

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/CV/2684/2023**

**BETWEEN:**

**ORANTO PETROLEUM LIMITED.....CLAIMANT/APPLICANT**

**AND**

- |   |   |                   |
|---|---|-------------------|
| <b>1. UNIVERSAL ELYSIUM LTD</b>                             | } | <b>DEFENDANTS</b> |
| <b>2. UNIVERSAL ELYSIUM<br/>CONSORTIUM LIMITED</b>          |   |                   |
| <b>3. NATIONAL INLAND WATERS<br/>AUTHORITY (NIWA) .....</b> |   |                   |
| <b>4. ONITSHA RIVER PORT LIMITED</b>                        |   |                   |

**RULING/JUDGMENT**

The claimant by an originating summons dated 15<sup>th</sup> day of March 2023 filed the same date seeks the determination of the questions contained in paragraph A and seeks the reliefs set out in paragraph B hereunder.

**QUESTION FOR DETERMINATION 1-8:**

- 1. Whether having regards to the combined reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021 between the Claimant and the 1<sup>st</sup> Respondent; the 2<sup>nd</sup> Respondent's letters dated 1/8/22, 12/8/22; 12/8/22, 8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; there is a binding and enforceable agreement between the claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants?**

- 2. Whether having regards to the combined effect of Article 3,4 and 5 of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021 between the Claimant and the 1<sup>st</sup> Respondent, the obligations created by the parties in the Memorandum of Understanding is binding and enforceable on the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants?**
- 3. Whether having regards to the combined reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021 between the Claimant and the 1<sup>st</sup> Defendant; the 2<sup>nd</sup> Defendant's letters dated 1/8/22, 12/8/22; 12/8/22,8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; and the 3<sup>rd</sup> Respondent's letter dated 9/11/22 and 9/12/22, the 3<sup>rd</sup> Defendant is not obligated to give full support to the spirit and letters of the Memorandum of Understanding, including maintaining status quo ante bellum pending the determination of the dispute between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant?**
- 4. Whether by the combined reading of Article 4, 5, and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, the Claimant is not entitled to the 40% shares and 40% board positions in the 4<sup>th</sup> Respondent for a reasonable amount and to the exclusion of all others until the mutual termination of the binding and enforceable Memorandum of Understanding between the parties?**
- 5. Whether by the combined reading of Article 4, 5, and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, the letter of the 2<sup>nd</sup> Defendant dated 5<sup>th</sup> January, 2023, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Memorandum of Understanding or entertain any offer from third parties for purpose of the transfer of the 40% shares in the 4<sup>th</sup> Defendant together with the agreement pertaining to the board positions agreed upon as the entitlements of the Claimant in the 4<sup>th</sup> Defendant during the subsistence of the binding and enforceable Memorandum of Understanding?**
- 6. Whether by the combined reading of Article 4, 5, and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, and the 2<sup>nd</sup> Defendant's letters dated 1/8/22, 12/8/22; 12/8/22,8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; and the 3<sup>rd</sup> Respondent's letter dated**

**9/11/22 and 9/12/22, a dispute has arisen as to what amounts to be sold by the 2<sup>nd</sup> Respondent and acquired by the Claimant in the 4<sup>th</sup> Defendant?**

- 7. Whether by community reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, and the 2<sup>nd</sup> Defendant's letters dated 1/8/22, 12/8/22; 12/8/22, 8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; and the 3<sup>rd</sup> Respondent's letter dated 9/11/22 and 9/12/22; and the 3<sup>rd</sup> Respondent's letter dated 9/12/22; the High Court of the Federal Capital Territory has Jurisdiction to appoint an assessor to determine the reasonable amount reflective of the value of 40% shares in the 4<sup>th</sup> Defendant?**
- 8. Whether by the value determined by the assessor appointed by the High Court of the Federal Capital Territory to Determine the reasonable amount reflective of the value of the 40% shares of the 4<sup>th</sup> Defendant shall be binding on all parties as a full and final resolution of all issues submitted to the court for determination?**

**RELIEFS SOUGHT 1-12:**

- 1. A DECLARATION that having regard to the combined reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021 between the Claimant and the 1<sup>st</sup> Respondent; the 2<sup>nd</sup> Respondent's letters dated 1/8/22, 12/8/22; 12/8/22, 8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; that there is a binding and enforceable agreement between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**
- 2. A DECLARATION that by the combined reading of Article 4, 5, and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, the obligations created by the parties in the Memorandum of Understanding is binding and enforceable on the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**
- 3. A DECLARATION that by the combined reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021 between the Claimant and the 1<sup>st</sup> Respondent; the 2<sup>nd</sup> Respondent's letters dated 1/8/22, 12/8/22; 12/8/22, 8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22;**

