IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE
DELIVERED ON THE 16THDAY OF JULY 2020
SUIT NO. FCT/HC/CV/946/2015

BETWEEN:

1. **AMI PROPERTIES LIMITED** } **CLAIMANT**
2. **SALISU ABBA AHMED**

AND

1. **URBAN SHELTER LIMITED**
2. **URBAN SHELTER INFRASTRUCTURE LIMITED**
3. **MALLAM IBRAHIM ALIYU**
4. **ALHAJI MUSA DANGOGO ALIYU**
5. **MR. ABDULRAHEEM IDOWU TAOFIQ**
6. **FEDERAL CAPITAL DEFENDANTS**
   TERRITORY ADMINISTRATION
   (Acting via the ABUJA INFRASTRUCTURE INVESTMENT CERNTRE (AIIC))
7. **BARR. FARUQ SANI**
   (Co-ordinator, ABUJA INFRASTRUCTURE INVESTMENT CENTRE (AIIC))
8. **THE HON. MINISTER, FEDERAL CAPITAL TERRITORY ADMINISTRATION**

- **ADEBAYO O OMOLE ESQ,BAYO ADETOMIWA ESQ, AND D.D. OKOROGBA FOR THE CLAIMANTS**
- **GBENGA ADESINA ESQ. FOR THE 1ST – 5THDEFENDANTS**
- **F. U. IBANGA ESQ. FOR THE 6TH – 8THDEFENDANTS**

JUDGMENT

By way of a Writ of Summons dated and filed on the 28th of January 2015, the Claimants are praying this Court for: -

1. **A Declaration** that the Memorandum of Understanding dated the 5th day of March 2012 duly executed by the Claimant and the 1st Defendant, in which the Claimants were engaged to facilitate the approval of a Land Concession under a Public-Private Partnership Policy of the Federal Capital Territory Administration for the purpose of Infrastructure Development and Housing within the Federal Capital Territory (The Project), together with all Verbal and Written Communications, Text Messages and Oral Discussion Exchange between the Parties, created a Valid and Subsisting Contract between the Claimants and 1st Defendants;
2. **A Declaration** that the Award of 245 Hectares of Land in Sheritti B District of the Federal Capital Territory under the Land Swap Program by the 6th Defendant in favour of the 2nd Defendant was in consequence of the direct exertions of the Claimants, in pursuance and fulfilment of the Claimants obligations under the Memorandum of Understanding dated the 5th day of March 2012, duly executed between the Claimants and the 1st Defendant;
3. **A Declaration** that upon the Award of the 245 Hectares of Land in Sheritti B District of the Federal Capital Territory under the Land Swap Program by the 6th Defendant in favour of the 2nd Defendant, the Claimants – having performed their obligations under the Memorandum of Understanding dated the 5th day of March 2012 – became entitled to the Compensation agreed between the Claimants and the 1st Defendant under the said Memorandum of Understanding; and that the failure/neglect/ refusal by the 1st and 2nd Defendant to

pay same to the Claimants amounts to a Fundamental Breach of the Contract between the Claimants and the 1st Defendant;

4. **A Declaration** that the Role Played by the 2nd. 3rd, 4th, 5th, 6th, and 7th Defendant in awarding the Land to the 2nd Defendant and not the 1st Defendant as intended, constitutes calculated connivance to circumvent and harm the Economic Interests of the Claimants and therefore amounts to acts of Civil Conspiracy and Intentional and Unlawful Interference with Economic Interests against the interests of the Claimant;
5. **An Order** directing: -

1. The 1st – 5th Defendants jointly and severally to specifically perform their Obligations by immediately paying to the Claimants, the Sum of N650, 000, 000.00 (Six Hundred and Fifty Million Naira), being the agreed Compensation now due to the Claimants for the Facilitation Services rendered to the 1st – 5th Defendants in actualising the Award of Land to the 1st – 5th Defendants, as contemplated under the Memorandum of Understanding dated the 5th of March 2012; or
2. **ALTERNATIVELY, An Order** directing the 1st – 5th Defendants jointly and severally to pay to the Claimants, the Sum of N350, 000, 000.00 (Three Hundred and Fifty Million Naira) or any Sum so adjudged as adequately Compensatory on a Quantum Meruit basis, for Services rendered by the Claimants in respect of the Award of the 245 Hectares of Land in Sheritti B District of the Federal Capital Territory to the 2nd Defendant by the 6th Defendant, pursuant to the Memorandum of Understanding dated the 5th of March 2012;
6. **IN FURTHER ALTERNATIVE, An Order** directing the 1st -5th Defendants jointly and severally to pay to the Claimants, the Sum of N3, 000, 000, 000.00 (Three Billion Naira only) as **General and Aggravated Damages** for loss of earning and profits occasioned to the Claimants by the 1st – 5th Defendant's

circumventions of the Claimant's Economic Interests and Conspiracy to injure his Business;

7. **An Order** directing the Defendants jointly and severally to pay to the Claimants the Sum of N5, 000, 000.00 (Five Million Naira) being Counsel's Fees and Costs incurred in filing this Suit;
8. **An Order** awarding **Post-Judgment Interest** on the Total Sum so adjudged by this Honourable Court as payable to the Claimants at the rate of 10% per annum, until full satisfaction of the Judgment Sum.
9. **An Order** of **Perpetual Injunction** restraining the Defendants, by themselves, their Agents, Privies, or anyone claiming through them, from developing or carrying out any acts, or exercising any rights howsoever, on the Parcel of Land measuring 245 Hectares of Land Sheritti B District of the Federal Capital Territory, in pursuance of the Land Swap Concession awarded to the 2nd Defendant herein, without first paying the Claimants the Fees adjudged due to them under the Memorandum of Understanding dated the 5th of March 2012.

The Claimants opened their Case on the 27th of September 2017, and the 2nd Claimant, Mr. Salisu Abba Ahmed, the alter ego of the 1st Claimant Company, testified solely in support of their Claims. Sworn by Affirmation, he adopted his Witness Statement on Oath and testified in essence that the 1st Defendant, Urban Shelter Limited engaged him in December 2011 to Facilitate and Secure a Land Concession with the Federal Capital Territory, for the Company under a Public-Private Partnership Arrangement for the Development of Housing and Infrastructure.

According to him, they agreed that upon the receipt of a Land Approval, hewould be paid the Sum of Six Hundred and Fifty Million Naira (N650, 000, 000.00). To this effect, the Parties executed a Memorandum of Understanding on the 5th of March 2012. From December 2011 on to February 2012 he claimed to have expended resources, industry and goodwill, in performance of the Job, andthat the 1st Defendant agreed that he will act as their Representative in all Meetingsand Discussions incidental to the Grant, with the Relevant Authorities.

On 15th of February 2012 he prepared a Cover Letter on the 1st Defendant's Letterhead, a Written Proposal, along with a Power Point Presentation, outlining the Feasibility of providing Infrastructural Works, Housing and Service Elements in respect of Identified Unallocated Expanse of Land, *Filing Dabo Phase IV North*, and highlighted the competence of the 1st Defendant to handle the Project. He also prepared a General Land Use Plan in respect of the Identified Unallocated Area covering 553. 69 Hectares of Land located at Phase 4 North-West, Filing Dabo, Cadastral Zone D11 FCT, and recommended for its submission to President Goodluck Jonathan for Consideration and Approval. He also presented the said Proposal and its supporting documents to the Presidency. Hethen followed-up through Key Contacts he has within the Presidency until the Proposal was brought before the President.

Being persuaded, the President, under a State House Cover Letter REF. NO. PRES/83/FCTA/73 dated the 12th of April 2012, signed by the Senior Special Assistant, Mr. Matt Aikhionbare, endorsed the Proposal, and directed the Honourable Minister of the Federal Capital Territory to engage Urban Shelter Limited in discussions towards realising the Project.

Based on the Presidential Directive, Mr. Salisu as the Representative of Urban Shelter Limited claimed he sought out the Audience of the 8th Defendant, the Honourable Minister of the Federal Capital Territorythrough a Letter dated the 19th of April 2012. He also wrote another Letter to Urban Shelter informing them of the progress and the need for a follow-up on the Presidential Directive, and requested that Urban Shelter issue him an **Introductory Letter** addressed to the Hon. Minister of the FCT.

In response to his Letter seeking audience, on the 23rd of April 2012 he got a phone call from the 7th Defendant, Barr. Faruq Sani, the Co-ordinator of Abuja Infrastructure Investment Centre. Barr Faruq informed him that the Office of the Hon. Minister had received the Presidential Directive along with the Proposal, and hadrequested for the 3rd Defendant, the Chairman of Urban Shelter, Mallam Ibrahim Aliyu for further discussion.

According to Mr. Salisu, he informed Barr. Faruq that Mallam Ibrahim Aliyu at that time was out of the Country, and thereafter he sent a Text Message to Mallam Ibrahim Aliyu, informing him that the Hon. Minister of the FCT has requested to see him. Mallam Aliyu responded with a promise that upon his return scheduled for sometime in May 2012, he would attend to the Hon. Minister's Request.

Mr. Salisu stated that time was of the essence, so he chose not to wait for the return of Mallam Aliyu, but engaged with Barr. Faruq and the FCTA directly in Meeting.In the course of their discussions, Barrister Faruq informed him that the FCTA having considered all the available Public-Private Partnership Options, in line with the FCTA's Policy on Infrastructural Development, its focus at that material time was the Land Swap Scheme. Barr. Faruq then advised

Urban Shelter to apply for the Land Swap Scheme rather than the Land Concession, contemplated under the Memorandum of Understanding and Mr. Salisu informed him that Mallam Ibrahim Aliyuwill be interested in the Land Swap Scheme, though at that time he was out of the Country.

According to Mr. Salisu, after the Meeting he informed Mallam Aliyu of the outcome, and also sent an SMS to himthat the Permanent Secretary of the FCTA had tried to reach him urgently on the Telephone to no avail, still for a Meeting with the Hon. Minister of the FCT.

Subsequently, on the 10th of May 2012 Barr Faruq issued Urban Shelter Limited a Request for Proposal under the Land Swap Scheme. The Original Copy was given to Mr. Salisu, he acknowledged receipt on the 11th of May 2012, and delivered it personally to the Office of Urban Shelter Limited, to Mallam Aliyu on that same date, and by this date Mallam Aliyu was in the Country.
Mallam Aliyu in Mr. Salisu's presence handed over the Request to the 5th Defendant, Mr. Abduraheem Idowu Taofiq, and instructed Mr. Taofiq to work with Mr. Salisu on the Proposal.
On the same day, hours later, Mr. Salisu stated that Barr. Faruq called him on the phone and informed him that there was an error on the Request for Proposal Letter, which had been resolved by Urban Shelter. He found it strange that an error was not communicated to him as theirRepresentative, and sohe called Mr. Taofiq, who at first failed to take his calls, but subsequently replied his SMS. He also sent an SMS in this regard to Mallam Aliyu.

