

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 29TH DAY OF JANUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2928/2018

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

ENGR. V. I. P. OKOYE CLAIMANT

AND

1. IPCO (NIGERIA) LIMITED } DEFENDANTS
2. OLU ADEWUNMI }

J U D G M E N T

The claim of the Claimant vide his Writ of Summons and Statement of Claim dated and filed on the 8th day of

November 2018 against the Defendants is for the following:

- (1) A declaration that the Defendants are in breach of the agreement entered into with the Claimant on the 2nd of March, 2009.
- (2) A declaration that the Claimant is entitled to the sum of ~~N~~84 Million from the Defendants being agreed weekly expenditure from April 2009 till 31st January 2018 (420 Weeks or 105 Months).
- (3) A declaration that the Claimant is entitled to 10% of the \$37.5 Million paid to the Defendants as final arbitral settlement award.
- (4) ~~N~~5 Million as general and exemplary damages against the Defendants for breach of contract.

The Defendants were served with the Writ of Summons, Statement of Claim and all other processes. They filed and served their Statement of Defence.

The Claimant opened his case on the 17th of February 2023. The sole witness is the Claimant himself. He is Vincent Ibe Paul Okoye. He deposed to a Witness Statement on Oath sworn to on 4/10/2018. He adopted same as his oral evidence.

In the said Witness Statement on Oath, he deposes that he is the Claimant and Project Engineer as well as Consultant particularly in the Petroleum Sector.

That the 1st Defendant is a registered company in Nigeria doing business in the Petroleum Sector while the 2nd

Defendant is the Chairman, Board of Directors/Chief Executive Officer of the 1st Defendant.

In February 2009, the 2nd Defendant approached him on behalf of the 1st Defendant to act as a Consultant and negotiate the resolution of its dispute with the Nigerian National Petroleum Corporation (NNPC) in respect of its arbitral award which NNPC disputed and refused to honour.

That he executed the said Letter of Engagement constituting terms and conditions of the agreement. He was formerly engaged by the Defendants vide a Letter of Engagement dated 2nd March 2009 to start negotiation with NNPC.

The 2nd Defendant on behalf of the 1st Defendant paid him ₦800,000 which is the total sum of one month of the

agreed ~~N~~200,000 weekly expenses until the successful completion of the negotiations as per the terms of the agreement in the Letter of Engagement.

The arbitral award dated 28/10/2004 against NNPC which the Defendants engaged him to negotiate comprise of:

- (1) \$152,175,971.55
- (2) N5,000,000.00
- (3) 14% post-award interest from the date of the award until full payment.

It is part of the agreement in the said Letter of Engagement that he will participate in all negotiations on behalf of the 1st Defendant.

He attended several meetings with NNPC officials and engaged in negotiations and carried the 2nd Defendant along in all his negotiations.

The Defendants approved his work and commended him. The Defendants had conversation with one Jim Bazor and Clement Eze wherein he intimated them of how he had coordinated all the elements resulting in fruitful negotiations.

That in the course of negotiation, there was an agreement and disagreement but in the course of time, the NNPC agreed for settlement and forwarded a proposal to IPCO, the 1st Defendant vide a letter dated September 15, 2009, which Defendants replied stating their acceptance.

The 2nd Defendant drafted a letter to be given to NNPC and forwarded same to him via e-mail. He vetted same

and sent it to the Defendants before it was forwarded to NNPC.

That upon receipt of the proposal, NNPC replied suspending the negotiation. That as a result of the NNPC refusal to accept the deal as proposed by the Defendants, the negotiations stalled and dragged on for a few more years while he still continued to put his best efforts in negotiation.

That the Defendants after making the first payment of ~~N~~800,000.00 to him in the first month, neglected and failed to pay him his expenditures from the month of April 2009 till the conclusion of transactions although he continued in the spirit of team work and expectation.

The Defendants failed to pay him ~~N~~200,000 per week for 420 weeks (105 months) as at January 2018 and the total sum is now ~~N~~84,000,000 which has not been paid.