**and the 3<sup>rd</sup> Defendant's letter dated 9/12/22, the 3<sup>rd</sup> Defendant is obligated to give full support to the spirit and letters of the Memorandum of Understanding, including maintaining status quo ante bellum pending the determination of the dispute between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**

- 4. A DECLARATION that by the combined reading of Article 4, 5, and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, the Claimant is not entitled to the 40% shares and 40% board positions in the 4<sup>th</sup> Respondent for a reasonable amount and to the exclusion of all others until the mutual termination of the binding and enforceable Memorandum of Understanding between the parties?**
- 5. A DECLARATION that be the combined reading of Article 4, 5 and 6 and Article 2(a) and (b) of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot entertain any offer from the third parties for the 40% shares and board positions in the 4<sup>th</sup> Defendant during the subsistence of the binding and enforceable Memorandum of Understanding.**
- 6. A DECLARATION that by a combined reading of Paragraphs 5 and Article1, 2(a) and (b), 4 and 5 of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Respondent, and the 2<sup>nd</sup>Respondent's letters dated 1/8/22, 12/8/22; 12/8/22,8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; a dispute has arisen as to what amounts to a reasonable amount reflective of the value of 40% shares to be sold by the 2<sup>nd</sup> Defendant and acquired by the Claimant in the 4<sup>th</sup> Defendant?**
- 7. A DECLARATION that by a community reading of the Memorandum of Understanding dated 26<sup>th</sup> February, 2021, between the Claimant and the 1<sup>st</sup> Defendant, and the 2<sup>nd</sup>Defendant's letters dated 1/8/22, 12/8/22; 12/8/22,8/12/22 and 5/1/23; and the Claimant's letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22 and 16/12/22; and the 3<sup>rd</sup> Respondent's letter dated 9/11/22 and 9/12/22; and the 3<sup>rd</sup> Respondent's letter dated 9/12/22; the High Court of the Federal Capital Territory has Jurisdiction to appoint an assessor to**

**determine the reasonable amount reflective of the value of 40% shares in the 4<sup>th</sup> Defendant?**

- 8. A DECLARATION that the value determined by the assessor appointed by the High Court of the Federal Capital Territory to determine the reasonable amount reflective of the value of 40% shares in the 4<sup>th</sup> Defendant shall be binding on all the parties as a full and final resolution of all the issues submitted to the court for determination.**
- 9. AN ORDER OF PERPETUAL INJUNCTION restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from entertaining any offer from third parties and nullifying any offer from third parties for the 40% of shares and board positions in the 4<sup>th</sup> Defendant during the subsistence of the binding and enforceable Memorandum of Understanding.**
- 10. AN ORDER OF COURT appointing an assessor to determine the reasonable amount reflective of the value of 40% shares in the 4<sup>th</sup> Defendant.**
- 11. A MANDATORY ORDER OF COURT that the value determined by the assessor appointed by the High Court of Federal Capital Territory to determine the reasonable amount reflective of the value of the 40% shares of the 4<sup>th</sup> Defendant shall be binding on all the parties as full and final resolution of all issues submitted to the court for determination.**
- 12. AND FOR SUCH OTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances of this suit.**

In support of the originating summons is an affidavit deposed to by prince Dr OkeyEze of No:12 Chari Close, Maitama-Abuja of 35 paragraphs annexed with exhibits marked Oranto I, being the memorandum of understanding between Universal Elysium Ltd and Oranto Petroleum Ltd dated the 26<sup>th</sup> February, 2021

2. Oranto 2, Letter from Universal Elysium Consortium Ltd addressed to the Managing Director OrantoPetroleum Caption: Acquisition of Shares in Universal Elysium Consortium Ltd dated 1<sup>st</sup> August, 2022.

3. Oranto 3, Petroleum Ltd addresses to Dr. George Nwangwu (Director) Universal Elysium Consortium Ltd dated 9<sup>th</sup> August, 2022 Caption: Response to offer and request for information in Re-Acquisition of shares in Universal Elysium Consortium Ltd.

4. Oranto 4 Letter from Oranto Petroleum Ltd dated 17/8/2022 addressed to Dr George Nwangwu (Dir) Universal Elysium Consortium Ltd Caption: Counter offer in acquisition of shares in universal Elysium consortium Ltd.