According to Mr. Salisu, in fulfilment of his obligation to Urban Shelter, he followed up the AIIC Officials relentlessly, in relation to the Collation of Documents submitted for the Proposal. He alsomade

sure Urban Shelter Ltd was in compliance with the Requisite Conditions under the Land Swap Scheme, and was at all material times in contact with Barr. Faruq. He also rendered full updates on the progress of the Proposal to Mallam Aliyu and the 4th Defendant, Alhaji Musa Dangogo Aliyu. Sometime in December 2012, he was informed that the Approval Process was near completion and the Hon. Minister of the FCT had a Memo before him to grant an Approval in favour of Six Investor Companies under the Land Swap Scheme, Urban Shelter inclusive, and he informed Mallam Aliyu and Alhaji Aliyu of this development.

To his surprise, the Daily Trust Newspaper on the 6th of December 2012 publishedthe Contract Signing Ceremony between the Hon. Minister of the FCT and 2nd Defendant Company, Urban Shelter Infrastructure Limited, as well as other Investors under the Land Swap Scheme.
From the Picture taken, Alhaji Aliyuwas stated as the Chairman of Urban Shelter Infrastructure, and Mr. Taofiq as its Managing Director. They were awarded 245.31 Hectares Sheretti (B) District under the Land Swap Scheme, instead of Urban Shelter Limited. Given the Separate Legal Status of both Companies, he was surprised to discover that all his efforts and resources were being expended for Urban Shelter Infrastructure Limited.
Mr. Salisu claims that Urban Shelter Limited,surreptitiously swapped/substituted its' Subsidiary in its place without informing him of this decision.
When he sought out Mallam Aliyu and Alhaji Aliyu for clarification, they refused to take his phone calls and distanced themselves from him.

After several futile efforts, he was constrained to formally notify them on the 2nd of January 2013 through a Letter stating the queer

turn of events and then demanded that they pay up the agreed remuneration per their Memorandum of Understanding dated the 5th of March 2012, having successfully discharged his obligation to them.

On the day he took the Letter to the Office of Urban Shelter, he met Alhaji Aliyu who told him that they do not owe him or any Facilitator any Money, as the Transaction or Project contemplated under the Memorandum of Understanding is fundamentally different from the Land Swap Concession Scheme, which Mr. Salisu was contracted for by Urban Shelter, and not by Urban Shelter Infrastructure Limited. He further clarified that the Land Swap Scheme was awarded to Urban Shelter Infrastructure Limited and not Urban Shelter Limited.

Mr. Salisu claimed that the 1st -5th Defendants have been at all material times aware of their Pre-Existing Obligations to him and his Company under the Memorandum of Understanding dated the 5th of March. He is also certain without a doubt that the 245 Hectares of Land Swap awarded to Urban Shelter Infrastructure Limited was as a result of both he and his Company's effort.
According to him, his services were never terminated, and neither was he informedby Urban Shelter Limited that he is no longer their Agent, or that a Third Party would take the benefit of his effort.

Mr. Salisu claimed he wrote to Mallam Aliyu on the 31st of January 2014, seeking an Amicable Settlement, but was ignored. The 3rd, 4th and 5th Defendants rather than communicate with him, told Third Parties who he asked to intervene, that he is merely a busybody, a meddlesome interloper and a rent-seeker.

He pointed out that the covert substitution of the Request for Proposal Letter dated the 10th of May 2012, with REF NO.

FCTA/AIIC/P4TAP/016/12 addressed to '*The Chairman, Urban Shelter'* by another Letter with the same date and REF NO addressed to *'The Chairman, Urban Shelter Infrastructure Limited'*, without informing or involving him, was calculated to circumvent his interest under the Memorandum of Understanding.

Upon his investigation,he discovered that Urban Shelter Limited and Urban Shelter Infrastructure Limited are interwoven, and Urban Shelter Limited holds 70% Shares in Urban Shelter Infrastructure Limited.

Further, that Alhaji Aliyu, the Chairman, Board of Directors and Mr Taofiq, the Managing Director of Urban Shelter Infrastructure Limited, both signed the Memorandum of Understanding with the Claimants dated the 5th of March 2012 in the capacity of Managing Director and Secretary of Urban Shelter Limited.

Finally, Mr. Salisu claimed that the 1st Defendant's Circumvention and their refusal to pay the Contract Fee caused him to suffer Economic Loss, Damage to his Business Reputation, Image and Goodwill, and he is certain that the FCTA and Barr Faruq were aware that he acted on behalf of the 2nd – 5th Defendant. As a result of Urban Shelter's failure to explore amicable options, he was constrained to engage Legal Counsel at the Cost of Five Million Naira (N5, 000, 000.00) to prosecute his Claim. He then prayed the Court to grant himand his Company Justice.

In support of his Case, Mr. Salisu tendered into Evidence: -

1. The Memorandum of Understanding admitted as **Exhibit A**.
2. Ami Properties' Request Letter to the Honourable Minister of the FCT for an Appointment, admitted as **Exhibit B**.

3. Ami Properties' Request Letter to Urban Shelter Limited for an Introductory Letter admitted as **Exhibit C**.
4. Subpoena Duces Tecum addressed to Abuja Infrastructure Investment Centre to present the Court with the Proposal Request Letter to Urban Shelter, admitted as **Exhibit D**.
5. A Copy of the Daily Trust Newspaper that published the Land-Swap Signing Ceremony between the Hon. Min. of the FCT and Urban Shelter Infrastructure, admitted as **Exhibit E**.
6. Copies ofCorporate Affairs Commission, Incorporation Documents of Urban Shelter Limited and Urban Shelter Infrastructure Limited, admitted as **Exhibit F**.
7. Ami Properties Complaint Letter to Urban Shelter Limited on a breach of their MOU, admitted as **Exhibit G**.
8. A Flash Drive containing Text Messages Correspondence between Mr. Salisu and the Defendants, admitted as **Exhibit H**.
9. A Bill of Charges for the prosecution of the Suit, admitted as **Exhibit I**.
10. Ami Properties Request for Proposal on behalf of Urban Shelter Limited, admitted as **Exhibit J**.
11. A Further Witness Statement on Oath, admitted as **Exhibit K**.
12. AState House Abuja Letter from the Presidency addressed to the Hon. Min. of the FCTA, admitted<u>provisionally</u>as **Exhibit L.**

Under Cross-Examinationby Counsel to the 1st – 5th Defendants, Mr. Salisu Ahmed maintained that he signed a Memorandum of Understanding with Urban Shelter Limited to facilitate a Land Approval, but not with Urban Shelter Infrastructure, because he did not know them. He admitted to a variance in the Memorandum of Understanding, and stated that the Chairman had agreed to payhim the Sum of Six Hundred and Fifty Million Naira (N650, 000, 000.00) once he delivered on the Job, which he did.

He claimed to have done previous jobs of this nature for Urban Shelter, both official and unofficial. Sometimes it would be free of charge, and other times the Chairman would give him 'PR', something small. He admitted receiving a House from Urban Shelter as payment for previous Jobs done.
Finally, he pointed out that the correspondence via Text Messages between himself and Urban Shelter was before the MOU was executed.

Under Cross-Examination by Counsel to the 6th – 8th Defendants, Mr. Salisu admitted that the FCTA, Barr. Faruq and the Hon. Min. of the FCT were not parties in the Memorandum of Understanding between his Company and Urban Shelter Limited, but their Actionshave denied him the fruit of his labour. He admitted that he never complained in writing to the Hon. Minister, but had a Verbal Meeting with him, when at that time, the incompetence of Urban Shelter was being questioned and he resolved the issue. He insisted that some part of the Memorandum of Understanding implied the Issuance of Land, and for him to seek the Presidency's Intervention and report back to Urban Shelter.

When Learned Counsel confronted Mr. Salisu with the fact that the 6th – 8th Defendants were not copied in the Memorandum of Understanding, and that the Memorandum of Understanding did not provide that the Hon. Minister of the FCT should allocate the Land to his Company, Mr. Salisu confirmed these facts and more, by stating that the Seal of Urban Shelter Limited was not affixed on the Memorandum of Understanding.

When confronted with the Legal Status of his Company, Mr. Salisu contended that his Company is incorporated and he is the Managing

Partner. When asked to present his Letter of Appointment, he stated that it was not in Court at the time of his Testimony.
Finally, as regards the Sum of Six Hundred and Fifty Million Naira (N650, 000, 000.00) Facilitation Fee, Mr. Salisu stated that the Money ought to be paid by the 1st – 5th Defendants, and not the 6th – 8th Defendants.

No **Re-Examination** was done on the Testimony of this Witness, and the Claimants closed their Case.

In response, the 1st – 5th Defendants opened their Defence on the 20th of June 2019. The 4th Defendant, Alhaji Musa Dangogo Aliyu, the Managing Director of Urban Shelter Limited and the Chairman of Urban Shelter Infrastructure Limited testified in support of the Case of the 1st – 5th Defendants. Sworn to on the Holy Koran, he adopted his Witness Statement on Oath and testified in essence thatUrban Shelter Limited executed the Memorandum of Understanding on the 5th of March 2012 with the Claimants.
According to him,because the Claimants failed to deliver on the jobthe 1st – 5th Defendant's discontinued further communication with them.

He contended that the Land Swap Scheme is fundamentally different from the Project contemplated under the Memorandum of Understanding, and that Urban Shelter Infrastructure on its own, applied to the FCTA for a Land Concession, which was accordingly granted. He stated that Urban Shelter Infrastructure did not engage the Claimants to aid in the facilitation of their Land Swap Application, and was never a Party to the Memorandum of Understanding between Urban Shelter Limited and the Claimants.

The Claimants are yet to secure a Land Concession for the benefit of Urban Shelter up and until the filing of this Suit, and therefore are yet to fulfil their obligation.

Alhaji Aliyu admitted that Mr. Salisu had in the past done jobs for Urban Shelter and was compensated in Cash and Houses valued at One Hundred Million Naira (N100, 000, 000.00). They are therefore not in any way indebted to the Claimants, as the Claimants cannot request for what they have not earned.
Finally, He prayed the Court to dismiss the Suit for being gold digging, vexatious and frivolous with substantial cost.

In support of the 1st – 5th Defendant's Defence Alhaji Aliyu tendered: -

1. A Bundle of Documents; a Memorandum signed with the FCDA and Request for their Documents for Land-Swap Scheme, submitted to the Senate Committee on FCT, admitted as **Exhibit M**.
2. A Bundle of Copies of Cheques and Correspondence between the Claimants and the 1st-5th Defendants, and it was admitted as **Exhibit N**

Under Cross-Examination by Counsel to the 6th – 8th Defendants, Alhaji Aliyu admitted being familiar withUrban Shelter's Land Allocation Procedure with the FCDA, however, as the Chief Executive Officer, he was not always directly involved. He claimed a File was opened, and the FCDA together with the Company pursuedthe acquisition of the Land through the usual bottlenecks of bureaucracy. He stated that Urban Shelter did not give any Bribe or Inducement before the Land was allocated, andhe agreed with Learned Counsel that the 6th – 8th Defendants were not parties to the

Subject Matter, which is the Memorandum of Understanding between the Claimants and Urban Shelter.

