

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 19TH DAY OF NOVEMBER 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 13 APO - ABUJA

SUIT NO. CV/1147/14

BETWEEN

1. EUTAW CONST. & DEV. NIG LTD.	}	CLAIMANTS
2. EUTAW CONST. CO. INC. U.S		

AND

CENTRAL BANK OF NIGERIA DEFENDANT

JUDGEMENT

The Claimants are private limited liability companies. The summary of their claim before the Court, as gathered from their pleadings, is that sometime in February, 2011, the Defendant awarded to them contract for the refurbishment of the Defendant's Branch Building in Akure, Ondo State, at a total cost of ~~₦4,013,927,628.67k~~; which contract site the

Defendant formally handed over to them sometime in March, 2011. The case of the Claimants is further that, apart from committing resources to preparing working drawings and mobilizing to site, they also caused their bankers to issue **Performance Guarantee** and **Advance Payment Guarantee** to the Defendant in order to demonstrate their financial capability to execute the contract.

However, after they had put all machineries in motion to commence execution of the contract, the Defendant sometime in May, 2011, informed the Claimants that she received a letter dated 11/04/2011, purportedly written by the Claimants' representative to inform the Defendant of their incapability to perform the contract; which purported representation the Claimants promptly denied and disclaimed and further reassured the Defendant of their readiness and capacity to execute the contract; but that the Defendant, not being satisfied with the

Claimants' representations, caused the contract to be formally terminated by letter of 11/10/2011 and proceeded to re-award the contract to another company by name **XYZ Engineering Nigeria Limited**, by letter dated 20/10/2011.

The Claimants contended that the Defendant breached the contract entered to between them by prematurely terminating the same, causing them to incur huge financial losses and damages.

Being aggrieved by the Defendant's alleged breach, the Claimants commenced the instant action, by Writ of Summons and Statement of Claim filed in this Court on 28/03/2014; and by their operative Further Amended Statement of Claim filed with leave of Court on 17/01/2018, they claimed against the Defendants the reliefs set out as follows:

- 1. An order declaring that a valid contract for the refurbishment of CBN Akure Branch Building***

between the Plaintiff Company and the Defendant exists.

2. An order declaring that the Defendant is in breach of the said contract for the refurbishment of CBN Akure Branch Building.

3. An order for special Damages in the total sum of One Billion, Seven Hundred and Forty Five Million, Three Hundred and Twenty Four Thousand Naira (₦1,745,324,000.00).

4. An order for general damages in the sum of Five Billion Naira (₦5,000,000,000.00).

5. An order for compensation for loss of anticipated profits in the sum of One Billion, Two Hundred Million Naira (₦1,200,000,000.00).

6. An order for exemplary damages in the sum of Five Billion Naira (₦5,000,000,000.00).

7. An order for interest pursuant to the Central Bank of Nigeria maximum commercial interest rate.

8.30% interest on judgment sum from the date of judgment to the date of final liquidation.

The Defendant joined issues with the Claimants and contested their claim by filing her operative *Amended Statement of Defence* on 27/05/2019. Her case, in a nutshell, is that there was no definite enforceable contract between the parties; particularly more so that the Claimants have, through their representative, expressed incapacity to perform the same; and as such the issue of breach and damages cannot arise in the circumstances.

At the plenary trial, one **Edmund Nosegbe**, the *Managing Director* of the 1st Claimant testified as sole witness for the Claimants and tendered a total of **thirty (30)** sets of documents in evidence as exhibits to further support the Claimants' case. He was subjected to cross-examination by learned counsel for the Defendant.

The Defendant equally fielded only one witness, by name, **Eviama Louis Onovre**, a *Senior Manager* in her employment and the *Site Manager* for the project in issue. The witness tendered in evidence a total of **sixteen (16)** sets of documents as exhibits and was also duly cross-examined by the Claimants' learned senior counsel.

At the close of plenary trial, parties proceeded to file and exchange their written final addresses in the manner prescribed by the **Rules** of this Court.

The Defendant filed her final written address on 27/01/2020 wherein her learned counsel, **T. J. Aondo, Esq.**, formulated three (3) issues as having arisen for determination in this suit, namely:

- 1. Whether there is any feature of the suit that renders incompetent or deprives this Honourable Court of its exclusive jurisdiction to entertain same.***

2. Whether the 1st Claimant having deliberately rescinded the absolute terms and conditions as stated in the award of Contract for refurbishment of CBN Akure branch, can assert a right for breach of Contract.

3. Whether the Court should contemplate granting damages for non-existent contract.

The Claimants in turn filed their final written address on 06/12/2019, wherein their learned counsel, **Ewere A. Aliemeke, Esq.**, distilled a sole issue for determination in the suit, namely:

Whether from the state of pleadings, the evidence led and the extant position of our law, the Claimants have not established that the basis upon which the contract was terminated by the Defendant was unfounded and this Court ought to in the circumstance grant the Claimants all the reliefs sought in this case.

The Defendant further filed a Reply on points of law to the Claimants' final address on 06/08/2020.

Upon a proper appraisal of the relevant pleadings before the Court, the admissible evidence led on the record and the totality of the circumstances of this case, it is the view of the Court that the issues that have arisen for determination in this suit, without prejudice to the issues formulated by the respective learned counsel for the parties, can be succinctly distilled as follows:

- 1. Whether or not there is a binding and enforceable contract between the Defendant and the 1st Claimant and if so, whether or not the Defendant's purported termination of same constituted a breach of the contract.***
- 2. If issue (1) is resolved in the affirmative, whether or not the Claimants are entitled to the damages claimed in this action.***

As I proceed, I should state that I had properly considered and taken due advantage of the copious arguments canvassed by learned counsel on both sides of the divide, in their respective written addresses, to which I shall specifically make reference as I deem needful in the course of this judgment.

PRELIMINARY ISSUES

As a preliminary point, the Court has noted the arguments of the Defendant's learned counsel on the issue he formulated as to whether there is any feature of the present action that renders it incompetent or deprives the Court of jurisdiction to entertain the same. Learned counsel had hinged the grounds of his arguments on his believe that the Claimants have no reasonable cause of action and that they lacked the *locus standi* to have instituted the

present action; and invariably that the Court lacked jurisdiction to have entertained the same.

It is not in question that issues of jurisdiction can be raised at any stage of the trial of an action; as such, the Defendant is competent to raise such issues at the final address stage. See *Petrojessica Enterprises Limited Vs. Leventis Trading Company Limited*¹; *NDIC Vs. CBN*².

However, having regard to the contentious nature of the suit; the vociferous denials offered by the Defendant in her *Amended Statement of Defence*; and the gamut of oral and documentary evidence led at the trial, could it still be said that the Claimants had no reasonable cause of action?

It is trite, in simple terms, that in order for a suit to disclose reasonable cause of action against a defendant, the claimant must clearly set out the

¹ [1992] 5 NWLR (Pt. 244) 675

² [2002] 7 NWLR (Pt. 766) 272

wrongful act of the defendant, founded in law, for which relief is sought against him. In other words, reasonable cause of action is said to be present where an action is said to have some chance of success when only the allegations in the pleadings are considered; and that so long as the Statement of Claim discloses some cause of action or raise some question fit to be decided by the Court against the Defendant; and that the mere fact that the case is weak and not likely to succeed is no ground for striking it out. See the *locus classicus* authority of Thomas Vs. Olufosoye³. See also Ogunsanya Vs. Dada⁴; Rinco Construction Company Vs. Veepee Industries Limited⁵.

