

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/3562/2020
DATE: : FRIDAY 14TH FEBRUARY, 2025

BETWEEN:

MR. ARUNA BAWA

CLAIMANT

**(TRADING UNDER THE NAME AND STYLE OF ARUNA
BAWA & CO.)**

AND

- 1. FEDERAL REPUBLIC OF NIGERIA
(THE FEDERAL GOVERNMENT OF NIGERIA)**
- 2. THE HON. ATTORNEY GENERAL OF THE
FEDERATION AND MINISTER OF JUSTICE**

DEFENDANTS

JUDGMENT

The Claimant vide a Writ of Summons and Statement of Claim dated and filed on the 29th December, 2020 wherein Claimant claims against the Defendant as follows:-

1. An Order directing the Defendants to immediately pay to the Claimant the sum of **N6,739,467,295.56K (Six Billion, Seven Hundred and Thirty-Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety-Five Naira, Fifty Six Kobo only)** being fee inclusive of VAT due to the Claimant from the Defendants pursuant to performance by the Claimant of the Agency Agreement dated 19th September, 2017 between the Defendants and the Claimant.
2. An Order directing the Defendants to immediately pay interest on the sum of **N6,739,467,295.56 (Six Billion, Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo only)** to the Claimant at the prevailing Central Bank of Nigeria Monetary Policy Rate from 14th August, 2019 to any date Judgment is entered in this Suit.

3. An Order directing the Defendants to pay to the Claimant post judgment interest on Judgment sum at the rate of 10% (Ten Percent) per annum until same is fully liquidated.
4. The cost of this action to be assessed at the stage of Judgment.

Upon service of the writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing.

The case of the Claimant as distilled from the statement of claim is that, the Claimant on 15th August, 2017 vide a letter with Reference Number **MJ/DSD/ASSETRECOVERY/XXXII** from the Office of the 2nd Defendant, was engaged by the Defendants to carry out Forensic Audit with a view to assist in backlog recovery of the Federal Government of Nigeria's funds (then in the sum of **N83,000,000,000 (Eighty-Three Billion Naira Only)** wrongfully trapped in 17 (Seventeen) Financial Institutions and the Central Bank of Nigeria (CBN) through the instrumentality of the National Health Insurance Scheme's (NHIS's) investments and remittances from the Financial Institutions to the CBN.

The said letter of 15th August, 2017 is hereby pleaded and a copy attached and marked as Annexure "A"

That pursuant to the said letter of engagement, the Defendants and the Claimant entered into a formal Agency Agreement dated 19th September, 2017. The copy of the Agency Agreement is hereby attached and marked as Annexure "B". Notice to produce the counterpart copy of the Agency Agreement is hereby given to the Defendants.

Consequently, the 2nd Defendant wrote letters of introduction to various stakeholders including the 17 Financial Institutions, the CBN, the Office of the Accountant General of the Federation, the Federal Ministry of Finance, the Federal Ministry of Health, the Executive Secretary of NHIS and the Inspector General of Police introducing the Claimant as consultant to the Defendants engaged to carry out the said audit and assist in the backlog recovery of the funds.

Copies of the said letters of introduction as well as their acknowledged letters of delivery written by the Claimant are hereby pleaded, attached and marked as Annexure "C" Series.

The Claimant avers that it embarked on works and in the course of the forensic audit, the Claimant was able to determine the amount due from each of the 17 Financial Institutions and owing to the Government of the Federation. The Claimant was also able

to determine the quantum of remittances made from the Financial Institutions to the CBN but not reflected in the NHIS's Treasury Single Account (TSA). Accordingly, on 3rd May, 2018, and in accordance with its Terms of Reference under the Agency Agreement, the Claimant issued Notices of Indebtedness as at 29th April 2018 to each of the 17 Financial Institutions notifying them of the amount due from each of them. The acknowledgement copies of the said Notices of Indebtedness served on each of the Financial Institutions are hereby pleaded, attached and marked as Annexure "D" Series.

The acknowledgement copy of transmittal letter written by the Claimant to the 2nd Defendant with attached copies of the acknowledged Notices of Indebtedness served on each of the Financial Institutions are hereby pleaded, attached and marked as Annexure "E". Notice to produce the original is hereby given to the Defendants.

The Claimant further avers that based on the results of the forensic audit, and pursuant to its mandate, it wrote to the CBN demanding for the NHIS's TSA Statement of Account to confirm the remittances the Financial Institutions claimed they made to CBN in favour of NHIS in response to the TSA Policy of the

Federal Government of Nigeria. The CBN forwarded the NHIS's TSA Statement to the Claimant by email.

That based on the responses to its Notices of Indebtedness (mentioned in Paragraph 7) and its Demand for Payment Notices (mentioned in Paragraph 11 hereunder) served on the Financial Institutions, the Claimant was able to cross-check the amounts the Financial Institutions claimed to have remitted to CBN in favour of NHIS and ascertained the amount claimed to have been so remitted to CBN in favour of NHIS that was not reflected in the NHIS- TSA Statement issued by the CBN.

Consequently, the Claimant wrote letters to the CBN to confirm or deny the amounts the Financial Institutions claimed were remitted to CBN in favour of NHIS but were not reflected in the NHIS's TSA Statement issued by the CBN, till date the CBN failed to respond to these letters, giving the Claimant the belief that the amounts the Financial Institutions claimed they remitted to CBN in favour of NHIS that were not reflected in the NHIS's TSA Statement were actually remitted to CBN.

Copies of the Claimant's letters to the CBN are hereby pleaded, attached and marked as Annexure "F" Series. Notice to produce the originals is hereby given to the Defendants.

Claimant avers further that pursuant to its mandate under the Agency Agreement on 10th July, 2018, the Claimant issued and served on each of the 17 Financial Institutions a Payment Demand Notice asking each of them to remit the amounts due from it into the Defendants designated Asset Recovery Account held with the Central Bank of Nigeria.

Copies of the acknowledgment of the said notices dated 10th July, 2018 are hereby pleaded, attached and marked as Annexure "G" Series.

Acknowledged copy of the Claimant's letter forwarding Copies of the acknowledgment of the said Payment Demand Notices dated 10th July, 2018 and other matters to the 2nd Defendant is hereby pleaded, attached and marked as Annexure "H". Notice to produce the original is hereby given to the Defendants.

Claimant avers that on 17th April, 2019, pursuant to its Terms of Reference under the Agency Agreement and acting in the best interest of the Defendants and holding two rounds of account reconciliation meetings with each of the Financial Institutions, the Claimant further issued and served on the respective 17 Financial Institutions final payment demand notices vide email notifying them of their respective indebtedness and urging them to remit

the reconciled amounts due from them to the Federal Government of Nigeria designated Asset Recovery Account in CBN before 30th April, 2019.

Copies of the emails with the attached final payment demand notices dated 17th April, 2019 the Claimant sent to the Financial Institutions are hereby pleaded, attached and marked as Annexure "1" Series.

That the total amount the Financial Institutions remitted to CBN is in the sum of **N78,900,615,527.00K (Seventy Eight Billion, Nine Hundred Million, Six Hundred And Fifteen Thousand, Five Hundred and Twenty Seven Naira only)** while the total amount due from Financial Institutions as at the time the Forensic Audit was concluded and which, as per the Agency Agreement, the 2nd Defendant has directed the CBN to debit the accounts of the Financial Institutions with the amounts due from them which they failed to remit to the Federal Government's designated recovery account is in the sum of **N68,384,060,522.00K (Sixty Eight Billion, Three Hundred and Eighty Four Million, Sixty Thousand, Five Hundred and Twenty Two Naira only)**. The analysis of the sum of **N78,900,615, 527.00K** is as follows:

That the sum of **N76,175,615,527.00K (Seventy Six Billion, One Hundred and Seventy Five Million, Six Hundred And Fifteen Thousand, Five Hundred and Twenty Seven Naira only)** being the total amount the Financial Institutions remitted to CBN but not reflect in the NHIS's TSA Statement of Account of which letters were written to the CBN by the Claimant and the CBN did not deny;

That the sum of **N38,000,000.00K (Thirty Eight Million Naira Only)** being money remitted and/or paid by Zenith Bank Plc. to the designated Asset Recovery Account in CBN after the Claimant's Payment Demand letter.

The sum of **37,000,000.00 (Thirty-Seven Million Naira Only)** being the money remitted and/or paid by Fidelity Bank Plc. to the designated Asset Recovery Account in CBN after the final Reconciliation Meeting in April, 2019.

That the sum of **2,650,000,000.00 (Two Billion, Six Hundred and Fifty Million)** being backlog recoveries remitted by Heritage Bank into the NHIS TSA in CBN during and after the Claimant had completed the Forensic audit update and had extensively carried out the backlog recovery contract.

That pursuant to the Agency Agreement, it carried out the forensic audit of the investments made by the NHIS and other financial records of the NHIS, in the course of which the Claimant ascertained the amounts due the Federal Government of Nigeria from each of the 17 Financial Institutions. The Claimant also ascertained the total amount remitted by some Financial Institutions to the CBN in favour of NHIS that were not reflected in the NHIS TSA statement issued by the CBN.

Consequently, the Claimant served on each of the 17 Financial Institutions with notices of indebtedness and demand for payment and held two rounds of account reconciliation meetings with the respective 17 Financial Institutions concerned at the end of the first round of account reconciliation exercise the Claimant issued a detail interim report on 8th March, 2019. The Claimant also scheduled and held final Account Reconciliation Meeting with the 17 Financial Institutions at the end of which it issued a detail final report dated 29th April, 2019. The two rounds of account reconciliation meetings the Claimant held with the respective 17 Financial Institutions were attended by official representatives of The Office of the Secretary to the Federation and the Central Bank of Nigeria. However, the Asset Recovery and Management Unit of the Federal Ministry of Justice, the Accountant General of

the Federation, the Federal Ministry of Finance, the Federal Ministry of Health and the NHIS were invited to the Account Reconciliation Meetings but failed to send their representatives to attend the meetings.