That in the course of time and upon Defendants prompting, he reopened the negotiation and consultation and forwarded an SMS vide phone to the new GMD of NNPC in the spirit of continuous negotiation on behalf of the Defendants.

That negotiation continued till the end of January 2018 when he heard that the Defendants had secretly made a deal with NNPC and collected a lesser amount which was done without his knowledge.

That this action of the Defendants in doing negotiation behind his back and collecting the aforesaid sum is

contrary to the terms and conditions of the agreement he entered into with the Defendants.

That he called 2nd Defendant but he did not pick his calls but later sent a text giving him unacceptable reasons why he was left out of the negotiation.

That by reason of the Letter of Engagement, his contract is still valid and subsisting. That it was not revoked or terminated.

That the Defendants are in breach of contract. That he is entitled to 10% of the \$37.5 Million paid to the Defendants.

That failure to reach the \$50 Million mark and above as stipulated in the contract was not attributed to him but the Defendants for their failure to involve him.

That the last negotiation he was involved in was at \$80 Million which NNPC agreed to pay and he advised the Defendants to cut the deal but they refused only to go back and accept \$37.5 Million ascribing it to the funders.

The Claimant tendered:

Exhibit A– Letter of Engagement dated 2/03/2009.

Exhibit B– Letter from 1st Defendant dated 25/09/2009 tilted “Without Prejudice Proposal on Amicable Settlement.”

Exhibits C – C1 are:

- (1) Letter dated 15/09/2009
- (2) Letter from NNPC to 1st Defendant dated 6th November 2009.

Exhibit D – Personal letter of witness dated 25/08/2017 addressed to Group MD of NNPC.

Exhibits E – E3 are two (2) emails and two (2) SMS and Certificate of Compliance.

The Claimant filed an Additional Witness Statement on Oath which he further adopted.

He said 2nd Defendant engaged him for the 1st Defendant. The 2nd Defendant claimed to be the Chief Executive Officer of the 1st Defendant.

That he was appointed a Consultant/Advisor and a Letter of Engagement executed.

That 2nd Defendant turned the Company to his private affairs and conducts its affairs by himself to the exclusion of other directors whom he merely introduced to him but he was to report to him directly at all times.

There was no agreement for him to retire expenditures or provide invoices for expenses.

The Letter of Engagement demanded that he should participate in all negotiations but Defendants breached this condition.

That he always offered his advice continuously without failure up to 2017.

That it is not true that he failed to fulfil his obligation for 9 years or abandon Defendants by conduct.

That he did not participate in the negotiation between 1st Defendant and the Attorney-General of the Federation because the 2nd Defendant told him not to participate but that he was offering 2nd Defendant consultancy services.

That 2nd Defendant gave him a copy of the agreement brokered by the Attorney-General. That NNPC later repudiated the agreement having not participated.

That he was instrumental to NNPC Board resuming negotiation when the aforesaid agreement was repudiated.

That he is not aware of any creditors/funders intervention throughout the negotiation and no one introduced them to him.

That Defendants violated the terms of the agreement by failing to inform him of any negotiations between June 2017 and January 2018 as he was supposed to participate in all negotiations.

That he did not repudiate the agreement by conduct. He urges the Court to enter Judgment.

Under Cross-Examination, the witness said he was engaged by the 1st Defendant in an advisory role as a Consultant to achieve an out of Court settlement with NNPC.

To a further question he answered that no settlement was achieved because he was not getting proper cooperation from people who engaged him.

That he did not write a letter to the 1st Defendant to offer a lesser amount than the \$105 Million.

To a further question he answered that there is nothing to show on the face of the Exhibit C that it was received.

That Exhibit D was to make the GMD of NNPC to settle out of Court.

There were other negotiations where he achieved \$80 Million. It is not in writing.

He was discussing with them face to face. That he discussed much. That everything needed not be in writing. That they were also lobbying.

He was sending texts when he was out of the country. That he was meeting with them in Transcorp, Sheraton, etc.