For purposes of determining the issue instant, the Court must and has restricted itself to a consideration

³ [1986] 1 NWLR (Pt. 18) 669

⁴ [1992] 3 NWLR (Pt. 232) 745

⁵ [2005] 9 NWLR (Pt. 929) 85

of the averments in the Further Amended Statement of Claim only.

By my understanding of the totality of the Claimants' action, their grievance is predicated on their contention that the Defendant entered into a valid contract with them which was purportedly given up on their behalves without their consent or lawful authority; and that the subsequent action of the Defendant in cancelling the contract on that basis constituted a breach for which they are entitled to damages. This, strictly, is the Claimants' case.

It is to be understood that whether or not the case of the Claimants is substantial enough for the Court to sustain the same is not a matter for consideration by the Court when deciding the issue as to whether or not they have a reasonable cause of action. It is sufficient, as seen from the pleadings of the Claimants before the Court, that they have made

allegations against the Defendant, worthy of some response by the Defendant and fit for the Court to determine.

Learned Defendant's counsel, with respect, misapprehended the position of the law when, in his arguments, he delved into the core merits of the suit in urging the Court to hold that the Claimants had no reasonable cause of action. But then, all that the Claimants needed to show, in order to establish that they have a reasonable cause of action, is all I had said earlier, which is that in their Further Amended Statement of Claim, they have made certain allegations against the Defendant arising from the relationship between them, which allegations are worthy of consideration by the Court.

I therefore hold that the Defendant's contention that the Claimant's case is incompetent and that the Court lacked the jurisdiction to entertain the same on

grounds that the claim lacked reasonable cause of action is misconceived and unsustainable.

The other leg of the Defendant's objection to the competence of the instant action is the contention that the Claimants have no *locus standi* to have instituted the action in that the Claimant's sole witness, the *Managing Director* of the 1st Claimant, on oath admitted that there was no Board Resolution reached by the 1st Claimant to institute the instant action.

Now, the general principles that guide the Courts in determining a claimant's *locus* or standing or capacity to institute an action are more or less commonplace. The dominant factor however, as also rightly submitted by the Defendant's learned counsel, is that the claimant must show by his claim before the Court that he has sufficient legal right or interest in the subject matter of the suit, which legal right or interest are shown to have been or in danger of

being violated or invaded or adversely tampered with by the alleged acts or intended acts of the defendant, and which legal right the Court is entitled to protect by virtue of its powers under the provisions of **s. 6(6) (b) of the Constitution**. See the authorities of Adesanya Vs. President, Federal Republic of Nigeria⁶; Thomas Vs. Olufosoye (supra)⁷; Owodunni Vs. Regd. Trustees of the Celestial Church of Christ⁸; Ajayi Vs. Adebisi⁹.

It is also pertinent to restate the correct position that where a party's standing to commence an action is challenged or is in issue in a matter, the focal question to be resolved will be whether the person whose standing is in issue is the proper or competent person to request for adjudication of a dispute and

⁶ [1981] 1 All NLR (Pt. 1) 19

⁷ Note 3

⁸ [2000] 10 NWLR (Pt. 675) 315

⁹ [2012] 11 NWLR (Pt. 1310) 137

not whether the dispute is justiciable. See Okoye Vs. Lagos State Government¹⁰; Iyanda Vs. Laniba II¹¹.

Again, it would seem that learned Defendant's counsel fell into error by delving into the evidence led at the trial, and in particular evidence that was extracted from the Claimant's sole witness under cross-examination, in raising the issue of *locus*; whereas, as learned counsel rightly submitted in another breath, what determines *locus* is the claim before the Court, as circumscribed by the Writ of Summons and the Statement of Claim and no more. See Ebongo Vs. Uwemedimo¹²; Douglas Vs. Shell Petroleum Dev. Co.¹³.

In the present action, the Defendant's learned counsel did not make reference to any feature of the claim

¹⁰ [1990] 3 NWLR (Pt. 136) 115

¹¹ [2003] 2 NWLR (Pt. 801) 267

¹² [1995] 5 NWLR (Pt. 411) 22

¹³ [1999] 2 NWLR (Pt. 591) 466

before the Court from which it could be inferred that the Claimants had no *locus* to have instituted the instant action. What is more, it is very apparent, from the Claimants' pleading before the Court, that they clearly demonstrated their interest in the issues in dispute in the present action. There was a clear relationship between the Defendant and the 1st Claimant that gave rise to the Defendant giving the 1st Claimant letter of award of contract to renovate her Akure Branch Building. Every other issue in the action relates back to the initial involvement of the Defendant with the 1st Claimant. The Claimants further pleaded that the 2nd Claimant is a shareholder in the 1st Claimant Company;¹⁴ which further explained the reason for her inclusion in the action as a co-Claimant.

It must be stated clearly that the question as to whether or not the Claimants had the authorization of

¹⁴ See paras 2 and 3 of the Further Amended Statement of Claim

the 1st Claimant's Board of Directors to institute the action cannot even arise in that the Defendant did not, anywhere in her pleadings, challenge the authority of the Claimants to institute the action. As such, whatever evidence the Defendant's learned counsel elicited from the said Claimants' witness under cross-examination as to the Claimants' authority to commence the action would go to no issue since it will amount to evidence led on facts not pleaded before the Court. I so hold.

On the strength of the foregoing analysis, the Court further holds that the Claimants have demonstrated sufficient *locus* to have commenced the present action and as such the suit was competent before the Court and the Court's jurisdiction to entertain the same is not in any way impaired.

Having dealt with the preliminary issues as raised by the Defendant's learned counsel in his written

address, the Court now proceeds to deal with the substantive issues distilled for determination. In proceeding, the Court shall deal with the two issues together.

DETERMINATION OF SUBSTANTIVE ISSUES

In determining whether there was an enforceable contract between the Defendant and the 1st Claimant, my starting point is the document tendered in evidence by the **CW1** as **Exhibit C3**¹⁵. The evidence of the **CW1** is that the Defendant, sometime in July, 2010, advertised for qualified contractors to tender their bids for the contract for the refurbishment of the CBN Branch Building in Akure, Ondo State; that the 1st Claimant responded to the advert by going through the prequalification

¹⁵ Letter dated February 28, 2011, written by Garba Ahmed, Director Procurement & Support Services Dept., CBN and addressed to the 1st Claimant with the caption **AWARD OF CONTRACT FOR THE REFURBISHMENT OF CENTRAL BANK OF NIGERIA AKURE BRANCH BUILDING, ONDO STATE**

procedure, which led the Defendant, by letter of 09/11/2010,¹⁶ to invite the 1st Claimant to tender for the said contract.

At the end of the day, the Defendant informed the 1st Claimant by the said letter, **Exhibit C3**, of the decision to award the contract to the 1st Claimant.

As requested by the said letter of award, the 1st Claimant submitted to the Defendant, letter of acceptance of the said contract offer, dated 03/03/2011, and tendered in evidence by the **CW1** as **Exhibit C5**.