Copies of the Interim Report dated 8th March, 2019 that was issued at the end of the first round of account reconciliation meetings and the Final Report issued at the end of the second and final Account Reconciliation Meeting the Claimant held with Financial Institutions dated 29th April, 2019 served on the Defendants and evidence of receipt of same are hereby pleaded, attached and marked as Annexures "J1" and "J2" respectively. Notice to produce the originals at trial is hereby given to the Defendants.

Further to the above, the Claimant avers that the forensic audit exercise is carried out revealed, and as detailed out in the Reports dated 8th March, 2019 and 29th April, 2019, that the 17 Financial Institutions and the CBN were indebted to the Government of the Federation to the tune of **N147,284,676,049.57 (One Hundred and Forty Seven Billion, Two Hundred and Eighty Four Million, Six Hundred**

and Seventy Six Thousand, Forty Nine Naira and Fifty Seven Kobo only)as at 15thApril, 2019.

That the Claimant avers that out of the total debt of **N147,284,676,049.57(One Hundred and Forty Seven Billion, Two Hundred and Eighty Four Million, Six Hundred and Seventy Six Thousand, Forty Nine Naira and Fifty Seven Kobo only)** through its commendable efforts, the total sum of **78,900,615,527.00k** was traced to the CBN as at 15th April, 2019 leaving a balance sum of **N68,384,060,522.00K** due from the Financial Institutions as at 15th April, 2019.

The Claimant avers that in respect of the balance sum of **N68,384,060,522.00K**, the 2nd Defendant, as per the Agency Agreement and following the advice of the Claimant, instructed the Central Bank of Nigeria (CBN) to debit the respective Bank Accounts of the Financial Institutions concerned according to the amount outstanding against each of them.

Claimant avers that as per the Agency Agreement, it does not have the obligation to commence recovery action in Court against the Financial Institutions without the express instruction of the Defendants. Its obligation under the agreement was to advise the Defendants as to the appropriate mode of recovering the debt

and same was commendably discharged when the Claimant advised the Defendants to instruct the CBN to debit the bank accounts of the debtors, which advice was accepted

That consequent on the above and reasonably believing that the Defendants have been duly credited with all the debts owed by the Financial Institutions and the CBN, the Claimant on 14th August, 2019 sent to the Defendants, vides a letter of even date, invoice of its fee of 5% (Five Percent) of the sum recovered as per the Agency Agreement in the sum of **N6,739,467,295.56K (Six Billion, Seven Hundred and Thirty-Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo only)** inclusive of Value Added Tax (VAT) and details of its Bank Account. The Claimant followed it up with a demand letter dated 28th August, 2019 sent to the Defendants.

Copies of both Claimant's letters dated 14th and 28th August 2019 hereby pleaded attached and marked as Annexures "K1" and "K2" respectively. Notice to produce the originals is hereby given to the Defendants.

Claimant avers further that since the above letters stated above, it has visited the offices of the Defendants, made several

overtures and engaged officials of the Defendants verbally all in a bid to get the Defendants to settle its fee but the Defendants remained adamant and failed or neglected to settle the claim despite all entreaties.

Consequently, on 9th October, 2019 the Claimant instructed its Solicitors of Messrs. Allyu Momoh & Co. to issue and serve on the Defendants a letter demanding for payment of the fee failure of which the Claimant shall proceed with the belief that arbitration as per the Agency Agreement has been triggered.

The acknowledgment copy of the said solicitors' letter dated 9th October, 2019 is hereby pleaded, attached and marked as Annexure "L". Notice to produce the original at trial is hereby given to the Defendants.

That rather than comply with the demand especially in view of the said solicitors' letter of 9th October, 2019, on 11th October, 2019 the 2nd Defendant curiously responding to the Claimant's letter of 28th August, 2019 and ignoring the solicitors' letter of 9th October, 2019, wrote a letter (11th October, 2019) to the Claimant wherein the 2nd Defendant made some spurious allegations against the Claimant all with the aim of wrongfully denying the Claimant its earned fee or delaying the payment of same.

The said letter of 11th October, 2019 is hereby pleaded and a copy attached and marked as Annexure "M".

That in response to the 2nd Defendant's said letter of 11th October, 2019, on 24th October, 2019 the Claimant further instructed its solicitors of Messrs. Aliyu Momoh & Co. to issue and serve on the Defendants a letter which adequately addressed the spurious allegations made by the 2nd Defendant in the said letter of 11th October, 2019.

A copy of the said solicitors' letter dated 24th October, 2019 is hereby pleaded, attached and marked as Annexure "N". Notice to produce the original at trial is hereby given to the Defendants.

That Claimant avers that to save its face, on 25th October, 2019 the 2nd Defendant wrote a letter to the Claimant's solicitors to which the Claimant's solicitors responded vides a letter dated 28th October, 2019.

Copies of both the 2nd Defendant's letter dated 25th October, 2019 and the Claimant's solicitors letter dated 28th October, 2019 are hereby pleaded, attached and marked as Annexure "O1" and "O2" respectively. Notice to produce the original of Annexure "O2" is hereby given to the Defendants.

That following the failure of the Defendants to initiate amicable settlement of the dispute despite all entreaties and overture by the Claimant and following the failure, neglect and/or refusal of the Defendants to meet the Claimant's claim as per the Agency Agreement, on 27th November, 2019 the Claimant instructed its solicitors of Messrs. Aliyu Momoh & Co. to apply to the Hon. Chief Justice of Nigeria to appoint an Arbitrator to determine the dispute and the instruction was carried out on same date. On 14th February, 2020 and on 5th August, 2020 the said solicitors wrote further reminders on the need to appoint an Arbitrator to determine the dispute between the parties.

Acknowledgement copies of the said letters to the Chief Justice of the Federation are hereby pleaded, attached and marked as Annexure "P".

That till date, despite all follow up and entreaties from the Claimant and its solicitors, the Chief Justice of Nigeria has failed to appoint an Arbitrator to determine the dispute. The Claimant has lost fate in any arbitral process. Consequently, the only option left for the Claimant is to litigate the dispute in Court to determine the dispute according to the laws of the land.

That till date, the Defendants have failed, neglected and/or refused to pay the Claimant this fee standing in the sum of **N6, 739,467,295.56K (Six Billion, Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo only)** inclusive of VAT despite all demands and entreaties to get the Defendants to pay.

That despite the complexities, risks, hardship and obstacles involved, the Claimant ardently and diligently concluded the contract (Agency Agreement) and consequently was able to ascertain that the Financial Institutions concerned and the Central Bank of Nigeria are unlawfully holding on to the total sum of **N147,284,676,049.57 (One Hundred and Forty Seven Billion, Two Hundred and Eighty Four Million, Six Hundred and Seventy Six Thousand, Forty Nine Naira and Fifty Seven Kobo)** (as at 15th April 2019) belonging to the Federal Government (the Public.)

That some of the money, as a result of the dogged, smart, credible, excellent and transparent work of the Claimant has been remitted by some of the Financial Institutions themselves, in cash, white, as per the terms of the contract, the rest have been

recovered by the Defendants/CBN through the agreed mode of debiting the Financial Institutions account held with CBN in favour of the Federal Republic of Nigeria.

The Respondents, despite the commendable performance, repeated demands and very huge resources the Claimant spent in successfully and diligently executing the contract, have failed to remit the Claimant's fee being the sum **N6,739,467,295.56K** inclusive of VAT to the Claimant.

That the unjustifiable and false excuse of the Defendants (despite having admitted earlier that the Claimant creditably executed the contract) is that the tenure of the contract had expired at the time the Claimant completed the contract. Succinctly put, decoding from the terms of the contract, however, particularly the "effective date" as provided in Article VIII paragraph 8.1 to 8.2 of the Contract Agreement (Annexure "A" herein), the Claimant did not only carry out an excellent and commendable job, but also completed the job within the tenure of the contract.

Moreover, the Defendants at no point material ever disputed any of the Reports sent to them by the Claimant. The Defendants, for the avoidance of doubt, has never disputed any of the figures contained in the Claimant's reports and correspondences.

That wrongful action of the Defendants, no doubt, stems from other negative and wrongful reasons on the part of the Defendants as shall be further disclosed by the Claimant at the hearing.

Above represents the claims of the Claimant.

Claimant opened its case on the 25th day of October, 2021 PW1 adopted his witness statement on oath and merely corroborated the Claimant statement of claim hook line and sinker.

I do not think it will be of any gainful purpose re-producing everything, hook, line and sinker again.

PW1 tendered the following documents in evidence and same were admitted and marked as Exhibits "1 – 34" respectively, as follows;

1. Letter of instruction to engage in forensic audit dated 15th August, 2017.
2. Agency Agreement between
3. Letters of Instruction from the AGF to various stake holders (27 in number).
4. Photocopies of acknowledgement of deliveries of letters of Introduction (13 in number).

5. Acknowledgement copies of Notice of Indebtedness served on each of the Financial Institution 17 in number.
6. Acknowledgement Letter of transmitting Letter dated 15th May, 2018
7. Copies of Letters (8 in number) written to the CBN
8. Demand Notice of acknowledgement (17 in number)
9. Copies of Email attaching final payment Demand Notices to the various financial Institutions with Certificate of compliance.
10. Copies of Interim report dated 8th March, 2019
11. Acknowledgement copy of final reports dated 29th April, 2019
12. Copy of Letter of invoice dated 14th August, 2019
13. Copy of Letter of Demand dated 28th August, 2019
14. Copy of Claimant's Solicitors Letter dated 9th October, 2019
15. 2nd Defendants Letter dated 11th October, 2021
16. Solicitors Letter dated 24th October, 2019
17. Defendants Letter dated 25th October, 2019

18. Claimant's Solicitors Letter dated 28th October, 2019
19. Letters from Claimant's Solicitors to the Chief Justice of Nigeria (3 Letters)
20. Copies of Claimant's qualifications
21. Copy of Audit and Recovery work plan dated 29th September, 2019.
22. Copy of Letter dated 3rd October, 2017 titled audit and recovery work plan standard draft Letter of Introduction.
23. Defendants Letter dated 19th October, 2017.
24. Acknowledgement copy of Claimant Letter dated 1st October, 2017.
25. Acknowledgement copy of Claimant Letter dated 16th November, 2017.
26. Acknowledgement copy of Claimant Letter dated 12th February, 2018.
27. Acknowledgement copy of Claimant letter dated 6th March, 2018
28. Defendants Letter dated 26th March, 2018.

