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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 15TH DAY OF MARCH, 2024

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

SUIT NO: FCT/HC/CV/1873/2019

BETWEEN:

CHIEF IFEANYI EJIOFOR, ESQ, ----- CLAIMANT
(Carrying on business in the name
and style of I.C. EJIOFOR & CO.)

AND

1. ADVISION COMMUNICATIONS LTD.
2. MR. OLUWAFEMI AGUNBIADE } DEFENDANTS

JUDGMENT

In this case Chief Ifeanyi Ejiofor, the Claimant in this case is a legal practitioner. He was engaged by the Defendants – Advision Communications Ltd and Oluwafemi Agunbiade to render legal service. That was in 2018. He was instructed by the Defendants to take up legal action on their behalf against Federal Ministry of Environment. The action was premised on allegation of forgery, manipulation of technical bid documents which were submitted by the Defendants to

the said Federal Ministry of Environment. The bid was in respect of Hydrogen-carbon Pollution, Remediation Project (Hyprep) Ogoni Land clean up lot No. 3.

He accepted the brief. He acted on the clear subsisting understanding and agreement between the parties. It was also based on the Defendants' specific understanding under the said agreement of the parties. The Defendants urged him to forge ahead with the Suit, doing all that is required. They assured him and promised him to reimburse whatever he has expended in filing the Suit.

On the 23rd day of April, 2018 he filed the Suit between the Defendants, Advision Communications Ltd & Anor V. Federal Ministry of Environment & 3 Ors at the instance and on behalf of the Defendants in the present Suit. The Suit was filed at the Federal High Court Abuja Division in the Suit No.: **FHC/ABJ/CS/417/2018.** The Claimant filed the Suit with his own money.

Shortly after the Suit was filed the Defendants started acting funny. Confused and worried the Claimant decided to reach out to the Defendants to find out what was going on especially as they were acting strangely to him and had refused to fulfill their own obligation under the agreement to file the Suit. He sent messages (SMS). Put calls across to the Defendants. He invited the Defendants for a meeting in order to ascertain what was going on and why the Defendants failed to fulfill their obligation. But the Defendants blatantly refused to honour the invitation. The Claimant, having filed the Suit, continued to follow up,

making appearances and representation for and on behalf of the Defendants in this Suit.

On the 28th December, 2018 the Claimant received a letter from the Defendants. In the letter the Defendants debriefed the Claimant from prosecuting the said Suit **FHC/ABJ/CS/417/2018.** Since the Defendants engaged the legal services of the Claimant they never paid him a kobo for services rendered as Professional Fees. Meanwhile, there was an executed Memorandum of Understanding between the parties. The Claimant attached the documents starting from his letter to the Federal Ministry of Environment, the Memorandum of Understanding, Writ of Summons and Motions on Notice, Counter Affidavit challenging the Motion of the Defendant in that Suit at the Federal High Court and Reply on Points of Law. The Debriefing letter from the Defendants, Bill of Charges and Defendants' letter and more.

Disappointed, shocked, confused, annoyed and angry the Claimant instituted this action as law abiding citizen against the Defendants in this case seeking the following Reliefs:

(1) A Declaration that the Defendants have an obligation and/or duty to pay the Professional, filing and appearance fees respectively, set out in the Claimant's Bill of Charges to him.
(2) An Order of this Court directing the Defendants to pay him the sum of ₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven Hundred and

Ninety Naira) which is the accessed amount payable to the Claimant by the Defendants o account of the professional services rendered to the Defendants.

(3) The sum of ₦5, 000,000.00 (Five Million Naira) only as general and exemplary damages.

(4) The sum of ₦2, 000,000.00 (Two Million Naira) being the cost of the action.

(5) 10% Interest per annum on the Judgment sum from date of Judgment until full and final liquidation.

The Claimant testified in person and tendered 12 documents. In summary the Claimant claimed that he has adduced enough evidence in proof of his case and he is entitled to his claims in answer to the question raised for determination in his Final Written Address.

> **"Whether he has proved his case against the Defendants to be entitled to the Reliefs sought."**

That he has asserted and proved as required by law. That he is entitled to his fees on the account of the legal services rendered as required by **S. 16(1) of the Legal Practitioner Act.** That he prepared his Bill of Charges as required by the Act which he attached and exhibited as **EXH 11.** That he served the Defendants as shown in **EXH 10 & 11.** That it was long after the Bill of Charges were duly served on the Defendants that he instituted this action.