5. Oranto 5, letter from Oranto Petroleum Ltd addressed to Dr George Nwangwu dated 24<sup>th</sup> August, 2022 Captioned Re-Counter Offer in Acquisition of shares in Universal Elysium Consortium Ltd.

6.Oranto 6, letter from Oranto Petroleum Ltd addressed to Dr. George Nwangwu (Dir) UniversalElysium Consortium Ltd Caption:

Re-counter offer in Acquisition of shares in Universal Elysium Consortium ltd.

7. Oranto 7, letter from Oranto Petroleum Ltd Addressed to Dr George Nwangwu (Dir) Universal Elysium Consortium Ltd dated 23-11-2022.

8. Oranto 8, letter addressed to Prince Arthurs Eze OFR Chairman Oranto Petroleum Ltd Caption

Re-counter offer in acquisition of shares in universal Elysium Consortium Ltd. Follow up on counter proposal dated December, 8, 2022.

9. Oranto 9, letter from Dr George Nwangwu CMD/CEO of National Inland Waterways Authority (NIWA) DATED December, 9<sup>th</sup> 2022 addressed to the MD Universal Elysium Consortium Ltd Captioned counter offer in acquisition of shares in universal Elysium consortium Ltd, followed upon counter proposal.

10. Oranto 10, letter from Oranto Petroleum Ltd (CHAIRMAN) Prince Arthur 1 Eze (OFR) dated 16<sup>th</sup> December, 2022 addressed to Dr George Nwangwu Executive Director Universal Elysium Consortium Ltd Caption: Re-counter offer from the acquisition of shares in Universal Elysium Consortium Ltd.

11. Oranto 11, letter from Universal Elysium Consortium Ltd dated the 5<sup>th</sup> January, 2023 addressed to Prince Arethur 1 Eze OFR (Chairman) Oranto Petroleum Ltd Caption Re-counter offer for the acquisition of shares in Universal Elysium Consortium Ltd.

Attached to the affidavit is a written address in support of the originating summons of 20 pages.

Filed alongside the originating summons was a motion exparte with motion No: M/6191/2023 for an order of interlocutory injunction dated the 15<sup>th</sup> day of March, 2023.

The said motion was moved dated the 22<sup>nd</sup> day of March, 2023 and the order sought therein was granted and the matter adjourned to 3<sup>rd</sup> April, 2023 for the motion on Notice.

The motion on notice was moved dated 3<sup>rd</sup> day of April, 2023 counsel to the 1<sup>st</sup> & 2<sup>nd</sup> -4<sup>th</sup> defendants prayed the court to give them another date to respond to the said motion reasons being that they have not been served with any of the processes in this suit particularly the motion on notice sought to be moved and that he got the existence of this suit from the 1<sup>st</sup> Defendants and is ready to receive service in the court. Upon hearing the oral application of the defendant this matter was adjourned to the 10<sup>th</sup> May, 2023 for hearing of the motion on notice.

Before the motion date set for hearing, the Defendant filed a motion on notice for an order granting leave to the 2<sup>nd</sup> & 4<sup>th</sup> defendant/applicant to file their memorandum of conditional appearance, counter affidavit and other accompanying processes out of time and deeming the 2<sup>nd</sup> & 4<sup>th</sup> defendant/applicant memo of conditional appearance, counter affidavit and other accompanying processes already filed and served as having been properly filed and served. The motion was moved and the order sought therein was granted as prayed. On the part of the order of this court made in respect of interlocutory injunction still subsist and the matter adjourned to 21-06-2023 for hearing.

On the 21<sup>st</sup> May, 2023 both counsel were present in court. The defendant/applicant informed the court, that there is a PO filed by the 1<sup>st</sup> & 2<sup>nd</sup> Respondent.

The 1<sup>st</sup> Defendant on its side informed the court that they have a motion on notice filed with motion number 10258 for regularization of their process. The motion was moved and the order sought therein was granted. While the 2<sup>nd</sup> - 4<sup>th</sup> Defendants/Applicant also moved their motion for an order to grant leave for the 2<sup>nd</sup> -4<sup>th</sup> defendants/Applicant to file further counter affidavit. The motion was moved and the order sought therein was granted as the claimant counsel did not object same.

The claimant counsel on his part informed this court that all parties have been served with all the processes in this matter and the Hearing Notice served on them.

The 2<sup>nd</sup> -4<sup>th</sup> Defendants/Applicant then prayed the court to move its motion on Preliminary objection this the claimant counsel did not object.

Now to the ruling of the Preliminary objection.

### **RULING**

This ruling is on the 2<sup>nd</sup> and 4<sup>th</sup> Defendants Notice of Preliminary objection with motion No: M/8968/2023 dated 13<sup>th</sup> day of April, 2023.

