IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 5TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/GWD/CV/141/2023

BETWEEN:

AIGBEFOH E. DAVID ESQ ------ CLAIMANT
(Trading under the name and style of
David Aigbefoh & Co. Lex Dominus Chamber)

AND

1. ENGR. PRABHAKAR ROUTHU ANJANEYULU
2. ARAVIND METALIC NIG. LTD } DEFENDANTS
3. ARAVIND ARCHITECTURAL ALUMINIUM NIG. LTD
4. PAN AFRICA FAÇADE SOLUTIONS INT'L LTD

JUDGMENT

In this Originating Summons the Claimant want the Court to resolve the questions raised therein and grant the Consequential Order as sought. The questions raised are as follows:

1. Whether having regard to the legal retainer agreement freely executed between the Claimant and the Defendants, the

contract of legal service entered into between the parties on the 2nd of July, 2019 is not valid and subsisting.

2. Whether by the combined effect of the provisions of paragraphs 10 and 12 of the legal retainer agreement dated the 2nd of July, 2019 freely executed between the Claimant and the Defendants, terminated or rescinded by the act of omission of the parties or by the neglect or refusal of the Defendants to perform their obligation under the contract and whether the Defendants can unilaterally resile from the said contract of legal service.

3. Whether the Defendants are not liable for a breach of the legal retainer agreement dated the 2nd of July, 2019 freely executed between the Claimant and the Defendants by the neglect or refusal of the Defendants to perform their obligation under the contract.

4. Whether the Defendants are not liable to pay to the Claimant all the retainer fees of ₦2, 000,000.00 (Two Million Naira) per annum under the legal retainer agreement from the 9th of March, 2021 till date.

Whereas the Claimant claims against the Defendants the following:

1. A Declaration that having regard to the legal retainer agreement freely executed between the Claimant and the Defendants, the contract of legal service entered into between the parties on the 2nd of July, 2019 is still valid and subsisting.

2. A Declaration that the combined effect of the provisions of paragraphs 10 and 12 of the legal retainer agreement dated the 2nd of July, 2019 freely executed between the Claimant and the Defendants, the contract of legal service entered into between the parties have not come to an end nor been extinguished, determined, terminated or rescinded by the act or omission of the parties or by the neglect or refusal of the Defendants to perform their obligations under the contract and that the Defendants cannot unilaterally resile from the said contract of legal service.

3. A Declaration that the Defendants are liable for a breach of the legal retainer agreement dated the 2nd of July, 2019 freely executed between the Claimant and the Defendants by the neglect or refusal of the Defendants to perform their obligation under the contract.

4. A Declaration that the Defendants are liable to pay to the Claimant all the retainer fees of ₦2, 000,000.00 (Two Million Naira) per annum under the legal retainer's agreement from the 9th of March, 2021 till date with 25% increase from year to year.

5. An Order of this Honourable Court against the Defendants to pay the sum of ₦250, 000,000.00 (Two Hundred and Fifty Million Naira) only being general damages for a breach of contract, business inconvenience, emotional stress, pains and business sufferings as a result of the actions of the Defendants in unlawfully refusing to comply with the terms of the contract between them and the Claimant.

6. 10% interest on the Judgment sum until the entire Judgment sum is fully liquidated.

7. ₦700, 000.00 (Seven Hundred Thousand Naira) only as cost of action.

He supported the Originating Summons with an Affidavit of 28 paragraphs which he deposed to in person. He attached 8 documents which are marked as **EXH A, B, C, D1, D2, D3, E1 and E2.**

It is the story of the Claimant who is a legal practitioner – Barrister and Solicitor of the Supreme Court of Nigeria that the 1st Defendant is the Managing Director (MD) of the 2nd – 4th Defendants which are companies managed and directed by the said 1st Defendant, who is an Indian citizen doing business in Nigeria. All the 2nd – 4th Defendants were also incorporated companies in Nigeria.

That on the 9th of March, 2016 the 1st Defendant via 2nd – 3rd Defendants retained his legal service in a retainership Agreement signed. That it was yearly and the yearly fee was **₦1, 000,000.00 (One Million Naira).** It goes year to year until it is terminated validly in line with the terms of the Agreement. The Agreement was attached as **EXH A.** He also acted as the company's Secretary. He was founding member of the 2nd & 3rd Defendants and later held **₦6, 000,000.00 (Six Million Naira)** ordinary share in the 2nd & 3rd Defendants.

When the 1st Defendant failed to honour the retainership Agreement, the Claimant wrote to him on 29th May, 2019 pointing out the breach. He attached the letter as **EXH B.**

That after several exchanges of correspondences, the personal Counsel for the 1st Defendant – Magaji, SAN met with the Claimant to renegotiate new terms of engagement to regulate the legal relationship between the parties. It was resolved that the Claimant should relinquish the **₦6, 000,000.00 (Six Million Naira)** ordinary share at **₦1, 000,000.00 (One Million Naira)** each in 2nd & 3rd Defendants and that the Defendants would continue to retain the Claimant as their Solicitor at an annual fee of **₦2, 000,000.00 (Two Million Naira)** and annual review at **25%** from year to year. That Agreement was reduced into writing on the 2nd of July, 2019. It was also freely executed by the parties. It was exhibited as **EXH C.**

That in consideration of transferring the **₦6, 000,000.00 (Six Million Naira)** ordinary share to the 1st Defendant, the 2nd & 3rd Defendants were to retain the Claimant for his legal services in anything relating to the 1st Defendant and the companies during the subsistence of the legal Agreement as spelt out clearly in **Paragraph 10** of **EXH C** of 2nd July, 2019.

