, cross examine him on that fact or at least show that he does not accept the evidence as true. Where he fails to do so as has happened in the instant case, the Court can take his silence as***

acceptance that the party does not dispute the facts."

I therefore further hold that failure to cross-examine the **CW2**, the maker of **Exhibit C8**, on its contents, renders the content credible and as such, this Court must give it its full evidential weight and value; and must act on it. I so hold.

I had also noted the testimony of the **DW2** and the arguments of the Defendants' learned counsel that the Defendants had written to the Claimant, *vide* the letter of 28th February, 2011, **Exhibit C17**, purporting to intimate the Claimant with the details of the purported steps taken by the Defendants that yielded the payments of the said refunds. The letter, **Exhibit C17**, states further:

"I therefore cannot see the result of the efforts on your part as a Consultant in the recovery of the said $62 million. Therefore, no Consultancy fee arises from this particular transaction. ..."

I agree with the arguments of the Claimant's learned senior counsel that **Exhibit C17** cannot be effective rebuttal of **Exhibits C8, C10 and C11**. For one, the letter did not specifically respond to those letters. It merely responded to the Claimant's letter of February 10, 2011, **Exhibit C13,** by which the Claimant demanded for payment of her **15**% consultancy fee on the first payment of **$12,255,419.21,** made to the 1st Defendant. At best, **Exhibit C17** is an afterthought and a clear evidence of breach of the **CA, Exhibit C3,** on the part of the Defendants. I so hold.

I must again agree with the submissions of the Claimant's learned senior counsel that the Defendant's case is fraught with inconsistencies. In one breath the Defendants had maintained in their letter of 28th February, 2011, **Exhibit C17,** that no consultancy fee arose from London Club Debt buy-back refunds because it did not result from the Claimant's efforts. As noted by the Claimant's learned senior counsel, as the

Defendants continued to amend their Statement of Defence, their defence continued to change. So, in another breath, the Defendants contended that recovery of the London Club debt buy-backs was not part of the Claimant's obligations under the **CA**. I agree with the Claimant's learned senior counsel that the Defendants contradictory, inconsistent and chameleonic approach is not permissible in litigation, as was held by the Court of Appeal in *Sheka Vs. Bashari [2013] LPELR-21403(CA)*.

In my view, the defence of the Defendants in this case can be likened to the desperate acts of a sinking man, trying to latch on every available straw in sight for safety. Unfortunately, the Defendants have no such legal straws to hold on in this case. I so hold.

On the basis of the foregoing analysis of the evidence led at the trial, the Court is satisfied that the Claimant performed her obligations under the Consultancy

Agreement, **Exhibit C3,** particularly **Clause 3(2)** thereof, and is therefore entitled to be granted relief (1) of her Claim. I so hold.

DID THE DEFENDANTS BREACH THEIR OBLIGATIONS UNDER THE CONSULTANCY AGREEMENT?

Following on the heels of the determination that the Claimant performed her side of the bargain under the **CA, Exhibit C3,** is a determination as to whether or not the Defendants did not in turn breach their own obligation to the Claimant under the **CA.**

Clause 5 of **Exhibit C3** states as follows:

> ***"PAYMENT***
>
> ***5. In consideration of the services to be rendered by the Consultant under this Agreement, the Client shall pay the Consultant 15% of the amount recovered in favour of the State Government net of withholding tax and value added tax in the currency of refund***

within 15 days of refund from/by the Federal Ministry of Finance."

It is well established by evidence led on record by both sides that the Defendants refused to pay the Claimant what was due to her in the manner agreed to by **Clause 5** of **Exhibit C3,** after the Defendants were paid the sum of **$61,277,069.09,** which resulted partly from the Claimant's efforts as evidence has revealed.

Evidence revealed that the Defendants' persisted in the breach of the **CA,** by continuing to ignore the Claimant's letters, **Exhibits 13, 15** and **16,** by which she demanded for payment of her Consultancy Fees as agreed to under the **CA.**

The Defendants have equally admitted severally that no fee was paid to the Claimant from the recovered sum, on the flawed ground that the Claimant played no part in the recovery exercise and that the London

Club debt buy-back did not form part of the Claimant's obligations under **Exhibit C3**.

I consider it needless to dabble into the arguments of the Defendants' learned counsel that the Claimant's engagement was restricted to reconciliations and recoveries on the over deductions on Paris Club debt alone. These arguments find no support whatsoever in the **CAs, Exhibits C3, C19** and **C20** executed by the Claimant and the 1st Defendant. Nowhere in the **CA** did parties mention specifically "Paris Club Debt" or the sum of **$178,250,450.00**. The fact that the Claimant did not successfully undertake recovery of the 1st Defendant's entitlements under the Paris Club debt cannot be an excuse to deny her of her fees with respect to the London Club buy-backs which she eminently earned. I so hold.

I must further hold that the arguments of waiver of the Claimant's fees canvassed by the Defendants' learned

counsel is clearly misconceived. I hold that the request by the Claimant for renewal of the **CA** when the first and second ones executed lapsed could by no means be interpreted to be evidence of waiver of her entitlement to her **15%** consultancy fee with respect to the services she had already rendered. Evidence on record revealed that the request for renewal of the **CA** was to afford the Claimant to conclude her assignment with respect to the Paris Club Debt portfolio of the 1st Defendant, which eventually did not materialize.

IS THE CLAIMANT ENTITLED TO REMEDIES CLAIMED FOR BREACH OF CONTRACT?