The **CW1** further testified that sequel to the award letter, the Defendant caused her architectural consultants, by name **Kelnic Associates**, to forward the working drawings for the contract to her. The **CW1** tendered in evidence¹⁷ the letter dated 09/03/2011, by which the said consultants

¹⁶ Admitted in evidence as **Exhibit C2**

¹⁷ As **Exhibit C4**

forwarded the said drawings to her, but did not tender the drawings in evidence.

By another letter dated 09/03/2011, tendered by the **CW1** as **Exhibit C6**, the Defendant wrote to the 1st Claimant to intimate her that the site handing over exercise to the main contractors and consultants have been scheduled to hold on 24/03/2011, at the CBN Akure Branch Building premises. According to the **CW1**, the 1st Claimant attended the said handing over event where the Defendant formally handed over the premises to her. He further confirmed this fact under cross-examination by the Defendant's learned counsel, wherein he stated that he and one **Soji Taiwo** were physically present at the event.

It is also the evidence of the **CW1** that in furtherance of the 1st Claimant's obligations under the contract, and in order to demonstrate her financial capacity to successfully execute the project, she caused her

bankers, **Sterling Bank Plc**, to raise and issue out a **Performance Guarantee** and **Advance Payment Guarantee** to the Defendant with respect to the contract. He tendered the said bank documents in evidence as **Exhibits C7**¹⁸ and **C8**¹⁹ respectively.

The **CW1** further testified that after the Claimants have expended a lot of money in readiness to execute the contract, that they received information from the Defendant, sometime in May, 2011, that she (the Defendant) received a letter dated 11/04/2011, from the 1st Claimant by which the 1st Claimant intimated the Defendant of her inability to perform the contract. The **CW1** tendered copy of the said letter in evidence as **Exhibit C9**.

According to the **CW1**, the Claimants, upon becoming aware of the said letter, made vigorous efforts at

¹⁸ Advance Payment Guarantee issued on 07/04/2011 by Sterling bank Plc to the Central Bank of Nigeria

¹⁹ Performance Guarantee issued on 20/04/2011 by Sterling bank Plc to the Central Bank of Nigeria

convincing the Defendant that one **Mr. Soji Taiwo**, who signed the letter, **Exhibit C9**, on behalf of the 1st Claimant, had no authorization of the Board of the company to so act; and that he was no more than a *“meddling interloper”* in the affairs of the 1st Claimant. The witness tendered in evidence in that regard, letters²⁰ severally written on her behalf by her Solicitors, **M. I. Tsav & Co.**, to the Defendant, with a view to distancing and exonerating the 1st Claimant from the letter, **Exhibit C9**; and to appeal to the Defendant to allow the 1st Claimant proceed with the execution of the contract.

The **CW1** further testified that the Defendant failed to respond to all the letters written to her on behalf of the Claimants aforementioned, to dissociate them from the letter written by the said **Mr. Soji Taiwo**,

²⁰ Letter of 9th May, 2011 – **Exhibit C10**; Letter of 2nd June, 2011 – **Exhibit C11**; Letter of 3rd June, 2011 – **Exhibit C12**; Letter of 15th July, 2011 – **Exhibit C14**; Letter of 16th December, 2011 – **Exhibit C15**; Letter of 19th September, 2011 – **Exhibit C16**; Letter of 23rd November, 2011 – **Exhibit C17**; Letter of 8th August, 2011 – **Exhibit C19**

Exhibit C9; but rather that the Defendant wrote to the 1st Claimant, letter dated 11/10/2011²¹, by which she purported to terminate the said contract.

The **CW1** further testified that after purporting to terminate the contract, the Defendant purportedly re-awarded the same to another company by name **XYZ Engineering Nigeria Limited**.

For the purpose of resolving the issue at hand, it is pertinent to state that under cross-examination by the Defendant's learned counsel, the **CW1** further gave evidence with respect to the following salient points:

1. That he could not recall that at the pre-contract stage, that there was a letter written by the Claimants to the Defendant mandating **Edmund Nosegbe (him); Olusoji Taiwo** and **Suleiman Ali** as contact persons

²¹ Admitted in evidence as Exhibit C21

to interface with the Defendant on behalf of the Claimants.

2. That it was not correct that **Olusoji Taiwo** wrote most of the correspondence from the Claimants to the Defendant and her agents; including email communication; but that he was merely mandated only to pick up letters from the Defendant on behalf of the Claimants whenever he (**CW1**) was not around.
3. That he (**CW1**) and **Olusoji Taiwo** were present at the Akure Branch site of the Defendant on the day the site was handed over to the 1st Claimant in March, 2011.
4. That **Olusoji Taiwo** was not a staff, shareholder, Director or a principal officer of the Claimants.

5. That **Olusoji Taiwo** picked up the contract award letter and also submitted the acceptance letter (**Exhibit C5**) on his (**CW1's**) behalf.
6. That the Claimants did not perform any aspect of the contract on site before the same was terminated.
7. That the Defendant did not release any funds to the Claimants for the execution of the project.

Now, the Defendant, through her sole witness, the **DW1**, also gave evidence to defend this aspect of the Claimant's claim, under determination; the salient portions of which I shall review as I proceed.

The **DW1** confirmed the testimony of the **CW1** with relations to the Defendant's advertisement of the contract under reference and how the Claimant,

alongside other companies bided for the contract and how, after going through the relevant processes, five of the companies, including the 1st Claimant, were shortlisted on the basis of the general information submitted by them; and that how, after assessing the profiles, particulars of Directors and List of contact to interface with the Defendant over the project and their technical bid, that the 1st Claimant emerged as the most successful contractor to which the contract was then awarded²².

The **DW1** made reference to and tendered in evidence as **Exhibits D3 and D3A** respectively, the prequalification documents submitted by the 1st Claimant to the Defendant with respect to the contract.

²² See **Exhibit D1** – the invitation for prequalification of contractors for the execution of capital development projects under 2010 budget advertised by the CBN in Leadership Newspaper of June 5, 2010.

Invitation to tender letter issued by the CBN (also tendered by the **CW1** as **Exhibit C2**)

The witness equally confirmed the **CW1**'s testimony that the Defendant issued the Claimant with the contract award letter²³ and he further stated that it was one **Olusoji Taiwo**, the 1st Claimant's representative, that collected the letter; and that it was the same **Olusoji A. Taiwo** that signed the 1st Claimant's letter of acceptance of the contract, furnished on the Defendant, which he also tendered in evidence as **Exhibit D6**²⁴.

The **DW1** further testified that a formal signing of the contract was pending when the Defendant terminated the contract, *vide* her letter of 11/10/2011²⁵, in view of the letter²⁶ written earlier by the 1st Claimant to the Defendant stating her incapacity to execute the contract.

²³ Acknowledged copy of which he tendered in evidence as **Exhibit D5**.

²⁴ Same as **Exhibit C5**

²⁵ Tendered in evidence by the **DW1** as **Exhibit D10**

²⁶ Tendered as **Exhibit D7** (same as **Exhibit C9**)

The **DW1** further testified that **Mr. Olusoji Taiwo** is designated as the Executive Director/Vice President, Business Development of the 1st Claimant and her representative who interfaced as her contact person with the Defendant in matters regarding the contract award, particularly at the prequalification stage; that it was the 1st Claimant that submitted the name of the said **Olusoji Taiwo** to the Defendant as the one to represent and lead her efforts in interfacing with the Defendant on the project and he further placed reliance on the documents he tendered as **Exhibits D3** and **D3A** respectively, in that regard.