That he transferred the shares as agreed as shown in letter to CAC on 2nd July, 2019. He attached the transfers of the Share Agreement between him and the Defendants dated 2nd July, 2019 as **EXH D 1 & 2.** In the Share Agreement it was clearly stated in paragraph 12 of **EXH C** that the transferred Shares Agreement on **D1 & D2.** That the Legal Retainership Agreement can only be validly terminated by a 3 months Notice in writing which must be issued during winding of proceeding of 2nd – 4th Defendants. Hence the Agreement cannot be terminated unless as stipulated in the Agreement.

That notwithstanding the Agreement of the parties, the Defendants has only paid the annual retainership fee of **₦2, 000,000.00 (Two Million Naira)** for only one (1) year and never made any other payment till date. That the Agreement has not been terminated and it is still subsisting and binding on the parties. That since the 9th day of March, 2021 the Defendants has been in breach of the Agreement and have refused to perform their obligation under the contract of legal service. That the Claimant has always performed his own obligation in this case and he is willing to do so. That the Defendants have been in breach since. That he wrote to the Defendants a letter on 4th of October, 2022 forwarding his Bill of Charges as required by law to the Defendants pursuant to **Order 49 Rule 3 of the Legal Practitioner Act.** He attached the letter as **EXH E1 & E2.**

That all effort made for the Defendants to perform their own obligation proved abortive. That the Defendants rather than fulfill their side of the obligation under the contract resorted to use of dilatory and intimidating tactics to evade the performance of their obligation under the contract. That the attitudes of the Defendants and the breach by the Defendants has caused him untold hardship, trauma, great inconveniences, emotional stress and mental stress too. He urged Court to so hold and grant the Reliefs sought.

In the Written Address the Claimant raised 2 Issues for determination which are:

(1) Whether having regard to the clear provisions of the paragraphs 10 & 12 of the Legal Retainer Agreement of 2nd July, 2019 there is a valid and

subsisting contract between the Claimant and the Defendants which has not been determined by acts or omission of the Defendants.

(2) Whether the Defendants failure, neglect or omission to perform their obligation under the contract contrary to the express obligation under the terms of the said Agreement dated 2nd of July, 2019 does not amount to a breach of contract.

On Issue No. 1, the Claimant submitted that there is a valid and subsisting contract of Legal Retainer Agreement between him and the Defendants and that the Agreement has not been determined by the acts or omission of the Defendants. That in the present Agreement all essential ingredients of a valid contract are present as copiously deposed to in the averments in the Affidavit in support of the application. That he has shown and established that he entered into the Agreement sometime in 2016 through the Agreement dated 9th of March, 2016 which he attached as **EXH A.** That he showed how he was allotted **₦6, 000,000.00 (Six Million Naira)** ordinary shares in the 2nd & 3rd Defendants etc. That in this case there is offer, acceptance and consideration as well as consensus and idem. That the Agreement which contains the terms of the contract/agreement constitutes a binding contract. He referred to **EXH C.** That the Legal Agreement is a multi-party settlement Agreement involving 4 different legal entities in which all parties appended their signature. Hence, that constitutes a binding Agreement. He relied on the following cases:

Best (Nig) Ltd V. Blackhod Hodge Nig. Ltd & Anor
(2011) LPELR – 776 (SC)

Sapara V. Uch Board Management
(1988) LPELR – 3014 (SC)

Abba V. Shell Petro. Development Company Nig. Ltd
(2013) LPELR – 20338 (SC)

That parties in this Suit are ad idem as they freely appended their signature to the contract. That there was also consideration of **₦12, 000,000.00 (Twelve Million Naira)** Ordinary Shares he held in the Defendants and **₦6, 000,000.00 (Six Million Naira)** Ordinary Shares he held in the 1st Defendant. He urged Court to hold that there is a subsisting valid Agreement the term of which is stipulated in the Legal Retainer Agreement of 2nd July, 2019. That by the Agreement the Claimant remains the retained Counsel to the Defendants and that the contract remains in force until same is validly terminated during the winding up of the 2nd – 4th Defendants. He referred to paragraphs 10 & 12 of the Affidavit in support of the Originating Summons.

That by the same Agreement as averred in paragraphs 10 & 12, the claim of the effect and stipulation of the contract is that the consideration of the Claimant transferring his shares in the Defendants' companies to the Defendants entails that he shall continuously be engaged as the Solicitor and Barrister of the Defendants. Hence, the legal relationship remains perpetually in force until validly terminated by a 3 months Notice in writing issued during winding up of the Defendants companies. That means that for as long as the companies are in existence, he is continued to be engaged to render Legal Services to the Defendants. He referred to **paragraphs 13 – 17** of the Affidavit in support.