According to him, Mr. Salisu Ahmed proposed that he could get 650 Hectares of Land in the Northern Region of Abuja, around Dei-Dei, for the Company, at the Cost of One Million Naira (N1, 000, 000.00) per Hectare, to which he agreed and signed the Memorandum of Understanding between **himself and Mr. Salisu Ahmed**. He however stated that he alone did not own Urban Shelter Limited, and in Urban Shelter Infrastructure, he is only a Chairman and not a Shareholder.

Under Cross-Examination by Counsel to the Claimants, Alhaji Aliyu admitted that both himself and Urban Shelter are Shareholders in Urban Shelter Infrastructure. He also admitted knowing Mr. Salisu very well as he usually gave him feedbacks, but in regard to the present transaction in issue; Mr. Salisu is yet to give him any Feedback.

When confronted with **Exhibit C**, Alhaji Aliyu vehemently denied ever seeing the Document before, adding that if he had, he would have acted on it by minuting it to the next Officer. He claimed that the Stamp was forged as anyone could manufacture it. He was further confronted with **Pages 89-90 of Exhibit M**, wherein Urban Shelter is stated as the Promoter, and Alhaji Aliyu admitted that Urban Shelter is therein stated as the Lead Sponsor. He also admitted that the MOU was never terminated because they hoped that Mr. Salisu would still make good on his promise in the Sabongida District.

As regards the Request for the Proposal, Learned Counsel further confronted Alhaji Aliyu with **Exhibits D3, D4, D5, D6 and D8**, and

he denied ever seeing the Documents. Further,the Letter in question was addressed to the Chairman of Urban Shelter Limited, and not him. Though the Managing Director and himself signed the MOU, he usually did not receive Letters on behalf the Company.
Further still, he retracted his response to the questions asked in regard to **Exhibit D**, because he presumed they were asked in relation to Urban Shelter Infrastructure, and stated that he received **Exhibit D5 and D6** because they were addressed to him as Chairman.

Under Re-Examination, Alhaji Aliyu clarified that Urban Shelter InfrastructureLimited applied for the Land Swap and not Urban Shelter Limited.

On the Part of the 6th – 8th Defendants, they did not file a Witness Statement on Oath in support of their Joint Statement of Defence, but rather chose to rest their Case on that of the Claimants.

In their Reply Pleadings, it is the Claimants positthat Urban Shelter Infrastructure did not submit any Separate Application or make fresh effort towards a Land Swap Concession, and the Land awarded to them was as a result of the Claimants efforts.
The Claimants maintained that they did not renege on their obligations. Rather, it was as a result of their timeous performance of their obligation, that the Land Swap Deal eventually succeeded. Further, that the 1st – 5th Defendants are Parties to the Memorandum of Understanding signed between Urban Shelter and the Claimants, as they signed the Document in their Respective Capacities. They restated that the Actions of the 1st Defendant were calculated to cheat and sideline the interest of the Claimants under the Contract, which has occasioned them an Injury. Therefore, their Claim is properly founded.

On this note the Defence closed their Defence and Parties were ordered to file their Final Written Addresses.

The 1st – 5th Defendants filed their Final Written Address dated the 24th of July 2019, via a Motion on Notice for Extension of Time dated the 25th of September 2019. They formulated Three Issues for Determination, namely: -

1. Whether the Action for Breach of Contract can stand in the absence of a Valid Contract? Or whether the Claimants have proved their Claim of Breach of Contract against the Defendants
2. Whether from the Totality of Evidence adduced before this Honourable Court, the Claimants have proved their Case as required by Law, or whether if the above is in the Negative, the Claimants are entitled to the Consequential Monetary Reliefs and Damages claimed.
3. Whether where the Contract between Parties is reduced to Writing, Extrinsic Evidence is permitted to add, vary, subtract from or contradict the Terms of the Written Instrument.

The 6th – 8th Defendants filed their Final Written Address dated the 1st of November 2019, on the 4th of November 2019. They formulated Two Issues for Determination, namely: -

1. Whether from the Totality of the Evidence adduced by the Claimants and the Exhibits tendered in this Suit, the Claimant has proved any Wrong Doing, or any Reasonable Cause of Action against the 6th, 7th and 8th Defendants to be entitled to the Declaratory Reliefs sought in Paragraphs 56 (1) – (4) of the

Claimant's Statement of Claim against the 6th, 7th, and 8th Defendants.

2. Whether the Honourable Court can proceed suo moto to Award the Claimants Monetary Claims in **Paragraphs 56 (5.1) – (9)** of the Claimants Statement of Claim against the 6th, 7th, and 8th Defendants when the Claims are specifically against the 1st – 5th Defendants.

In response, the Claimants filed their Final Written Address dated the 27th of November 2019. They formulated Five Issues for Determination, namely: -

1. Whether the Memorandum of Understanding dated the 5th of March 2012 constituted a Valid and Subsisting Contract between the Claimants and the 1st Defendants;
2. Whether from the Totality of Evidence adduced and surrounding circumstances of this Case, the Contract between the Claimants and the 1st Defendant was varied;
3. Whether the 1st Defendant breached the Terms of the Contract between itself and the Claimants by allowing its Subsidiary take benefit of the Exertions of the Claimants and failing to fulfil its Obligations to compensate the Claimants for their Exertions;
4. Whether having failed to adduce any Evidence in these Proceedings, the 6th – 8th Defendants are absolved of liability from the Claimants' Claims; and
5. Whether by the Totality of Evidence adduced, Claimants have proved their Claims and are entitled to the Remedies and Reliefs sought.

The 1st – 5th Defendants in response, filed a Reply on Points of Law dated the 22nd of January 2020, via a Motion on Notice filed on the 24th of January 2020. In their Reply, they did not formulate Further

Issues, but responded to the Issues raised by the Claimants in their Final Address.

All Arguments of Counsel are duly noted on Record.

After a Careful Consideration of the Facts and the Issues formulated, the Court finds the following Issues for determination, namely: -

1. Whether from the Totality of the Evidence adduced by the Claimants as well as by the Exhibits tendered in this Suit, and whether by the fact of Resting their Case on that of the Claimants, the Claimants have proved any Wrong Doing, or any Reasonable Cause of Action against the 6th, 7th and 8th Defendants to be entitled to the Declaratory Reliefs and Monetary Claims sought in **Paragraphs 56 (1) – (4) and56 (5.1) – (9)** of the Claimant's Statement of Claim against the 6th, 7th, and 8th Defendants.

2. Whether a Relationship of Agency was established to justify any Connection between this Contract in **Exhibit A** and the Memorandum of Understanding between Federal Capital Territory Administration (FCTA) and the 2nd Defendant in **Exhibit M**.

3. Whether the Memorandum of Understanding in **Exhibit A** dated the 5th of March 2012 constitutes a Valid and Subsisting Contract between the Claimants and the 1st Defendants

4. Whether the 1st Defendant breached the Terms of the Contract between itself and the Claimants by allowing the 2nd Defendant take the benefit of **Exhibit M** as a result of the Exertions of the

Claimants in furtherance of **Exhibit A** thereby failing to fulfil its Obligations to compensate the Claimants for their Exertions.

5. Whether by the Totality of Evidence adduced, the Claimants have proved their Claims and are entitled to the Remedies and Reliefs sought

Whether from the Totality of the Evidence adduced by the Claimants as well as by the Exhibits tendered in this Suit, and whether by the fact of <u>Resting their Case</u> on that of the Claimants, the Claimants have proved any Wrong Doing, or any <u>Reasonable Cause of Action</u> against the 6th, 7th and 8th Defendants to be entitled to the Declaratory Reliefs and Monetary Claims sought in Paragraphs 56 (1) – (4) and 56 (5.1) – (9) of the Claimant's Statement of Claim against the 6th, 7th, and 8th Defendants.

On **Issue One**, it is clear from the Processes before the Court that the 6th – 8thDefendants filed a Joint Statement of Defence but did not filea Witness Statement on Oath or Documentary Exhibits in support of their Defence.During the Trial, the 6th – 8th Defendants elected to rest their Case on the Evidence led thus far and therefore, the implication and consequence of their position would be analyzed.

A brief summary of the 6th – 8th Defendants position is that they queried the Legal Capacity of AmiPropertiesto institute this Action, for Want of Incorporation. They denied having anyknowledge of the Claimants being Agents or Intermediaries for the 1st -5th Defendants, or being aware of the existence of a Memorandum of Understanding between Urban Shelter and the Claimants. Further, that even the Memorandum of Understanding did not direct the

HonourableMinister to offer the Land to Urban Shelter Limited specifically, and even if it did, the Offer in itself is not an Allocation of Land under the Land Use Act.

According to them, the Land Swap Programme under the Federal Capital Territory Administration has Guidelines and Conditions that govern transactions with the Private Sector. These Conditions frownon dealings with Intermediaries or Agents, which is targeted at frustrating Corruption, Rent Seeking, Fraud, Indolence and Laziness.
They claimed that Urban Shelter Infrastructure satisfied all the Conditions under the Land Swap Programme, was duly allocated Land and a Development Lease Agreement was executed with the Company in 2014.They also claimed the Claimants Case against them, did not disclose a Reasonable Cause of Action and then urged the Court to dismiss the Claimants' Action.

All these above stated Averments as contained in the Joint Pleadings of the 6th – 8th Defendants have clearly shown their Response to the Claimants' Allegations of Collusion and Circumvention. They have denied any part in the Circumvention as alleged, and have stated that they did not know that there was a Middle Man/Agent who represented Urban Shelter Limited with regard to the Land Swap Scheme. Therefore, they played no role in the grouse between the Claimants and the 1st Defendant. However, these Averments are not backed by Evidence, either Oral or Documentary.

Learned Counsel to the 6th – 8th Defendants, in his Submission justified their choice not to file a Witness Statement on Oath, or call any Witness in support of their Defence. He submitted that **Exhibit A**, the Claimants' Document has failed to show any wrong doing on the part of the 6th – 8th Defendants, and the entire evidence as

presented by the Claimants, has failed to prove any iota of Breach occasioned by the 6th – 8th Defendants, or prove that they instigated it.

As regards the Allegations of Inducement and Connivance, they are Criminal Allegations with the Standard of Proof of'beyond a reasonable doubt'; therefore, making the 6th – 8th Defendants' failure to call a Witness to be immaterial to the Claimants failure to discharge the Criminal Burden of Proof upon them, and such failure is fatal to the Claimants' Case against the 6th – 8th Defendants.