Learned counsel on both sides have argued in agreement of the trite position of the law that parties to a contract are bound by the terms of the contract they freely entered into and that the Court is duty bound to enforce the contract voluntarily entered into

by parties before it. See *GTB Vs. Fox Glove Nig. Ltd. [2016] LPELR-40167(CA);* and *Odigbo Vs. Abubakar & Ors. [2018] LPELR-46473(CA).*

As also correctly submitted by the Defendants' learned counsel, a breach of contract is said to occur when a party to a contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See *Pan Bisbilder Nig. Ltd. Vs. F.B.N. Ltd. [2000] 1 NWLR (Pt. 642) 684; Best (Nig.) Ltd. Vs. Blackwood Hodge Nigeria Ltd. [2011] LPELR-776(SC); Tsokwa Oil Marketing Company Vs. B.O.N. Ltd. [2002] 11 NWLR (Pt. 777) 163.*

The trite position of the law is further that in an action of this nature, where breach of contract is established, the only remedy available to the Claimant, is in damages. In other words, where two parties have

made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, that is, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

In such circumstances, the Claimant will be entitled to be restored, in so far as monetary compensation can do, to the position he would have been had the contract not been breached, as depicted in the maxim *restitutio in integrum*. See Okongwu Vs. NNPC *[1989] 4 NWLR (Pt. 115) 295;* Orji Vs. Anyaso *[2000] 2 NWLR (Pt. 643) 1;* Adekunle Vs. Rockview Hotel Limited *[2004] 1 NWLR (Pt. 853) 161;* Cameroon Airlines Vs. Otutuizu *[2011] 4 NWLR (Pt. 1238) 512.*

In the present case, the Court has found as fact in the foregoing that the Defendants breached **Clause 5** of **Exhibit C3**, by failing to pay the Claimant the amount representing **15%** of the sum of **$61,277.096.07** recovered with respect to the London Club debt buy-backs. The Claimant is therefore entitled to a grant of reliefs (2) and (3) of her claim, in order to restore her to the position she would have been if the contract had not been breached by the Defendants.

The Claimant has also claimed the sum of **₦350,000,000.00 (Three Hundred and Fifty Million Naira)** only as general damages for breach of contract, etc. In *Stabilini Visioni Ltd. Vs. Metalum Ltd. [2008] 9 NWLR (Pt. 1092) 416 @ 433-434*, the Court of Appeal, *per* **Mshelia, JCA**, held, *inter alia*, as follows:

> ***"In a situation arising from commercial matters, I should think that a party holding on to the funds of***

another for so long without justification, ought to pay him compensation for so doing."

The evidence on record established that the Claimant had earned her consultancy fee since 2010, which the Defendants continued to deny her the fruits of. The Claimant also gave evidence of attempts she made to resolve the dispute in this suit with the Defendants by arbitration which efforts were botched by the uncooperative stance of the Defendants.

On these grounds, I hold that the Claimant is rightly entitled to compensation in the form of general damages as well as post-judgment interest on the liquidated debt.

Berthing the Court's analysis of the totality of the material evidence adduced on record as demonstrated in the foregoing, therefore, I must resolve the sole issue set down for determination in this suit, encompassing the issues respectively formulated

by learned counsel for the respective parties, in favour of the Claimant. As seen by evidence on record, this suit is rooted in the sanctity of contracts freely entered into by parties in this suit; and this Court, in that regard has a bounden duty to ensure the enforcement of the **Consultancy Agreement** executed between the parties.

I noted the contentions of the Defendants' learned counsel that the Claimant induced the Defendants, by her letter, **Exhibit C1**, to enter into the CA. However, no evidence of any such inducement was adduced at the trial.

I strongly reckon that if the Defendants believed that they had the capacity and wherewithal to unilaterally unearth and recover funds due to her from the Federal Government of Nigeria under the London Club Debt buy-back; or if they were aware of the existence of or imminence of payment of such refunds at the material

time; they would have seen no need to engage the services of the Claimant, as a Consultant, in the first place to undertake the intricate exercise of reconciliation and recovery of the refunds. Having put pen to paper with the Claimant; and the Claimant, having also performed on some aspects of the agreement; the Defendants cannot in the circumstances attempt to avoid paying the Claimant her legally entitled fees. After all, it is said – **a labourer is deserving of his wages.**

In the overall analysis, the Court adjudges the claim of the Claimant as meritorious. For avoidance of doubts and abundance of clarity, judgment is hereby entered in favour of the Claimant against the Defendants jointly and or severally, upon terms set out as follows:

1. ***It is hereby declared that the Claimant performed her obligations under the Consultancy Agreement with the 1st Defendant by ensuring/facilitating the***

recovery of excess deductions/charges on the London Club Debt buy-back to the tune of $61,277,096.07 from the Federal Republic of Nigeria.

2. ***It is hereby further declared that the Claimant is entitled to 15% of the said sum of $61,277,096.07 which was recovered from the Federal Republic of Nigeria for the 1st Defendant as provided for in the Consultancy Agreement executed between the parties.***

3. ***The Defendants are hereby ordered, jointly and or severally, to pay to the Claimant forthwith the sum of $9,191,564.41 or its equivalent in Naira at the prevailing Central Bank of Nigeria (CBN) rate, being 15% of the total refunded sum referred to in (1) and (2) above, which is the agreed consultancy fee as provided for in the Consultancy Agreement executed between the parties.***

4. ***The Defendants are hereby further ordered to pay to the Claimant forthwith, the sum of ₦50,000,000.00***

(Fifty Million Naira) only as general damages for breach of contract.

5. ***It is hereby further ordered that the Defendants, jointly and or severally, shall pay the sum set out in (3) above, to the Claimant at the rate of 10% per annum from the date of this judgment until the same is finally liquidated.***

6. ***Costs of the action is hereby assessed in the sum of ₦500,000.00 (Five Hundred Thousand Naira) only, payable by the Defendants, jointly and or severally, to the Claimant.***

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
11/06/2020

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