That the provision of paragraph 12 has not been complied with. That the contract having not been validly terminated is still subsisting. He urged Court to so hold. That the parties are bound by the terms of the Agreement – **pacta sunt servanda.** He referred to the following cases:

Egharevba V. Osagie
(2009) 18 NWLR (PT. 1173) 299 @ 302

Williams V. Regd. Trustees of Textile Lagos State & Ors
(2016) LPELR – 41420 (CA)

Ecobank V. Huawei Tech. Company Nig. Ltd & Ors
(2017) LPELR – 45110 (CA)

Union Homes Savings and Loans PLC V. UBA
(2022) LPELR – 58242 (CA)

He urged Court to hold that the multi-party Agreement entered into between the parties in this Suit is still valid and subsisting and that the Defendants cannot resile from same. He urged Court to resolve Issue No. 1 in his favour.

On Issue No. 2 – whether the action of the Defendants amount to a breach of the contract of 2nd July, 2019; he answered in the affirmative. He referred to **EXH C.** That the words in the said EXH C are clear and the Court has no right to source for meaning of the words outside the plain meaning as contained thereto. That in consideration of the contract on the part of the Claimant was for him to relinquish his 40% Shares each on both companies which is **₦6, 000,000.00 (Six Million Naira)** Ordinary Shares each on the Defendants. That he performed his own side of the obligation that same day on the 2nd July, 2019 as averred in paragraph 16 and

seen in **EXH D1 & D2** which he attached in the case. That refusal of the Defendants to fulfill their own side of the obligation amounts to breach of terms of the contract. He referred to the cases of:

UBA PLC V. Siegner Sabithes (Nig) Ltd
(2018) LPELR – 51586 (CA)

FCMB V. Oguefi Ozomgbachi
(2021) LPELR – 52822 (CA) a case in which the Court of Appeal upheld the decision of this Court at first instance.

Unity Bank V. Ahmed
(2019) LPELR – 47395 (SC)

That there is a clear breach of the contract by the Defendants and there is need for Court to Order specific performance or award damages for the breach. That he has claimed special and general damages. That there is need for Court to award damages against the Defendants for the breach. He relied on the case of:

MCC (Nig) Ltd V. Igbinoba
(2010) 15 NWLR (PT. 1215) 99 @ 113

That in this case damages flows from the nature of the breach. Hence, there is no need for special pleading or proof before damages are awarded. He urged Court to so hold. That the breach by the Defendants has continued unabated. Hence, the Court should hold them liable for the breach and award damages accordingly. He urged Court to resolve Issue No. 2 in his favour and grant the Relief sought.

Upon receipt of the Originating Summons the Defendants jointly filed a Counter Affidavit of 59 paragraphs. They attached some documents marked as **EXH MAM 1 – MAM 3** which are:

- Board Resolution of 22nd February, 2021.
- Reply to the Board Resolution dated 25th February, 2021.
- Another letter dated 5th March, 2021.

All letters are from the Defendants.

In the Written Address they raised 2 Issues for determination which they argued together. The Issues are:

(1) Whether in the circumstance of this case, the Retainer Agreement is not unenforceable for reason of undue influence, illegality and being against public policy.

(2) Whether the said Retainer Agreement between the parties has not been terminated.

Taking the 2 Issues together, they submitted that the Agreement is not enforceable due to influence, being illegal and/or against public policy and that it has been duly terminated. That as contract Agreement between the lawyer and client, it can be terminated at any time for any reason or without reason. That in the contract the Claimant conferred on himself undue advantage of the 1st and that the Agreement is illegal by virtue of **Rule 23 of the Rules of Professional Conduct for Legal Practitioners.** That the Claimant disregarded that provision in this case. They referred to the case of:

Nwangwu V. FBN PLC

(2022) 1 NWLR (PT. 1812) 417 @ 447 – 448 Para H – C

A.C.B V. Alao
(1994) 7 NWLR (PT. 358) 614

That the Claimant acted in a manner that bestowed him personal gains and benefits in clear abuse of the confidence reposed on him by the Defendants. They referred to the Counter Affidavit.

That the Claimant also allotted Shares to himself in the 1st – 3rd Defendants' companies on basis of non-existing law to the effect that the 1st & 2nd Defendants as foreigners cannot register company in Nigeria and own all the Shares therein. That he used the relinquished Shares as consideration for the Retainer Agreement which he now seeks to enforce. They urged Court not to allow the Claimant to do so. They referred to **Rule 23 of the Rules of Professional Conduct for Legal Practitioners** as well as the case of:

MTN (Nig) Communication Ltd V. VCC Investment Ltd
(2015) 7 NWLR (PT. 1459) 437 @ 463

That the Retainership Agreement is illegal and obtained under undue influence. That the Claimant should not be allowed to benefit from his wrong. He referred to the case of:

Moddibo V. Usman
(2020) 3 NWLR (PT. 1712) 470 @ 514 – 515 Para H – D

That the Claimant took undue advantage of the Defendants for his own benefit. That he brought Innocent Igwe to take 6, 000,000 Shares which he relinquished after he was told that he is not entitled to any monetary compensation having not

contributed any money in the 2nd Defendant. That the Claimant allotted the Share to himself as he did in the case of the Architect Frank Oiseomoye Uunakhoba from where he acquired 9, 000,000 Shares of the 3rd Defendant. That it was wrong for the Claimant to demand for the payment of **₦120, 000,000.00 (One Hundred and Twenty Million Naira)** to be paid to him by the 1st Defendant as profit from the Shares of the companies without making payment or contributing a kobo for the Shares. That he was still paid Retainership Fees as the Secretary of the companies – 1st to 3rd Defendants.