He confirms Exhibit A which says if negotiated agreement is below \$50 Million, he is not entitled to fees.

The bundle of text messages totalling 9 text messages are Exhibits F – F8. Witness said they also communicated with email.

To another question, he answered that the basis to get paid is successful negotiation. That if he is involved and the negotiated amount is below \$50 Million he will be entitled to 0% only if he is involved.

He answers that he did not demand any amount in Exhibits F – F8. That in Exhibit F8, he was congratulating the Defendants despite knowing the negotiated sum of \$37.5 Million.

He does not have any approval. That his claim to ~~N~~\$84 Million is tied to expenses in Exhibit A. That the sum is for logistics, accommodation and sundry expenses.

He did not send any expenditure to 1st and 2nd Defendants neither did he send any claim. He did not participate in any

negotiation because he was sidelined. The negotiation is between 2009 – 2018.

The above is the case of the Claimant.

The Defendant opened their case and called a witness in defence. He is Olu Adewunmi of No. 6, Elsie Femi Pearce, Victoria Island, Lagos. He made a Statement on Oath on 17/01/2022. He adopted same as his evidence.

He deposes that he is the Chairman of the 1st Defendant at all times material to this action. That the Claimant knew at all times that he was one of the Directors of the 1st Defendant with Mr. James Caranay Bazor as its Managing Director. Mr. Peter Duncan Rea its Deputy Managing Director and Project Director, Mr. Peter Grey its Executive Director and Mr. John Fowher its Commercial Director/Head of Commercial.

That he held no shares of the 1st Defendant and was not its alter ego as alleged.

That in 2002, 1st Defendant commenced arbitral proceedings against NNPC claiming damages for breach of a construction contract between NNPC and 1st Defendant dated 14/03/1994 in relation to the Bonny Export Terminal Project.

That Claimant was not involved in any aspect of the process of the arbitral proceeding conducted by the 1st Defendant against the NNPC in which the Arbitral Tribunal awarded to the 1st Defendant US\$ 152,175,971.55; ~~N~~5 Million and post-award interest from the date of the award until full payment at the rate of 14% per annum.

The Claimant was only appointed as Consultant/Advisor in the matter of IPCO vs. NNPC – BONNY EXPORT TERMINAL PROJECT by a Letter of Engagement dated March 2, 2009 to aid the expeditious resolution of the payment of the aforesaid sums awarded to the 1st Defendant.

The Letter of Engagement is between Claimant and 1st Defendant, 2nd Defendant was not a party.

That the ~~N~~200,000.00 the 1st Defendant agreed to pay the Claimant as expenses per week was the weekly cap in respect of expenses actually incurred by the Claimant and the sum of ~~N~~800,000.00 paid by the 1st Defendant to Claimant for one month at the outset of the agreement.

It was to ensure that the Claimant's work is not delayed by funds. That the Claimant did not provide 1st Defendant with

invoices that he actually incurred expenses in the sum of ~~N~~800,000.00 or any sum for the first month.

That Claimant did not incur any expenses in connection with the purported negotiation with the NNPC and in fact negotiated no sum at all with the NNPC and therefore not entitled to ~~N~~200,000 weekly expenses.

That he acted solely for and on behalf of the 1st Defendant who is a disclosed principal. The duty of the Claimant is to “advise” the 1st Defendant and participate in all negotiations on behalf of the 1st Defendant.

That final decision is to be taken by 1st Defendant. That no Clause in the Letter of Engagement precludes 1st Defendant from making all final decisions on the negotiated amount, taking over negotiations from any

person appointed by it, compromising on settlement by conceding to a lesser amount, etc.

That Claimant failed woefully to successfully negotiate any amount on the IPCO vs. NNPC – Bonny Export Terminal Project.

That Claimant failed to advice the 1st Defendant and failed to participate in all negotiations in favour of the 1st Defendant. That Claimant was engaged on 2nd March 2009 and failed to fulfil his obligation in the Letter of Engagement for more than 9 years until 2018 when the funders (creditors) of the 1st Defendnat stepped in even to the disadvantage of the 1st Defendant.