The 2<sup>nd</sup> and 4<sup>th</sup> defendants/Applicant pray this court for the following reliefs.

- 1. An order of this court dismissing the plaintiff/Respondent suit for lack of Jurisdiction.**
- 2. And for such other orders as this Honourable Court may deem fit to make in the circumstance.**

The grounds upon which this objection is anchored are as follows:

- 1. This Honourable court lacks the Jurisdiction to entertain the suit in view of the fact that the issues complained about in the suit bothers on the administration of companies in Nigeria and also involves the 3<sup>rd</sup> Defendant/Respondent which is an agency of the Federal Government of Nigeria.**
- 2. There is no privity of contract between the claimant and the 2<sup>nd</sup> -4<sup>th</sup> Defendants.**
- 3. The Applicant/ Respondent has not made out any reasonable cause of action against the defendant.**
- 4. The suit constitutes an abuse of the legal process.**

Attached to the notice of preliminary objection is an affidavit deposed to by one Mrs Taiyobong Osoji of No: 5 Kakoma close, Wuse 2 Abuja of 19 paragraphs and annexed to the affidavit are exhibits marked D7, being the memorandum of understanding made. Dated the 26<sup>th</sup> day of February, 2021 between Universal Elysium Ltd and Oranto Petroleum Ltd. Accompanying the motion is a written address in support of notice of preliminary objection of 10 pages wherein the written address three issues was formulated for determination to wit:

- 1. Whether this honourable court has the requisite jurisdiction to hear this matter in view of it been predicated on the administration of companies in Nigeria which is the exclusive jurisdiction of the Federal High Court and /or involving the 3<sup>rd</sup> Defendant which is an agency of the Federal Government.**
- 2. Whether there is privity of contract between the claimant and the 2<sup>nd</sup>/ 4<sup>th</sup> Defendants.**
- 3. Whether it is not just and proper for the Honourable court. To order that pleadings be filed in this matter in view of the contentious nature of the fact?**

Upon service of the notice, the claimant filed the 2<sup>nd</sup> & 4<sup>th</sup> Defendant notice of preliminary objection filed on 2<sup>nd</sup> May 2023 challenging the competence of this suit. The said counter affidavit deposed to by one prince Dr Okey Eze, of No: 12 Chari Close, Maitama Abuja of 6 paragraphs dated the 10<sup>th</sup> day of May, 2023.



Attached to the counter are exhibit marked Maureen Okonkwo I, and the claimant's written address of 12 pages wherein a sole issue was formulated for determination to wit:

Whether this Honourable court has Jurisdiction to entertain the claimant's suit as presently constituted vis-a-vis the parties and the subject matter of dispute.

The 1<sup>st</sup> Defendant/Respondent did not file a counter to the Application of the 2<sup>nd</sup> & 4<sup>th</sup> Defendant, but alien self to the position of the 2<sup>nd</sup> & 4<sup>th</sup> defendant/Applicant and urge the court to dismiss the claimant suit.

The 2<sup>nd</sup> & 4<sup>th</sup> Defendant/Applicants did not file any further counter but responded on points of law on the claimant's/counter affidavit

Now to the issues for determination. Also stated earlier in this ruling, the 2<sup>nd</sup> & 4<sup>th</sup> Respondent/Applicant formulated 3 issues for determination while on the side of the claimant, formulated a sole issue for determination, the sole issue covers the issues so formulated by the 2<sup>nd</sup> & 4<sup>th</sup> Defendant/Applicant hence I shall adopt the issues as mine which this court will decide upon to see where the pendulum lies.

On the first issue-

**“Whether this honourable court has the requisite jurisdiction to hear this matter in view of it been predicated on the administration of companies in Nigeria which is the exclusive Jurisdiction of the Federal High Court and/or involving the 3<sup>rd</sup> Defendant which is an agency of the Federal Government.**

On this referred the court to the case of Okpenenum V S.G.E. (Nig) Ltd (1998) 7 NWLR (559) 537 at 543 R 11. The Supreme Court held that.