Further, the Claimants failed to prove the Time and Mannerwhere the 8th Defendant,in the exercise of his Powers connived with the 1st – 5th Defendants, substituted the Names, and granted the Land to the 2nd Defendant.It all amounted to Suspicion and Hearsay Evidence, which is inadmissible, and he placed reliance on the following Cases on the Legal Effect of the Claimants' failure to call Evidence in Defence, and the Statutory Evidential Burden on the Claimants to be entitled to Judgment; **BELLO & ANOR VS MAMUDU ALOA & ORD (1989) SCC PAGE 1 AT PAGE 20 LINES 28. CHIEF OROKI IRON BAR VS FEDERAL MORTGAGE FINANCE (2009) 15 NWLR PART 1165 PAGE 506 AT 534-535, ISAAC GAJI & 2ORS VS EMMANUEL PAYE (2003) 8 NWLR PART 823 PAGE 583 AT PAGE 611**.

In response, Learned Counsel to the Claimants argued that the 6th – 8th Defendants having being confronted with **Exhibit H** and the Role of their Officer in the Transaction, failed to lead any Evidence,whether Oral or Documentary in support of their Defence, or disprove or discredit the Evidence of the 2nd Claimant against them. He submitted that their failure is deemed as an admission and made reference to the Cases of **AKINTOLA VS BALOGUN (2000) 1 NWLR (PART 642) PAGE, 532 AT 545, PARAS A-B** and **OMODELE**

ASHABI EYA & ORS VS ALHAJA RISIKATU OLOPADE & ANOR (2011) 11 NWLR (PART 1259) PAGE 505 AT 529, PARAS A-B.

He further contended that the Address of Learned Counsel, no matter how brilliant cannot make up for the Lack of Evidence to prove a Case, and he placed reliance on the Case of **ELUZIEM & ORS VS AMADI (2014) LPELR – 22459 (CA)** and **ALIYU & ORS VS INTERCONTINENTAL BANK PLC & ANOR (2013) LPELR – 20716 (CA)**, to the effect that the admission of facts pleaded and the absence of any positive rebuttal or oral testimony beyond their general traverse, has placed the Claimants in the position of no further duty to prove the alleged wrongs against the 6th – 8th Defendants.
Finally, Learned Counselurged the Court to discountenance the Submissions and enter Judgment in favour of the Claimants.

Now, it is clear upon a closer look at the contention of 6th – 8th Defendants that their Challenges were based more on Principles of Law than on Facts. They had argued on the Question of Agency, Privity of Contract, Legal Capacity and the Criminal Burden of Proof needed to be established. Therefore, they do not need any Witnesses to prove their Legal Contentions. It is trite Law that a Party is not under any obligation to call a Particular Witness or Witnesses, if he believes that he can prove his Case without calling the Witness. Reference is made to the Cases of **BELLO VS KASSIM (1969) NMLR 148**; **ODI CHUKWUMA VS OSI CHUKWUMA & ORS CA/E/31/2008 (P24, PARAS A-C);** and**ALHAJI USMAN BUA VS BASHIRU DAUDA (2003) LPELR-810 (SC).**

As regards their Contention that they were ignorant of the Agency Relationship, and as regards their Guidelines and Conditions under the Land Swap Scheme, they were obliged to call a Witness to testify

in this regard. Averments in Pleadings cannot be accepted as Evidence Simpliciter without calling evidence to prove it. They do not stand-alone as Proof, and are not Evidence. It is the Duty of a Party to call Evidence to support Averments. See the Cases of **OKECHUKWU VS OKAFOR (1961) 2 SCNCR PAGE 369, AJERO & ANOR VS UGORJI & ORS (1999) LPELR-295 (SC) PER KALGO, JSC (PP. 27-28, PARAS G-A) UREGBA VS ATTORNEY GENERAL BENDEL (1986) 1 NWLR PART 16 PAGE 303 AT 307** and **AYOKE VS BELLO (1992) 1 NWLR PART 218 PAGE 380**. In any event, the 6th – 8th Defendants did not plead their Guidelines and Conditions, and so considering them, would be an Academic Exercise.

It must however be strongly pointed out that the fact that no Witnesses were called upon to reinforce the case for the 6th to 8th Defendants, does not necessarily equate to guilt or confirmation of the Claimant's contention of liability. If the overall picture depicts no liability on the 6th to the 8th Defendants, then the absence of Witnesses to their own regard and for their own benefit, does not of itself, merit a conclusion that there is indeed liability on their part.

The Implication of the Defendant's election not to call any Witness, or tender any Document in support of his Position is very clear in Law. It means that: - (a) that the Defendant is stating that the Claimant, has not made out any case for the Defendant to respond to; or (b) that he admits the facts of the Case as stated by the Claimants or (c) that he has a Complete Defence in answer to the Claimant's Case.

If the circumstance were such that the Claimant failed to call Evidence on a Material Element in his Case, or where the Claimant's Evidence is so patently discredited that no reasonable Tribunal can believe it, and the Defendant elects not to call Evidence, the

Defendant may still be entitled to Judgment. See the Cases of **ADUKE VS AIYELABOLA 8 WACA 43 AT 45, ONYEKAONWU VS EKWUBIRI (1966) 1 ALL NLR 32 AT 35, BALOGUN VS UNITED BANK FOR AFRICA (1992) 6 NWLR PART 247 PAGE 366, NWABUOKU VS OTTIH (1961) 2 SCNLR 232, ATTORNEY GENERAL OYO STATE VS FAIRLAKES NO 2 (1989) 5 NWLR PART 121 PAGE 255, BALOGUN VS UNITED BANK FOR AFRICA LTD (1992) 6 NWLR PART 247 PAGE 366.**

The Court notes that despite the Defendants failure to call any Witness in Support of their Averments, or tender any Documentary Evidence in support of their Defence, they were able to elicit Evidence from the Witnesses in Support of their Case via Cross-Examination and the Expatiation of the Principles of Law based on their Arguments.

Therefore, by virtue of the above, the Defendants cannot be deemed to have accepted in totality, the facts adduced by the Claimant. Reliance is placed on the Supreme Court Authorities of**MOGAJI & 7 ORS VS ODOFIN & 7 ORS (1978) 4 SC 91, AT PAGES 93-94 and AG LAGOS STATE VS PURIFICATION TECHNIQUES (NIG) LTD (2003) LPELR-13108 (CA)**.

Now, to determine **whether the Claimants have a Reasonable Cause of Action against the 6th – 8th Defendants** in line with the above Authorities, the Court will take a look at the Statement of Claim, and particularly the Reliefs sought to determine whether from the Facts in Issue, there is a Prima Facie Cause of Action against the 6th to the 8th Defendants.

From the Reliefs sought in the Statement of Claim, it is clear that the only Claims against the 6th to the 8th Defendants are those in Reliefs

No. 4, 7 and 9, which sought for a Declaration that they connived to circumvent and harm the Economic Interest of the Claimants, the Claim for Cost of Counsel's Fees and finally, for Perpetual Injunction.

It is trite that No Reasonable Cause of Action is an Action with some possibility of success when only the Allegations in the Claimant's Statement of Claim are considered. If when those Allegations are examined, and it is found that the alleged Cause of Action is certain to fail, then the Statement of Claim ought to be Struck Out. Where a Statement of Claim disclosed a Reasonable Cause of Action, it is irrelevant whether or not the Action would succeed.See also the **Case of IBRAHIM VS OSIM (1988) 3 NWLR (PT 82) 257; ESEIGBE VS AGHOLOR (1990) 7 NWLR (PT. 161) 234; CHEVRON NIGERIA LIMITED VS LONESTAR DRILLING NIGERIA LIMITED (2007) LPELR-842 (SC) per OGUNTADE (JSC)**

In the determination of a Reasonable Cause of Action it is irrelevant to consider the Weakness of the Claimant's Case. What is important is to examine the Averments in the Pleadings, to see if they disclose some Cause of Action or raise some Questions that are fit to be decided by a Judge. Reference is made to the following Cases of **CHIEF SA DADA & 3 ORS VS OTUNBA ADENIRAN OGUNSANYA & ANOR (1992) 3 NWLR (PT.212) 754; (1992) 4 SCNJ 162, per KAWU, JSC @ 765**; **IRENETHOMAS VS DR OLUFOSOYE (1986) 1 NWLR (PT18) 669**; **HENRY STEPHENS ENGINEERING LTD VS SA YAKUBU (NIGERIA) LTD (2009) LPELR-1363 (SC) Per OGBUAGU, JSC (PP 16-17, PARAS G-B);THOMAS VS OLUFOSOYE (1986) 1 NWLR (PT18) 669; DADA VS OGUNSANYA (1992) 3 NWLR (PT. 232) 754. BARBUS & CO. (NIG) LTD & ANOR V. OKAFOR-UDEJI (2018) LPELR-44501 (SC) PER KEKERE-EKUN, J.S.C. (P. 24, PARASA-F)**

Based on the facts, the Claimants have presented the Court with a Memorandum of Understanding dated the 5th of March 2012 as the Fulcrum of their Action against the 6th – 8thDefendants. However, under Cross-Examination the 2nd Claimant clearly dissociated the 6th – 8th Defendants from being Parties to the Memorandum of Understanding, or Beneficiaries of the Obligation contained therein. They also stated that the alleged Facilitation Fee being demanded had nothing to do with the 6th – 8th Defendants.

The Claimant's narrow issue against the 6th – 8th Defendants is an alleged Civil Connivance; being the Circumvention of the 1st Defendant's Name on the Request for Proposal by the 6th – 8th Defendant, and this, according to the Claimant, denied them the Fruit of their Labour. The Claimants went on and on about a Collusion but failed to show how it happened, when it happened or where it happened.
It goes without saying that to impute a Criminal Activity within a Civil Action, and Unlawful Interference, the Claimant is mandated to establish his Case beyond a reasonable doubt. The Law will not settle for less. All throughout the gamut of the evidence adduced by the Claimant, the specificities of the commission of these Offences were not set out in their Pleadings, Orally or by Documentary Evidence, and therefore this Allegation falls flat on its face as unproved.

There is also the Doctrine of Privity of Contract, which is all about the Sanctity of Contract between the Parties to it. It does not extend to others from outside. This Doctrine will not apply to a Non-Party to the Contract who may have, unwittingly, been dragged into the Contract with a view to becoming a shield or scapegoat against the non-performance by one of the Parties. Reference is made to the following Cases of **EPEROKUN VS UNIVERSITY OF LAGOS (2004)**

16 WRN 90; (1986) 7 SC 106; (1986) 4 NWLR (PT. 34) 162, UKEJIANYA VS UCHENDU (1950) 13 WACA 45, KOKORO-OWO VS LAGOS STATE GOVERNMENT (2004) 24 WRN 61; (2001) FWLR (PT. 61) 1709; (2001) 11 NWLR (PT. 723) 237 AT PAGE 246 D - E. UNITED BANK FOR AFRICA & ANOR VS ALHAJI BABANGIDA JARGABA (2007) LPELR-3399 (SC) PER MUHAMMAD, JSC; ANDOGUNDARE & ANOR VS OGUNLOWO & ORS (1997) LPELR-2326 (SC) PER ONU, JSC (P14, PARAS E-F).