That the mail dated 22/05/2009 was to inform the Claimant of the report done by other persons assisting 1st Defendant in its desire to resolve the dispute with NNPC.

The 1st Defendant acted by itself and its United Kingdom legal representatives to the knowledge of the Claimant.

There was no agreement with NNPC as they repudiated the 1st Defendant's offer to accept the sum of \$127,000 as full and final settlement.

Despite another reduction, the NNPC did not accept but rather terminated the negotiations which is a sign of Claimant's failure to impact the course of negotiation.

That no negotiation was entertained from 6/11/2009 to early 2018. The Claimant did not do anything during the aforesaid period in respect of the debt from the NNPC to 1st Defendant.

The Claimant was not involved in any negotiation during the period. He did not expend any N84 Million or any sum at all as expenses for his role as a Consultant/Advisor to 1st Defendant.

Claimant did not do anything to reopen negotiations and no letter from NNPC reopening negotiation on account of Claimant's intervention. That Claimant abandoned his obligation for 9 years.

That the suspension of negotiation is failure of the Claimant to fulfil his obligation. That the SMS letters contained no negotiations.

That settlement reached with NNPC by 1st Defendant creditors was not contrary to the terms and conditions of the agreement between Claimant and 1st Defendant.

That Claimant disengaged himself from the negotiations for almost 9 years. The Claimant was delighted by the settlement.

That it is the Letter of Engagement that regulated the relationship and not any trade or custom.

The Claimant is not entitled to 10% of \$37.5 Million as he failed to perform the terms of the Letter of Engagement.

The failure to reach the \$50 Million mark as stipulated in the contract was wholly attributable to the complete failure of the Claimant to pull any weight in the negotiations.

That NNPC did not agree to pay the sum of \$80 Million to the 1st Defendant as alleged. The 1st Defendant did not refuse to cut the deal as alleged. The Claimant did not

bring any such offer. It is a complete fabrication by Claimant.

It was a negotiation by the Federal Government through the Ministry of Petroleum and the Attorney-General of the Federation. The NNPC and Claimant were not involved in the negotiation.

That Claimant's failure for 9 years terminated the agreement by conduct.

That Claimant breached the agreement which entitled 1st Defendant to treat the agreement as having come to an end. That Claimant is not entitled to the reliefs sought.

The DW1 tendered Exhibit G – Re: Application for Historical Search Report from CAC to Opaoluwa Oluwagbemiga.

That he refers to Exhibit A in paragraphs 10, 11, 12, 15 and several other paragraphs. He also refer to Exhibits C – C1 in paragraphs 22 & 23. That Exhibits F – F9 are the exhibits he referred to in paragraphs 31 – 32.

Under Cross-Examination he answered that he is the Chairman of the Board of Directors. That he has the capacity to enter into an agreement with the Claimant subject to an agreement with the Board.

He identified Exhibit A as the agreement he executed on behalf of the 1st Defendant.

To a question, he answered that Exhibit A, Clause 1 says the Claimant must participate in all negotiations.

He answered that Claimant was aware that negotiations were going on but he was not involved.

That Exhibit A was not terminated. In Exhibit F3 Claimant knew everything that was going on. He knew there are funders in play.

The Claimant could not make any headway in his contract. He did not close the deal. The Claimant abandoned negotiation for 9 years. The amount paid to Claimant is expenses.

The arbitration was held in London. That although it was not specifically written but they both knew Claimant's expenses ought to be retired. He did not ask for the retirement of the amount. He did not come forward again.

To a further question, he answered that there is a Board Resolution appointing funders. It is an international organisation. The resolution is not before the Court.

After the ~~N~~800,000 he was not paid any money. He was part of the negotiation until the suspension. He was not part to the final negotiation.

The above is the case of the Defence.

The Defendants' Final Written Address which Defendants' Counsel adopted as his final oral argument is dated 29/05/2023. He raised one issue for determination therein which is:

Whether having regard to the pleadings and evidence led, particularly the Letter of Engagement dated 2/03/2009, Exhibit A, the Claimant is entitled to any of the reliefs sought.