29. Acknowledgement copy of Claimant Letter dated 2nd April, 2018.
30. Acknowledgement copy of Claimant Letter dated 13th August, 2018.
31. Three set of Letter
32. Acknowledgement copy of Claimant Letter dated 27th December, 2018, 29th, October, 2018 and 23rd October, 2018.
33. Defendants letter dated 8th October, 2018
34. Acknowledgement copy of Claimant letter dated 17th December, 2018.

PW1 was cross - examined and subsequently discharged.

On their part, 1st and 2nd Defendants filed a joint Statement of Defence and witness statement on oath wherein, they denied paragraph 1 of the Claimant's Statement of Claim and put the Claimant to the strictest proof thereof.

That the Defendants wrote the letters of introduction as part of its obligation under the agency agreement but the Claimant on its own deliberately waited for some months to lapse before it

decided to send the letters to the various bodies without the notice of the Defendants.

Defendants in reply to paragraphs 6 and 7 of the Claimant's Statement of Claim state that pursuant to the Claimant's notice of indebtedness to various Financial Institutions, the Ministry is in receipt of correspondences from various Banks/Financial Institutions denying their indebtedness to the NHIS. Copies of the said correspondences from Wema Bank dated 3rd January 2019, Unity Bank (two (2) correspondences) dated 4th July, 2018 and 29th April, 2019, United Bank for Africa(UBA) dated 14th April, 2019 and Guaranty Trust Bank (GTB) dated 9th May, 2019 are herein attached as Exhibits "AGF3" "AGF4", "AGF5", "AGF6" and "AGF7"

Defendants denied paragraphs 8, 9, 10, 11 and 12 of the Claimant's Statement of Claim and in response state that if the Claimant contends that if such took place, same was done without the notice of the Defendants' and in further response to paragraph 10 of the Claimant's Statement of Claim, Defendants contends that they are not the maker of the said documents and therefore cannot produce the original documents.

Defendants further deny paragraph 13 of the Claimant's Statement of Claim and in response state that the Claimant's assertions are speculative in nature and untrue. The only payment received in respect of the Recovery is from the Zenith Bank who had paid into the Federal Government of Nigeria account. A copy of letter from the Zenith Bank dated the 30th of July, 2018 and the confirmation from the CBN to this effect dated 25th October, 2018 is herein attached as Exhibits "AGF8" and "AGF9"

Defendants denied paragraphs 14 and 15 of the Claimant's Statement of Claim and in response state that if the Claimant contends that such took place, same was not done how/ when it ought to have been done as per the Agency Agreement.

Defendants denied paragraphs 16, 17 and 18 of the Claimant's Statement of Claim and put the Claimant to the strictest proof thereof.

Defendants further states in paragraph 19 of the Claimant's Statement of Claim that as per the Agency Agreement, the Claimant may be given the approval to commence any legal proceedings provided that the Claimant seeks the approval of the Defendants in writing to do so.

Defendants further deny paragraph 20 of the Claimant's Statement of Claim and in response state that it has not been credited with all the debts owed by the various Financial Institution as stipulated by the Claimant and therefore re-iterates its averment in paragraph 5 above.

Defendants denied paragraph 21 of the Claimant's Statement of Claim and state that the information supplied in the said paragraph is false as there is no mention of a letter in paragraph 17 of the Claimant's Statement of claim.

That 2nd Defendant denied paragraph 22 of the Claimant's Statement of claim and state that there is no record of such service of the said Claimant's solicitor's letter on the Ministry and put the Claimant to the strictest proof thereof.

That in response to paragraph 23 of the Claimant's Statement of Claim, the Defendants reviewed the contents of the Claimant's letter dated the 28th August, 2019 and felt the need to re-inform the Claimant via a letter dated the 11th October, 2019 that the Agency Agreement was already terminated and of their unethical and unprofessional acts/conducts. Certified Copy of the letter is herein attached as Exhibit "AGF10".

Defendants further states in reply to paragraph 24 of the Claimant's Statement of Claim that the Ministry is in receipt of the said letter and replied same with a letter dated the 25th October, 2019 where it was clearly re-iterated that the engagement of the Claimant's had since lapsed. Certified Copy of the letter is herein attached as Exhibit "AGF11".

Defendants in paragraph 26 of the Claimant's Statement of Claims further responded that a letter was received from the Claimant's lawyer in respect of Arbitration dated the 4th December, 2019, and pursuant to the letter, a memo was raised to the SGF/PS in respect of same. A reply memo in respect of same adduce to the fact that the Defendants are not opposed to the Arbitration. Certified Copy of the Memo is herein attached as Exhibits "AGF12" and "AGF13".

Defendants denied paragraphs 27 and 28 of the Claimant's Statement of Claim and in further response to paragraph 28, the Defendants re-iterate its averment in paragraph 6 above and further state that the only sum due to the Claimant is from the recovery of Zenith Bank alone which has been confirmed by the CBN. The Claimant is yet to apply for the success fee in respect of Zenith Bank but is rather speculating over an overall sum.

That Defendants deny paragraphs 29, 30 and 31 of the Claimant's Statement of claim and put the Claimant to the strictest proof thereof. In further response to paragraph 30 of the Claimant's Statement of claim, the Defendant states that the Defendants/CBN do not have an agreed mode of debiting Financial Institution account held with CBN or any other financial agencies as such monies are not theirs.

That Defendants deny paragraphs 32 of the Claimant's Statement of claim and state further that pursuant to the Agency Agreement at page 8 particularly in paragraphs 10.1, the Agency Agreement had been terminated since the 18th of September, 2018 and same was not renewed by any party at any time whatsoever.

That Defendants deny paragraphs 33 and 34 of the Claimant's Statement of claim and state further states that pursuant to the Agency Agreement page 2 particularly in paragraphs iv(g) & (h), the Claimant breached its own terms of reference (TOR) and Article 5 which contains the obligation of the Agency in its entirety.

That Defendants are not indebted to the Claimant to the sum of **N6,739,467,295.56k (Six Billion Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven**

Thousand Two Hundred and Ninety Five Naira, Fifty Six Kobo) only as alleged by the Claimant.

That Defendants shall object to some of the pleaded documents referred to in the Claimant's Statement of Claim and will put the Claimant to the strictest proof thereof.

That Defendants deny paragraph 35 of the Claimant's Statement of Claim in its entirety and decline responsibility for same particularly Reliefs (a) – (d).

That Defendants shall contend at the hearing of this suit that:

That the suit is frivolous, unmeritorious and a waste of the court time.

That the Agency Agreement between the Claimant and the Defendants had long lapsed since the 18th of September 2018.

That the terms of the Agency Agreement between the Claimant and the Defendants were breached by the Claimant severally.

That the Defendants shall rely in addition to their filed processes, the Statement of Claim, the Witness Statement on Oath, and also rely on the documents and witnesses of the Claimant in this suit.

That Defendants avers that the Claimant is not entitled to any claim as stated in paragraphs 35 (a)-(d) of its Statement of Claim or at all and the court is urge to dismiss this suit in its entirety.

DW1 (Bunmi Naiyeju Adelaiye) adopted her witness statement on oath and states that the office of the office of the Hon. Attorney General of the Federation via the solicitors Department of the ministry engaged the services of the Claimant as an Agent vide agency Agreement signed by both parties. Later in time in year 2007, the department of Assets Recovery Monitoring Unit (ARMU) was created in the Federal Ministry of Justice and subsequently the file of the Claimant amongst others were sent to the department (ARMU) from the solicitors Department to handle as that was the area of its expertise.

DW1 testified that in the course of the duration of the Agency Agreement, it was discovered that the Claimant's behavior was unethical and unprofessional and that Assets Recovery Monitoring Unit (ARMU) made concerted efforts not to renew the agreement as a result of discrepancies with some clauses in the agreement and the unethical actions of the claimant.

DW1 further testified that pursuant to the Claimant notice of indebtedness, various financial institutions, the Ministry is in

receipt of correspondences from various Banks\financial institutions denying their indebtedness to the NHIS.

DW1 further gave evidence that the only payment received in respect of recovery is from Zenith Bank who had paid into the FGN account.

DW1 stated that the Defendants are not indebted to the Claimant to the sum of **N6,739,467,295.56k (Six Billion Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven Thousand Two Hundred and Ninety Five Naira, Fifty Six Kobo)** only as alleged by the Claimant.

That the said Agency Agreement was terminated on the 18th September, 2018 as stipulated by the Agency Agreement and same was never renewed by either parties and Claimant was expressly and impliedly informed about termination\non-renewal of the Agency Agreement both orally and in writing at various times but the Claimant refused to adhere to same.

DW1 further stated that pursuant to the Letter of the Claimant in appointing an arbitrator, a memo was raised to the SGF\PS in respect of the same, a reply memo in respect of same adduced to the fact that the Defendants are not opposed to the Arbitration.

DW1 tendered the following documents in evidence and same were so marked as Exhibits "D1" – "D11" respectively, as follows:

1. Letter from WEMA Bank dated 3rd March, 2019
2. Letter from Unity Bank dated 4th July, 2018
3. Letter from Unity Bank dated April 29th 2019
4. Letter from UBA dated 24th April, 2019
5. Letter from A. A Ibrahim SAN & Co. dated 9th May, 2019
6. Letter from Zenith Bank dated 30th May, 2018
7. Letter from CBN dated 25th October, 2018
8. Letter from the Attorney General of the Federation dated 11th October, 2019
9. Letter from Attorney General of the Federation dated 25th October, 2019
10. Extract of a memo in the Ministry's file dated the 23rd January, 2020
11. Extract from the main file dated 10th February, 2020.

In turn, Claimant filed reply to statement of defence. It is the averment of Claimant that, in specific response to Paragraph 1 of the Defendants' Statement of Defence, the Claimant states that he qualified as a Chartered Accountant as back as the year 1978.