That his testimony and evidence was not controverted by the Defendants. That contrary to the Defendants' submission that it is not after he has prosecuted the Defendants' case to conclusion that he should be entitled to his Legal – Professional Fee. That that assertion and submission is a gross misconception.

That throughout the gamut of the Defendants' pleadings and their evidence before this Court they did not deny that he performed and rendered the services as agreed and contained in the Bill of Charges – **EXH 11.**

That there are irrefutable and uncontroverted evidence before this Court showing that he carried out the substantial performance of the legal services to the Defendants. That the assertion of the Defendants that he has not performed the contract to conclusion as agreed in the Memorandum of Understanding and thus not entitled to payment of his fees is gross misconception. That he is entitled to be paid for the services rendered to the Defendants before he was debriefed.

That the Defendants fundamentally breached the Terms of the engagement. That the Defendants had benefitted from the services he has rendered to them before they hurriedly debriefed him with the clear and malicious intension not to pay him for the said services rendered to them. That he rightly approached the Court to seek redress as a law abiding citizen. That his testimony was consistent with the paragraphs 2, 3 & 4 of the Memorandum of Understanding – **EXH 2** which captured the circumstance of his case.

The Claimant has also submitted that he has credible evidence to show that he shouldered the expenses spent on filing the Originating Processes and for going to Court to represent the Defendants. He referred to the Court official fee paid as exhibited, **paragraph 4 of EXH 3** which is the official Court assessment of the sum of **₦50, 000.00 (Fifty Thousand Naira)**. That the Defendants did not deny or controvert that fact.

That he the Claimant is the Proprietor of the **I.C. Ejiofor & Co.** a registered law firm and that there is a nexus between the firm and the Claimant who is the Principal partner and the Memorandum of Understanding that was duly executed by the parties which he tendered **EXH 2.** That he is a legal practitioner carrying out business in the name and style of **I.C. Ejiofor & Co.** which is a duly registered business name. That the argument of the Defendants that the contract between the parties is null and void when they had benefitted from the same contract, cannot stand.

That the Memorandum of Understanding duly executed by the parties is valid, legal, lawful and proper. That there is no law that prevents a registered business name from entering into contract Agreement as he did with the Claimant in this case. That a registered business name and its Proprietor are regarded as one and the same. Again, that the capacity and the Registration of **I.C. Ejiofor & Co.** to enter into the Memorandum of Understanding with the Defendants was never in issue before the Court. That the parties are bound by the terms of contract they have entered into and also by their pleading before the Court.

That the submission and argument of the Defendants that he did not adduce enough to show the registration of **I.C. Ejiofor & Co.** is a mere afterthought which is not contained in the Defendants' pleading before this Court and therefore goes to no issue. He urged Court to discard the said submission and argument. That even in the absence of any Memorandum of Understanding or other written Agreement between the parties as to the fees payable to him, that he is still entitled to the payment for the services he had rendered to the Defendants. He urged Court to discountenance the Defendants' Final Written Address for lacking in merit and to dismiss their Defence.

He concluded that he had adduced evidence which is credible, cogent, unchallenged and uncontroverted. That the said evidence as it stands are admitted and accepted as proof of the fact it seeks to establish. He relied on the case of:

Nwede V. State
(1985) 3 NWLR (PT. 13) 444 SC

He also concluded by submitting that he has proved his case upon the preponderance of the evidence to entitle him to the Reliefs sought. He urged the Court to grant all his Reliefs as sought.

The Court deemed as if set down below seriatim all the 4 cases cited by the Claimant in support of his case.

On their part the Defendants conformed that they engaged the Claimant to render legal services to the Defendants by filing the Suit against the Federal Ministry of Environment.

That there was Memorandum of Understanding duly executed between the parties. They confirmed that they debriefed the Claimant and terminated the relationship. That the Claimant's claim that he is entitled to the remuneration claimed after the termination under the Memorandum of Understanding is misconceived. The Defendants tendered through their sole Witness the Memorandum of Understanding which was marked as **EXH 13.**

The 2nd Defendant, Mr. Oluwafemi Agunbiade testified for and on behalf of the Defendants. He tendered a document – **EXH 13,** Memorandum of Understanding. The Defendants also filed a Reply on Points of Law to the Claimant's Final Written Address.

In their Final Written Address the Defendants raised 5 long Issues for determination which are:

(1) Whether the Claimant as a Solicitor has performed the fundamental term or essence of Memorandum of Understanding which is to prosecute to conclusion the Defendants' Suit against the Federal Ministry of Environment in order to be entitled to the benefit/remuneration under the Memorandum of Understanding.