Learned Counsel contends that by Exhibit A, the Claimant has a duty to advise the 1st Defendant and participate in all negotiations that should lead to amicable settlement.

The out of Court settlement was to successfully negotiate the sum of not less than \$50 Million.

The amount finally paid was \$37.5 Million. By virtue of the agreement the Claimant is entitled to 0% from the negotiated amount having not been \$50 Million and above.

The 1st Defendant is only under obligation to pay the Claimant's expenses incurred with a maximum cap of ₦200,000 per week. Where no expenses were incurred, the Defendants are not under any obligation to pay.

The Claimant did not serve any invoice detailing expenses incurred.

That Defendants did not breach any terms of the agreement. That the Claimant did not participate in the negotiation of the out of Court settlement that led to the settlement award.

That Claimant has failed to make out any case for breach of contract against the Defendants both in the state of pleadings and evidence.

Claimant never made a demand for the money he is claiming. That without prior demand for the monies he is claiming, the Claimant lacks the right to commence an action in Court seeking reliefs.

That Claimant's pleading in paragraph 5 of the Reply to Amended Statement of Defence that the N200,000 weekly allowance was a consolidated fee and not tied to expenditure is contrary to the contents of Exhibit A and his Statement of Claim and evidence.

The evidence of the Claimant is incredible and bereft of probative value.

The relief seeking for 10% of the \$37.5 Million paid to the Defendants is not supported by the pleadings. The Claimant can only be entitled to 10% of the negotiated amount wherein he successfully negotiated the sum of \$50 Million and above.

It is also contrary to Exhibit A. That none of the exhibits tendered by the Claimant supports his claim.

That general or exemplary damages is unknown and ungrantable in a claim for breach of contract. That general damages belong to the realm of tort.

He urges the Court to refuse the claim as Claimant is not entitled to any damages, general or exemplary.

The Claimant's Counsel also adopted his Final Written Address as his oral final argument. It is dated 11/07/2023 but filed on the 12th.

He posited three (3) issues for determination, which are:

(1) Whether there is a valid and subsisting contract between the parties.

(2) Whether having regard to the state of the pleadings and evidence, the Defendants are in breach of the contract and therefore entitled to the reliefs sought.

(3) Whether Defendants are jointly and severally liable.

He canvassed that Exhibit A is the fulcrum of the contract. That Exhibit A has not been revoked. The agreement is valid and subsisting.

That it is a fundamental term in the agreement that Claimant must participate in all negotiations but was excluded without justifiable reason.

That the exclusion of the Claimant in the final negotiation was a fundamental breach contrary to the contemplation of the contract.

That Claimant did not abandon his jobs for 9 years. That Exhibits F – F8 show that 2nd Defendant commended and appreciated Claimant for standing by him.

The suspension of negotiation was done by NNPC Board and not the Claimant.

That there is no inconsistency in the Statement of Claim and Reply to Statement of Defence on expenditures. That expenditures stand for consolidated fees in his consultancy services.

That Exhibit A did not mention or contemplate the existence of 3rd parties called funders. That the Defendants acted contrary to the terms of the agreement namely, that the Claimant must participate in all negotiations.

That 2nd Defendant maliciously subverted and supplanted the Claimant when the 1st Defendant assigned him to assist in the day to day negotiations.

That Exhibit A did not authorise any funder. The 1st and 2nd Defendants are jointly and severally liable.

That Claimant is entitled to be restored and placed in a position as if the contract was performed.

That failure to involve the Claimant in the final negotiation was deliberate and calculated to deprive him of his 10%.
That the Claimant is entitled to damages.

I have also read and considered the Defendants' Reply on Points of Law.

The issue for determination in this suit, which covers all the issues raised by parties is:

Whether having regard to the pleadings and evidence led particularly the Letter of

Engagement, Exhibit A dated 2/03/2009, the Claimant is entitled to any of the reliefs sought.