The Claimants failed to showto this Court via Oral and Documentary Evidence, how the 6th to the 8th Defendants were participants to their Agreement, and what part/functions they had to execute in **Exhibit A**.
The 6th to the 8th Defendants were not beneficiaries under this Agreement and no Party had any Right to Unilaterally conscript them to agree to the performance of any Functions stated in their Agreement.
Further, the Claimants failed to demonstrate the following: -
(1) What Acts of the 6th – 8th Defendants caused them to lose the "Fruit of their Labour", (2) Whether any of the Acts undertaken by the 6th to the 8th Defendants were Unlawful, and (3) Whether theirActs were done outside their Statutory Functions.

The Court finds in conclusion, that even though Reliefs 4, 7 and 9 prima facie evidenced a Reasonable Cause of Action against the 6th to the 8th Defendants, the Claimants failed to establish a Connivance, and a Right established against the 6th to the 8th Defendants that entitled them to an Order of Perpetual Injunction. As regards the Question of Cost, it is clear that Cost can only be awarded at the end of the resolution of the Issues, but in this instance, the 6th to the 8th Defendants did nothing to justify the institution of an Action against them personally. In the light of the fact that no liability was

established against them, this Court finds that the Prayer for Cost is untenable, and is accordingly refused.

The Second Issue up for consideration is**Whether there is any <u>Connection</u> between this Contract in <u>Exhibit A</u> and the Memorandum of Understanding between the Federal Capital Territory Administration (FCTA) and the 2nd Defendant in <u>Exhibit M</u>**.

The crux of the Claimants' Case is that **Exhibit M, particularly at Page 19, the Memorandum of Understanding between the FCTA and the 2nd Defendant, Urban Shelter Infrastructure Limited** is the outcome of their exertions based on their obligations in **Exhibit A, the Memorandum of Understanding between Urban Shelter Limited and the Claimants.**

Now, the Court shall place the Memorandum in **Exhibit A** and the Memorandum in Page 19 of **Exhibit M** side by side, to determine whether there is a connection between the Two Memos.

Exhibit A	**Exhibit M Page 19**
PARTIES**–Ami Properties Limited, Representatives of Stakeholders of the Allocation Authority, Hydrof Incorporation** and **Urban Shelter Limited**	**Federal Capital Territory Administration** and **Urban Shelter Infrastructure Nigeria Limited**
TERMS **- Ami Properties Limited** will use their expertise connection to negotiate with **the Ministry of Federal Capital Territory Administration** to secure a**<u>Public Private Partnership Concession Contract</u>**between the **Representatives of Stakeholders of the Allocation Authority** and **Urban Shelter Limited**	The **Federal Capital Territory Administration** intends to grant **Urban Shelter Infrastructure Limited** all that Piece of Land at Sheretti (B) District, Phase IV (South), FCT measuring about 245 Hectares (actual size to be determined in a Final Agreement) on the basis of **<u>Land-For-Infrastructure-Swap Model</u>** on terms and conditions to be mutually agreed between the Parties in a Final Agreement for the **<u>Development of Integrated District Engineering Infrastructure</u>**
LAND SIZE **-** The Representatives of Stakeholders of **the Allocation Authority shall**	**Urban Shelter Infrastructure Limited** has expressly held itself out to the **Federal Capital**

provide an Area of about <u>800 hectares</u>of Land for Infrastructural Works and Housing.	**Territory Administration** as having the Technical Competence and Financial Capability to **Design, Finance, Build and Deliver a Standard Integrated Engineering Infrastructure** at Sheretti (B) District measuring about **<u>245 Hectares</u>** (actual size to be determined in a Final Agreement) without any Financial or demand risk on the part of the **Federal Capital Territory Administration**
CONSIDERATION **–** on consideration of the aforesaid to be realised bythe Stakeholder of the Allocation Authority/Hydrof Incorporation**, Urban Shelter Limited hereby Irrevocably commits the Sum of N650, 000, 000 ONLY for the Representatives of Stakeholder of the Allocation Authority on <u>Receipt of Approval</u>**of the Prayer being sought from the Approving Authority	As statement of its commitment to the Proposed Project, **Urban Shelter Infrastructure Limited** had **established a Project Account** in the Sum of **N350, 000, 000.00**(Aso Savings & Loans, CBD Abuja, 0133396793) to be **monitored by the Federal Capital Territory Administration for the funding of the following activities** as a prelude to concluding negotiations on the Final Development Agreement
The Project will also evolvethe Effective Frame Work for **Efficient <u>Finance Solution for Housing Requisition</u>** in the Federal Capital Territory by creating an effective seamless link from the National Housing Fund (NHF), the Federal Mortgage Bank (FMBN) to the Primary Mortgage Institutions (PMIS)to the FinalBuyer**.**	The **Federal Capital Territory Administration** had **requested** for, and **received**, an **Investor Proposal** from **Urban Shelter Infrastructure Limited** on **the Proposed Project** to wit; the **<u>Provision of Integrated Engineering Infrastructure at Sheretti (B)</u>** District of Phase IV (South) of the FCT.
EXECUTION -Directors and Secretaries of **Ami Properties,** the **Representatives of the Stakeholder of the Allocation Authority, Hydrof Incorporation** and **Urban Shelter Limited** on the 5th of March 2012**.**	The **Honourable Minister for the FCT** and the Managing Director for **Urban Shelter Infrastructure**on the 6th of December 2012.

Clearly, it can be seen from the above that the Parties, Land Size, Objective and Consideration differ largely.

From both documents: -

1. The Parties in **Exhibit A** are not Parties to **Exhibit M**.
2. The Objectives are different; one is Public-Private Partnership and the other is a Land For Infrastructure Swap Scheme.

3. The Sizes are also different; **Exhibit A** states 800 Hectares, whilst**Exhibit M** states 245 Hectares.
4. The Consideration was not the same; **Exhibit A** stated Six Hundred, and Fifty Million Naira (N650, 000, 000. 00), whilst **Exhibit M** provided for Three Hundred, and Fifty Million Naira (N350, 000, 000.00).

Nothing in the Two Memos appeared to be related. They might as well have been standing on their own.

Further, a closer perusal of **Exhibit A**revealed that the 1st Claimant's **EXCLUSIVEROLE** specified in the Memorandum was"*to use their Expertise, Connection to Negotiate with the Ministry of Federal Capital Territory Administration to secure a* ***Public Private Partnership Concession Contract****between the Representatives of Stakeholders of the Allocation Authority and* ***Urban Shelter Limited***". The Provision that *"the Facilitators shallprovide an Area of 800 Hectares of Land"* was the Mandate placed on the Facilitators, who, from **Exhibit A** are identified as the Representatives of Stakeholders of the Allocation Authority with an Address in Bayelsa State.
It is trite that generally the word *"shall"* is interpreted in its Mandatory Sense. However, whether the word is used in its mandatory or directory sense depends on the context in which it is used. The word "shall" can also mean "May" where the context so admits. See the Case of**FIDELITY BANK PLC VS MONY & ORS (2012) LPELR-7819 (SC) @ 21 - 22 B – D** and**AMADI VS NNPC (2000) 10 NWLR (PT.674) 76 @ 97 - 98 H - A.** Although these authorities are in respect of the Applicable Principles in the Interpretation of Statutes, the Principles are just as relevant to the Interpretation of Documents.

Conversely, the Objective in **Exhibit M** was for Land For Infrastructure Swap and not a Public Private Partnership, which the Claimants' Power-Point Proposal in **Exhibit L** was hinged on.

In **Exhibit M**, the Land is located at **Sheretti B, Phase IV South** and **NOTFilin Dabo, Phase IV North**.

The Claimant in further proof, testified as to the efforts he made to fulfil his obligations under **Exhibit A**, stating that he procured a General Land Use Plan at his own Cost in respect of the **Identified Unallocated Area covering 553. 69 Hectares of Land located at Phase 4 North-West, Filing Dabo, Cadastral Zone D11 FCT**. As earlier pointed out, this Land Size and Location are not reflected in **Exhibit M**.

The Claimants have also severally claimed to act as a **'Facilitator'** for Urban Shelter Limited. However, these Claims were inconsistent with the wordings of **Exhibit A**, which referred to the Claimants as **"Initiators/Promoters".**

According to the 2nd Claimant, Mr. Salisu, in fulfilment of his EXCLUSIVE ROLE set out in Exhibit A; he carried out "direct exertions". He Prepared and Submitted a Written Proposal along with a Power Point Presentation under the 1st Defendant's Cover Letter dated the 15th of February 2012, for a **Public Private Partnership for Housing and Infrastructural Development**, outlining the feasibility of providing Infrastructural Works, Housing and Service Elements in respect of **Identified Unallocated** Expanse of Land, ***FILING DABO PHASE IV NORTH*****.** He had also highlighted the competence of the 1st Defendant to handle the Project, and in proof tendered **Exhibit L**.

Based on the above, the presumption is that the Claimants' Power-Point Preparation was specifically in respect of Filin Dabo. Then, on the 12th of April 2012, the President gave a directive to the Minister to engage the 1st Defendant in discussions towards realizing the Project for "Dabo".

From the above Analysis, it is clear that **Exhibit A** and **Exhibit M** are clearly different in terms of Parties, Purpose, and Size of the Physical Land. For there to be a connection, the Claimant must satisfactorily explain the disparities as analyzed above and link/connect the dots from his physical exertions expended in **Exhibit A**, to the eventual signing of **Exhibit M**.

The success of his Claim would depend on whether he was able to connect the dots in the ensuing Issues arising hereunder.

The Court would for expediency determine both **Issues Three and Four** simultaneously, which Issues are: -

3. Whether the Memorandum of Understanding in Exhibit A dated the 5th of March 2012 constitutes a Valid and Subsisting Contract between the Claimants and the 1st Defendants and whether an Agency Relationship was established.

4. Whether the 1st Defendant breached the Terms of the Contract between itself and the Claimants andallowed the 2nd Defendant to take the benefit of the Exertions of the Claimants in furtherance of Exhibit A, thereby failing to fulfil its Obligations to compensate the Claimants for their Exertions.

It is imperative that **Exhibit A** titled"Quadruple Memorandum of Understanding", as a Note or Memorandum should be sufficient, provided that it contains all the Material Terms of the Contract. Such facts as the Names or Adequate Identification of the Parties, the

Description of the Subject Matter, the Nature of the Consideration, and all these, comprise what may be called the Minimum Requirement.

However, the circumstances of each Case needs to be thoroughly examined, to discover if any Individual Term has been deemed material by the Parties; and, if so, it must be included in the Memorandum. See the Case of **HAWKINS VS PRICE (1947) CH.645; 1 ALL E.R. 689**. Provided, however, that the Document relied on by the Claimant does not contain all the Material Terms, it need not have been deliberately prepared as a Memorandum. The Courts have accepted as sufficient a Telegram, a Recital in a Will, a Letter written to a Third Party, and even a Letter written by the Defendant with the object of repudiating his liabilities. All that is required is that the Memorandum should have come into existence before the commencement of the Action brought to enforce the Contract. See also the Case of **FARR, SMITH & CO VS MESSRS, LTD (1928) 1 KB 397**.