(2) Whether the Claimant's breach of the fundamental term of attendance and presence in Court to conduct all Court Proceedings from the <u>asside</u> prosecution of the Defendants' Suit against the Federal Ministry of Environment as

implied and expressed in clauses 1 – 6 of the Memorandum of Understanding, the Defendants were therefore right to treat themselves as discharged and terminate the Memorandum of Understanding.

(3) Whether the Claimant has proved his claim or can be entitled to the Reliefs sought against the Defendants.

(4) Whether by the Doctrine of Privity of Contract the Claimant's Suit against the Defendants is incompetent and therefore the Court lacks jurisdiction to entertain the Suit.

(5) Whether the Memorandum of Understanding between the parties is invalid, void and therefore unenforceable by this Court for want of legal personality of I.C. Ejiofor & Co. (Ugochinyere Chambers) to enter into Memorandum of Understanding.

On Issue No. 1, he submitted that parties are bound by their Agreement/Contract. That no party in a contract is free to walk out of the term of the Agreement it freely entered into. That Court is duty-bound to give effect to the Agreement.

That the Defendants engaged the Claimant to law firm of **I.C. Ejiofor & Co.** to stand as its Counsel in the case between the Defendants and the Federal Ministry of

Environment. That by the Memorandum of Understanding the Claimant is to prosecute the case to conclusion. He referred to the **paragraphs 1 – 3 of the Memorandum of Understanding – EXH 1 & 13.** That the term of the Memorandum of Understanding is fulfilled if the Claimant has concluded the prosecution of the Defendants' case. That it is after the performance of the terms that the Claimant will be entitled to the benefit under the Memorandum of Understanding. They referred to the following cases:

Tsokwa Oil Marketing Co. V. BON Ltd
(2002) 11 NWLR (PT. 777) 163 @ 170 Ratio 6

Asugwo V. Eyo
(2014) 5 NWLR (PT. 1400) 247 @ 410

That the Claimant was expected to conclude or secure settlement out of Court going by clause 2 & 4 of the Memorandum of Understanding. That it is after that and if the Defendants fail should the Claimant seek redress in Court. They urged Court to hold that the Claimant having not performed by clause 2 of the Memorandum of Understanding is not entitled to benefit from the Memorandum of Understanding.

On Issue No. 2 – whether the Defendants are right to terminate the Memorandum of Understanding the Claimant failing to fulfill clause 1 – 6 of the Memorandum of Understanding, they submitted that the Claimant is bound by the terms of the contract – Memorandum of Understanding. That by the Memorandum of Understanding

the Claimant was to attend Court every day the matter was called up in Court but he failed to do so on 4th December, 2018. That the fact in paragraph 22 of the Claimant's Oath is a hearsay as the Claimant was not the one that called the 2nd Defendant but Turshak Esq, did as reported to the Claimant. He urged the Court to discountenance the fact and reason given by the Claimant for being absent from Court on the 4th December, 2018. They referred to **S. 137 of the Evidence Act** and the case of:

Andrew V. INEC
(2018) 9 NWLR (PT. 1625) 507 @ 557 – 558

They also challenged the averment in **paragraph 24** of the Claimant's Oath on the report by Court Registrar that the Court did not sit on the said day. That failure of the Claimant to attend case on 4th December, 2018 is a fundamental breach of the terms of the Memorandum of Understanding. Hence the Defendants wrote the letter of termination/debriefing on 28th December, 2018. That the Defendants were right to write the debrief letter and terminate the Memorandum of Understanding based on breach by the Claimant. They referred to the case of:

Anuruba V. ECB Ltd
(2005) 10 NWLR (PT. 933) 321 @ 327

That by the Claimant's breach the Defendants treated themselves as discharged from the obligation under the Memorandum of Understanding.

On Issue No. 3 – whether the Claimant is entitled to his Reliefs, they submitted that he is not entitled to the Reliefs

including the **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven Hundred and Ninety Naira)**. That paragraph 30 of the Claimant's Oath is inadmissible to vary, contradict or add to the Memorandum of Understanding. They urged Court to expunge paragraphs **9, 10, 11, 12, 15, 18, 20 & 30.** They referred to **S. 128(1) and 135 of the Evidence Act.** That the Claimant's submission that the breach was because the Defendants failed to pay him the purported accumulated appearance and filing fees is misleading and misconceived as it meant to vary, add and contradict the Memorandum of Understanding – **EXH 1 & 13.** They referred to the cases of:

H.S.H.M Co. Ltd V. Jaffar
(2004) 15 NWLR (PT. 896) 343 @ 347

A.I.B Ltd V. Tee Lee Industry Ltd
(2003) 7 NWLR (PT. 819) 366 @ 379

That the Claimant failed to plead allegation of fraud by the Defendant with particulars and as such the Court should discountenance same. That the Claimant failed to prove fraud too. That the relationship that existed between the Claimant and the Defendants was Counsel-Client relationship which was purely official. That the Claimant failed to prove its claim and did not prosecute the case till conclusion. Therefore quantum meruit cannot avail him. Hence, Relief No. 6 of paragraph 30 cannot stand.