The Claimant's case is breach of contract. The agreement alleged to have been breached is Exhibit A. Both parties in their pleadings and evidence assert and agree that Exhibit A is the contract parties executed and that their obligations and duties are contained therein.

The agreement parties referred to, which is Exhibit A is dated march 2, 2009.

It is a Letter of Offer written by the 1st Defendant to the Claimant which was admitted by the Claimant to have been accepted by him.

It states:

“Re - Engagement as Consultant/Advisor in the matter of: IPCO vs. NNPC – Bonny Terminal Project.

This letter confirms your appointment as Consultant/Advisor in the above matter, the dispute of which has been protracted for many years...

BRIEF

It is now the desire of IPCO to pursue an out of Court settlement with NNPC and your role will be to advise us on how best to proceed on this front and to participate in all negotiations on our behalf.

You will be assisted by our Chairman, Olu Adewunmi who will be your day to day contact and who will take final decisions in respect of such negotiations on our behalf.

Your negotiations are not limited to NNPC but will include any other relevant government agency or department that may have impact on such negotiations.

FEES:

IPCO accepts to pay you fees upon successful negotiations as follows:

Below \$50 Million = 0%

\$50 Million - \$80 Million = 10% of negotiated amount.

\$81 Million - \$127 Million = 50% of negotiated amount in excess of \$81 Million.

The fees shall be paid not later than 14 days after IPCO must have received the negotiated amounts into its bank account.

IPCO also agrees to pay you expenses of ₦200,000 per week until the successful conclusion of negotiations.

Please signify your acceptance of the above terms by signing below.

I accept the terms above.

(Signed)

V. I. P. Okoye

Signed on behalf of IPCO Nig. Ltd

(Signed)

Olu Adewunmi

Chairman.”

In the instant case, parties are ad idem on the agreement reproduced above. See ODUTOLA vs. PAPERSACK NIG. LTD (2006) 18 NWLR (PT. 1012) p. 470 SC.

In the instant case, it is crystal clear and firmly established that there is an unmistakable offer and an unconditional acceptance of the terms mutually agreed upon by the parties thereto.

It is the law that a Court of law such as this Court must respect the sanctity of the agreement reached by parties.

See **SONA BREW LTD vs. PETERS** (2005) 1 NWLR (PT. 908) 478 CA.

It is therefore the duty of this Court to construe the terms of the contract in a plain and clear manner, in other words, the documents is to be construed in its ordinary meaning as a question of fact.

Where the words of a contract or agreement are clear, the operative words in it should be given their simple and ordinary grammatical meaning. See **DALEK NIG. LTD vs. OMPADEC.** (2007) 7 NWLR (PT. 1033) 402 SC and **UBN LTD vs. SAX (NIG.) LTD** (1994) 8 NWLR (PT. 361) 402 SC.

The law is that a written contract agreement entered into by parties is binding on them. Where there is any

disagreement between parties to such written agreement on any particular point, the only reliable evidence and legal source of information to resolve the claim is the written contract executed by the parties. See **SPDC NIG. LTD vs. EMEHURU (2007) 5 NWLR (PT. 1027) 347 CA.**

Claimant's evidence is that in 2009, he was engaged by the Defendants to act as a Consultant and negotiate the resolution of the dispute with NNPC in respect of the arbitral award which NNPC disputed.

That he was paid ~~N~~800,000 which was the total sum of one month of the agreed ~~N~~200,000 weekly expenses agreed to be paid until the successful completion of the negotiation as per Exhibit A.

That Exhibit A states that he will participate in all negotiations on behalf of the 1st Defendant.

His grouse is that the Defendants failed to pay him ₦200,000 per week for 420 weeks as at January 2018 which total sum is ₦84 Million.

That Defendants secretly made a deal with NNPC and accepted a lesser amount without his knowledge which is contrary to the terms of the agreement.

That he is entitled to 10% of the \$37.5 Million paid to the Defendants.