That in specific response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that it did not deliberately wait for some months to lapse before it deciding to send the letters to the various bodies without the notice of the Defendants as alleged, but that after the Agency Agreement was signed, on 29th September, 2017 the Claimant, pursuant to the agreement, submitted to the Defendants Audit and Recovery Work Plan for approval. In that Audit and Recovery Work Plan the Claimant specifically requested from the Defendants details of the Special Federal Government TSA account into which any recovered fund shall be lodged.

A copy of the said Audit and Recovery Work Plan is hereby pleaded, attached and marked as Annexure "R". Notice to produce the original is hereby given to the Defendants.

That in further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that for several weeks after Annexure "R" above was served on the Defendants, the

Defendants did not respond necessitating a further letter from the Claimant to the Defendants dated 3rd October, 2017 titled ***"Audit and Recovery Work Plan - Standard Draft Letters of Introduction and Other Matters."***

A copy of the said Audit and Recovery Work Plan - Standard Draft Letters of/Introduction and Other Matters is hereby pleaded, attached and marked as Annexure "S". Notice to produce the original is hereby given to the Defendants.

That in further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that it was only on 19th October, 2017 that the Defendants responded to Audit and Recovery Work Plan but was salient on many critical issues especially the Special Federal Government TSA account and when exactly the Letters of Introduction will be issued. A copy of the Defendants letter dated 19th October, 2017 is hereby pleaded, attached and marked as Annexure "T".

That in further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that having not heard from the Defendants, it wrote another letter to the Defendants on 16th October, 2017 stating its intention to write payment demand letters on the Financial Institutions and still requesting for the

Special TSA that ought to be included in the intended letters. A copy of the said Claimant's letter dated 16th October, 2017 is hereby pleaded, attached and marked as Annexure "U". Notice to produce the original is hereby given to the Defendants.

That in further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that it took the Defendants until 13th November, 2017 to issue the critical Letters of Introduction but still did not issue the Special TSA account details into which any recovered fund can be lodged as demanded for in the Audit and Recovery Work Plan.

In further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that immediately the letters of introduction were received preparatory for onward delivery to the various stakeholders, the Claimant wrote a letter to the Defendants on 16th November, 2017 still requesting for the Special TSA account details since both the Letters of Introduction and the Payment Demands Notices were to be delivered to the various Financial Institutions together.

A copy of the said Claimant's letter dated 16th November, 2017 is hereby pleaded, attached and marked as Annexure "V". Notice to produce the original is hereby given to the Defendants.

That in further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that despite all the letters the Defendants still failed, neglected and/or refused to supply the Claimant the critical Federal Government Special TSA requested. This made the Claimant, who was burning with desire to promptly and efficiently execute the Agency Agreement, to start visiting the Defendants almost on daily basis and on two of such occasion even met with the 2nd Defendant in person pleading for the said Federal Government Special TSA account details to be supplied in line with the Audit and Recovery Work Plan and the Agency Agreement. Despite several promises by the Defendants they never supplied the account details.

In further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that sometime in February, 2018, while it was still waiting for the requested TSA account details, one Z. S. Adeyanju the then Director Solicitor Department of the Federal Ministry of Justice called the Claimant and advised the Claimant to go and see one Ladidi B. Mohammed, the Head Asset Recovery and Management Unit of the Federal Ministry of Justice and when the Claimant did, the said Ladidi B. Mohammed told the Claimant verbally that as a condition to give out the requested Special TSA account details, the Claimant would have to return

the Letters of Introduction already given to the Claimant for redrafting. The Claimant asked the said Ladidi B. Mohammed to put her request for retrieval of the Letters of Introduction in writing to the Claimant in accordance with the terms of the agency agreement that all such vital communications should be in writing; but the said Ladidi B. Mohammed never did till date.

In further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that in further effort to get the needed TSA account details, on 12th February, 2018 the Claimant wrote further letter to the Defendants still asking for the Special TSA account details which the Defendants still did not respond to. A copy of the Claimant's said letter dated 12th February, 2018 is hereby pleaded, attached and marked as Annexure "W". Notice to produce the original is hereby given to the Defendants.

That further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that, the Defendants haven't spurned all the series of letters written and personal visits requesting for the account details, the Claimant was forced to write again another letter dated 6th March, 2018 requesting for the said account details and giving the Defendants summary of the indebtedness of the Financial Institutions for the period of 1st

January, 2011 to 31st December, 2016 with updated interest charges as at 31st January, 2018.

A copy of the said Claimant's letter dated 6th March, 2021 was annexed and marked as Annexure "X". Notice to produce the original was given to the Defendants.

In further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that rather than supply the requested account details, on 26th March, 2018, the Defendants purporting to responding to the Claimant's letter dated 6th March, 2018, wrote a letter of even date demanding that the Claimant explained its relationship with a stranger to the Agency Agreement one Messrs Sofura Professional Services.

A copy of the said Defendants' letter dated 26th March, 2018 was pleaded, attached and marked as Annexure "Y".

In further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that in response to the said query by way of the letter dated 26th March, 2018, on 2nd April, 2018 the Claimant wrote a detailed letter to the Defendants wherein the Claimant, at the pain of repetition (having earlier disclosed in detailed its relationship with the said Sofura Profession Service in its Proposal - Whistle-Application dated 14th July, 2014) again

explained its relationship with Sofura Professional Services and adequately responded to all the query raised in the said Defendants letter. A copy of the said Claimant' letter dated 2nd April, 2018 is hereby pleaded, attached and marked as Annexure "Z". Notice to produce the original is hereby given to the Defendants.

In further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that having realized shockingly that the Defendants particularly the 2nd Defendant's office were frustrating the assignment, the Claimant was forced to do the following as a way out:

That between 9th May, 2018 and 10th May, 2018 the Claimant served the Letters of Introduction to the various stakeholders including the 17 Financial Institutions.

Immediately thereafter, the Claimant served the various Financial Institutions Notices of Indebtedness (not Payment Demand Notice because there was no TSA account details to be inserted then), and that thereafter, the Claimant sent copies of the acknowledged Letters of Introduction as well as acknowledged Notices of Indebtedness to not just the Defendants but also the Federal Ministry of Finance, Office of the Accountant General of

the Federation, the Hon. Minister of Health and the National Health Insurance Scheme by way of forwarding letter which was asking for the account details.

That further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that it was only the Federal Ministry of Finance that responded to the Claimant's letter forwarding the acknowledged notices of indebtedness by instructing the Office of the Accountant General of the Federation to immediately supply the Claimant the Federal Government Recovery Account details which the Office of Accountant General did on 11th June, 2018 vide a letter of even date. A copy of the letter dated 11th June, 2018 from the Office of Accountant General of the Federation as well as the minute of the then Hon. Minister of Finance earlier pleaded is hereby attached and marked as Annexure "AA".

In further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that it was only then (after it received the letter from Office of Accountant General of the Federation supplying the details of the TSA) that the Claimant was able to prepare and sent to the 17 Financial Institutions

Payment Demand Letters dated 3rd July, 2018 already pleaded in the Statement of Claim.

That in further response to Paragraph 4 of the Defendants' Statement of Defence, the Claimant states that immediately the Payment Demand Notices were sent to the Financial Institutions, the Financial Institutions in conjunction with the top executives of the NHIS started mounting vigorous media campaign of calumny against the assignment with the aim of having the Defendants to terminate the Agency Agreement. This necessitated a meeting of the Claimant move to have the Agency Agreement terminated and confirmed that the delay in commencement of the assignment was occasioned by the failure on the part of the Defendants to supply the necessary information needed for the assignment. The Defendants also promised at the meeting to formally write letters to the various stakeholders especially the NHIS that the Agency Agreement was still alive and that they should stop interfering with the assignment. On 13th August, 2018, the Claimant wrote a letter of even date to the Defendant confirming some of the agreement reached at the said meeting of 2nd August, 2018.

A copy of the letter dated 13th August, 2018 is hereby pleaded, attached and marked as Annexure "BB". Notice to produce the original is hereby given to the Defendants.

Finally in further response to Paragraph 4 of the Defendants' Statement of Defence the Claimant states that it was the Defendants that breached the Agency Agreement and caused the delay in delivery of the Letters of Introductions which was to signal the commencement of the assignment based on the Audit and Recovery Work Plan submitted to the Defendants and the Agency Agreement.

That in specific response to Paragraph 5 of the Defendants' Statement of Defence the Claimant states that the Claimant is not aware of any letter written to the Defendants by any of the Financial Institutions and that the Defendants never bothered to forward any of the said letters to the Claimant to counter any of the content of the said letters. If at all the said letters were received by the Defendants from the banks, the Defendants deliberate sat on the letters for negative reasons.

That in further response to Paragraph 5 of the Defendants' Statement of Defence, the Claimant states that the Notices of Indebtedness served on all the 17 Financial Institutions contained

analysis of amount due from each of the banks, the amount of investment placed, when it was placed, the bank account extract of where the money came from, the interest rate, the amount that came back and when it was received into NHIS's account and the short payment due from each of the banks. To all these, few of the banks wrote to the Claimant making vague denial without any back up or reasonable explanation prompting the Claimant to write further letters to the bank stating further details on how the figure were arrived. In fact it was the agitation of some of the banks that necessitated the account reconciliation exercises which the Defendants especially the 2nd Defendant's office deliberately aimed to frustrate.

In specific response to Paragraph 6 of the Defendants' Statement of Defence, the Claimant states that the letter of introduction introducing the Claimant to the CBN was detailed and never envisaged that the Claimant need any other authorization to deal directly with the CBN. This notwithstanding the CBN is an agency of the 1st Defendant and most of the letters written to them where copied to the Office of the 2nd Defendant.