That the relationship between the 1st Defendant and the Claimant is fiduciary and the Claimant is to act on the best interest of the 1st Defendant as required by law. They relied on the provision of **Rule 14 of the Rules of Professional Conduct 2010.**

That the Claimant has misrepresented the facts to the Defendants and has protected his own interest at the detriment of the Defendants. That he took undue advantage of the Defendants by denying them their right to disperse with his services as seen in **paragraphs 10 & 12** of the Retainership Agreement. They relied on the provision of **Rule 18(1) of the Rules of Professional Conduct.**

That the Claimant also would not allow them to discharge him until 2nd – 4th Defendants are wound-up, hence denying the company a chance to use the lawyers of their choice or disengaging the services rendered, an act which is unenforceable. They referred to **S. 36(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and the case of:

Ezenwo V. Festus (No. 1)
(2020) 16 NWLR (PT. 1750) 324 @ 351 SC

That the Defendants exercised their right to disengage and actually disengaged the service of the Claimant via letter written on 22nd February, 2021. That they terminated his service as the company Secretary and other services pertaining to the 2nd & 3rd Defendants. That the Claimant responded to it in a letter to the Defendants dated 25th February, 2021 and the Defendants wrote another letter dated 5th of March, 2021. They attached the letters as Exhibits in their Counter Affidavit. That the Defendants therefore need no further letter to terminate the services of the Claimant. They referred to the case of:

Unity Bank V. Olatunji
(2015) 5 NWLR (PT. 1452) 203 @ 249

That the Defendants need not terminate the Agreement with the Claimant in the manner other contracts are terminated by giving formal notice or waiting for a breach or by giving any reason. They urged Court to hold that the contract between the Claimant and the Defendants have been terminated by conduct and by the letters of 22nd February, 2021 and 5th March, 2021 respectively.

That the term of the retainership was restrictive in nature and therefore not enforceable. They urged Court to hold that the Claimant is not entitled to benefit from his wrong. They referred to the case of:

Passo International Ltd V. Unity Bank
(2021) 7 NWLR (PT. 1775) 224 @ 254

They urged Court to dismiss the case on ground of illegality, undue influence and for being against public policy and award punitive cost against the Claimant.

Upon receipt of the Counter Affidavit by the Defendants, the Claimant filed a Further Affidavit of 14 paragraphs. He attached documents marked as **EXH DAC 1 – DAC 3.** In it he denied some of the averments in the Counter Affidavit and submitted that the content of the documents speaks for itself especially **paragraphs 7, 8, 10, 33, 37 – 39** of the Counter Affidavit. That he was not paid to register the 2nd ^ 3rd Defendants and urged the 1st Defendant to provide evidence if they did. That it was Igwe, one of the Promear Directors that paid for the registration of the 2nd & 3rd Defendants.

That he advised the Defendants to have a business permit and work in Nigeria as Expatriates and that in each case 2 Nigerians with B.Sc/HND in relevant discipline/profession should be attached. He referred to the Ministry of Interior document attached as **EXH DAC 1 – MIA/B.37776/1/64 – 65** dated **26th August, 2016.**

That the Defendants did not plead any particulars of undue influence made by him against them. That **EXH MAM 3** attached by the Defendants was concocted. That the Retainership Agreement has NOT been terminated.

That the Board Resolution removing him as company Secretary does not affect the Legal Retainer Agreement. That there is no document showing termination of the Legal Retainer Agreement entered into by the parties on 2nd July, 2019.

That he had never threatened the Defendants in any way. That the Defendants procured the retainership of Mahmud Magaji, SAN, to intimidate, threaten and frighten him to give up his right through the various correspondences. He referred to **EXH DAC 2(a) – 2(c).**

That he wrote a Petition to the President of NBA in a letter dated 17th October, 2022. Rather than respond, the Defendants through the said Magaji SAN, wrote a Petition against him to the same NBA President dated 4th April, 2023 and he replied by another letter attached as **EXH DAC 3(a) – (c).** That the Defendants also threatened him through Nigeria Police – FCT who invited him for questioning. That he brought the 1st Defendant to Nigeria via the 2nd Defendant through Expatriate Quota to whom he was impoverished by his former employer and was sent back to India after the Resident Permit of his employer expired.

In the Written Address he raised an Issue for determination which is:

> **"Whether in the Legal Retainer Agreement of 2nd July, 2019 freely entered into by the parties and the Exhibits therewith in response to the Defendants' Counter Affidavit, the parties are bound by the contract Agreement?"**

He submitted that they are bound by the said contract Agreement entered into on the 2nd of July, 2019. He urged Court to hold that there was no undue influence and that the Defendants were not able to prove and establish same as he never exerted any pressure on the Defendants to enter into the said Agreement against their will during the formation of

the contract. He relied on **S. 21 of the Evidence Act 2011.** That the Defendants all appended their signatures in the Agreement as seen in paragraph 10 of **EXH DAC 2(a) – 2(c).** That extant paragraphs of the Counter Affidavit as listed in his paragraph 3.4 of the Written Address is misrepresentation and misapplication of facts and is misleading the Court.