The **DW1** also confirmed the testimony of the **CW1** that the project site was successfully handed over to the Claimants on 24/03/2011 by the Defendant's *Site Manager* and that the 1st Claimant was given four (4) weeks moratorium within which to carry out the project execution planning and mobilization of resources to site; and that during this moratorium

period, the 1st Claimant, through **Olusoji A. Taiwo**, wrote a letter to the Defendant's Consultants for the project, to state that the delay in moving to site is as a result of disparity on some issues amongst members of the company²⁷.

The **DW1** further testified that prior to his writing of the letter of 11/04/2011, **Exhibit D7**, on behalf of the 1st Claimant, the 1st Claimant did not formally intimate the Defendant that she had withdrawn her mandate/authority reposed in **Olusoji Taiwo** to represent the company with relations to the contract award.

The **DW1** testified further that the Defendant acted in utmost good faith in terminating the contract with the 1st Claimant and that it was at the Defendant's Board of Directors' meeting on 24/02/2011, that it was decided that in the event that the 1st Claimant

²⁷ **DW1** tendered in evidence the said letter dated 29th March, 2011, written to Allied Consultants Limited, as **Exhibit D9**

declined the contract offer, the same should be offered to **Messrs XYZ Engineering Limited**, who happened to be the second (2nd) most responsive bidder;²⁸ and which was what the Defendant did in the present case.

Now, on the basis of evidence led by both sides, as highlighted in the foregoing, the first issue to resolve is as to whether there was indeed a valid and enforceable contract between the Defendant and the 1st Claimant with respect to the refurbishment of the Defendant's Akure Branch.

This takes me back to the letter of award tendered in evidence by both sides.²⁹ For its significant relevance to the determination of the issue at hand, I reproduce the material portions of the said letter as follows:

²⁸ The **DW1** tendered in evidence as **Exhibit D15**, Internal Memorandum dated 24th February, 2011, issued by the Director of Corporate Secretariat to the Director of Procurement & Support Services, containing the decisions of the Board of Directors held on 24th February, 2011.

²⁹ Tendered both by the **CW1** as **Exhibit C3** and the DW as **Exhibit D5**.

**“AWARD OF CONTRACT FOR THE
REFURBISHMENT OF CENTRAL BANK OF NIGERIA
AKURE BRANCH BUILDING, ONDO STATE**

I am pleased to inform you that the Central Bank of Nigeria has awarded to your company the contract for the Refurbishment of CBN Branch Building at Akure, Ondo State at the contract sum of ₦4,013,927,628.67 (Four Billion, Thirteen Million, Nine Hundred and Twenty Seven Thousand, Six Hundred and Twenty Eight Naira, Sixty Seven Kobo) 5% VAT inclusive.

The completion period for the project shall be One Hundred and Four (104) weeks effective from date of taking possession of site. Liquidated and ascertained damages clause shall apply for late completion as per the contract agreement provisions.

You are required to confirm acceptance of the award within seven (7) days and enter into a formal agreement with the Bank. Thereafter, you

are to liaise with the Director, Procurement & Support Services Department for further details.

While congratulating you on the award of this contract to your company, I would like to emphasise that the contract will be administered strictly in accordance with the specifications and provisions of the contract.”

(Underlined portions for emphasis)

By my reckoning, it is apparent on its face that the letter of award is written as a preamble to the happening of at least two major events, before it could be said that parties have entered into a binding contract. These two events are namely – (i) that the 1st Claimant was to confirm acceptance of the award within seven (7) days of receipt of the letter of award; and (ii) that the 1st Claimant was to enter into a formal agreement with the Bank.

From the evidence led on record, the 1st Claimant complied with the first requirement by confirming her

acceptance of the contract by delivering her letter of acceptance, dated March 3, 2011, to the Defendant. As reflected on **Exhibits C5** (same as **D6**), the said letter was acknowledged as received in the office of the Director, Procurement and Support Services Dept., of the Defendant, on 4th March, 2011.

However, there seem to be a contention between the two parties as to whether or not the 1st Claimant complied with the other stipulation in the letter of award to execute a formal contract with the Defendant.

I have carefully examined both the Claimant's Further Amended Statement of Claim and the *Statement on Oath* deposed by the **CW1**. All that the Claimants pleaded, with relation to executing a formal contract with the Defendant is at *paragraph 10* thereof. It states thus:

“10. The Plaintiffs further pleads the contract terms and conditions, still in possession of the Defendant and hereby puts the Defendant on Notice to produce the Original.”

The same pleading is repeated verbatim as the **CW1**'s evidence in *paragraph 11* of his *Statement on Oath*.

The Defendant controverted the pleading in *paragraph 10 (supra)*, by pleading in *paragraph 18* of her *Amended Statement of Defence* as follows:

“18. The Defendant denies paragraph 10 of the Statement of Claim and state that the formal signing of the contract was pending when the contract was terminated in view of the letter written by the 1st Claimant stating their incapacity to execute the contract....”

The **DW1** repeated the same pleading as his evidence in *paragraph 17* of his *Statement on Oath*.

Apart from purporting to plead the said contract terms and conditions in *paragraph 10* of the *Further Amended Statement of Claim*, the Claimants did not plead anywhere else whether or not the 1st Claimant in actual fact complied with the stipulation in the letter of award to enter into a formal agreement with the Defendant with respect to the contract. There is no pleading or evidence as to when and where the contract signing took place; who were present; and worse still no such contract was produced in evidence by the Claimants.

It is an elementary rule of evidence that it is the party that desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts that shall prove that those facts exist³⁰.

Whilst answering questions under cross-examination by the Claimants' learned senior counsel, the **DW1**

³⁰ See s. 131(1) of the **Evidence Act**

had this to say with regards to the formal contract agreement:

“The letter of award is in our project file. The letter conveys the award. But the letter does not include terms of the contract. There was no signed agreement between the CBN and the 1st Claimant. All we had was just a contract award.

Terms of contract are only issued after the offer letter had been accepted by the contractor. So, unless the contractor accepts the contract, there will be no agreement. There was no agreement signed between the two parties after the 1st Claimant accepted the contract.”

It becomes crystal clear, from the evidence extracted from the **DW1** under cross-examination by the Claimants’ learned senior counsel, that whereas the 1st Claimant fulfilled the first condition precedent to forming a binding contract with the Defendant as stipulated in the award letter, which is the submission

of letter of acceptance of the contract award; however, the second and perhaps the more critical requirement was not followed through, which was to sign a formal agreement with the Defendant.

It is therefore not difficult for the Court to hold, on the basis of the evidence on record, as reviewed in the foregoing, that the Claimants have failed to prove that the 1st Claimant and the Defendant entered into a formal contract for the refurbishment of the Central Bank of Nigeria Akure Branch Building, pursuant to or as stipulated in the letter of award, **Exhibit C3/D5**. I so hold.