That specific response to Paragraph 7 of the Defendants' Statement of Defence, the Claimant states that its assertion were

never speculative and it is completely false that it is only Zenith Bank that paid money to the CBN. Most of the banks admitted series of payments they made to CBN including Fidelity Bank, Aso Savings and Loan Plc. and Heritage Bank. In fact in the case of Heritage Bank, the bank wrote a letter to the Claimant on 5th May, 2019 admitting liability to the tune of **N10,000,000,000.00 (Ten Billion Naira Only)** even though the reconciled amount due from them is **N43,958,391,948.68 (Forty Three Billion, Nine Hundred and Fifty Eight Million, Three Hundred and Ninety One Thousand, Nine Hundred and Forty Eight Naira, Sixty Eight Kobo)** out of which the bank stated that the sum of **N2,650,000,000.00 (Two Billion, Six Hundred and Fifty Million Naira Only)** has been remitted to the NHIS account through the Economic and Financial Crimes Commission (EFCC) one of the mode the Defendants decided to use to recover the fund and that further sum of **N7,349,999,996 (Seven Billion, Three Hundred and Forty Nine Million, Nine Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Six Naira)** will be paid within a specified time. In the case of Aso Savings and Loans Plc., during one of the reconciliatory meetings with the Claimant, the bank brought copies of letters it sent to the 2nd Defendant on 24

October, 2018 wherein it (the bank) admitted payment of the sum **N100,000, 000.00 (One Hundred Million Naira only)** through EFCC one of the mode the Defendants were using to recover the funds wrongly trapped in the Financial Institutions after receiving the Claimant's forensic investigation by way of the notices of indebtedness and payment demand notices.

Copies of letters from some of the banks admitting payments to the Defendants are hereby pleaded, attached and marked as Annexure "CC".

That in specific response to Paragraph 8 of the Defendants' Statement of Defence, the Claimant states that it made every effort to carry the Defendants along in all the account reconciliatory meetings with each of the Financial Institutions. In fact, to make it easier for the staff of the Asset Recovery and Management Unit (ARMU) of the Federal Ministry of Justice to attend such reconciliation, the Claimant earlier proposed office of the Asset Recovery and Management Unit (ARMU) as the venue of each reconciliatory meeting with each bank. The Claimant made it clear to the Defendants that at the reconciliatory meetings each of the Defendants shall be confronted with documents and facts regarding their indebtedness. For some

curious reasons, the Asset Recovery and Management Unit (ARMU) started scuttling the scheduled reconciliation meetings with the Financial Institutions apparently they preferred dealing with the banks directly with the aimed of giving the banks soft landing. Despite all effort of Asset Recovery and Management Unit (ARMU) to frustrate the reconciliatory meetings, the Claimant still successfully reconciled the account with each of the 17 Financial Institutions which was attended by representatives of each of the Financial Institutions as shown in the detailed report dated 29th April, 2019 sent to the Defendants without any iota of objection.

Copies of Claimant letters dated 27th December, 2018, 29th October, 2018 and 13th October, 2018 sent to the Defendants with respect to the reconciliatory meetings are hereby pleaded, attached and marked as Annexure "DD" Series respective. Notice to produce the originals is hereby given to the Defendants.

That specific response to Paragraph 12 of the Defendants' Statement of Defence, the Claimant states that "17" was mistakenly inserted in Paragraph 21 of the Statement of Claimant instead of "20." The correct paragraph referred to in paragraph 21 of the Statement of Claim is paragraph "20" of the Statement of Claim.

In specific response to Paragraph 20 of the Defendants' Statement of Defence, the Claimant states that it is not true at all that the Agency Agreement lapsed on 18th September, 2018. Although the Agreement was executed on 19th September, 2017 and had a duration period of one year from effective date of commencement, the Agreement did not effectively commenced until on 10th May, 2018 when the last Letter of Introduction was served on the Financial Institutions; consequently, the Agreement commenced effectively on 10th May, 2018 and terminated on 9th May, 2019 as per Article VIII Clauses 8.1 and 8.2 of the Agency Agreement. Between 10th May, 2018 and 9th May, 2019 the Claimant commendably and creditably executed his own part of the bargain to the knowledge of the Defendants who even, within the period, issued letters to the Claimant without mentioning anything like termination of the Agency Agreement - for instance the Defendants' letters dated 9th October, 2018 and 11th December, 2018 written to the Claimant.

Copies of the said Defendants letters dated 8th October, 2018 and 11th December, 2018 are hereby pleaded, attached and marked as Annexures "EE" and "FF" respectively.

In response to the said Defendants' letter of 11th December, 2018 which is a query in nature, on 17th December, 2018 and 31st December, 2018 the Claimant wrote a letter to the Defendants to which the Defendants did not respond to till date. Copies of the Claimant's said letters dated 17th December, 2018 and 31st December, 2018 are hereby pleaded, attached and marked as Annexure "GG" and "HH" respectively. Notice to produce the originals is hereby given to the Defendants.

It is clear that, it is the Defendants who have breached the terms of the Agency Agreement and not the Claimant. The Claimant did not breach its obligations under the Agency Agreement, rather, performed satisfactorily its own part of the bargain.

Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned counsel for the 1st and 2nd Defendants filed written address wherein sole issue was raised for determination to wit:

Whether considering the facts and circumstances of the case, the evidence and documents placed before this Honourable Court, the Claimant is entitled to the reliefs sought against the Defendants in this suit.

Learned counsel for the Defendants tends to argue the issue raised above in three categories, namely;

- a. Evidential Value
- b. Agency
- c. Whistle blowing

On the evidential value, it is the submission of the learned counsel that the claimant has failed to establish that he is entitled to the reliefs against the defendants as prayed. The law is trite, that a claim for declaratory relief is an invitation to the court to make a pronouncement as to the legal position of a state of affairs. It is accepted that the action for declaration is a useful and important procedural method for ascertaining and determining the validity of the orders or decisions of courts or tribunals or administrative and executive decisions or actions. Hence, the law requires a very high degree of proof for a party to succeed. In the instant case, the duty is on the Claimant to establish that he is entitled to the declarations sought against the Defendants in this suit.

Learned counsel submits that he who asserts must prove, this is provided for in Section 131 of the Evidence Act. It is their

contention that the Claimant has not placed before this Honourable Court any evidence with even a modicum of probative value in support of its Complaint, Sufficient or at all to merit the consideration and/or grant of his reliefs in the Complaint. The Onus is on the Claimant to prove the facts in support of its claims, the Claimant being the one who asserts and therefore needs to prove.

Learned counsel contends that the Claimant in this suit whilst claiming the sum of **N6,739,467,295.56k (Six Billion, Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo)** only plus interest on same, plus post Judgment interest and cost of this suit has not in any way shown to this Honorable Court why such claims should be paid to him.

Learned counsel submits that the Claimant assumingly believes that he had recovered a lot of sums from various Financial Institutions but has not placed before this Honorable Court any proof of such recovery, the issuance of several letters to the Financial Institutions does not automatically amount to a recovery. There must be substantial evidence to show that such sums were actually paid into the designated account. There is no

proof before this Honorable Court from the Claimant to show that monies were paid in to the account of the CBN provided to him by the office of the Accountant General of the Federation (see Exhibit 35).

It is the argument of the learned counsel that all the Claimant assertions in its Statement of Claim in respect to monies recovered are mere assertions which are based on speculations and his beliefs but not on facts during the cross - examination of the Claimant's witness (PW1) by the Defendant's Counsel, particularly in Question 13.

Learned counsel contends further that the Claimant was aware such recoveries were made by the EFCC but still chose to claim such payments as part of its efforts. The letter from Heritage bank (Exhibit 30/31) was addressed to the Claimant personally and the Claimant was also the Person who exhibited the Aso Savings Bank letter. Both Exhibits (Exhibit 30/31) were in the possession of the Claimant and yet during cross-examination, particularly in question 15, when the Claimant was asked if he was aware that the EFCC had done huge recoveries, the Claimant reply was ***"I am not aware"***. Notably also, on the face of the Aso Bank letter, it was stated that the EFCC had written to the

bank on the 9th February, 2018 whilst the Claimant letter to the bank was dated 24th September, 2018. The Claimant cannot therefore say the recoveries were made by him. The Claimant has the burden to establish his claim on the strength of his case and cannot rely on the weakness of the defence, if any. He cited ***ALIUCHA VS. MARTINES ELECHI (2012) MRSCJ (Vol. 1) 79 at 104.***

Learned counsel submits that the Claimant's claims must fail against the Defendant, based on the facts in this instant case, it is the counsel's submission that by the terms of the Agency Agreements, success fees can only be paid after actual recoveries. The Claimant has not placed any material evidence or proof in support of his case against the Defendants, hence he is not entitled to the declaratory reliefs sought against the Defendants and the court is urged to so hold.

On the Agency relationship entered, learned counsel argues that the Claimant in this suit was engaged as an Agent by the Defendants as endorsed on the face of the writ.

From the facts of this suit, it is not contested whether the Defendants principal actually engaged the Claimant Agent to carry out certain duties for it, what is contested here is that the

claimant did not achieve the desired result of the agreement but yet choose to institute this suit asking for payments for what he did not achieve.

Learned counsel argues that Claimant clearly stated in question 4 during his cross-examination that he was engaged as an agent of the Defendants. An agent is supposed to comply with the lawful instructions, follow the terms of the agreement and act in a manner that is not detrimental to the principal; an agent must also provide the principal with as many relevant facts or pieces of information as possible.

Learned counsel submits in the light of the above that Claimant withheld information from Defendants and was unruly in behavior in various ways, this acts of the Claimant eventually led to the Defendants not renewing the engagement of the Claimant, Prior to the engagement of the Claimant as the Defendant's Agent, the Claimant had a duty to disclose that he had certain dealing with the NHIS and Sofura Professional Services, the Claimant mischievously withheld such information and approached the Defendants fraudulently to engage him for services which should not be credited to him. Claimant further stated during cross-examination that he knew Sofura professional services but denied

working with them, but in the Defendant's letter dated the 11th October, 2019 i.e Exhibit 15, a letter marked as B attached therein is the Claimant's letter to the said Sofura professional services demanding payments of outstanding professional fees in respect of the subject matter of this suit. How then can the claimant state before this honorable court that he did not work with them... and again can the Claimant be entitled to double payments on the same work..

Learned counsel further argues that the terms of the Agency agreement particularly Article 5.2 stipulates that the Claimant must inform, seek the permission of the Defendants before carrying out certain acts\duties. The claimant did not adhere to this dictates but went ahead and carried out duties on his own frolic. The court is urge to take judicial notice of paragraph 15 to 18 of the claimant's additional Witness statement on Oath.