**“A Court is competent when:**

- a. it is properly constituted with respect to the number and qualification of it's members.**
- b. the subject matter of the action is within it's jurisdiction.**
- c. The action is initiated by due process of law and**
- d. Any condition precedent to the exercise of it's jurisdiction has been fulfilled.**

Firstly, on the subject matter, on this he referred this court to section 251(1) (e) of the CFRN provides as follows:

**Notwithstanding anything to be contained in this constitution and in addition to such other Jurisdiction as may be conferred**

**upon it by an Act of the National Assembly, the Federal High Court shall have and exercise Jurisdiction to the exclusion of any other court in civil cases and matters-arising from the operation of the companies and Allied matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the companies and Allied matters Act.**

The learned Counsel submitted that, the import of the above constitutional provision is that matters bothering on or arising from the operation of the companies and allied matters Act or regulating the operation of companies incorporated under the companies and allied Matter Act, are strictly within the exclusive Jurisdiction of the Federal High Court. Further that the controversies in this suit hinge on the operation and management of companies, incorporated under the companies and allied matters Act, specifically, Issues on such bothering on sale of company shares, powers of company directors to approve contracts for sale of shares, power of the company directors to build the company, are all issues arising from the operation and regulation of companies under the companies and allied matters Act. The issues are within the exclusive Jurisdiction of the Federal High Court.

In respect to the Jurisdiction over parties, referred to section 251 of the CFN as amended which centres on the Federal High Court that exercises Jurisdiction to hear and determine cases involving agencies of the Federal Government.

Submitted that in the instant case, the 3<sup>rd</sup> Defendant is an agency of the Federal Government and in the reliefs sought in the originating summons No: 3, the claimant has sought declaratory reliefs against the 3<sup>rd</sup> Defendant to make the 3<sup>rd</sup> Defendant obligated to give full support to a purported memorandum of understanding. That there is no doubt that the inclusion of the 3<sup>rd</sup> Defendant in the instant suit instituted before this court offends the constitutional provisions which confers exclusive jurisdiction over the person of the 3<sup>rd</sup> defendant on the Federal High Court. Referred the court to the case of National Electric Power Authority V Adegbenro& ors (2003) ALL NLR.407,

Furthermore, respectfully submitted that this Honourable court lacks the requisite Jurisdiction to hear this matter in view of the facts that parts of the issue in this suit are matters bothering on the administration of companies in Nigeria and also involving the 3<sup>rd</sup> Defendant which is an agency of the Federal Government.

In response, the claimant's learned silk argued as follows:

That in paragraph 2:1:1-2:1.6, the 2<sup>nd</sup>& 4<sup>th</sup> Defendant profusely argued that the claimants cause of action bothers on the administration of companies and

affecting on agency of the Federal Government as a party (3<sup>rd</sup> Defendant) and concluded that it's only the Federal High Court that has the requisite Jurisdiction to hear and determine the case by virtue of the provision of section 251 of the 1999 CFN as (Amended)

On this the learned claimant counsel strongly opposes that line of argument in the sense that the memorandum of understanding (MOU) which the claimant has submitted to this court for interpretation is purely a document on simple contract between Juristic parties. That it has absolutely nothing to do with the administration of any company as wrongly alleged by the 2<sup>nd</sup> & 4<sup>th</sup> Defendants. Referred to the case of Edison Automotive Ind. V NERFUND (2022) 4 NWLR (PT. 182) 419 to 443 paragraphs Per Jauro JSC held thus:

**“A simple contract is all contracts other than formal contracts required to be under seal. In the instant case, the action of the Appellant predicated on the recovery of loan was one of the enforcement of a simple contract.**

And the case of Rahman Brothers Ltd V NPA (2019) 6 NWLR (prt. 1667) 126 & 138-139 paragraphs G-A, the Apex Court held thus:

**“section 251 of the 1999 constitution (as amended) which prescribes the jurisdiction of the Federal High Court does not cover simple contracts. And/or negligence emanating from such contract, in this case, both the claim and the counter claim are founded on simple contract. Therefore, the trial Federal High court lacked Jurisdiction”**

The learned senior silk, further referred to the agreement between parties, subject matter of this suit is a simple contract, which is not within the purview of the Federal High Court, this he referred the court to claimants questions for determination in this suit reproduced from the beginning of this ruling and the relief sought therein and submitted that a dispassionate and objective legal mind will agree with the fact that the claimants suit has absolutely nothing to do with the administration of company. This is also irrespective of the fact that any or all the parties are agencies of the Federal Government or not.

The learned senior silk, orally while responding to the said motion of preliminary objection, on his part, cited the case of Christian Integrated National –Ltd V Shell Petroleum Company (Nig) Ltd (SC) (765) (2017).