The position of the law is clear that where a contract is made subject to the fulfillment of certain specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled. See Tsokwa

Marketing Co. Ltd. Vs. B.O.N. Ltd;³¹ Best (Nigeria) Ltd. Vs. Blackwood Hodge (Nigeria) Ltd & Ors.³²

In my view, the intention of the Defendant for parties to enter into a formal contract is clearly and unequivocally expressed in the letter of award when it is stipulated that the 1st Claimant was required to **“enter into a formal agreement with the Bank.”** The Defendant’s intention that a formal contract be signed by both parties is further reinforced when it is further emphasized in the last paragraph of the letter of award that **“the contract will be administered strictly in accordance with the specifications and provisions of the contract.”**

I totally agree with the submissions of the Defendant’s learned counsel that the letter of award, **Exhibit D5** (also **Exhibit C3**), in the circumstances of the present case, is no more than a letter of intent,

³¹ [2002] 11 NWLR (Pt. 777) 163

³² [2011] LPELR - 776(SC)

issued subject to a formal contract to be signed by both the Defendant and the 1st Claimant and that for the letter of award to constitute a binding and enforceable contract, both parties must be shown to be *ad idem* as to the terms and conditions thereof; and that failure of the Claimants to prove the existence of such terms and conditions should be resolved against them.

Black's Law Dictionary, 8th Edition, explains the purport of a ***“letter of intent”***³³ as follows:

“A written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement... 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 Courts ordinarily do

³³ At page 924 thereof

not enforce one; but Courts occasionally find that a commitment has been made.”

The situation in the present case is akin to the circumstances in the case of *BPS Construction & Engineering Co. Ltd. Vs. FCDA*,³⁴ where the Supreme Court, per **Mary Peter-Odili, JSC**, held as follows:

“The understanding to be alluded to that phrase above is that the MOU, Exhibit P5 is subject to the occurrence of a future event which is the signing of a formal agreement. That means in my humble view that Exhibit P5 is not that final event or agreement but rather a preamble to the happening of the event coming after. Therefore the interpretation of the trial Court of the MOU being a binding contract was faulty, for as an agreement the MOU was inchoate or incomplete. Its completeness can only be when the "formal agreement" was signed and that was yet to happen. See Okechukwu Vs. Onuorah [2000] 15 NWLR (Pt. 691) 597 at 614-

³⁴ [2017] LPELR-42516(SC)

***515; U.B.A. Ltd. Vs. Tejumola & Sons Ltd [1988] 2
NWLR (Pt. 79) 662 at 688.”***

In the present case therefore the letter of award, by all intents and purposes is no more than a preamble to the “formal agreement” which the Defendant expected the 1st Claimant to sign with her at a later time before there could be said to be a valid, binding and enforceable contract between the parties for the refurbishment of the Defendant’s Akure Branch Building. The letter of award speaks of the further steps either party needed to take in order to crystallize their intentions. I so hold.

I must further hold that the binding effect of the letter of award, **Exhibit C3/D5** is to the extent of the intention expressed by the Defendant to enter into a formal agreement with the 1st Claimant but not binding in itself as an agreement or a contract. This explained why, in furtherance of the Defendant’s intention to enter into a formal contract with the 1st

Claimant, she formally handed over the site to the Defendant at a ceremony that took place on 24/03/2011.

The Claimant's learned counsel clearly misconceived the position of the law when he argued that even if parties did not execute a formal contract, the award letter had ripened into a valid contract in view of the fact that all the elements of a valid contract are present in the contract as evinced by the conduct of both parties. The facts of the authority of *Ebla Construction Ltd. Vs. Costain (West Africa) Plc*³⁵ relied upon by the Claimants' learned counsel for the submission that the letter of award in the instant case constituted a binding contract, are clearly distinguishable from the facts of the present case and for that reason inapplicable. This is for the fact that whilst in the case cited, the letter of intent was viewed as constituting a binding contract between

³⁵ [2011] 6 NWLR (Pt. 1242) 110

the parties for the reason that the employer had paid advance payment to the contractor and the contractor had also part-performed the contract. That is not the situation in the present case. The **CW1**, under cross-examination by the Defendant's learned counsel, clearly admitted that the Defendant had not paid the 1st Claimant any amount on the contract and that no work had been done by the 1st Claimant as of the time the contract was terminated.

It cannot therefore be said that the mere handing over of the site to the 1st Claimant by the Defendant, in order for her to make adequate preparations to source for funds preparatory to executing the contract, constituted waiver of the requirement to sign a formal agreement between the parties as stipulated in the letter of award.

I must also add that the fact that the 1st Claimant, of her own volition, caused **Performance Guarantee**

and **Advance Payment Guarantee, Exhibits C7** and **C8** respectively to be issued to the Defendant would also not in any way obviate the performance of a fundamental obligation towards the crystallization of the contract, which is the signing of a formal agreement.

In my view, it will unconscionable, unrealistic and downright unreasonable for anyone to suggest that signing a formal contract for the execution of a huge contract worth over ~~N4~~ **billion** is a mere formality that could be jettisoned by parties thereto.

It is pertinent to further note that in the award letter, **Exhibit C3**, the Defendant clearly stated that *“Liquidated and ascertained damages clause shall apply for late completion as per the contract agreement provisions.”*

This statement further establishes that the Defendant clearly contemplated that a formal contract agreement that will specify the detailed terms and

conditions shall be signed between the parties. I so hold.

In the circumstances therefore, I must proceed to hold that the evidence on record having established beyond conjecture that 1st Claimant did not fulfill a critical component of the contract award, by failing to execute a formal contract with the Defendant for the refurbishment of the Akure Branch Building of the Defendant, the issue of breach cannot arise.

The Supreme Court captured the point succinctly in Bilante Int'l Ltd. Vs. NDIC,³⁶ when it held as follows:

“There can be no breach of a non-existing contract. Once it has been determined that no enforceable contract exist between the parties or that what took place between the parties did not translate to a contract between them, the foundation of the relief claimed collapse with the absence of a cause of action, that is, breach of contract.... Therefore,

³⁶ [2011] NWLR (Pt. 1270) 407

there was no plausible reason for an award of general damages for breach of contract in the circumstance.”

In the present case therefore, the Court having come to a conclusion that there was no valid and enforceable contract between the Defendant and the 1st Claimant, the foundation for the claims for breach of contract has thus collapsed and it follows that where there is no breach of contract; award of damages becomes totally farfetched and utopian. As such, the totality of the pre-tender expenses, post contract award expenses, anticipated profit and exemplary damages claimed and tabulated by the Claimants in *paragraph 33* of their *Further Amended Statement of Claim* are totally unsustainable in the circumstances of the present case. I so hold.

The judgment would not however end here. I reckon, perhaps for purposes of academic adventure only; or in the event that the decision of this Court in the

foregoing that there is no binding or valid contract between the 1st Claimant and the Defendant is found to be wrong, that it is pertinent to proceed to determine, on the premises that **Exhibit C3/D5** is enforceable, whether or not, on the basis of the evidence led at the trial, the Defendant could be said to have unlawfully terminated the same thereby becoming liable in damages.

The evidence before the Court, which I had already highlighted in the foregoing is that the 1st Claimant, by letter dated 11th April, 2011³⁷, informed the Defendant that due to some internal squabbles within the folds of the company which could not be resolved amicably, she would not be able to execute the contract up to the expected standard and quality. The material portion of the said letter is reproduced as follows:

³⁷ Exhibit C9 (same as Exhibit D7)

**“RE: AWARD OF CONTRACT FOR THE
RENOVATION OF CBN BUILDING, AKURE, ONDO
STATE**

Sequel to the award of the above contract and hand over of the site to our company (Eutaw Construction and Development Nigeria Ltd.); unfortunately we would like to inform you that there is disagreement on certain issue between the members of the company especially our US partner – which we have tried to resolve amicably, but all effort towards peaceful resolution has failed.