It is further the argument of the learned counsel that vide the terms of the Agency Agreement, the claimant wrote to the Chief Justice of Nigeria to appoint an Arbitrator to adjudicate on the issues that had arisen out of the Agency Agreement, the Defendants did not object to this move in any way as reconciliatory moves were already proposed, this claimant did not

deny when he was quizzed in question 29 by the defence counsel. The Claimant without fully exploiting the Arbitration process took the Defendants to court.

Learned counsel added that the Agreement clearly stated in Article X that the agreement shall terminate twelve 12 months from the date of execution, and shall be renewed upon satisfactory performance of the agent's obligations under this agreement. The engagement of the claimant was not renewed by the Defendants thus the Agency agreement was brought to an end one year after its execution via the terms of the Agency Agreement.

Learned counsel further submits that the Claimant had not recovered any sum and there is no evidence to prove that the Claimant had recovered any sum\monies, that success fees can only be aid where there is an actual recovery.

Learned counsel further submits that assuming without conceding that the Claimant was entitled to any sort of payment, the Agreement between the Claimant and the Defendants is one that should be voidable.

Learned counsel submits on the Whistle Blowing Policy that in Nigeria, whistle blowing (a whistle blower) is an anti-corruption

programme that encourages people to disclose information about fraud, bribery, looted government funds, financial misconduct, etc. to the Government, to qualify for a reward under the Whistle Blowing Policy, the whistleblower must provide the Government with information it does not already have and could not otherwise obtain from any other publicly available source. The actual recovery must also be because of the information provided by the whistle blower.

Learned counsel submits that the Claimant who clearly stated that he is a Whistle Blower during cross-examination (questions 3 and 24), is not entitled to any payment as recoveries for his services as the information the Claimant fraudulently provided to the Defendants at the inception of the agreement was information already in the public domain.

Learned counsel argues that the information provided by the Claimant to the defendants was information already within the knowledge of the NHIS, Sofura Professional Services and the EFCC, the claimant derived the information he supplied to the Defendants from services he had done with Sofura Professional Services for the NHIS.

Learned counsel further contends that upon discovery from the complaint of the NHIS and Sofura Professional Services, the Defendants wrote a letter to the Claimant dated the 26th March, 2018 (Exhibit 28) seeking the Claimant statements on same. It was only then that the Claimant via its letter dated the 2nd April, 2018 (Exhibit 29) brought to light his services with Sofura Professional Services and the NHIS.

It is the contention of the learned counsel that an agreement entered between parties will not be binding and enforceable when the agreement is made under fraud or mis -representation. The case of ***ORAKA VS. ORAKA & ANOR (2019) LPELR-47675 (CA) was cited.***

It is in the light of this that the Defendants did not renew the agreement but rather put it to an end even before the Claimant could make any recovery every other act done by the Claimant after the agreement had been terminated were only acts he carried out on his own wishes. In law, any agreement terminated ceases to operate particularly where there is no agreement as to what happens to the respective obligations of the parties on termination. It therefore follows that by the act of the respondent

terminating the contract, the obligations and liabilities of the parties are halted from continuing.

The court is urge to so hold.

Learned counsel submits that, court of law is not a charitable institution and cannot award what was not particularly proved as granting same will amount to granting this Honorable court's decision in a vacuum.

In conclusion, learned counsel urge this Honourable Court to dismiss the claims of the Claimant against the Defendants for lack of any claim/evidence against them, court is urge to hold that the Claimant has not proven his case against the Defendants, hence not entitled to the reliefs sought against the Defendants.

On their part, learned counsel for the Claimant filed their final written address wherein two issues were formulated for determination to wit:-

- 1. Whether or not the failure of the Defendants to perform their own part of the contract in issue in this case namely the Agency Agreement dated 19th September, 2017 for forensic audit update and recovery of funds belonging to the government of**

Nigeria trapped in 17 Financial Institutions including the CBN does not entitle the Claimant to all the reliefs claimed and/or an Order of award of general damages.

2. **Whether or not the Claimant has proved his case on the balance of probabilities and should succeed in all his claims against the Defendants in this suit.**

Learned counsel jointly argued issue 1 & 2 together.

It is the submission of the learned counsel that the failure of the Defendants to perform their own part of the bargain in issue, entitles the Claimant to the reliefs claimed and/or Order of general damages - under the principle that equity sees that as done which ought to have been done, accordingly the Claimant is entitled to all the reliefs sought in this action.

Learned counsel submits that the Claimant has established a credible case against the Defendants, moreover, the Claimant's case and/or evidence were neither challenged in any way material nor contradicted by the Defendants at the trial. Furthermore, the Claimant's case is strengthened by the Defendants' failure and/or refusal to lead and/or give credible evidence on critical issues before the Court. The Defendants made spurious denials in the

Statement of Defence but failed to adduce credible evidence in proof of the denial. The Defendants, accordingly, are deemed to have admitted the Claimant's case, for instance, on the issue of Sofura Professional Services, the Defendants did not offer any credible evidence in rebuttal of the Claimant's assertion. Also on remittance by the banks, the Defendants failed to lead any credible evidence in denial and as such accepted those facts, facts admitted need no further proof, he cited ***ACHIMUGU VS. MINISTER OF FCT & ANOR (1998) 11 NWLR (Pt. 574)467 at 477.***

Thus, where a party failed to lead any evidence in support of his averments, as done by the Defendants in this case, the averments are deemed in law to have been abandoned. Learned counsel refers the Court to the case of ***AKPAN VS. RTQI CHURCH (2001) 15 NWLR (PT. 736) 328 at 349 – 350.***

The Court is urge to so hold that the Defendants are deemed to have abandoned their pleadings and consequently have no credible defence to the Claimant's case.

Learned counsel further submits that in civil trial the standard of proof required is proof on the balance or preponderance of probabilities, it is not proof beyond any reasonable doubt. He

cited ***OYOVBIARE VS. OMAMURHONU (2001) FWLR (Pt. 68) 1129;***

It is the argument of the learned counsel that the Defendants made allegations about the Sofura Professional Services and/or EFCC being engaged to make same recovery but never called any witness to prove those assertions, the only reasonable inference is that those people were unwilling to come and lie on behalf of the Defendants. There is presumption of unfavourableness of evidence of material witness not called by a party. The case of ***USUFU VS. STATE (2007) 1 NWLR (Pt. 1020) 94 at 118 was cited.***

Learned counsel further argues that the Defendants were in possession of critical evidences but failed to produce them before this Court, for instance the Defendants are in possession of the Statement of the FGN Asset Recovery Account Number 0020054161191 into which recovered funds were to be lodged. The presumption of law is that if the statement of account is produced, it shall count against the Defendants, that is why they hide it from this Honourable Court. He cited Section 169 of the Evidence Act, 2011. It has been held in avalanche of judicial authorities that documentary evidence is the yardstick or hanger

by which to assess the veracity of oral testimony or its credibility. The case of ***OGBEIDE & ANOR VS. OSIFOR (2006) LPELR 627 (CA) was cited.***

Learned counsel submits that the Defendants' breach of contract and the consequences thereof, is clear, and has been established by the Claimant, that there is an agreement and/or contract between the Claimant and the Defendants. Contract has been defined judicially in the case of ***BEST (NIG.) E.TD VS. B. H. (NIG.) LTD. (2011) 5 NWLR (Pt. 1239) 95 at 127 Paragraphs C-E.***

Learned counsel maintained that claimant consequently suffered general damages by way of financial loss, psychological\emotional trauma, embarrassment and\or hardship

It is further the submission of the learned counsel that general damages are loses which flow naturally from the adversary and is generally presumed by law as it needs not be pleaded nor proved. He cited the case of ***NWAOLISA VS. NWABUFOH (2011) 14 NWLR (Pt. 1268) 500 at 541, paragraphs D-E;***

Learned counsel further submits and urge the court to hold that there is no injustice greater than the conduct of the Defendants complained of in this suit; they enter into the agency agreement

with the Claimant; they allowed the Claimant to embark on the exercise with huge financial cost; received reports from the Claimant without objection; but in the end refuse to pay the Claimant for no just cause. This culture of impunity by the Defendants ought not to be tolerated in any civilized society and should be deprecated in the strongest term possible.

Learned counsel submits that the Claimant has proved on the balance of probability the case of complete failure of consideration against Defendants who are, therefore, jointly and severally, bound to pay the Claimant his full fees.

Learned counsel further submits that this Court has the inherent power to award general damages in the circumstances of this case, Claimant has suffered unquantifiable damages/loss as a result of the Defendants' conducts in this case. General damages being the loss which flows naturally from the Defendants' act and is presumed by law, counsel submits that it will be more in line with the dictate of justice to award the full sum of **N6,739,467,295.56K (Six Billion, Seven Hundred and Thirty Nine Million, Four Hundred and Sixty Seven**

Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo only) claimed as general damages against the Defendants.

Learned counsel humbly urge this Honourable Court to answer the two issues formulated above in favour of the Claimant and hold that the Claimant has proved his case on the balance of preponderance of probabilities and entitled to all the reliefs sought and/or Order for general damages.

Learned counsel also cited paragraph 4.9 and 4.10 of the Defendants' Counsel Final Written Address, learned counsel referred to Exhibit "31" (the letters Heritage Bank and Aso Savings & Loans) where the banks made admission of payments and concluded that those recoveries were handiwork of EFCC.

It is the argument of the learned counsel that Defendants did not produce any evidence to show that the EFCC was ever engaged to do the recovery subject matter of the Agency Agreement – Exhibit "2" which work ought to be exclusive in favour of the Claimant. The Defendants never produce any evidence of withdrawal of the letter of introduction served on the EFCC in 2017. The Defendants, in any case, did not call any witness from the EFCC to prove that the recoveries were not actually based on the financial data supplied to the Defendants by the Claimant. He

cited the case of ***INCORPORATED TRUSTEES OF THE BROTHERHOOD OF CROSS AND STAR VS. MR. E.T. NKEREUWEM & ORS. (2018)LPELR-44087(CA)*** on the position of the law on withholding evidence and/or withholding vital witness.