A Memorandum of Understanding was defined in the Case of **STAR FINANCE & PROPERTY LTD. & ANOR VS NDIC (2012) LPELR-8394 (CA) Per OKORO, J.C.A. (Pp.18-19, PARAS E-B)** from the **Black's Law Dictionary (Seventh Edition) at Page 998**: to be equated with a Letter of Intent on **Page 916**, as a Written Statement detailing the Preliminary Understanding of Parties who plan to enter into a Contract or some other Agreement; it is non-committal in writing, and is preliminary to a Contract. The Supreme Court also defined a Memorandum of Understanding in the Case of **BPS CONSTRUCTION & ENGINEERING CO. LTD VS FCDA (2017) LPELR-42516 (SC) Per KEKERE-EKUN, JSC (Pp. 20-21, PARAS B-B)** from the **Black's Law Dictionary, 8th edition at Page 1006**, wherein the Reader, is again directed to the Definition of a "Letter of

intent", at **Page 924**. The Supreme Court added that a Letter of Intent is not meant to be binding, and does not hinder the Parties from bargaining with a Third Party. Business People typically mean not to be bound by a Letter of Intent, and the Courts ordinarily do not enforce one; but the Courts occasionally find that a Commitment has been made.

It was held from the above Definition that a Memorandum of Understanding or Letter of Intent, merely sets down in writing what the Parties intend will eventually form the basis of a Formal Contract between them. It speaks to the future happening of a more Formal Relationship between the Parties and the steps each Party needs to take to bring that intention to reality. From the definition given above, notwithstanding the signing of a Memorandum of Understanding, the Parties thereto, are not precluded from entering into negotiations with a Third party on the same subject matter.

A Memorandum of Understanding is not an Offer as well as being not Definite, but is subject to the signing of a Contract.For an Offer to be capable of becoming binding on Acceptance, it must be definitely clear and final. A Document that merely provides for Signing of an Agreement in the future does not amount to an Offer. It is merely a Preliminary Move in Negotiation, which may lead, or may not lead to a Definite Offer being made by one of the Parties to the Negotiation. At this stage when the Terms and Conditions of the Agreement are not known, and are not contained in the document so signed, it will be foolhardy for any Party to claim that there is an Offer and Acceptance.

Learned Counsel representing the 1st – 5th Defendants contended that **Exhibit A** does not qualify as an Offer, or an Acceptance, but was an Invitation to Treat or Negotiate. According to him, **Exhibit**

Awas conditional and contingent upon the occurrence of an event. He referred the Court to **Clause 3** of **Exhibit A** to state that the 1st Defendant, only committed to N650, 000, 000.00 upon receipt of the Approval and the Grant of 800 Hectares of Land.

In Response, Learned Counsel to the Claimants argued that **Exhibit A** is a valid and enforceable Contract, and the evidence of a consensus ad idem is proof that a Valid Contract exists, and he placed reliance a Plethora of Cases. Further, he contended that **Exhibit A** was not conditional or contingent, and had become binding, the minute the Claimants accepted the Contract. However had that been the intendment, the Parties would have added another Clause, which would anticipate the execution of a subsequent Contract, which was not the case in this case. According to him, in Commercial Transactions, the nomenclature Parties give to a Contract does not define the Character of the intentions of the Parties. The Name or Title given to a Contract in form, does not determine its substance or character. The most essential feature that gave**Exhibit A,** the character of an enforceable Contract is the Agreement of Parties as to the Consideration contained.

As regards the Contractual Value of 'Letters of Intent' (Also known as Memorandum of Understanding), it is clear that the Parties intended that **Exhibit A** would be much more than a mere Letter of Intent. Learned Counsel then cited the Dictum of **Judge Humphrey Lloyd QC**, in the Case of **EDRC GROUP LIMITED VS BRUNEL UNIVERSITY (2006) ABC. L. R 03/29**, to the effect that a Letter of Intent comes in all sorts of forms. Some are merely expressions of hope; others are firmer but make it clear that no legal consequences ensue; others presage a Contract and may be tantamount to an Agreement 'Subject to Contract'; others are Contracts falling short of

the full-blown Contract that is contemplated; whilst still, others are in reality, a Contract, in all, but name.
According to him, **Exhibit A** settled all essential conditions that were necessary and left no vital term or condition unsettled, and he made reference to **Paragraphs 11, 12, 13, 14, and 15** of the Claimants Statement of Claim, which he claimed the 1st -5th Defendants admitted, and he placed reliance on the Case of **LEADWAY ASSURANCE CO. LTD VS ZECO NIG LTD (2004) 11 NWLR (PART 884) 316 PAGE 13 PARA C-E per KATSINA ALU JSC**.

Now, to be able to determine the validity of **Exhibit A,**it is imperative for the Court toinitially determine the admissibility of **Exhibit L,** which was provisionally admitted into evidence during the Trial. This Exhibit is the **State House Abuja Letter from the Presidency** addressed to the **Hon. Minister of the FCTA.**

Learned Counsel representing the 1st – 5th Defendants,who objected to the admissibility of **Exhibit L**, argued on the ground that the Documents are not properly certified by the Issuing Authority or the Source, and there is no proof that the Claimants applied for Certification of the Documents, as the mere evidence of payment doesn't authenticate that there was proper application. He stated that the Claimants could not produce the Original and urged the Court to expunge the Exhibit and not place reliance on it.

In turn, Learned Counsel to the 6th – 8th Defendants also objected to its admissibility on the ground that only the First Document was a Public Document, that the rest were Private Documents and there was no relation between the first document marked restricted, and the subsequent Private Documents attached.
He also argued that the Certification was improper by Law since they emanated from the Presidency. The proper place for them to be

certified is the State House, and not the FCTA. Otherwise, the Federal Ministry of Information may as well certify Documents emanating from the Federal High Court. He then urged the Court to reject the Private Documents, which need no certification, and hold that the first Document was wrongly certified.

The Claimants' Counsel in response to their contentions, cited the Provisions of **Section 104, 104(3) and 105 of Evidence Act 2011** as to the Proper Public Officer to issue a Certified True Copy of a Public Document and Custody of the Document. He also made reference to **Section 146** that there is a presumption of genuineness/regularity in favour of Certified True Copies, and it is not the Law that only the Officer who issued a Public Document, can certify same. He stated that in this case, the Public Document was transmitted from the State House to the FCDA along with other Documents, where a Public File is kept, forming part of Public Records, from which the FCDA can issue a Certified True Copy upon the Payment of the Requisite Fees.

Therefore, **Exhibit L** was properly and duly certified by the FCDA, and he urged the Court to discountenance the Arguments of Counsels to Defendants.

Now, from their above contentions, the Court finds it imperative to determine**first,whether Page 1 of the Document in Exhibit L, being a Public Document, was Properly Certified by the Appropriate Authority, and Secondly, whether the Remainder Documents attached are Private Documents, and whether it was improper to certify them**.

It is trite Law that a Public Document is a Document containing Records, Actions and Decisions of a Public Officer, see the Cases of

UMOGBAI VS AIYEMHOBA (2002) FWLR (PT 132) 192 AT 198 AD, (2002) 8 NWLR (PT 770) 687 AT 694 CE; ANUFORO VS OBILOR (1997) 11 NWLR (PT 530) 661 AT 676 EG (CA)

Section 104 of the Evidence Act states that*"**(1)**Every Public Officer having the Custody of a Public Document, which any Person has a Right to Inspect, shall give that Person on demand a Copy of it on Payment of the Legal Fees prescribed in that respect, together with a Certificate Written at the Foot of such Copy, that it is the True Copy of such Document or Part of it as the Case may be. **(2)** Such Certificate as is mentioned in **Subsection (1)** of this Section shall be dated and subscribed by such an Officer with his Name and his Official Title, and shall be sealed, whenever such Officer is authorized by Law to make use of a Seal, and such Copies so certified shall be called Certified True Copies."*

Under this Law, an Applicant who needs a Copy of any Public Document applies to the **Officer having the Custody** of that Document to make a New Copy from the Copy in his Custody. The Public Officer shall upon demand, give a Copy upon the Payment of the Prescribed Fees with a Certification at the Foot of the Document, stating that it is a True Copy of its Original. The Certificate shall be dated and Subscribed by such Officer with his Name and Official Title. The Applicant must have the Right to Inspect the Public Document before the Officer having the Custody must issue the same to the Applicant. The Payment of the Legal Fees is a Secondary Qualification. The Certification is an Authentication of the Secondary Copy of any Document, and for a Public Document in Private Possession to be admissible, the Document must be certified. If the Public Document in the possession of a Private Person is an Original, there is no requirement for Certification.

The Supreme Court Case of **TABIK INVESTMENT LTD. VS GT BANK PLC (2011) 17 NWLR (PT 1276) 240 PAGES 258 B-D** held that any Certified True Copy of a Public Document must contain the following: - (1) The Endorsement or the Certificate, (2) The Date of Certification, (3) The Signature of the Certifying Officer, (4) The Name of the Certifying Officer, (5) The Designation of the Officer, (6) Payment of the Prescribed Fees. A Certified True Copy with the first five conditions has substantially satisfied the Section.

Now, it is clear that the Claimant had obtained the Documents in **Exhibit L** directly from the FCTA, who had proper custody of the Documents. The Covering Letter was addressed directly to the Minister and it clearly stated in the First Paragraph that the attention of the Minister should be drawn to the President's Directive on the Third Page. This Referral contained a Directive to the Minister, and it is only natural that the Recipient of a Letter can validly certify the Documents in its Records. This Letter was not written to the Minister in his Private Capacity, but was in regard to his Public Functions. Therefore, the Certification by the FCDA was rightly carried out in respect of the Covering Letter. The Certification of the Covering Letter could in this instance, be rightly done by the Minister and the State House.

As regards the Attachments to this Letter, it appears that they were attached to the Covering Letter, and formed part of the Documents in the Custody of the Minister. This, without more, could also be tendered into evidence as an Exhibit.

Therefore, without further ado, the Objection in regard to the Admissibility of **Exhibit L** is found untenable, and is accordingly dismissed. The Provisional Acceptance of **Exhibit L** into evidence, is hereby, formally admitted as a Proper Exhibit before this Court.

Turning back to **Exhibit A**, a close perusal would show that the Parties to this Memorandum of Understanding made majorly Definite Obligations for each Party. There was no futuristic action or condition imposed before their Obligations will kick into effect. It was specifically and expressly agreed that Development Expertise would be deployed, the Yearly Disbursement to the Facilitator was staggered, and finally, the Consideration was set out expressly. There was no contemplation and no stipulation of a Condition Precedent to the coming into effect of their Obligations under this Agreement.

It was an Agreement to work out the Modalities of each of the Parties Role in regard to the Project.

The whole essence of this Agreement in **Exhibit A** was to define each Parties Role, Functions and the Consideration to be paid for the Sole Purpose of Facilitating an Acquisition of Land within the FCT. Therefore, as long as each of the Roles and Performance of each Party were clearly defined, the Agreement was complete to all intents and purposes.