He urged Court to discountenance the argument of undue influence, misrepresentation and act against public policy raised by the Defendants as they failed to establish same. He relied on the cases of:

Okafor V. Nweke
(2015) 7 NWLR (PT. 1454) 1 @ 20

Ukeje V. Ukeje
(2014) 11 NWLR (PT. 1418) 384

Oshodi V. Oshodi
(1992) 3 NWLR (PT. 232) 25

He urged Court to hold that the Defendants failed to prove the undue influence as they alleged as there was no undue influence in this case. So also on the issue of misrepresentation, as there was nothing false or material about his claims in this case. He referred to **S. 11 of the Evidence Act** and the case of:

Nwanji V. Ifediora
(2013) 13 NWLR (PT. 1575) 1 @ 15

That there was no misrepresentation that affected them or impacted on them on their decision to enter into the contract of retainership. He urged Court to so hold. That the allegation

of misrepresentation was not supported by any sufficient or clear convincing evidence. Hence, the claim/assertion is not proved and is therefore baseless.

That contrary to **paragraphs 3.21 – 3.35** of the Written Address of the Defendants that their Counsel should have been held liable for misconduct as could be seen in **paragraphs 10 & 11** of his Further Affidavit as seen on **EXH DAC 2 & 3** respectively.

That the submission of the Defendants that the contract cannot be terminated by the terms of the contract itself is legally UNFOUNDED. He relied on the provision of **S. 10 Interpretation Act.** That the terms of the contract are all consistent with the statutory provisions of the law and public policy. Hence, the contract termination clause is binding on the parties in this case. He urged Court to so hold. He relied on the case of:

Adeyemi V. Opeyori
(2020) 8 NWLR (PT. 1731) 1 @ 20

He urged Court to dismiss the Counter Affidavit and the facts therein and uphold the claim of the Claimant for termination of the contract. He urged Court to resolve the Issue in his favour and grant his Reliefs.

The Defendants filed a Further Counter Affidavit of 18 paragraphs. They attached documents marked as **EXH MAM 4 – 7.** They claimed that they paid the money for the registration of the 2nd & 3rd Defendants by borrowing from Igwe and that they repaid Igwe the money. That all the Claimant did for Expatriate Quota was part of the services

rendered to the Defendants alongside the registration of the 2nd & 3rd Defendants. That they paid for the services through Igwe who paid the Claimant directly. That the Claimant is not his business partner.

That they deposed to fact on undue influence. That they served the Claimant the said **MAM 3** via Email and it was not concocted. That the Retainership Agreement has been terminated as seen in one of the Notices to the Claimant. That the Defendants did not procure Mahmud Magaji, SAN, or anyone else to intimidate or threaten the Claimant. That the termination of the Agreement is based on the letter of 2nd July, 2019 as seen in **EXH DAC 2(c).**

That Magaji SAN, was procured to defend the 1st Defendant from the hand of the Claimant. That they did not instigate Magaji SAN to write letter of complaint against the Claimant to NBA President. That the letter was written by the 2nd Defendant. That the 1st Defendant petitioned the Commissioner of Police FCT but eventually withdrew same. They referred to **EXH MAM 4 & 5.**

That he went back to India when they was a delay in securing the Expatriate Quota for the 1st Defendant in the 2nd & 3rd Defendants and his Residential Permit expired. That there was a Legal Retainer Agreement between the 1st Defendant and the Claimant which came into effect on 9th of March, 2016 before the Claimant did work regarding the Expatriate Quota of which the Claimant alleged was breached. That he attached and referred to the said documents and letter of the Claimant dated 29th May, 2019 in which he alleged breach of

Legal Retainer Agreement of 9th March, 2016. The documents are marked as **EXH MAM 6 & 7** respectively.

In response to the alleged fresh issues raised by the Claimant in the Further Affidavit, the Defendants submitted as follows:

On burden of undue influence lying on the Defendants, that as in this case the burden of proof lies on the Claimant who shows that the allegation is made. He referred to the case of:

BUA V. Dauda
(2003) LPELR – 810 (SC) 18 – 20

That the allegation was raised because of unconscionable bargains. That the Defendants had shown that the Claimant misrepresented facts to them in acquiring the Shares of the 2nd & 3rd Defendants. That fact in the Counter Affidavit is enough and satisfied the requirement of undue influence. They also referred to the case of:

Isah V. Gemandi & 2 Ors
(2014) LPELR – 23239 Pg. 51 – 52

That the Defendants have shown unchallenged and credible evidence that the relationship between them and the Claimant, especially the 1st Defendant is such that Court can presume the existence of undue influence. Hence, burden of proof is on the Claimant in this case. That by their Counter Affidavit and documents attached in support the Defendants has shown that the Claimant exerted undue influence on them at the time of acquiring the Shares and at the time of the purported Agreement. They urged Court to so hold. They urged Court to hold that the Claimant's claim is unenforceable and should be dismissed with cost.

COURT

"Pacta Sunt Servanda" – Parties are bound by their Agreement they have entered into.