Justice KekereEkunon this held that this court has firmly settled the matter in Onorah V Kaduna Refinery Petroleum Ltd and & ors on the requisite Jurisdiction of the Federal High Court founded on contract and that this case was reinstated in the case of Maric Ade Property Development Company Ltd V

Chukelu (2021(LPERL) 53072 (CA). submitted that what is before the court is a case of the content of memorandum of understanding that the 2<sup>nd</sup> & 4<sup>th</sup> defendants admitted the facts by it's exhibit D1 attached to the notice of preliminary of objection. That all this cases can be decided on the case of the claimant on the face of the originating summons, both the case of Onourah relied upon by the supreme Court In Christian case confirm that there was a Federal Government agency that was a party in that action just like in this case of 3<sup>rd</sup> Defendant, but the law is settled that so long that the company is on a breach of contract but in this case is a breach of agreement for sales of shares, there is nothing about the control of the company as to render this suit accomodable under section 251 as capable of robbing this court it's Jurisdiction.

I have carefully gone through the submission of the 2<sup>nd</sup> & 4<sup>th</sup> Defendant/Applicant and that of the learned senior silk, the argument canvassed therein and the case cited thereto.

At this point wish to state that Jurisdiction is very fundamental it's the live wire of a case which should be determined at the earliest opportunity. In considering whether or not a court has Jurisdiction or competence to entertain an action, it is only the plaintiff's claim as endorsed on the writ of summons and the statement of claim that needs to be examined by the court. In other words, the legal position as to competence or otherwise of a trial court or tribunal to entertain a case is arrived at solely, on the facts disclosed in the statement of claim. See African Petroleum Plc V Akinnawo (2012) 4 NWLR 101. The issue here bothers on the facts that this court does not have the requisite Jurisdiction to entertain this matter as the Jurisdiction to entertain the instant suit is on the Federal High Court by section 25(1) of the CFN as (amended) on this I wish to state that, in the determination of the exclusive Jurisdiction of the Federal High Court In respect of section 251(1) of the 1999 CFN as (amended), the court must carefully examine the facts of the case to see whether they justify the application of the section. It is from the examination of the statement of claim and not the defence that the court can ascertain whether or not court has the Jurisdiction pursuant to the section. See Cadbury (Nig.) Plc V F. B. I. R. (2010) 2 NWLR (pt. 1179) page. 561 also Trade Bank Plc V Benilux (Nig) Ltd (2003) 9 NWLR.

There are certain conditions precedent to Jurisdiction of the Federal High Court under section 251 of the 1999 constitution, when the Jurisdiction of the Federal High Court under Section 251 of the 1999 CFN is in issue as in the instant case, the following must co-exist

- a. The parties or a party must be the Federal Government or it's agencies and**
- b. The subject matter of the litigation**

Satisfying the above is not the end of the matter the pleading of the plaintiff on this case the originating summons, must be carefully examined so as to understand the facts and circumstances of the case in order to determine if the claims are within the Jurisdiction of the court. It is clearly not enough only to have an agency of the Federal Government as party for the Federal High Court to have Jurisdiction. See Enterprise Bank Ltd V Aroso (2014) 3 NWLR (PT. 1394) 257 SC also the case of Wuyep V Wuyep (2013)2 NWLR page. 337.

Upon a careful perusal of the claims of the claimant, the relief sought therein, and the parties before this court, I have to agree with the submission of the Learned counsel to the claimant in all it's argument and submission, hence I shall resolve this issue in favour of the claimant. I so hold.

On issue two whether there is privity of contract between the claimant and the 2<sup>nd</sup> & 4<sup>th</sup> Defendant?

On this it is the submission of the learned counsel to the 2<sup>nd</sup> & 4<sup>th</sup> Defendant/Applicant where he stated the law of business of contract thus. That the law is settled that a contract must bind only parties to it, and no other. That it is therefore only parties who are privy to a contract that must be responsible for it's performance or benefit therefrom. See the case of Ogundare & Anor V Ogunlowe & ors (1997) LPELR- 2332 (SC), the Supreme Court Per Onu JSC held that:

**in law, there is privity of contract. it is always between the contracting parties who must stand or fall, benefit or lose from the provision of their contract. Their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit there under.**

That the rational for this age long principle of law was stated in the case in the case of C. A. P Plc V Vital Inv. Ltd (2006), C.A.P. Plc V Vital Inv. Ltd (2006) 6 NWLR (pt. 976) 220 at 251, 252, 204-265 (CA) as follows:

**the reason for the enunciation of the principles of privity of contract is based on consensus ad Idem: it is only the contracting parties that know what their enforceable rights or obligations are and therefore strangers should not be saddled with the responsibility. In the case of Ikpeazu V A.C.B Ltd (1965) NWLR.374 our own Supreme Court expatiated on the principle.**

The learned counsel submitted that the memorandum of understanding which is the document relied upon by the claimant is an agreement between the claimant and the 1<sup>st</sup> Defendant only. That there is nothing in the said MOU and or any

subsequent correspondence between the parties to suggest that the 2<sup>nd</sup> & 4<sup>th</sup> defendants are parties or privy to the agreement or understanding between the claimant and the 1<sup>st</sup> Defendant. That it will therefore be absurd for the claimant to attempt to rope the 2<sup>nd</sup> and 4<sup>th</sup> Defendants into this understanding. That it is trite that a document speaks for itself and its content cannot be varied except by another document.