However, we have come to the conclusion that we can no longer execute the above contract up to the standard and quality earlier promised and this is because of the above stated reason.

Again, we thank you for the privilege and opportunity given to us.

Yours faithfully

(signed)

**FOR: EUTAW CONSTRUCTION AND
DEVELOPMENT LTD
SOJI TAIWO”**

Now, in response to the said letter, **Exhibit C9**, the Defendant wrote letter dated 11th October, 2011, **Exhibit D10**, to inform the 1st Claimant that she has regarded the contract as terminated. Also, for its relevance, I reproduce the relevant portion of the letter of termination as follows:

**“RE: AWARD OF CONTRACT FOR THE
RENOVATION OF CBN BUILDING, AKURE
BRANCH**

We are in receipt of your letter dated April 11, 2011 on the above subject matter in which you informed the bank of your inability to execute the above contract.

Following your admission of incapacity to execute the contract, which we regard as a fundamental breach, the Bank hereby regards the contract as

terminated. You are to take immediate steps to vacate and handover the site to the Bank's representative. This is without prejudice to any claim the bank may have against your company in connection with the contract."

To start with, both parties are clearly *ad idem* that the letter, **Exhibit C9**, constitutes a rescission or repudiation of the contract, on the part of the 1st Claimant. This explained the gamut of letters³⁸ written on behalf of the 1st Claimant by their Solicitors, **M. I. Tsav & Co.**, to the Defendant, to dissociate her from the letter. In one of such letters, dated 9th May, 2011³⁹, it is stated on behalf of the Claimants in reaction to the letter, **Exhibit C9**, *inter alia*, as follows:

³⁸ See footnote 20

³⁹ **Exhibit C10**

**“RE: EUTAW CONSTRUCTION & DEVELOPMENT
NIGERIA LIMITED – CBN CONTRACT FOR
REFURBISHMENT OF CBN AKURE BRANCH**

....

We refer to the brief meeting held in your office on Tuesday the 3rd, instant; amongst your Alhaji Garba AHMED, Messrs Edmund NOSEGBE, Ifeanyi Emmanuel ONOCHIE and our Mohammed I. TSAV, Esq., in connection with a letter written by one Mr. Sojo TAIWO, allegedly written for Eutaw Nigeria, asking CBN to rescind the contract awarded to Eutaw Nigeria.

Be that as it may; there have been defects in the organizational structure and procedures of Eutaw Nigeria. Eutaw Nigeria has initiated an investigation as to how Mr. Taiwo could have the effrontery to write such an unauthorized and damaging letter for Eutaw.

Our instructions reveal that Mr. Soji Taiwo is a director/Shareholder of Snatoe Limited...a Nigerian

company which is a shareholder of and represented on the Board of Directors of Eutaw Nigeria by Mr. Edmund NOSEGBE. Our instructions also reveal that Mr. Soji Taiwo is disgruntled Director on the Board of Snatoe Limited and is agitating to be recognized. He has no authority to represent Snatoe on the Board of Directors of Eutaw Nigeria and he certainly does not represent Eutaw Nigeria.

The fact that he signed the acceptance letter at the time was only a necessary convenience to expedite matters at the time. But that privilege does not extend to making such a unilateral but an unauthorized decision to write a letter to CBN allegedly for Eutaw Nigeria with such far reaching effect on the activities, operations and integrity of Eutaw Nigeria.

Mr. Soji Taiwo's act is reckless. He is a "meddling interloper" in the affairs of Eutaw Nigeria, with the motive to perpetrate mischief in the name of Eutaw Nigeria by carrying out unauthorized Boardroom

management functions and unlawfully writing the said letter to the CBN alleging that the company was not capable of executing the contract and thus be rescinded. ...

The letter written by one Mr. Soji Taiwo was not authorized by the Board of Eutaw Nigeria and as such it is null and void and of no effect whatsoever. ...”

The purport of this letter, and many others written in the same fashion by the Claimants to the Defendant is to disclaim and disown **Exhibit C9**, written on behalf of the 1st Claimant to the Defendant, to surrender the contract awarded to her. The Claimants’ contention is that the individual who signed the letter, **Mr. Soji Taiwo**, purportedly on behalf of the 1st Claimant, had no authorization of the Board of Directors of the company to so write a letter of such impact to the Defendant.

I have also noted that the Claimants' learned counsel devoted a substantial portion of his final address to the contention that the said **Mr. Soji Taiwo** was a stranger to the contract between the 1st Claimant and the Defendant and as such the letter he wrote could not have affected the existing relationship between the 1st Claimant and the Defendant.

Learned Claimants' counsel cited the provisions of **sections 250 and 567** of the **Companies and Allied Matters Act (CAMA)**, to buttress his submission that the act of a person who is not a director of a company cannot bind the company. Learned counsel had further argued that the fact that the said **Soji Taiwo** received the contract award letter and further wrote the acceptance letter on behalf of the 1st Claimant did not make him a Director of the company; or that he was held out as one.

Learned counsel also relied on the documents of incorporation of the 1st Claimant, attached to the letter, **Exhibit C10**, to contend that the Claimants had established that the said **Soji Taiwo** was not a shareholder, or Director or Secretary of the 1st Claimant company; and as such did not have the authorization of the Claimants to write the letter **Exhibit C9**.

Learned counsel further contended that rather than ignoring the said letter, **Exhibit C9**, written by the said **Soji Taiwo** purportedly at the instance of the 1st Claimant; considering the deluge of letters written on her behalf by **M. I. Tsav & Co.**, her Solicitors, to disclaim the same, the Defendant ridiculously held on to the letter as her excuse to terminate the contract.

Learned counsel further contended that it was obvious that the Board of Directors of the Defendant willfully terminated the contract but merely used the

letter, **Exhibit C9** as a ruse, since they had all the information at their disposal that pointed to the fact that **Soji Taiwo** indeed was not a Director or Shareholder of the 1st Defendant, who could have lawfully written such a letter on her behalf.

But then, what is the state of the evidence on record? Could it be said that the said **Soji Taiwo** had the ostensible authority of the 1st Claimant when he wrote the letter, **Exhibit C9/D7** to the Defendant? Was the Defendant right when she acted on the said letter, **Exhibit C9**, to cancel and terminate the contract, *vide* **Exhibit C21**, reproduced in the foregoing?

The **DW1** gave evidence in *paragraphs 13 and 28* of his *Statement on Oath* and tendered in furtherance thereof, the document **Exhibit D3** to which the document, **Exhibit D3A** is attached. These documents contain the 1st Claimant's submission to the Defendant

for the Prequalification of contractors for the execution of capital development projects under 2010 Budget for the refurbishment of CBN Akure Branch Building.

In the document **Exhibit D3A** captioned **“LEADERSHIP,”** the Directors of the 1st Defendant were stated to be:

1. **Abidemi Okoya-Thomas** (Chairman)
2. **Thomas Elmore** – Vice Chairman
3. **John Bond**
4. **Edmund O. Nosegbe**
5. **SNATOE (Sule Ali/Soji Taiwo/Chituru** – one to represent)
6. **Audu Mark**

In the same document, the 1st Claimant listed her **“LEADERSHIP TEAM (MANAGEMENT BOARD)”** to include:

“OLUSOJI TAIWO, ED/VP BUSINESS DEVELOPMENT: As an entrepreneur, Soji will lead our efforts in attracting business opportunities to Eutaw Nigeria. An avid real estate investor and land developer in the Southeast USA, his vision for and unwavering commitment to community and economic development will bring exciting projects to Eutaw and communities across Nigeria.”