It is a global principle of law known to every party who entered into a contract Agreement. Such terms and conditions are binding on such parties unless there is a proven undue influence or that such terms are contrary to public policy. In that case, a breach of the terms will not attract any judicial sanction. Such principle stands as long as the Agreement subsists. Such Agreement cannot stand where there is evidence that the condition and terms are froth or based on illegality, proven undue influence and against public policy. Anything outside that cannot stand. Once parties have agreed in principle by their body language or by their action or penned down the terms of an Agreement in paper and signed same and witnessed by other person(s) depending on the Agreement and its nature, they are bound by such terms. Therefore, no emotional sentiment, moral attachment or solicitation can change that. Once parties are bound they are forever bound by such terms unless they have vacated same or the act of god's hand made the terms to be impossible to fulfill. So where there is a breach or allegation thereof and it is established, it attracts strong judicial civil sanctions. Also where there is allegation of illegality or undue influence as defence to the allegation of breach of contract, it must be proven by the person who alleges, as he who alleges must prove. That proof must be beyond reasonable doubt. Again, whosoever asserts such breach or undue influence or against public policy must prove same with cogent,

consistent and watertight facts, documentary and material evidence or otherwise. It is not a matter of merely alleging breach or undue influence and the like. On all the above see the following cases:

A-G Nasarawa V. A-G Plateau
(2012) 10 NWLR (PT. 419)

Daspan V. Mangu Local Government Council
(2013) 2 NWLR (PT. 203)

Lagos State Government V. Toluwase
(2013) 1 NWLR 555

It is the responsibility and duty of Court to give interpretation of document of Agreement between the parties which is consistent with the objective of the entire document. It is not for the Court to add or subtract from such document – Agreement. See the cases of:

Bakare V. NRC
(2007) 12 NWLR (PT. 1064) 606

Odutola Holdings V. Ladejoya
(2006) 12 NWLR (PT. 994) 321

Uni Petrol V. E.S.B.I.R
(2006) 8 NWLR (PT. 982) 624

Rivers State Government V. Specialist Koneall
(2005) 7 NWLR (PT. 923) 145

All in all, parties are bound by the contract agreement they have entered into freely no matter.

Universally, it is believed that parties enter into an Agreement freely and out of their freewill unless they prove undue influence. Once parties enter into an agreement they are bound by its terms and condition. See the case of:

Lagos State Government V. Toluwase Supra

Again, the content of an Agreement or document should be given its plain, direct and unambiguous meaning. Also, document speaks louder than the voice of man.

It is imperative to state that once there is an agreement signed or as can be deciphered from the action or relationship of the parties or their body language or communication over time, where there is a contractual intention between the parties and where there is a consideration in such relation, the Court shall hold that there is a valid contract. Where there is no known action terminating such contract, the Court shall hold that the contract is subsisting. Also, where a party establishes that the other party or parties to the contract failed to fulfill its obligation under the valid contract, the Court shall hold that there is a breach and that the party in breach is liable to pay damages to the other party. That is the decision of Court in the case of:

Akinyemi V. Odu'a Investment Co. Ltd
(2012) 17 NWLR Pg 209

Going by the decision in the case of:

Atago V Atuche
(2013) 3 NWLR P.332

In every case premised on Originating Summons the Court is called upon to construct, consider and determine and answer the questions raised therein and grant Order sought where there is merit in the case as the circumstance of the case warrants. In this case the Claimant – David E. Aigbefoh, a lawyer trading in the name of David Aigbefoh & Co. has raised 4 questions for the construction consideration and defamation of this Court. He had asked for grant of Consequential Orders too.

This Court has summarized the parties' stances as shown above. To do justice in this case it will be in the interest of justice to construct, determine the question vis-à-vis the document evidence attached by the Claimant and the Counter and Further Counter Affidavit of the Defendants and documents attached in support of the Counter Affidavit.

This Court had gone through the stance of the parties and the Issues yelling for determination on whether there was a valid contract of Retainership; whether it is binding; whether the said contract is still subsisting or already terminated and whether there is a breach by the Defendants or whether the Agreement has been properly terminated as Defendants claim and whether the Claimant has proved that it has not been terminated and he is therefore entitled to damages as he claims and alleged. From all the above, has the Claimant established his claim that the Court should and answer the question in his favour and grant the Reliefs sought?

Not answering the questions seriatim per se, it is the very humble and considered view of this Court that the Claimant has established the claim so much so that this Court should

without hesitation hold so and grant his Reliefs both Declaratory and otherwise as sought. This Court also holds that there is a valid and subsisting contract Agreement between the parties, a fact which both parties acknowledged. The contract is still subsisting. So this Court also humbly holds. The terms of the contract is binding on the parties, same having not been terminated. The Court also holds that the contract has not been validly terminated. There is a breach of the terms of the contract by the Defendants' failure to fulfill their obligation as contained therein which is failure to pay the Retainership Agreement Fee especially going by the terms of the Agreement – **Paragraphs 10 & 12 of the Agreement of 9th of July, 2019** which came into effect on 9th of March, 2020.

It is a global practice in the world of contract that where a party proves a breach of terms of a contract that such party is entitled to damages. That is the decision in the cases of:

Eno V. Tinubu
(2012) 8 NWLR (PT. 1301) 104

Taylor V. Oghenenovo
(2012) 13 NWLR (PT. 1316) 46

Garba V. Kur
(2003) 11 NWLR (PT. 831) 280

Ijebu-Ode LGA V. Adedeji Balogun & Co. Ltd
(1991) 1 NWLR (PT. 166) 136

In this case, it is also the humble and considered view of this Court that the Claimant had established that the Defendants breached the terms of the Agreement entered by them on the

2nd of July, 2019 which came into effect on 9th of March, 2020 by failure of the Defendants to fulfill their obligation as contained in the terms of the Agreement. To that effect this Court answers the questions posed by the Claimant thus:

That the contract of legal services entered into between the parties on 2nd of July, 2019 is valid and still subsisting, having not been terminated as agreed to in the said contract by the parties.