On the Claimant filing the Court Processes with his money, the Defendants submitted that there is no evidence before the Court as to receipt of payment made by the Claimant

showing that he filed the Suit in his name. That the payment was made by litigant and not by the Claimant. They referred to **S. 167(c) of the Evidence Act.** They urged Court to so hold that the Claimant failed to discharge the onus. They referred to **S. 136(1) of the Evidence Act.** They also relied on the case of:

NNB PLC V. Egun
(2001) 7 NWLR (PT. 711) 1 @ 4

On payment of **₦100, 000.00** (**One Hundred Thousand Naira**) for 2 appearances, the Defendants submitted that it s speculative. They referred to the case of:

Agbi V. Ogbeh
(2006) 11 NWLR (PT. 990) 65 @ 99

That the Claimant failed to establish that he is entitled to principal Relief. That he cannot be entitled to Damages. They referred to the case of:

Tsokwa Oil Marketing Co. V. BON Ltd Supra

They urged Court to dismiss the Suit of the Claimant.

On Issue No. 4 – whether the case of the Claimant is incompetent against the Defendant, they submitted that it is incompetent and that the Court lacks jurisdiction to entertain same. They submitted that the Claimant is not a party to the Memorandum of Understanding and same was between I.C. Ejiofor & Co. (Ugochinyere Chambers) V. the 1st & 2nd Defendants. That the 2 parties can sue and be sued. They urged Court to so hold. That in this case the Claimant is carrying on business in the name and style of

I.C. Ejiofor & Co. That it is not same as Chief Ifeanyi Ejiofor & Co. who is a party to the Memorandum of Understanding. That the 2 parties are distinct. That failure to have the name as contained in the Memorandum of Understanding endorsed in the Writ makes the Writ incompetent and as such Court lacks jurisdiction to entertain same. They urged Court to strike the Suit out for lack of jurisdiction.

On Issue No. 5 – on whether the Memorandum of Understanding between the 1st & 2nd Defendants and I.C. Ejiofor & Co. is invalid, void and unenforceable for want of legal personality of I.C. Ejiofor & Co. to enter into the Memorandum of Understanding, they submitted that the Memorandum of Understanding is a legal document. But that I.C. Ejiofor & Co. is not a natural person but an artificial person. That the Claimant has the duty to prove that I.C. Ejiofor & Co. has the legal personality to enter into Memorandum of Understanding – **EXH 13** by production of Certificate of Registration. That the Claimant failed to do so. That the said I.C. Ejiofor & Co. lacks legal personality to function for purpose of entering into Contract Agreement to sue and be sued.

That **EXH 1 & 13** entered into by the 1st & 2nd Defendants and I.C. Ejiofor & Co. alone without name of a natural person endorsed in the Writ is invalid and void and therefore unenforceable ab initio. That there is no evidence to show that I.C. Ejiofor & Co. was registered. They urged Court to find **EXH 13** void, invalid and unenforceable. That I.C. Ejiofor & Co. is non-existent in law. They referred to the case of:

S.I.B Consortium Ltd V. NNPC
(2011) 9 NWLR (PT. 1252) 315 @ 332

They urged Court to so hold and dismiss the Suit of the Claimant for want of jurisdiction, breach of contract and inconsistency.

The Defendants also filed Reply on Points of Law to the Claimant's Final Written Address. In it they stated that the case cited by the Claimant in support of the **S. 16(2) of the Legal Practitioners Act** did not support his claim. That payment of Legal Fees is not automatic but peculiar to circumstance of the case. That the fees are unreasonable and objectionable. That the sum of **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven Hundred and Ninety Naira)** claimed by the Claimant is not an agreed amount and is not consistent with the provision of **S. 16(2) of the Legal Practitioners Act.** That the parties agreed on fee of **₦5, 000,000.00 (Five Million Naira)** upon completion of the case. He referred to **EXH 13 –** Memorandum of Understanding which is same as **EXH 2** tendered by the Claimant. Hence, the sum of **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven Hundred and Ninety Naira)** claimed by the Claimant is objectionable. That the terms and condition precedent for entitlement to same must be satisfied. He urged Court to so hold.