All the Material Terms were clearly set out and it is important to note that each Parties actions within the Agreement, were to come into existence **immediately** and not before the commencement of any action to commence the Contract.

The point being made here is, that to the extent that it was an Agreement to identify and assign Roles and Fees for the Parties, the Memorandum of Understanding was a Completed Document, as far as the Quest for an allocated plot of Land is concerned.

To the extent that these Roles and especially the Fees, were hinged on the actual acquisition of the Land, then it was not a Final Agreement per se.

It is noted that there was no Return Date to ascertain how far they had achieved their purpose before a Formal Contract could be entered into, and therefore, the Parties duly executed it. The fact of execution made it a binding document.

A very important determination at this stage is the question of whether or not the Claimants acted as an Agent for the 1st Defendant, or even the Chairman of the 1st Defendant. This Question is closely related to the Corporate Legal Personality of the 1st and 2nd Defendants.

From the Pleadings and through his Oral Testimony, the 2nd Claimant had personally testified by admitting that both Companies had Separate Legal Personalities, and therefore, to begin to analyze their respective Legal Personalities would be a surplusage as it is clear that both Companies having separate existence, although affiliated, can legitimately pursue separate business interests. It is immaterial whether they share common party representation and also immaterial the quantum of shareholding they have in each other. The ultimate fact is that they are Separate in the Eyes of the Law.

Throughout the Pleadings, as well as their Oral Testimony, the 2nd Claimant had projected the fact that he was an Agent of the 1st Defendant. It is necessary to immediately point out, that he did not claim to be an Agent of the 2nd Defendant.

It is trite Law that an Agency Relationship may be created in any One of the Three Main ways: -

a. By an Actual Authority to Contract given by the Principal to the Agent.
b. By the Principal's Ratification of a Contract entered into by the Agent on the Principal's Behalf, but without its Authority (i.e. the Authority is retrospectively conferred).
c. By an Ostensible Authority conferred on the Agent by the Principal, even though no Actual Authority had been given.

Normally, the Authority given by the Principal to its Agent is an Express Authority, enabling the Latter to bind the Former by acts done within the Scope of that Authority. Such Authority may, in general be given orally. But in some Cases, it is necessary that the Authority should be given in a Special Form. In certain transactions, for example, Conveyance of Land, the Authority should normally be given by Deed.

The Authority of an Agent may also be implied, but an Express Limitation can negate such Implied Authority. In most Cases, Implied Authority is said to be incidental to an Express Authority or required due to the circumstances of the Case. Therefore, if an Agent is authorized to conduct a particular trade or business, or to perform certain duties, that Agent has Implied Authority to do such acts, as are usual in the trade or business, or ordinarily incidental to the due performance of the duties.

Secondly, the Principal may ratify such acts conducted by the Agent on his Principal's behalf, but without his Principal's Authority. The Principal may then subsequently ratify after the fact of being aware of a pending commitment made without his knowledge and

authority, by adopting the benefits and liabilities of such a Contract made on his behalf.

Finally, there is Ostensible Authority, where a Principal may by words or conduct create an inference that an Agent has Authority to act on his behalf, even though no Authority exists in fact. In such a Case, if the Agent contracts within the LIMITS of the apparent Authority, although without any Actual Authority, the Principal will be bound by the Third Parties as a result of the Agent's Acts. The Principle of Estoppel could be invoked to compel the Principal being bound. Thus, where one Person expressly or impliedly represents another to have authority to act as an Agent, so that a Third Party reasonably believes the person who is so held out to possess that authority, and deals with that person in reliance on the representation so made, the Person making the representation, will be bound to the same extent as if Actual Authority had in fact been conferred. Reference is made to the Cases of **SHEARSON LEHMAN HUTTON INC VS MacLAINE, WATSON & CO LTD (NO.2) (1988) 1WLR AT 16 and POLISH SS CO VS AJ WILLIAMS FUELS (OVERSEAS SALES) LTD, THE SUWALKI (1989) 1 LLYOD'S REP 511.**

It is however important to note three things here. The first is that the Principal must make the representation and ostensible authority cannot be created simply by the representation made by the Agent. Secondly, the Third Party must rely on a representation of the Agent's authority to act as Agent. Finally, the Agent's want of authority must be unknown to the Third Party.

Now, turning to the Case, the Claimants have stated that they wrote to the 1st Defendant, requesting for a Letter of Introduction. This Request is evidenced in **Exhibit C dated the 20th of April 2012**. The

Second Paragraph of this Letter is very instructive, and it states thus: "Stemming from your inability to accompany, due to certain exigencies, the delegation that will meet the Hon. Minister, in part, occasioned by the proposed MFCTA's "Land-for-Infrastructure Swap Procurement Method", the Facilitators have demanded a Letter of Introduction by your Company to the Hon. Minister through us." This simply means that there was no written express engagement as an Agent. It also means that the MFCTA's Facilitators did not perceive an implied authority, as they have naturally assumed him to be their representative.

To qualify under the Category of Ostensible Authority, the 1st Defendant would have needed to personally portray to the Minister the fact that the Claimants were their Agents. It is clear, that MFCTA did not rely on the Claimants' assertion that they were indeed Agents of the 1st Defendant.They were also unaware of the Claimants' want of authority and clearly needed confirmation directly from the 1st Defendant.

This Confirmation Letter together with an Appointment Letter was missing throughout the Trial, and even through the Length and Breadth of the Emails and Text Messages in **Exhibit H** showing any appointment, or even hinting by inference to any such representation.

The Claimants' relied on certain Meetings and Phone Calls between the 2nd Claimant and Barr Farouk, as well as his preparation of a Power-Point Presentation, Collation of Documents as his evidence to show that he was the Agent of the 1st Defendant.

The 2nd Claimant had testified that he received aphone call from Barrister Faruq on April 23rd 2012, wherein he was informed of the

necessity for the Managing Director of the 1st Defendant to see the Minister, whereupon he replied that the Managing Director would meet in May 2012, upon his return.

According to the evidence, the 2ndClaimant chose not to wait till May 2012, and continued to engage Barrister Faruq and FCTA directly.

The only confirmation of this engagement has to be either by Documentary Evidence or by the Oral Testimony of Barrister Faruq, who would have confirmed his Representation and the fact that the FCTA preferred the Application for Public-Private Partnership to be varied to an Application for Land for Infrastructure Swap. The evidence of this Meeting needed to have been produced, either through the Minutes of the Meeting, and if Oral, then Barrister Faruq was in the best position to validate this discussion. Also, the Claimants had to have presented Positive Evidence that the 1st Defendant indeed indicated an interest in the Land for Infrastructure Swap, and gave the Claimants approval to go ahead in negotiations with Barrister Faruq.

According to Learned Counsel to the Claimants, the 1st to the 5th Defendants by their conduct had varied the Terms in **Exhibit A** via Correspondences and **Exhibit L,** to now reflect the contents in **Exhibit M**. By their subsequent action to the Written Update submitted to them by PW1, which they duly acknowledged in **Exhibit C**, the 1st – 5th Defendants, particularly the 1st and 3rd Defendants, had induced the Claimants to believe the representation and focus of **Exhibit A** had changed from what was contemplated as *"Land Concession in Filin Dabo"* to *"Land Swap in Sheretti (B) District".* Therefore, they are estopped from subsequently denying this representation, as they now seek to do.

It is clear that a Contract under Seal can be varied, as an Oral Contract may rescind it. Reference is made to the Case of **BERRY VS BERRY (1929) 2 KB 316**. A Simple Contract again, whether in writing or not may be varied by Subsequent Agreement, either written or oral. This is in no way in conflicts with the Rule that Extrinsic Evidence is not admissible to vary or add to the contents of a Written Document, for that Principle merely refers to the ascertainment of the Original Intention of the Parties. It has no application to the Case of a Subsequent Variation. But a Contract required by Law to be in writing, or be evidenced by writing must be varied in writing. See further the Cases of **GOSS VS LORD NUGENT (1833) 5 B & AD 58, NOBLE VS WARD (1867) LR 2 EX 135; UNITED DOMINIONS CORP (JAMAICA) LTD VS SHOUCAIR (1969) 1 AC 340 AND; NEW HART BUILDERS LTD VS BRINDLEY (1975) CH 342.** The changes must go to the Very Root of the Original Agreement and should have made manifest, the Intention in any event of a Complete Extinction of the First Contract, and not merely the desire of an Alteration, however sweeping, in terms which leave it still subsisting.

It is worthy of note that the Managing Director of the 1st Defendant, who testified before the Court distanced himself from this Letter in **Exhibit C**. This was cleverly done as he was also called to represent the 2nd Defendant as its Chairman.

This Letter cannot possibly represent a "variation", because it was unilaterally stated, and there was nothing to show that the Minister requested for a variation. The only people that could validate the assertions were Barrister Faruq and the Minister himself, and even if, they refused to appear before the Court to testify, the Claimants had the option to summon them under a Subpoena ad Testificandum. The failure to do so coupled with the fact that the

Claimant had earlier stated that he was called on the phone to apply for the land swap scheme, leaves the contention that there was a variation hanging aimlessly in the air.

On the Fourth Issue of **Whether the 1st Defendant breached the Terms of the Contract between itself and the Claimants and allowed the 2nd Defendant to take the benefit of the Exertions of the Claimants in furtherance of Exhibit A, thereby failing to fulfil its Obligations to compensate the Claimants for their Exertions**

Now, turning to the Agreement in **Exhibit A**, and the eventual happenings in **Exhibit M**, it is clear that there must be Connecting Dots.

The Agreement in **Exhibit A** was for an Unidentified Land of about 800 Hectares within the FCT, and this appears to be subsequently identified in **Exhibit L, at Page 3**, where he urged the President to approve the allocation of the identified unallocated District in Phase IV North. Strangely, within his Power-Point Presentation, he referred to 700 Hectares.

In Paragraph 19 of the 2nd Claimant's Witness Statement on Oath, he averred that he prepared a General Land Use Plan in respect of 553.69 Hectares at Phase IV North-West, Filing Dabo District, Cadastral Zone D11, FCT.

The above demonstrates the inconsistencies in the Claimants' presentation of evidence. The Witness for the 1st – 5th Defendants had stated that the Memorandum of Understanding in **Exhibit A**was not terminated because they were hoping the Claimants would make good on his promise regarding Sabongida District.

Now, it is clear that the President of the Federal Republic of Nigeria approved the Public Private Partnership on the 12th of April 2012. The Claimants needed to have shown evidence of his Application on behalf of the 1st Defendant for the purposes of a Land For Infrastructure Swap Scheme. This is particularly important in view of the fact that Barrister Faruq did not inform him of the Minister's Unilateral Conversion from Public Private Partnership to a Land For Infrastructure Swap Scheme. Clearly, the Memorandum of Understanding in Exhibit A, the Power-Point Presentation etc. would not be applicable to the Land For Infrastructure Swap Scheme, since the modus operandi had changed. The averments in the Statement of Claim had in fact validated the Court's position that the Latter Scheme was different.
The Claimant needed to show their active participation in this conversion, as the advice from Barrister Faruq was to "APPLY".