Learned counsel further argues that it is curious and inequitable that after receiving financial data from the Claimant, engaging the Claimant and making the Claimant to undertake the extensive works pursuant to the Agency Agreement the Defendants went behind to engage the EFCC to do the recovery exercise which by the Exhibit "2" ought to be to the exclusion of any other person. He cited ***JULIUS BERGER (NIG) PLC. VS. ALMIGHTY PROJECTS INNOVATIVE LIMITED & ANOR (2021) LPELR (SC)*** on whether a party is permitted to approbate and reprobate at the same time.

Learned counsel finally further argues that in paragraphs 4.28 to 4.40 of the final written address, Learned Counsel for the Defendants is inviting this Honourable Court of justice to render the Exhibit "2" voidable on the alleged ground of fraud, it is indeed disheartening that learned counsel can put forward such argument in view of the credible evidence led by the Claimant

and the fact that the Defendants offered no evidence in rebuttal. The Defendants did not prove any fraud against the Claimant. All relevant facts were adequately disclosed to the Defendants before Exhibits "1" and "2" were issued and entered. The Claimant left no one in doubt as to the background of his whistle blowing application and it is really annoying that the Defendants keep hitting on the point simply to deny the Claimant his earned remuneration under the Agency Agreement. The Defendant did not call the so called Sofura Professional Services to testify at the trial and neither did they ever reported the Claimant to his professional body for any wrong doing till date because they knew that the Claimant did nothing wrong but acted in public interest.

Learned counsel urge this Honourable Court to discountenance the written submission of the learned counsel for the Defendants as the argument were largely misconceived, mischievous and or not supported by evidence led at the trial.

In conclusion, learned counsel further urge this Honourable court to enter judgment in favour of the Claimant as doing so will be more in line with the dictate of justice. The Claimant has sufficiently proved his case against the Defendants on the balance

of probabilities that the Defendants did not perform their own part of the bargain and ought to have long paid him his earned remuneration under the Agency Agreement subject matter of this suit. The Claimant is entitled to all the reliefs sought and/or general damages.

COURT:-

I have carefully gone through both the oral and documentary evidence adduced on the part of Claimant on the one hand and Defendants on the other hand.

The kernel of Claimant's claim rests squarely on letter dated 15th August, 2017 engaging him as Consultant to Federal Government of Nigeria to carry out forensic Audit to recover the sum of **N83,000,000,000 (Eighty Three Billion Naira)** only which were wrongfully trapped in 17 Financial Institutions and the Central Bank of Nigeria (CBN) through the instrumentality of the National Health Insurance Scheme (NHIS). Pursuant to the engagement and acceptance, formal Agency Agreement dated the 19th September, 2017 was entered between the Claimant and the Defendants.

The Claimant and the Defendants carried out certain roles/duties to facilitate the performance of the Agency agreement. Several

letters were written by the Claimant to the various financial institutions, and that the said financial institutions responded to the letters from the Claimant.

On the part of the Defendants, they contend that in the course of the performance of the agreement, they found out that the Claimant who did not only breach some conditions of the Terms of Reference, but has also breached some conditions of the Agency Agreement. The Defendants also received correspondences from NHIS and SOFURA Professional Services discrediting Claimant.

That the Claimant despite the correspondence informing him that the Agreement was terminated went further, allegedly carrying out acts when the Agreement had been terminated. Upon his conclusion, the Claimant wrote to the Defendants requesting payment for what he alleged was the monies recovered.

The law is settled on the importance of documentary evidence, except where fraud is pleaded, documentary evidence is the best form of evidence. No oral evidence therefore shall be allowed to discredit or contradict the contents thereof. See ***OLAWOYE VS. BELLO (2015) LPELR – 24475;***

EGHARERA VS.OSAGIE (2009)18 NWLR (Pt. 1173) 299 (SC).

Where parties enter into agreement in writing, they are bound by the terms thereof. The court and indeed any other party will not allow anything to be read into the agreement, terms on which the parties were not in agreement or not ad-idem. ***LARMIE VS DATA PROCESSION, MAINTENANCE & SERVICES LTD. (2005) 12 SC (Pt. 1)93 at 103.***

A cursory consideration of the afore-mentioned Exhibit '1' (Letter of Instruction to engage in Forensic Audit and Backlog Recovery) clearly represents the embodiment of the terms and conditions of the contract between the Claimant and Defendants.

Supreme Court defined burden of proof in ***KALA VS. POTISKUM (1998) 3 NWLR (540) 1 at Page 17 as follows:-***

"The phrase burden of proof" has three meanings namely:-

a. The persuasive burden.

This is the burden of proof as a matter of law and pleadings, the burden of establishing a case whether by preponderance of evidence or beyond reasonable doubt. This is also referred to as the legal burden of proof.

b. The evidential burden.

This is the burden of proof in the sense of adducing evidence.

c. The burden of establishing the admissibility of evidence.

See also ***NWARU VS. OKOYE (2008) 18 NWLR (118) 29 at 64 – 5.***

The onus or burden of proof is merely an onus to prove or establish an issue, there cannot be a burden of proof where there are no issues in dispute between the parties and to discover where the burden lies in any given case, the Court has the onerous duty to critically look at the pleadings.

See ***OKOYE & ORS VS. NWANKWO (2014) LPELR 23172 (SC).***

The gravamen of Claimant's action from the state of pleadings and documents tendered lies on Exhibits '1' and '2' i.e the Letter of Instruction to Engage in Forensic Audit appointing the Claimant as Consultant by the Federal Government of Nigeria and Agency Agreement

The law is very clear on when a contract is deemed to have been established. There must be offer, acceptance, intention to create legal relationship, consideration and capacity to contract. See ***OJO VS. ABT ASSOCIATES INCORPORATED LTD. (2014) LPELR – 22860 CA.***

There is no gain saying that Claimant vide Exhibit '1' was engaged by the 1st Defendant (Federal Government of Nigeria) as Consultant to carry out forensic Audit to recover the sum of **N83,000,000,000 (Eighty Three Billion Naira)** only which were wrongfully trapped in 17 Financial Institutions and the Central Bank of Nigeria (CBN) through the instrumentality of the National Health Insurance Scheme (NHIS).

It is equally stated that the said contract was terminated since 18th September, 2018 vide Exhibit "17" for the reason given therein which necessitated the action of the Claimant.

The Claimant (Aruna Bawa) who gave evidence as the managing partner of the Accounting firm of the Claimant maintained in paragraph 12 that pursuant to its mandate under the Agency Agreement on 10th July, 2018, the Claimant issued and served on each of the 17 Financial Institutions a Payment Demand Notice asking each of them to remit the amounts due from it into the

Defendants designated Asset Recovery Account held with the Central Bank of Nigeria.

PW1 further gave evidence in paragraph 21 of his witness statement on oath that on reasonably believing that the Defendants have been duly credited with all the debts owed by the Financial Institutions and the CBN, the Claimant sent to the Defendants, vides a letter dated 14th August, 2019 of its fee of 5% (Five Percent) of the sum recovered as per the Agency Agreement in the sum of **N6,739,467,295.56K (Six Billion, Seven Hundred and Thirty-Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety Five Naira, Fifty Six Kobo only)** inclusive of Value Added Tax (VAT) and details of its Bank Account. The Claimant followed it up with a demand letter dated 28th August, 2019 sent to the Defendants.

I need to observe that when a contract is reduced into writing, the writing gives the terms agreed upon. Before the parties come to a binding contract they usually enter into negotiations. It is the certainty of the terms the parties arrived at that determines their intentions and whether there is a binding contract.

I find solace for above in the following authorities; ***MANDILAS & KARABERIS LTD. VS. OKITIKI (1963)1 ALL MR 22 at 26;***

OLAMYAM & ORS VS.UNILAG (1985) 2 NWLR (Pt.9) 599;

***A.A MACAULAY VS. NAL MERCHANT BANK LTD. (1990) 6
SCNJ 117 at 133;***

***OMEGA BANK NIGERIA PLC. VS. O.B.C LTD. (2005) 1
SCNJ 150 at 170 Lines 14 to Page 171.***

PW1 who tendered Exhibits "1" – "34" was asked the following questions under cross-examination:-

XXX:- In what capacity were you engaged?

Ans:-Whistle blower to carry out forensic audit and assist in backlog recovery.

XXX:-I put it to you that as a whistle blower you are federal Government Agent?

Ans:- Yes.

XXX:- Do you know Sofura Professional Services?

Ans:- Yes.

XXX:- Did you do any work for them?

Ans:- No

XXX:- Have a look at Exhibit "15" which has a Letter head on Aruna Bawa & Co. who signed the Letter?

Ans:- I signed it.

XXX:- Have a look at Exhibit 29 page 2

XXX:- Did you work for Sofura?

Ans:- Yes

XXX: In the process of carrying out your duties, did all the banks pay their indebtedness?

Ans:- I believe all they paid their indebtedness. We completed the assignment and according to the contract once the amounts due from the Banks are completed and payment demand notice serve on each, the banks were duty bound to pay the money to the Federal Government of Nigeria.

XXX:- Do you have evidence that the Banks paid the money?

Ans:- I do not have.

XXX:- Are you aware that EFCC also did a huge recovery on the sum?

Ans:-I am not aware.

XXX:-Have a look at Exhibit 31, who was it addressed to?

Ans:- To me.

XXX:- Did you reply Exhibit 31?

Ans:- I did not have to reply the Letter.

XXX:- You said certain sums were debited by CBN on the order of the 2nd Defendant. Do you have the proof?

Ans:- I am not aware.

XXX:- You said N78 million was paid, do you have the evidence?

Ans:- It is in our report of 29/4/2019.

Ans:- Yes.

XXX:- Have you recovered the money?

Ans:- Yes.

XXX:- Would you still say that you recovered all the money from the Banks?

Ans:-Yes. I provided all the information

The essence of cross - examination cannot be over emphasized. It is to enable the cross - examining party to demolish or weaken

the case of the party being cross-examined. See ***OKE & ANOR VS. UBA PLC. & ANOR (2015) LPELR – 24827 (CA)***.