Again, under the caption **“Contacts”** for the 1st Claimant in **Exhibit D3A**, are three names, including:

“Olusoji Taiwo

Nig: 01 824 5632; 0808 995 2575

sojitalwo@aol.com; soji@eutawnigeria.com”

By my understanding of **Exhibit D3A**, which the Claimants did not in any way controvert or discredit throughout the trial, the 1st Claimant represented **Olusoji Taiwo** to the Defendant to be part of her leadership and Management Board team. Consistent with this representation is the fact that it was the

same **Soji Taiwo** that issued all written communications undertaken by the 1st Claimant either to the Defendant or the Defendant's consultants, prior to writing the letter, **Exhibit C9/D7** in context. For instance, the said **Olusoji Taiwo** wrote the letter tendered by the **DW1** as **Exhibit D9**, to the Defendant's Consultants, where he expressed regrets for the 1st Claimant's delay in moving to the project site after the same was handed over to her representatives. He stated further in the letter, dated 29th March, 2011, as follows:

“Sequel to the March 24, 2011 CBN Site Hand-Over to our company, we would like to inform you that our delay in moving to site is as a result in the disparity within certain issues amongst members of the Company. However, we hope to resolve these issues at our AGM slated for next week.

In the meantime, we employ (sic) you to be mindful of dealings with some of our staff who do not bear

*the authority of Eutaw Nigeria but claim to do so.
We shall be conveying more information on this
after AGM....*

For Eutaw Construction & Dev. Company

Olusoji Taiwo”

By my understanding, the writing of the above-reproduced letter by **Olusoji Taiwo**, on behalf of the 1st Claimant, is clearly consistent with the 1st Claimant’s representation contained in **Exhibit D3A** that the said **Olusoji Taiwo** is part of the Leadership Team or Management Board of the 1st Defendant and that he is one of the 1st Claimant’s contact persons, as also clearly stated in **Exhibit D3A**.

Also, in **Exhibit D11** tendered by the **DW1**, which is the minutes of the Kick off Meeting between the Defendant’s Consultants and the contractors on the refurbishment of CBN Akure, Minna and Yola Branches, held on 8 March, 2011, the said **Soji**

Taiwo is listed as **(No. 31)** on the Attendance List at the meeting, alongside four (4) others, as representing the 1st Claimant at the said meeting.

It is also not to be forgotten that it was the same **Olusoji Taiwo** who wrote the all-important Letter of Acceptance of the contract, **Exhibit C5/D6**, on behalf of the 1st Claimant.

All of these documents, coupled also with the testimony of the **CW1**, under cross-examination by the Defendant's learned counsel, that **Olusoji Taiwo** was present alongside other representatives of the 1st Claimant, at the site handing-over ceremony on March 24, 2011, show consistently that the said **Olusoji Taiwo** acted with full knowledge and authority of the 1st Claimant, as her representative with regards to the contract in issue. I so hold.

I also find instructive, the advisory of the Defendant's Legal Adviser/Director, Legal Services Department,

in the memo of June 15, 2011⁴⁰, to the Deputy Governor, Corporate Services, in response to another memo from the Procurement & Support Services Department with respect to the issue at hand. The **DW1** had made reference to the contents of the memo in *paragraphs 44 and 45* of his *Statement on Oath*. The said memo states, in part:

“2. In a memo from PSSD dated April 20, 2011 (copy attached) our advice was sought following the receipt of a letter (copy attached) dated April 11, 2011 from the contractor in which the contractor communicated its inability to perform the contract due to internal squabbles within the Company.

3. In our memo dated April 29, 2011 (copy attached) we advised the termination of the contract. We attached to our memo a draft letter of termination (copy attached).

⁴⁰ Tendered by the **DW1** as **Exhibit D16**

4. Our advice was predicated on the admission by the contractor that it no longer had the capacity to perform the contract, which in our view, amounted to a repudiation of the contract.

5. In a letter dated May 9, 2011 (copy attached) addressed to the Director, PSSD from Messrs M. I. Tsav & Co. (Solicitors to the contractor), it was alleged among other things, that one Soji Taiwo who wrote the letter repudiating the contract award had no authority to write the letter as he was not a “member of the contractor-company”

We consider this assertion very strange as Olusoji Taiwo had featured prominently both at meetings and in the correspondence between the contractor and the Bank. For instance, it was Olusoji Taiwo who wrote on behalf of the contractor to accept the award of the contract. Having presented Olusoji as bona fide representative of the company, the company is estopped from resiling from that position. It should be noted that the Bank is not

obliged to go on a voyage of discovery to ascertain and confirm who had authority to act for or represent the company. Furthermore, there is nothing on record to show that the contractor had withdrawn the authority it had reposed in Olusoji Taiwo to represent it.

In the given circumstances, the Bank is entitled to rely on the letter from the company which clearly showed “that the contractor is incapacitated” by internal squabbles from executing the contract. The contract should therefore be terminated as its continuance would only lead to needless controversy and frustration of the contract.”

I further refer to the memo of the Defendant’s Director, Procurement & Support Services Department (PSSD), written to the Director, Legal Services on December 15, 2011⁴¹, in response to the 1st Claimant’s petition⁴² to the Director General,

⁴¹ Tendered in evidence by the **DW1** as **Exhibit D13**

⁴² Tendered by the **CW1** as **Exhibit C18**

Bureau of Public Procurement (BPP) for the Defendant's decision to terminate the contract which was forwarded to the Defendant for her response. This response, referred to by the **DW1** in *paragraphs 46 and 47* of his *Statement on Oath*, in my view, again lucidly captured the correct position I had advanced in the foregoing, when he stated as follows:

“In conclusion, the action of the Bank to terminate the contractual relationship it had with Messrs Eutaw Construction and Development Nigeria Limited was premised on the company's correspondence to the Bank expressing their inability to execute the contract to specifications.

The Bank also considered the assertions of Messrs M. I. Tsav & Co. that one Soji Taiwo who wrote the letter repudiating the contract award had no authority to write the letter as he was not a member of the contractor company as strange. This

is because Olusoji Taiwo had featured prominently both at meetings and in the correspondence between the Contractor and the Bank. For instance, it was Olusoji Taiwo who wrote on behalf of the Contractor to accept the offer of the award of the Contract. Furthermore, as at the time, there was nothing on record to show that the Contractor had withdrawn the authority it had reposed in Olusoji Taiwo to represent it. The Bank was therefore constrained to rely on the letter from the company which clearly showed “that the Contractor is incapacitated by internal squabbles from executing the Contract.”

The Bank had therefore acted in good faith towards achieving the benefit of the project to rehabilitate the CBN Akure Branch Building and the continuance of maintaining a contractual relationship with Messrs Eutaw Construction and Development Nigeria Limited would only lead to needless controversy and frustration of the Contract.

....”