On the other hand, the Defendants' argument is that the Claimant did not provide 1st Defendant with invoices that

he actually incurred expenses for the first month. That he did not incur expenses in the course of negotiation.

That the duty of the Claimant is to advise the 1st Defendant and participate in all negotiations on behalf of the 1st Defendant.

That Claimant failed woefully to advise and participate in all negotiations in favour of the 1st Defendant.

That he failed to fulfil his obligation for 9 years.

It is the duty of the Claimant to prove his case on the balance of probability and preponderance of evidence.

The role of the Claimant as can be gleaned from Exhibit A is advisory on how to proceed on the recovery of the award and to participate in all negotiations on their behalf.

I have read Exhibits B, C, C1 dated 25/09/2009, September 15, 2009. Negotiations were suspended on the 6th of November 2009 vide a letter, i.e. Exhibit C1.

Exhibit D is a letter by Claimant dated 25/08/2017 purportedly written 8 years after negotiation was suspended to the Group Managing Director of NNPC. There is no evidence that the letter was served on the addressee.

I have also perused Exhibits E – E3 and F – F9. There is no evidence before this Court to show that the suspension of negotiation was called off. However he was not

precluded by the letter of NNPC, Exhibit C1 to stop rendering advice.

There is no evidence before the Court that the suspension of negotiation was as a result of the action or inaction of the Defendants.

By Exhibit A, it is the duty of the Claimant to find a way out of the quagmire which he failed to do.

In my humble view, the Claimant has not shown by evidence how the 1st Defendant breached the agreement he entered with the 1st Defendant.

The Exhibit A says the 1st Defendant agrees to pay expenses of ₦200,000 to the Claimant until the successful conclusion of negotiation.

The evidence is that negotiation was suspended on the 6/11/2009 vide Exhibit C1. There is no concrete evidence that the Claimant continued to render advice on the way out of the logjam.

The expenses expected to be paid as envisaged by Exhibit A are expenses incurred in the process of negotiations.

According to the Black's Law Dictionary (Eight Edition), expense is an expenditure of money, time labour or resources to accomplish a result.

The Claimant did not put before this Court materials that he incurred any expenses. No receipts, invoices incurred are placed before this Court.

I therefore agree with the 1st Defendant's evidence and argument that there are no materials placed before this Court to suggest that he incurred expenses in furtherance of the advice or negotiations which were suspended till 2018 when \$37.5 Million was paid as full and final settlement.

Furthermore the Claimant did not demand the aforesaid accumulated expenses as they fall due which made it clearer that no expenses were indeed incurred.

In respect of the Claimant's entitlement to 10% of the \$37.5 Million eventually paid to the 1st Defendant, the Claimant agreed under Cross-Examination that if negotiated agreement is below \$50 Million, he is not entitled to fees.

Exhibit A is clear. The 1st Defendant only accepts to pay fees upon successful negotiations on certain conditions:

- (1) When it is \$50 Million – the Claimant is entitled to 0%.
- (2) When it is \$50 – \$80 Million, the Claimant is entitled to 10%.
- (3) When the Claimant successfully negotiates \$81 Million - \$127 Million, he is entitled to 50% of the negotiated amount in excess of \$81 Million.

The Claimant was said to have abandoned negotiation. The evidence is that negotiation was suspended for 9 years.

There is no credible evidence that Claimant continued with advice or did anything to reopen negotiation.

Even if he did, the amount paid to the 1st Defendant is \$37.5 Million which is far below the amount that would have entitled the Claimant to fees as outlined in the contract agreement.

By the contract agreement, the Claimant is entitled to 0%.

The Claimant made allusion to consultancy. No evidence of consultancy services were rendered during the period of the suspension or thereafter.

The Claimant has failed to prove his case on the balance of probability and preponderance of evidence so as to entitle him to Judgment.

The suit fails and it is therefore dismissed.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

29/01/2024

Claimant present.

Defendant absent.

Val Igbanusi, Esq. for the Claimant.

Sonia Ernest Egbuna, Esq. for the Defendants.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

29/01/2024