It is the law that all elicited answers under cross-examination form part of the evidence of such a witness.

From the ensuing evidence of PW1, he expressly agreed that he was engaged as an Agent of the Defendants. An agent must certainly comply with the lawful instructions of his principal, follow the terms of the Agreement, an agent must provide the principal with as many relevant facts or pieces of information as possible as clearly contained in Exhibit '2'.

It is therefore settled from the evidence of PW1 before the Court that Claimant is claiming for work done based on Exhibits "1" and '2' and not breach of contract. These are two different issues all together in law.

For the avoidance of doubt, I have read clause 2 of Exhibit "1". i.e the letter of investigation to engage in Forensic Audit and Backlog Recovery.

It is herein reproduced, as follows:-

1. ***"Your engagement as an Agent to the Federal Government is to carry out a comprehensive recovery***

exercise with respect to NHIS funds trapped in commercial Banks to the tune of N46,515,215,848.00 (Forty Six Billion, Five Hundred and Fifteen Million, Two Hundred and Fifteen Thousand, Eight Hundred and Forty Eight Naira), NHIS Investment and Current Account Balances allegedly transferred to NHIS's TSA by Commercial Banks, but not reflected in NHIS's TSA Statements issued by the CBN to the tune of N36,206,790,109.57 (Thirty Six Billion, Two Hundred and Six Million, Seven Hundred and Ninety Thousand, One Hundred and Nine Naira Fifty Seven Kobo); Unexplained Reversal of Accrued Investment Interest Accruals due to NHIS to the tune of N1,162,794,519.00 (One Billion One Hundred and Sixty Two Million, Seven Hundred and Ninety Thousand, One Hundred and Ninety Four Thousand, Five Hundred and Nineteen Naira), and transferring all the recovered proceeds to the Federal Government's Treasury."

To resolve the bone of contention, the issue formulated by the Defendants seem apt.. I hereby adopt same as that of court for determination.

The issue is,

Whether considering the facts and circumstances of the case, the evidence and documents placed before this court, the Claimant is entitled to reliefs sought against the Defendants in this suit.

It is morethan clear that the claims of the Claimant amongst other, is claim for work done and not breach of contract.

The onus, therefore is on the Claimant to establish by evidence the fact that he indeed carried-out the job as detailed in the letter appointing him.

I have seen the documents tendered by the Claimant which were admitted as Exhibits "1" – "34" in number.

I have similarly seen the documents tendered by the Defendants which were admitted and marked Exhibits "D1" – "D11".

I have juxtaposed the said documents to be able to arrive at a just decision.

It is settled in the annals of our jurisprudence that the onus is on the person who claims that a fact exists to lead evidence in establishing such fact otherwise his claim ought to claim.

See the case of ***NIGERIAN MARITIME SERVICES LTD. VS. ALH. BELLO AFOLABI (1978) NSCQR Page 566 (5664).***

It is settled law that parties are bound by the terms of contract freely entered into. It is not the business of court to re-write the contract for the parties.

See the case of ***FIDELITY BANK PLC. VS. MARRITY CHEMICAL INDUSTRIES LTD. & 2ORS. (2022) ELC 7695 (SC) Page 1.***

For a party to therefore enforce the terms of such a contract, the agreed terms of the Implied or Express terms of the contract must be placed before the court, otherwise, the court may find it difficult to adjudicate on same.

Assuming this was an action for breach of contract, a contract for service; the Plaintiffs' remedy lies only in damages for such a breach of contract. Where there is a total repudiation of contractual obligation the only remedy is an action for breach of contract and not for the party complaining of the breach to insist that the contract subsists. See ***COMMISSIONER FOR WORKS, BENUE STATE VS. DEVCON LTD. (1988) 3 NWLR (Pt. 83) 407 at 422;***

NWAOLISAH VS. NWAUFUFOH (2011) LPELR – 2115 (SC)

In the instant suit, Claimant is claiming for work done and not breach of contract.

It is the evidence of the Defendants on the other hand that arising from the conduct of the Claimant, the Agency Agreement and letter of engagement had to be terminated and same was never renewed.

It is the evidence of the Defendants that they communicated vide Exhibit "17" the said termination of the contract.

DW1 in her evidence stated that Claimant never carried-out any such contract as claimed and hence not entitled to any such claims.

Indeed PW1 stated under cross-examination that he knows Sofura Professional Services but denied working with them. It is the duty of the Agent to disclose any piece of information in the course of such relationship.

It is instructive to state that Claimant who has the onerous duty to establish its claim by leading credible evidence, admitted under cross-examination to have carried-out the job as contained in the afore-produced Exhibit '1' which was recovery of the said sum on

behalf of the Federal Government of Nigeria and paid same into the account provided by the Office of the Accountant General of the Federation, but that they have no evidence of such recovery.

PW1 who admitted the fact that it recovered monies on behalf of Federal Government of Nigeria based on Exhibit '1', failed to show any such evidence of recoveries by tendering any such bank statements showing the account number and bank agreed that the money has entered and reflected in the said account supplied moreso that Defendants have denied the fact that Claimant ever made any recoveries.

It is instructive to further note that Claimant was requested by the Defendants to pay all such recovered monies into a designated account with the following Account details:-

- FGN Assets Recovery
- 0020054161191
- Central Bank of Nigeria.

I make bold to say that Claimant did not place any evidence before the court to show any such lodgments made into the said account provided.

Permit me to state the position of the law first and foremost with respect to termination, cancellation or repudiation of contract which to my mind and understanding is the same.

A contract duly entered-into by contracting parties can be terminated by either of the parties to the contract with or without notice. Repudiation occurs where a party by words or conduct conveys to the other party that he no longer intends to honour his obligation in the agreement.

The remedy is always damages for the breach of contract. The authority of ***COMMISSIONER FOR WORKS BENUE STATE VS. DEVCON LTD. (1988) 3 NWLR (Pt. 83) 407.***

Claimant is claiming payment of the agreed honorarium of what he has recovered and therefore is under an obligation to satisfy the Court that he is so entitled to the said reliefs. It is solely the duty of Claimant to prove that he is entitled to the said reliefs.

Exhibit '1' which is the embodiment of the contract has in certain conditions which Claimant was mandated to carry-out.

Claimant was mandated to liaise with the Director, Solicitor's Department Office of the Attorney General of the Federation.

PW1 who tendered the said Exhibit '1' admitted complying with all the conditions but failed to tender any such evidence in Court for the Court to ascertain whether any such job was carried-out before the termination or after the termination of the said Exhibit "1".

The law cannot command an impossibility. The essence of justice is to do what is true and correct.

Claimant has clearly failed to lead evidence in support of his claim to warrant this Court making any such declaration with respect to Relief '1' under consideration.

Claimant who was given Exhibit '1' i.e the Engagement to recover money on behalf of the Federal Government of Nigeria which 1st Defendant by Exhibit '17' terminated had the option of approaching the Court for breach of contract and not for claim of work done when clearly no such work was ever carried out by Claimant from the available evidence before the Court.

What then is the fate of the Claimant!

As stated in the preceding part of this Judgment, Claimant who alluded to the fact that he carried-out the contract in Exhibit '1' and now claim for payment in accordance with the terms of the

contracts stated in Exhibit '1' has failed, and woefully so, to lead any evidence in prove of his claim. Claimant is not entitled to the said sum of **N6,739,467,295.56K (Six Billion, Seven Hundred and Thirty-Nine Million, Four Hundred and Sixty Seven Thousand, Two Hundred and Ninety - Five Naira, Fifty Six Kobo only)**... it is refused and dismissed.

The other reliefs which I can safely say are parasitic, cannot then stand with the dismissal of relief 1.. they are accordingly, similarly dismissed.

Indeed, you cannot put something on nothing and expect it to stand.

MCFOY VS. UAC (1962) LTD. (CA) 150.

Before I put a full stop to this, I wish to commend both counsel for exhibiting brilliance and knowledge of law all through the proceedings.

I however wish to note that cases are won based on evidence and not written addresses.

I am minded to make such observation because had Claimant led any evidence to lead the Court on how, when, how much was expended on account of the withdrawn or terminated contract,

which the Court views as a wrong or injurious, there shall then be a remedy.

Instead of leading credible and reliable evidence in support of its pleadings, Claimant's counsel, made tremendous academic effort in their final written address to create holes in the case of the Defendants.

Courts are precluded from speculative decisions.

It is settled position of law that address of counsel form part of the case and failure to hear the address of one party, however overwhelming the evidence on one side vitiates the trial. See ***OKOEBOR VS. POLICE COUNCIL (2003) 5 SC 1.***

I however must be quick to add that no matter how brilliant the address of counsel is, it cannot be a substitute for pleadings or evidence.

See ***OKWEJIMINOR VS. GBAJIKE (2008) 5 NWLR (Pt. 1079) 172 at Page 223, Paragraph B.***

Claimant's counsel also made futile effort when he made heavy weather in his final written address on unchallenged evidence. That piece of evidence cannot be read in isolation even if it were so to warrant this Court entering Judgment in favour of the

Claimant especially when Claimant has failed to establish the fact that he is entitled to any of the declaratory reliefs sought for the reason adduced in the body of this Judgment.

Claimant who has not claimed for breach of contract but for payment of work done and who has failed to so lead evidence must carry his cross. I therefore resolve the issue formulated against the Claimant. There is no merit in Claimant's claims.

Claimant is a gold digger on a gold digging mission.

In summation therefore, the said reliefs 1, 2, 3 and 4 are all refused and dismissed.

The plight of Claimant clearly has been left in limbo to wither away as a judicial gate-crasher that has by a long line of decided and settled authorities been consigned to a forlorn heap of legal fossil.

I shall on the whole, for the reasons advanced, make an Order dismissing the suit of the Claimant. Said Suit No. **FCT/HC/CV/3562/2020** is hereby and accordingly dismissed.

Justice Y. Halilu
Hon. Judge
14th February, 2025

APPEARANCES

Claimant in Court.

Emos Enemale I., Esq., with **Gregory O.I, Esq.** and **T.O Uchai, Esq.** – for the Claimant.

Ngosoo T.A, Uchegbu, Esq. – for the Defendants.