He further submitted that, from the content of the MOU, it is obvious that the 2<sup>nd</sup> & 4<sup>th</sup> Defendants cannot by any stretch of imagination be bound by the terms of the MOU between the claimant and only the 1<sup>st</sup> Defendant. Besides, the 1<sup>st</sup> Defendant who has only 25% shares in the 4<sup>th</sup> Defendant as at the date of the MOU could not validly contract to seek 40% shares of the 4<sup>th</sup> Defendant. That is beyond the power of the 1<sup>st</sup> Defendant to do so especially when the 4<sup>th</sup> Defendant is not a Party to the MOU. See the case of Eagle Sight LTD V Rotbams (Nig) Ltd (2022 LPELR- 59321/(CA) the court of Appeal reiterated the point that even in situations where a MOU is binding on the parties, to it, its bindingness cannot extend to a third party. Respectfully submitted that there is no privity of contract between the claimant and the 2<sup>nd</sup> & 4<sup>th</sup> Defendants and joining the 2<sup>nd</sup> & 4<sup>th</sup> defendants in this the suit makes the suit incompetent.

The learned senior counsel in his response, referred to paragraph 2:2:1-2:2:5 of the written address, the 2<sup>nd</sup> & 4<sup>th</sup> defendant argued to the effect that they do not have any privity of contract with the claimant and the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant in respect of the MOU which is the subject matter of this suit. That in paragraph 5 (a-g) of the counter affidavit, the claimant made detailed and specific averments to justify the fact that the 1, 2<sup>nd</sup> & 4<sup>th</sup> Defendants are sister companies liable to the claimant's claim in this suit. This the claimant referred to the respective status reports of the CAC of the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> marked as exhibit Oranto A, B, & C to establish the facts that, the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendants are sister companies because:

- a. They are interchangeably shareholders in each other's shareholding arrangement thus
  - i. **The 1<sup>st</sup> Defendant directly holds 34 % of shares in the 2<sup>nd</sup> Defendant amounting to 3, 400,000 shares.**
  - ii. **The 4<sup>th</sup> Defendant also holds 33% of shares in the 2<sup>nd</sup> Defendant amounting to 3,300,00 shares.**
  - iii. **The 1<sup>st</sup> defendant is a shareholder in the 4<sup>th</sup> defendant**
- b. **That the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendants all have No:1. Rima Street Maitama Abuja as their respective common registered office Addresses in Nigeria**

- c. **That the 1<sup>st</sup> and 2<sup>nd</sup> & 4<sup>th</sup> Defendant have a common Managing Director in the person of Nwangwu George who is also on the Board of Directors of the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendants.**
- d. **Mr Nwangwu George is a signatory in the shares subscription signature columns of the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> defendants, indicating that the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> defendant share a common ownership.**

Furthermore, the learned silk posits that upon the invocation of the doctrine of lifting the corporate veil, on the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendant it will certainly be revealed that they are sister companies controlled by same or similar board of directors referred the court to the case of International Offshore Const. Ltd V S. L. N. Ltd (2003) 16 NWLR (pt. 845) 157 CA. it was held as follows:

**“in this regard the findings of the learned trial Judge is very instructive at page 77 of the record of Appeal. He stated thus: the evidence before me is to the effect that the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants are sister companies of the 4<sup>th</sup> Defendant all under the control of the 4<sup>th</sup> Defendant and that the 4<sup>th</sup> Defendant uses the 1<sup>st</sup> to 3<sup>rd</sup> Defendants Companies inter-changeably”**

On this he referred to exhibit D which was a candid business advice to the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendant through their common managing Director for them to honour the terms of the MOU with the claimant, but they failed to heed to same.