Further, on the 10th of May 2012, Barrister Faruq issued the 1st Defendant a Request for Proposal, which the 2nd Claimant collected the next day. This Request was recalled within a few hours, as an error was said to have occurred on the Letter. This, of itself, is very strange indeed. If truly Barrister Faruq had notified the 1st Defendant through the 2nd Claimant, of the need to re-apply under a different Scheme, it would never have been termed as an error. All Parties would have been satisfied that their efforts paid off.

It is equally important to recall that on the 11th of May 2012 when the 2nd Claimant initially presented the Request for Proposal Letter to the 1st Defendant, and before its recall, the Managing Director had directed the 2nd Claimant and the Managing Director of the 2nd Defendant, Mr. Taofiq to work on the Proposal.

When the Letter was recalled on this date, the 11th of May 2012, it is clear that by this date, the Application by the 2nd Defendant was in the works, because on this day, Barrister Faruq had realized that the Request for Proposal ought to have gone to the 2nd Defendant as opposed to the 1st Defendant.

The Request for Proposal issued to the 2nd Defendant had to be based on their Formal Application to the Minister. The fact the 2nd Defendant is not before the Court is irrelevant because the Claimants could have called for it, but did not. The burden of proof for the 2nd Defendant to show that they were legitimately assigned the Request for Proposal based on their own Application did not arise. It was up to the Claimants to challenge their entitlement. This, they failed to do.

This fact also knocks off the Claimants contention that the 7th Defendant issued two Requests for Proposals with the same Reference Number. The fact that the Land allocated was the same, with the same Size and Location, naturally signifies that an error indeed occurred.

The absence of the Application by the 1st Defendant for this Swap Scheme lends credence to the fact that the 1st Defendant never applied for it in the first place. If this were not so, the Application would have been called for by the Claimants through Subpoena. They had subpoenaed all other Documents except this one.

From May to December 2012, about Eight Months, the 2nd Claimant claimed he was in actual pursuit of the Processing for this Scheme, but there was no positive evidence of this pursuit before the Court. The 2nd Claimant claimed to have made Key Contacts within the Presidency but did not call any of the Contacts or tender any

Documentation to show how much he exerted and expended towards the actualization of **Exhibit M**.

Further, if truly the 2nd Claimant was a Representative of the 1st Defendant, the Publication of the Signing In Ceremony of the 6th of December 2012 should not have caught him by surprise. It is obvious that there was "No Need to Know".

It also buttresses the fact that he could possibly not be their Agent or Representative. He certainly was NOT an Agent of the 2nd Defendant, and for him to claim entitlement and the Right to Know, he needed to convince the Court that he is an Agent of the 3rd Defendant, Mallam Ibrahim Aliyu **directly.**

Further still, since the 2nd Claimant claimed to have participated in the Collation of Documents for the 1st Defendant, the fact that the 2nd Defendant was granted the Land Concession has not exempted the 1st Defendant from stillbeing granted a Land Concession sometime in the future. Until the Claimants can prove that this is the Final and Last List for such Schemes by the Minister, it is premature to cry foul play. The Claimants are expected to justify their very own exertions and inputs into the success of the grant to the 2nd Defendant.

By the Claimants' own averment, he has no Legal Right to challenge any benefit accruing to the 2nd Defendant, and this is even poignant when faced with the reality that Sheretti B, said to be in the South, is not the same as Dabo Phase IV, said to be in the North. They are Two Poles apart.

Besides, as of the 10th of May 2012 when the Minister issued a Request for Proposal under the Land Swap Scheme as opposed to the Public Private Partnership, the Terms in the Memorandum of

Understanding had fundamentally changed and there need to have been an amendment that effect.

This then leads to the question of whether there was a Breach and the Court cannot close its Eagle Eyes to the Conduct of the Parties in the Transaction between them. Of Vital Importance, is the fact that a Court of Law has a Duty to construe the surrounding circumstances including Written or Oral Statements so as to discover the Intention of the Parties. Reference is made to **OWONIBOYS TECHNICAL SERVICES LTD VS UBN LTD (2003) 15 NWLR (PT 844) PG545; SE CO LTD VS NBCI (2006) 7 NWLR (PT978) PG201; and OMEGA BANK NIG PLC VS OBC LTD (2005) 8 NWLR (PT928) PG547**.

To determine whether a Claimant is entitled to a Remedy, where he has established a Right, is to look into the Substance of an Action and not the Form. A Person seeking to enforce his Right under a Contractual Agreement must show that he has fulfilled all the Conditions Precedent and that he has Performed all those Terms which ought to have been Performed by him.

From the Claimants' Averments, particularly **Paragraphs 11, 12 and 13**, as well as the date **Exhibit A** was executed, it appears that some of the Claimant's exertions were before **Exhibit A** was executed.

The Question therefore, that begs to be asked is whether the Resources, Goodwill and Industry expended by the Claimants, were incorporated into the Memorandum of Understanding in **Exhibit A**? The Claimants have not through direct or oral evidence demonstrated what exertions or efforts of theirs that was expended and reflected in the Memorandum of Understanding. They have failed to tender any Receipts or Agreement in proof of this. The

Memorandum did not reflect Dabo, 553 Hectares, a General Land Use Plan or Feasibility Works and Lobbying Works.

Finally, it is important to bring to bear the Role of the Claimants as Initiators/Promoters, who were to bring their expertise connection to negotiate with the Ministry of FCT to secure a Public Private Partnership Concession Contract between the Facilitators and the Executors. There was no Payment Scheduled for the Claimants in **Exhibit A**. Under the Paragraph that set out the specific and explicit Agreement of all the Parties, the Consideration in Clause 3, in the Sum of Six Hundred and Fifty Million Naira (N650, 000, 000.00) was granted to the Facilitators *"on receipt of the Approval of the Land by the Approving Authority".*

In this Quadruple Agreement the Facilitators were listed as *"the Representatives of the Stakeholders of the Allocation Authority"*, as opposed to the 1st Claimant.There was no Money ascribed or granted to the Claimants in any manner, and unless they can justify how they were Facilitators, they have no claim whatsoever.

Finally, on the Fifth and Last Issue for determination, which is **whether by the Totality of Evidence adduced, the Claimants have proved their Claims and are entitled to the Remedies and Reliefs sought**.

It is clear from the totality of all the Evidence before this Court and analyzed above that the Claimants have failed to establish their Case on the Balance of Probability to have any Financial Entitlement to the proceeds of **Exhibits A & M**. Having failed to prove their Case in its entirety, it is accordingly dismissed.

Therefore, in conclusion: -

- **A Declaration will not be made** that the Memorandum of Understanding dated the 5th day of March 2012 duly executed by the Claimant and the 1st Defendant, in which the Claimants were engaged to facilitate the approval of a Land Concession under a Public-Private Partnership Policy of the Federal Capital Territory Administration for the purpose of Infrastructure Development and Housing within the Federal Capital Territory (The Project), together with all Verbal and Written Communications, Text Messages and Oral Discussion Exchange between the Parties, created a Valid and Subsisting Contract between the Claimants and 1st Defendants;

- **A Declaration** will not be made that the Award of 245 Hectares of Land in Sheritti B District of the Federal Capital Territory under the Land Swap Program by the 6th Defendant in favour of the 2nd Defendant was in consequence of the direct exertions of the Claimants, in pursuance and fulfilment of the Claimants obligations under the Memorandum of Understanding dated the 5th day of March 2012, duly executed between the Claimants and the 1st Defendant;

- **The Court declines to Declare** that upon the Award of the 245 Hectares of Land in Sheritti B District of the Federal Capital Territory under the Land Swap Program by the 6thDefendant in favour of the 2nd Defendant, the Claimants – having performed their obligations under the Memorandum of Understanding dated the 5th day of March 2012 – became entitled to the Compensation agreed between the Claimants

and the 1st Defendant under the said Memorandum of Understanding; and that the failure/neglect/ refusal by the 1st and 2nd Defendant to pay same to the Claimants amounts to a Fundamental Breach of the Contract between the Claimants and the 1st Defendant;

- **The Court refuses to Declare** that the Role-played by the 2nd. 3rd, 4th, 5th, 6th, and 7th Defendant in awarding the Land to the 2nd Defendant and not the 1st Defendant as intended, constitutes calculated connivance to circumvent and harm the Economic Interests of the Claimants and therefore amounts to acts of Civil Conspiracy and Intentional and Unlawful Interference with Economic Interests against the interests of the Claimant;

- **No Order is made in respect of the following** directing: -

  That the 1st – 5th Defendants jointly and severally should specifically perform their Obligations by immediately paying to the Claimants, the Sum of N650, 000, 000.00 (Six Hundred and Fifty Million Naira), being the agreed Compensation now due to the Claimants for the Facilitation Services rendered to the 1st – 5th Defendants in actualising the Award of Land to the 1st – 5th Defendants, as contemplated under the Memorandum of Understanding dated the 5th of March 2012;

- **As regards the ALTERNATIVE Prayers, No Order** directing the 1st – 5th Defendants jointly and severally to pay to the Claimants, the Sum of N350, 000, 000.00 (Three Hundred and Fifty Million Naira) or any Sum so adjudged as adequately Compensatory on a Quantum Meruit basis, for Services

rendered by the Claimants in respect of the Award of the 245 Hectares of Land in Sheritti B District of the Federal Capital Territory to the 2nd Defendant by the 6th Defendant, pursuant to the Memorandum of Understanding dated the 5th of March 2012;

- **IN FURTHER ALTERNATIVE, No Order**is made directing the 1st -5th Defendants jointly and severally to pay to the Claimants, the Sum of N3, 000, 000, 000.00 (Three Billion Naira only) as **General and Aggravated Damages** for loss of earning and profits occasioned to the Claimants by the 1st – 5th Defendant's circumventions of the Claimant's Economic Interests and Conspiracy to injure his Business;

- **No Order is made** directing the Defendants jointly and severally to pay to the Claimants the Sum of N5, 000, 000.00 (Five Million Naira) being Counsel's Fees and Costs incurred in filing this Suit;

- **No Order is made** awarding **Post-Judgment Interest** on the Total Sum so adjudged by this Honourable Court as payable to the Claimants at the rate of 10% per annum, until full satisfaction of the Judgment Sum.

- **No Order** of **Perpetual Injunction is made** restraining the Defendants, by themselves, their Agents, Privies, or anyone claiming through them, from developing or carrying out any acts, or exercising any rights howsoever, on the Parcel of Land measuring 245 Hectares of Land Sheritti B District of the Federal Capital Territory, in pursuance of the Land Swap Concession awarded to the 2nd Defendant herein, without first

paying the Claimants the Fees adjudged due to them under the Memorandum of Understanding dated the 5th of March 2012.

Judgment is given in favour of the Defendants.

HON. JUSTICE A.A.I. BANJOKO
JUDGE