That Court cannot grant the claim because Court cannot rewrite the terms of the contract of the parties. That **EXH 13** is absolute and final on the fee payable to the Claimant. That Court has no jurisdiction to deviate from that. That

the parties are bound by the Agreement they have entered into in this case as contained in the Memorandum of Understanding. That the issue of **quantum meruit –** part performance does not apply because of the written Agreement between the parties. He referred to the case of:

Uwah V. Akpabio
(2014) 7 NWLR (PT. 1740) 472

He urged Court to so hold and refuse the claims.

On the submission of the Claimant that the Defendants' Final Written Address failed to comply with the provision of **Order 33 Rule 2 & 3 of the High Court Rules 2018,** the Defendants replied that it goes to no issue based on **Order 5 Rule 1 (2) of the High Court Rules.** That the observation of the Claimant' Counsel should be treated as irregularity and does not render the Process incompetent. He referred to the case of:

Chief Chuba Egolum V. Obasanjo
(1999) 7 NWLR (PT. 601) 413

That the Claimant's Counsel had taken fresh step before his complaint having filed his Final Written Address. That the Claimant Counsel failed to comply with **Order 5 Rule 2 (2).**

On the Claimant's Counsel submission on doctrine of substantial and part performance, the Defendants replied that by **EXH 13** the doctrine cannot avail the Claimant as parties are bound by the terms of Agreement on the averment of the Defendant in **paragraphs 8.7 & 8.9 of the Final Written Address** as an admission.

The Defendants replied that the Defendants joined issue with the Claimant and burden of proof is on the Claimant not on the Defendant. They referred to **S. 131 (1) & (2) of the Evidence Act** and the case of:

FIPDC Nig. Ltd V. EAS Ltd
(2006) 6 NWLR (PT. 975) 1

On the Claimant's submission on Issue 4 and 5, the Defendants replied that issue of jurisdiction can be raised on Appeal for the first time. That it is incumbent on the Claimant to show that he proved the Privity of Contract and Juristic Personality by tendering the Certificate of Incorporation showing that his name is same as contained in **EXH 13.** That the Claimant's response to Issue 4 and 5 raised by the Defendants seeking to confer jurisdiction on the Court should fail. He referred to the case of:

APGA V. Anyanwu
(2014) 7 NWLR (PT. 1407) 541

He urged Court to so hold.

COURT

This Court has detailedly summarized the stands of the parties. The questions are; has the Claimant proved his case to be entitled to the Reliefs sought? Whether the Suit of the Claimant is incompetent as the Defendants are postulating as per Privity of Contract and Does the Court have jurisdiction to entertain the Suit? Whether the Memorandum of Understanding between the parties, Advision and I.C. Ejiofor & Co. is invalid, void and

unenforceable by the Court for want of legal personality of I.C. Ejiofor & Co. to enter into the Memorandum of Understanding? Is the Claimant in breach of the fundamental terms of attendance in Court to conduct the proceeding as per clause 1 of **EXH 2 & 13?** Is the Defendant right to terminate the Agreement?

Not answering the questions seriatim, it is the humble view of this Court that the Claimant has proved its case against the Defendants and is therefore entitled to the Reliefs sought.

The Suit of the Claimant is competent contrary to the submission of the Defendants as per Privity of Contract between the parties.

This Court has the requisite jurisdiction to entertain the case.

The Memorandum of Understanding between the parties – **EXH 2 & 13** is valid, enforceable and NOT VOID because the unnatural personality like the I.C. Ejiofor & Co. uses the blood, tissue, skin and skeleton of natural personality to operate and one does the action of the unnatural personality through the natural personality recognized as valid, enforceable and legal/lawful. No unnatural entity exists outside the help of the natural entity. There is no breach of fundamental terms of the contract because there was a life and subsisting case filed in Court. There was no evidence that the matter was struck out. The newly appointed Counsel for the Defendants did not file

any new Suit or filed for the relisting of the Suit. If he did, the Defendants never made that known to this Court. Besides, the Defendants confirmed that the Claimant filed the Suit. Their only complaint is that the Claimant did not do day-to-day attendance of the Suit in Court.