I must in addition refer to the admission contained in the Claimants’ Solicitor’s letter to the Defendant, **Exhibit C10**, a portion of which I had reproduced in the foregoing, that at the material time, the 1st Claimant **“was not being managed and administered in a professional manner”** and that **“there have been defects in the organizational structure and procedures”** of 1st Defendant. These admissions are clearly consistent with the reason advanced by **Olusoji Taiwo** in the rescission letter, when he said that **“there is disagreement on certain issue between the members of the company especially our US partner-which we have tried to resolve amicably, but all effort towards peaceful resolution has failed.”**

As such, when the said **Olusoji Taiwo** issued the letter, **Exhibit C9** to rescind the contract on behalf of the 1st Claimant, it cannot be contended otherwise, in so far as the evidence on record is concerned, that

up to the date the said letter, **Exhibit C9** was issued by **Olusoji Taiwo**, he was not a lawful representative of the 1st Claimant. I so hold.

The provision of s. **77 of CAMA**, cited and relied upon by the Defendant's learned counsel, is clearly apposite to the circumstances of the instant case. The provision states that:

“77. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal unless otherwise so required in this Part of this Act.”

(Emphasis supplied)

In the authority of Gateway Holdings Limited Vs. Sterling Asset Management & Trustees Limited⁴³, cited by the Defendant's learned counsel, the Court of

⁴³ [2016] 9 NWLR (Pt. 1518) 490 @ 514

Appeal weighed in on the provision of s. 77 of **CAMA** when it held as follows:

“...In the light of Section 77 of the Act and having regard to the evidential position of the law under section 131 of the Evidence Act, 2011, the burden is on the party who asserts that a company document is irregular to show with facts such irregularity indicating that the signatories to the document are not director, secretary or other authorized officer of the company. In the instant case, the appellant contended that there was nothing to establish the positions in the respondent company of the persons who signed the respondent’s letter of demand so as to be able to ascertain whether they were absolutely authorized officers of the company. However, the appellant failed to discharge the burden which rested on it to show with facts such irregularity indicating that the signatories to the letter of demand were not

director, secretary or other authorized officer of the respondent.”

I have noted the arguments of the Claimants’ learned counsel, referring in particular to the incorporation documents of the 1st Claimant⁴⁴ which reveal that the said **Olusoji Taiwo** is not named as a Director or the Secretary of the company in any of those documents. That fact is not contested. However, the provision of **s. 77** of the **CAMA** is clear. It does not restrict the authentication of a company document to a Director or Secretary alone. It is permissible, by that section, for any **“other authorized officer of the company”** to so authenticate a company document.

In the present case, even though **Olusoji Taiwo** is not named in the company registration particulars of the 1st Defendant kept with the Corporate Affairs Commission, either as a Director or the Secretary, however, the representation contained in the

⁴⁴ See annexure to **Exhibit C10** and **Exhibit D4**

document, **Exhibit D3A**, brings him within the category of an “**authorized officer**” of the company, the 1st Claimant having held him out to the Defendant as such. I so hold.

I must therefore further hold that the sudden *volte face* and flip-flop by the 1st Claimant in referring to the said **Olusoji Taiwo** as a “**meddling interloper**” in her Solicitor’s letter, **Exhibit C10** and others after it, is not only clearly inconsistent with the evidence on record and as such untenable; but also unfortunate and ridiculous.

I note that the 1st Claimant curiously in one breath did not see anything wrong in the said **Olusoji Taiwo**, as her authorized representative, in writing and issuing to the Defendant, the Letter of Acceptance of the contract, **Exhibit C5/D6**, which is an integral step she was required to take for a binding contract to ensue with the Defendant; yet in

another breath, chose to disclaim the letter of rescission written by the same man on the ground that he was not a director or secretary of the company.

It is trite law that a party must be consistent with the case he presents before the Court and he is not allowed to approbate and reprobate on the same issue. See Onykwelu Vs. Elf Petroleum Nigeria Ltd.⁴⁵; Adeosun Vs. Governor of Ekiti State⁴⁶.

One would have expected the Claimants, rather than ridiculously distancing themselves from **Olusoji Taiwo** and the letter, **Exhibit C9**, to have eaten the humble pie, own up to the letter, appeal for a withdrawal of the same and go back and put their house in order. To have maintained a complete *volte face* stance as they did by the gamut of letters their Solicitor wrote to the Defendant, in my view, exacerbated their already bad situation. I reckon

⁴⁵ [2009] 5 NWLR (Pt. 1133) 181

⁴⁶ [2012] LPELR 7843(SC)

that no responsible organization, especially a big one at that as the Central Bank of Nigeria, will remain comfortable and enthused to continue to do business with the 1st Claimant, given the apparent internal squabbles within her folds, as revealed in **Exhibits C9** and **C10** respectively.

Flowing from the foregoing analysis of the evidence on record, therefore, the Court cannot fault the decision of the Defendant to write the letter, **Exhibit C21/D10**, to formally regard the contract as terminated and I so hold.

I must state that no law compels the Defendant to accept the unwholesome explanations of the Claimants' Solicitors in the several letters written to deny and disclaim the letter, **Exhibit C9**; neither does the Defendant have the responsibility or be compelled to probe into the internal ramblings within the fold of the 1st Claimant in order to ascertain the

veracity of **Exhibit C9**, as suggested by the Claimants' learned counsel. What cannot be denied, as laid bare by evidence on record, is that **Exhibit C9**, was written with the ostensible authority of the 1st Claimant; more so that no evidence was produced at the trial by the Claimants to show that the authority accorded **Olusoji Taiwo** by **Exhibit D3A** had been withdrawn as at the time he wrote **Exhibit C9** on behalf of the 1st Claimant.

If anything, the Claimant's grievances, in my view, ought to be directed at the said **Mr. Soji Taiwo**, if indeed it was true that he did not have the authorization of the 1st Claimant to have issued the letter, **Exhibit C9**. Proceeding against the Defendant in the present action as the Claimants did, in my considered view, is nothing but a totally misguided, misdirected and ill-conceived move that has no force of law. I so hold.

Whichever way the case of the Claimants are viewed therefore, the inescapable conclusion the Court must reach in the circumstances, is on the one hand that there is no enforceable contract between the 1st Claimant and the Defendant; and on the other hand that the Defendant lawfully walked away from the contract award, the 1st Claimant having rescinded the same, or incapacitated herself from performing the same.

With respect to the Claimants' claim for damages, I adopt the Court's earlier decision,⁴⁷ predicated on the determination that the Claimants have failed to make out a case of breach of contract against the Defendant; and as such the claims for damages of whatever description, cannot arise in the circumstances.

In the overall analysis, the two issues formulated for determination are resolved emphatically against the

⁴⁷ See page 47 of the judgment

Claimants. Accordingly the judgment of this Court is that the Claimants' claim is spurious as it lacked in merit and in substance. It must be and it is hereby accordingly dismissed. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(Presiding Judge)
19/11/2020

Legal representation:

Joe Agi, Esq. SAN (with **O. F. Ekengba, Esq.;** **Ewere A. Aliemeka, Esq. & L. O. Olu-Agunloye, Esq.**) – *for the Claimants*

T. J. Aondo, Esq. (with **Bashir Bulama, Esq.;** **Rose Adole (Miss);** **Patience Idi (Miss);** **Muhammed A. Umar, Esq. & I. Obaniyi, Esq.**) – *for the Defendant*