Again, the effect of paragraph 10 and 12 of the Legal Retainer Agreement dated 2nd July, 2019 executed by the parties, the contract of legal services entered into between the parties has not come to an end. It has not been extinguished, determined, terminated or rescinded. The Defendants cannot therefore resile unilaterally from the said contract.

By the Defendants neglect and refusal to perform their obligation under the contract which they freely entered into and freely executed they are liable for the breach of the said Legal Retainer Agreement and are liable to pay the Claimant damages for them breaching the said terms. **Pacta Sunt Servanda.** Parties – Claimant and the Defendants in this case are bound by the terms of the Agreement they entered into.

The Defendants are also liable to pay the Claimant all the retainer fee that are outstanding – **₦2, 000,000.00 (Two Million Naira)** per annum as agreed under the Retainer Agreement from 9th of March, 2019 till date.

The considered view of this Court on the questions as set above are based on the following reasoning and grounds:

There is no doubt that the parties entered into an agreement of legal services on the 2nd of July, 2016. That document was tendered by the Claimant as **EXH C.** The Defendants also confirmed that fact and acknowledged same. That document was duly signed and executed by the parties. The Claimant signed and it was witnessed by one Yetu Hope M. on the same day. The Claimant affixed his NBA Stamp as seal. The Directors of the 2nd, 3rd and 4th Defendants signed for and on behalf of the 2nd – 4th Defendants. They also affixed their respective stamp and seals of the companies. There is nothing in the length and breadth of the documents before me in this case to show that that contract was terminated as set out in the Agreement. Hence, this Court holds that the contract- Agreement having met all the requirements as required by law is still subsisting and valid.

On question No. 2 – on the combine weeding of the paragraphs 10 & 12 of the said Agreement of 2nd July, 2019; it will be proper to recite the said paragraphs in order to do justice to that question.

Paragraph 10

> In consideration of Aigbefoh .... Transfer its 40% Share in Aravind Metalic Nigeria (2nd Defendant) and Aravind Architectural Aluminium Nig. Ltd (3rd Defendant) each and respectively in favour of Prabhakar A. Routhu (1st Defendant) and Uppu Aravind Swarm. This Retainer Agreement shall to the effect, that Aigbefoh & Co. shall continuously be retained to render legal services to both companies aforementioned inclusive Pan African Façade Solutions International Ltd in every matter relating to his companies/personal Issues to the

exclusion of all others during the existence of the Legal Retainer Agreement.

From the above content of paragraph 10 of the Agreement, it is clear that upon the transfer of 40% of the Share in the 2nd & 3rd Defendants in favour of the 1st Defendant, the Law Firm of the Claimant shall retain and render legal services to, not only the 2nd & 3rd Defendants but even the 4th Defendant in all matters concerning the companies and even on personal issues for as long as the Retainer Agreement subsists and exists. The Claimant's service can only come to an end when the Retainer Agreement stops existing.

It is equally imperative to cite verbatim the content of paragraph 12 of the same Retainer Agreement of 2nd March, 2019. It is thus:

Paragraph 12

The Legal Retainer Agreement may be terminated by either party (during the winding up) of the companies hereto, by giving to the other party three (3) months notice in writing to that effect. The termination by ether party will not however affect any existing liabilities between the parties or any pending Suit or matter in Court.

From the above (paragraph 12 of the Agreement of 2nd July, 2019) the contract of Retainer Agreement can be terminated during the time of the winding up of the companies. That termination can be done by either the Claimant or the Defendants given the other party Notice in writing. That notice to terminate will be within three (3) months. Again, the termination can be by notice by any of the parties. That

notice of termination of the Retainer Agreement will not in any way affect any existing liabilities of the parties to each other. It will also not affect any pending existing matter or Suit that is in Court. That means that notwithstanding termination the parties must still fulfill their obligations which are outstanding before the termination notice is given. Again, the contract/Retainer Agreement can only be terminated during the winding up of the 2nd – 4th Defendants by three (3) months notice to that effect.

So going by the above it means that even where the services of the Claimant as the company's Secretary is terminated that all obligation of the Defendants to the Claimant as per pending cases in Court should be fulfilled. That means that all the entitlements of the Claimant must be fulfilled by the Defendants for the disengagement to be effective. That means that case in Court shall attract a fee different from the Retainer Agreement Fee. So also in recovering of debt for the Defendants by the Claimant shall attract a different fee – 10% of the sum recovered. See **Paragraphs 5 & 6 of the Retainer Agreement of 2nd July, 2019.**

Also any matter litigated in Court by the Claimant also attracts 10%. The Defendants are also to pay for Processes filed in Court. All in all, parties are by the said paragraph 12 obligated to pay for any outstanding liabilities and entitlement to any outstanding indebtedness. Even in the Claimant's response to letter of 25th February, 2021 he pointed out that the company should pay him all his entitlement due to him as a company Secretary.