A closer look at the Memorandum of Understanding shows that the parties agreed for a fee of **₦5, 000,000.00 (Five Million Naira).** They entered into the Agreement as **Advision Cmmunication Ltd and I.C. Ejiofor & Co.** It is very clear that it was the Chambers that the Defendants had the Memorandum of Understanding with. If the Chambers does not exist as the Defendants claim, how come it filed the Court Processes? It is because it exists and has the capacity. Again by the name of the Chamber **I.C. Ejiofor & Co.** it puts no one in doubt that it is a law firm. Again it shows that not only I.C. Ejiofor, it also has some other persons in the Chambers like the representatives of the Chambers on the day the Memorandum of Understanding was signed. It is not a secret that law firm Chambers are made up of several lawyers. By the name I.C. Ejiofor it is clear that Ifeanyi Ejiofor is the lead/head of that Chamber. It is like the Managing Director of a company. Such entities usually operate and are operated by the humans who run such company/entities.

From everything/submission of the parties the main issue is the non-payment of the sum of **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven**

Hundred and Ninety Naira) which the Claimant claims on basis of quantum meruit and which the Defendants challenged stating that the Claimant is not entitled to the quantum meruit – part payment based on work done having not tried the case to conclusion. But it is imperative to state that the Defendants terminated the Contract/Agreement before the Claimant could conclude. Meanwhile, there is no term in the Memorandum of Understanding that gives the Defendants power to terminate the Memorandum of Understanding and debrief the Claimant. The matter was still pending in Court when the Defendants unceremoniously terminated/debriefed the Claimant stating that he was not attending Court personally and as he, the Defendant wanted. Even the Defendants operate through the arms, limbs, skeleton, tissue, flesh and blood of the Chief Executive Officer (CEO), the 2nd Defendant who is in Court today.

The Claimant had clearly stated that it is trading in the name and style of I.C. Ejiofor & Co. hence, being consistent with the name of the party in the Memorandum of Understanding.

From what had transpired between the parties there is privity of contract between the parties. That fact cannot be buried on the technical argument of the Defendants' Counsel. The Defendants who are now crying wolf about non-juristic personality had faith and trust in the Chambers of the Claimant before it had that Memorandum of Understanding. Again, the Memorandum

of Understanding was even prepared by the same Ifeanyi Ejiofor Esq. who instituted this action as the Claimant.

On the issue of the legal fee – **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven Hundred and Ninety Naira)** the Claimant has been able to establish that. To start with it is not in doubt that the Claimant filed Processes in the said Suit as required. He tendered all the Processes filed from the Writ of Summons to Motion Ex-Parte to Motion on Notice to the Counter Affidavit in opposition against the Preliminary Objection filed by the 1st & 2nd Defendants in the Suit and his Replies on Points of Law to the Preliminary Objection by the 3rd & 4th Defendants. All these documents were attached as **EXH 3 – 8.** The Defendants did not deny knowledge of these documents. They even confirmed that the Claimant sent some Counsel to Court on several occasions.

It is imperative to state that a Counsel hired to file and prosecute a case has no control over the Court where the matter is pending. This is so because if the Judge done come or the Court did not sit, there is basically nothing the lawyer can do. Again, adjournment of cases is at the discretion of the Court too not at the convenience of the Counsel or his Client. So the Counsel, like the Claimant in this case, should not be blamed for adjournments made in a matter by the Court as he has no control over such case schedule.

The Claimant promptly acted by writing a letter to the Ministry of Environment as early as 22nd March, 2018 five days before the Memorandum of Understanding was formally signed. The same letter was signed and authored by the said Ifeanyi Ejiofor. It was written in the letterhead of the same I.C. Ejiofor & Co. He signed as the Principal Partner of the I.C. Ejiofor & Co. That document was tendered as **EXH 1.**

Even the Defendants acknowledged that the Suit was pending before **Hon. Justice Binta Nyako – FCT/ABJ/417/2018.**

The Defendants in their letter of 28th December, 2018 debriefed the Claimant, the reason being that:

> **"Our decision is anchored on our review of the entire case and progress achieved."**

The matter was filed on 3rd April, 2018. Meanwhile, the Memorandum of Understanding was signed on 27th March, 2018. Which means that the matter was filed barely one week after the Memorandum of Understanding was signed on the 27th March, 2018.

The Defendants further stated that the matter was all notices and no movement. But they forgot that the Defendants in that Suit had filed Preliminary Objection which the Claimant had filed a response to Counter Affidavit and Replies as required challenging the Preliminary Objection by the 1st & 2nd Defendants and the 3rd & 4th Defendants in that case. Those applications has

time frame and can only be heard when they are ripe for Hearing not at the time the Defendants want. From all indication, the matter in the main was not yet set for Hearing as the Court was only hearing the Preliminary Objection in order to hear the main Suit.

It is imperative to state that after the filing of a matter it may take a while before the matter is assigned to a Court. Again, Preliminary Objection by opponents are usually a ploy by the Applicant of such Preliminary Objection to waste the time of the Claimant and test their resolve. From the dates in the Claimant's responses to the Preliminary Objection, it is clear that his actions were very prompt and no waste of time at all. Besides, the filing of such Responses costs money too aside from the money expended for the filing and service of Originating Processes and Motions. Again, there are 4 parties in that Suit too.

The Defendants' sudden termination of the Agreement is a breach of the Memorandum of Understanding entered into with the Claimant.

The allegation of incompetency to achieve their aim as raised by the Defendants is unfounded. So also the allegation of possibility of compromise of the Defendants' desired outcome of the case is unfounded too and without basis as the case was still in its very preliminary stage. The Defendants in the said Suit had not even filed Statements of Defence to their Suit and they were complaining.

Also there is no term in the Contract/Memorandum of Understanding that allows the Defendants to terminate the Memorandum of Understanding/Brief. Hence, they are in breach.

The letter – **EXH 9** is highly misconceived and malicious too. It is as if the Defendants has other plans to kick out the Claimant after he had slaved to file the Suit and follow up on the Preliminary Objection filed by the Defendants in that Suit. As already stated, there is no evidence to show that the Claimant was not in Court on 4th December, 2018. Again there is no evidence to show that the Court sat that same date. Besides, there is nothing in the Memorandum of Understanding that states that the Claimant, Ifeanyi Ejiofor should attend Court personally all the time bearing in mind that the Agreement/Memorandum of Understanding was between the Defendants and I.C. Ejiofor & Co.

It is the view of this Court that the Claimant kept to the letters of **Article 5 of the Memorandum of Understanding** as he worked assiduously towards the success of the Memorandum of Understanding by promptly filing the Suit and filing Responses to the Preliminary Objection filed by all the Defendants in that Suit as shown in **EXH 3 – 8.**

There is no justification for the Defendants to terminate the brief just because the said Claimant did not attend Court personally on 2 occasions which the Claimant had in evidence shown that a Counsel was ready to go to

Court. Again, the Claimant had said that one of the occasions his Counsel waited for the Defendants to bring vehicle to take him to Court. Again, it is imperative to also state that it costs money for Counsel to go from his house or Chambers to Court on any given day. All those costs monetary expenses.

By the Memorandum of Understanding there was no term for termination of the Contract before the matter is concluded. Hence, if the Defendants are insisting that the Claimant is entitled to payment of **₦5, 000,000.00 (Five Million Naira)** if and only the matter is concluded or Terms of Settlement reached then the same Defendants should know that they has no right under the Memorandum of Understanding to debrief the Claimant as there was no term/condition provided on debriefing. Again the clause 5 of the Memorandum of Understanding is applicable to all the parties. It states thus:

Clause 5

> **"That the PARTIES (Claimant and Defendants) shall work assiduously towards the successful implementation of this Understanding."**

By the use of the phrase **"the parties"** means both the Claimant and the Defendants. So working assiduously is the responsibility of both parties not just for the Claimant. It is the Defendants that failed to work assiduously towards the successful implementation of the letters of the Understanding – **EXH 2 Clause 5.**

On the big elephant in the claims of the Claimant which is the payment of the fee on quantum meruit bases which the Defendants challenged, it is imperative to look deeply at the Clause 3:

> **"In the event of client's failure to pay this agreed fee ... ₦5, 000,000.00 (Five Million Naira) to the Solicitor at the conclusion of the client's case or any time the matter is settled out of Court or at any stage from Pre-action Notice is issued to Federal Ministry of Environment and/or as the case subsists in Court, the Solicitor shall take all legal steps towards recovering of same."**

From the above **Clause 3** of the Memorandum of Understanding the Claimant has a right to take the legal action it has taken by filing this Suit to recover his money – fees. The Defendants are obligated to pay the Claimant his fees as per what he has done and/or services rendered from the time of filing/giving Pre-action Notice to the Federal Ministry of Environment, which the Claimant did by **EXH 1.** The case was still subsisting in Court when the Defendants out of blues debriefed the Claimant for no legally justifiable reason. Hence, violating and breaching the terms of the Memorandum of Understanding – **Clause 4 and Clause 5.**

By Clause 3 the Defendants are obligated to pay the Claimant for the services rendered. So this Court holds. See Clause 3. The same Clause 3 gave the Claimant right to take all legal steps to recover his fees and expenses.