But by the content of the Agreement, the termination is supposed to be upon winding up of the company not at the whim and caprice of the company and/or its Director or Board Meeting. Hence, the Retainership has not been terminated in accordance with the Agreement. So this Court holds since the Defendants did not pay the Claimant and the Defendants cannot unlawfully resile from the contract.

On whether the Defendants are liable for the breach of the contract, it is the view of this Court that the Defendants, having not terminated the contract as spelt out in the Agreement and by their refusal to perform their obligation by not paying the Claimant, they are in breach of the contract. They are liable for the breach of the Legal Retain Agreement of 2nd of July, 2019 as they neglected to perform their obligation, since they did not give the Claimant due notice and did not pay him for the services rendered as agreed in the Legal Retainer Agreement of 2nd July, 2019 – paragraph 3 in which they agreed to pay him **₦2, 000,000.00 (Two Million Naira)** per annum subject to upward review of 25%. In paragraph 2 the parties agreed that the Agreement shall be terminated in accordance with the provision of the Agreement. See paragraph 12 therein.

There is no evidence that any of the companies, 2nd – 4th Defendants is been wound-up. There is no evidence that a formal letter of termination of Agreement was written to the Claimant as required by the Agreement. There is also no evidence that the Defendants paid the Claimant for the services rendered after March 2021 to date. The Claimant had, as a professional, formally demanded for all the

outstanding amount due to him from the Defendants as shown in **EXH E1 – E3.**

As for the fourth question, it is the humble view of this Court that the Defendants having failed and breached the terms of the Agreement are liable to pay the Claimant the **₦2, 000,000.00 (Two Million Naira)** per annum which is the Legal Retainer Fee as agreed by the parties in the Agreement of 9th March, 2020 from March 2021 when the paid him last till date, together with 25% as agreed in paragraph 3 of the Agreement which stipulates thus:

Paragraph 3

> "The Retainer Fee to be paid by our client to the Legal Practitioner shall be ₦2, 000,000.00 (Two Million Naira) and this fee shall be subject to upward review of minimum of 25% increase from year to year based on utmost good faith …"

The Defendants' failure to live up to that paragraph of the Agreement makes this Court hold that they, the Defendants are liable for breach of the provision – paragraph 3 because parties are bound by the Agreement they have entered into.

The Claimant demanded for the payment by sending Bill of Charges to the Defendants, the Defendants did not respond or show evidence of payment or reason for not paying or evidence of winding up.

That brings the Court to the documents attached by the Defendants especially **MAM 3** and **EXH 2C** which the Claimant claimed was never served on him. Even the letter of 27th March, 2019 is phoney as it shows that it is the Claimant that is to interview Commissioner of Police on 13th

June, 2019. Meanwhile, the action took place on 7th June, 2019 which is what was complained about. And that it was concocted by the Defendants, a fact which the Defendants did not deny. A closer look at the document shows that it was a scanned paper in which the letter was super-imposed. The Court comes to that conclusion because in every letter written by the Defendants it has the company's seal showing the name of the company which is a circular marking. That seal is usually placed at the end of the document after the Defendants had signed. But strangely in **EXH MAM 3 –** a 2 pages letter dated 5th March, 2021 in which the Defendants claimed to have paid the Claimant upfront without any evidence to prove and establish same. In that letter the seal of the Claimant appeared at the bottom of the first page of the letter and after was no signature therein. And at the end of the letter in page 2, the 1st Defendant signed and the seal was affixed as in every other letters from the Defendants. See **EXH MAM 1 – MAM 4** and even in the Agreement of 2nd July, 2019.

This Court is strongly of the view that the said **MAM 3** was actually concocted as the Claimant alleged. Besides, the Defendants did not challenge that fact. There is equally no evidence of receipt and acknowledgement of the document by the Claimant.

Again, the Defendants had in their letter stated that they gave verbal notice to the Claimant to bring and relinquish all their documents in the Claimant's custody. The Claimant vehemently denied that fact. But most importantly, the parties never agreed that such vital instruction/information

should be done or given verbally. This Court does not believe the Defendants.

From all indication and going from the above the Claimant has established.

The Defendants were also in breach by retaining the service of Chigbu Godwin Ndubisi while the Legal Retainer Agreement between the Claimant and the Defendants is still subsisting. The Defendants confirmed that they used the said Chigbu.

This Court has answered the questions in favour of the Claimant following the law, the agreement of the parties as spelt out in the document before this Court dated 2nd of July, 2019 and the other correspondence.

The Claimant haven established his case as it were, especially that the Defendants were in breach as they have equally founded; he is entitled to the payment of Damages.

All in all, this Court grants the Reliefs as follows:

(1) **Reliefs 1 – 4 granted as prayed.**

(2) **On Relief 5, the Court Orders that the Defendant should pay to the Claimant the sum of ₦5, 000,000.00 (Five Million Naira) as General Damages for the breach of contract, for the inconveniences, emotional stress, pains and business sufferings as a result of the said breach of term of the Agreement of 2nd March, 2019.**

(3) The Court also Order the Defendants to pay to the Claimant 5% interest of the Judgment sum from the date of this Judgment until it is fully liquidated.

(4) The Court awards the sum of ₦150, 000.00 (One Hundred and Fifty Thousand Naira) as cost of this action.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

_____

K.N. OGBONNAYA

HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: AIGBEFOH DAVID ESQ.

DEFENDANTS' COUNSEL: RABIU SULEIMAN ESQ.