The **₦5, 000,000.00 (Five Million Naira)** fee is and can be applicable where the case was completely and successfully prosecuted and the Defendants won. It is so much so that even where the case is unsuccessful that the fee payable to the Claimant by the Defendants will be determined by the input and contribution of the Solicitor (Claimant) in prosecuting the case of the Defendants. That means that the payment should be done on quantum meruit which the Defendants had laboriously challenged. Invariably, Clause 3 & 4 of the Memorandum of Understanding recognizes and provided for payment based on what was done. The Clause 3 was clear that it will be quantified from the time of Pre-action Notice – **EXH 1** till the time of termination as the Defendants debriefed Claimant and as the case subsists in Court. Clause 3 also specified that **₦5, 000,000.00 (Five Million Naira)** can only be paid upon successful completion of the case. So contrary to the submission of the Defendants that no fee is payable except upon successful completion is misleadingly wrong and ill-conceived too. This is because the clause 3 & 4 states otherwise. So this Court holds that the Claimant has a right to seek for payment of his legal fee on quantum meruit basis because parties agreed to that in clause 3. He is also entitled to be paid the said fee. After all, the clause 3 gives him right to take all legal steps to recover his fees from what he expended and services rendered from Pre-action Notice until the debriefing. So this Court holds.

The Claimant has as a law abiding citizen taking all legal steps as a professional by writing a letter formally demanding for the payment of the outstanding indebtedness to the I.C. Ejiofor & Co. That letter was written on 25th February, 2019 after the Defendants unlawfully terminated the brief. That letter was tendered as **EXH 10.** It was acknowledged by the 2nd Defendant who the letter was personally addressed to. In the said letter the Claimant gave detailed role it has played and the services rendered, all with date. He told the Defendants all that had transpired and the days when the Court sat and did not sit and all money expended in filing of Court Processes and more. The Claimant even invited the Defendants for a meeting so they can formally assess the fees payable to the law firm for professional services rendered as envisaged in paragraph 4 of the Memorandum of Understanding. The letter ended with a warning and notification that the Claimant will take and explore appropriate legal remedy to get the fees paid if they fail to do the needful. The Defendants did not go for the meeting. The Defendants did not deny receipt of the letter. They confirmed that the Claimant wrote the letter to them.

As a professional and in line with the provision of the Legal Practitioners Act, the Claimant sent a Bill of Charge as required to the Defendants stating in details the expenses and the professional services fees and charges with dates all totaling to **₦2, 951,790.00 (Two Million, Nine Hundred and Fifty One Thousand, Seven**

Hundred and Ninety Naira) only. He stated how it came to the figures/charges. That document was tendered as **EXH 11.** The document was addressed to the 2nd Defendant and it was personally served on him for and on behalf of the 1st Defendant. The 2nd Defendant acknowledged receipt as seen in the face of the said Acknowledgement copy of the letter. That Bill of Charges was written on the 10th of April, 2019. The Defendants did not deny receipt of same.

The action of the Claimant is in line with the requirement of the law. So this Court holds.

It is very clear that from the response of the Defendants to the Bill of Charges and letter of 10th April, 2019 that the Defendants did not understand the content of the Memorandum of Understanding especially Clause 3 and 4 on issue of payment of money/fees on quantum meruit. That Reply written on 11th April, 2019 was tendered as **EXH 12.**

It is also the view of this Court that this Court has the requisite jurisdiction to entertain this Suit.

From all the above it is evidently clear that the Claimant has established his claims and he is entitled to the claims having so established its case. So this Court holds.

By the Memorandum of Understanding the parties agreed as to mode of settling the professional fees where the matter is not prosecuted fully by the Claimant.

The Court therefore holds that there is merit in the case of the Claimant and Judgment is hereby entered in his favour and the Reliefs are granted to wit:

(1) Relief No. 1 granted as prayed.
(2) Relief No. 2 granted as prayed.
(3) On Relief No. 3, the Defendants are to pay to the Claimant the sum of ₦200, 000.00 (Two Hundred Thousand Naira) only as General Damages.
(4) The Defendants are to pay to the Claimant the sum of ₦50, 000.00 (Fifty Thousand Naira) as cost of the Suit.
(5) The Defendants are to pay 3% Interest on the Judgment sum from date of Judgment till final liquidation of same.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

_____

K.N. OGBONNAYA

HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: HABILA G. TURSHAK ESQ.

DEFENDANT COUNSEL: NOT REPRESENTED BY ANY COUNSEL.