The learned senior counsel further contented that it can never and should not be the claimant fault that the 1<sup>st</sup> Defendants abandoned using the 4<sup>th</sup> Defendant as the SPV to execute the concession agreement, as against the 2<sup>nd</sup> Defendants that was later incorporated for that purpose. That it is trite law that the court will readily imply certain words, meaning interpretation, terms and conditions into a contract for the purpose of giving life and success to the intent and purpose of the contract. See Ibama V Shell Pet Dev. Co. Nig (Ltd) (1998) 3 NWLR (pt. 542) 493 pp. 499-500 paragraph H-A it was held thus:

**“there are certain situations where terms may be logistically implied from the express terms of the contract or where no such express terms of the particular contract”**

Also U.B. N. Plc V Awmar Properties Ltd (2018) 10 NWLR (pt. 1626) 64 at Page 51 paragraph A, the Apex Court Held thus:

“in implying terms into a contract, the exercise involved is that of ascertaining the presumed intention of the parties collected from the words of the agreement and the surrounding circumstances on this he submitted that, this is a court of Justice and it is trite law that no court of law will allow any party to benefit from it's wrongdoing or breach whatever as in the instant case. Referred to the

case of MTN (Nig) Comm. Ltd V Corporate Comm. Inv. Ltd (2019 9 NWLR pt. (1678) 422 & 458 paragraph E-F the Supreme Court held thus:

**“a party to a suit should not be given the advantage of it’s own wrongdoing or allowed to use it as a weapon against the other party in this case, the court of Appeal and trial Court rightly held that the appellant could not be allowed to take advantage of it’s deliberate act of withstanding it’s signature to the agreement? (exhibit A) and to use it hisa weapon against the respondent.”**

Also in the case of Kano Tey (Plc V AIT (Nig) Ltd (2002) 2 NWLR (pt. 751) 420, & 450 paragraph B-D where it was held thus:

**“a party should not be allowed to be benefit from his own wrong. This is encapsulated in the3 latinMexim. NullusConnmodumCaperePutest de Injuria SuaPropria) in the instant appeal, the responsibility for seeking local approval and obtaining foreign exchange in pursuance of the contract between the appellant and the respondent was contract between the appellant and the respondent was on the appellant and the appellant cannot be allowed to benefit from it’s failure to fulfil it’s duty on the contract.**

I have carefully gone through the submission of the learned counsel to the 2<sup>nd</sup> & 4<sup>th</sup> Defendant on the issue of privity of contract raised and the response by the leaned senior claimant counsel. On this I wish to state that a contract can only create enforceable rights and obligations on the parties to the contract, and so only parties to the contract can sue to enforce them. It also follows that only those who have furnished consideration may sue. There are generally two types of privityof contract, horizontal and vertical. The differences between them includes: Horizontal privity exists when the beneficiary of a contract is a third party and not one of the signatories of the originally contract.

In Eyiboh V Muijaddadi& ors 2021 LPELR-57110 (SC) where it was held thus:

**“it is settled in law on privity of contract and firmly settled that a person is not under any obligation to bear the burden of a contract to which he is not privy, even though the contract is in his favour or benefit only a person who is a party to a contract can sue on it.**

The reason for the enunciation of the principle of privity to a contract is based on consensus ad-idem. It is only the contracting parties that know what their



enforceable rights and obligation are, and therefore a stranger should not be saddled with the responsibility”

This in L. S. D. P. C. V N. C. S. S. F. Ltd (1992) (Pt. 244) 653 at 669-670, this court per Olatunwa JSC held thus:

**“The evidence led Justified this observation is there any privity of contract between the 1<sup>st</sup> appellant and the respondent? The answer is no. privity of contract is a common law doctrine.**

Generally, only parties to a contract can enforce the contract. this general principle is stated with great locality in Dunlop Pneumatic Tyre Ltd Vs Selfridges & Co Ltd (1915) AC-847

Having well stated the, general position of the law, I will now through the eyes of the facts on record as argued by both counsels to determine whether the case at hand falls within the exception to the privity of contract doctrine.

However, counsel for the 2<sup>nd</sup>&4<sup>th</sup> Defendants have argued that there is no privity of contract between the claimant and the 2<sup>nd</sup>& 4<sup>th</sup> defendants. He stated that, the MOU which forms the basis of the Plaintiff's claims is an agreement between the claimant and the 1<sup>st</sup> Defendant only. That the MOU exhibit D1. That the 2<sup>nd</sup>& 4<sup>th</sup> Defendant s are not privy to the said MOU or any agreement whatsoever involving the claimant and the 1<sup>st</sup> Defendant. That the 2<sup>nd</sup>& 4<sup>th</sup> Defendants have no contract whatsoever with the claimant.

On this I wish to state that where there is a collateral contract between one of the parties to a main contract and a third party arising from the terms of the main contract, from the terms of the main contract, any of the parties to the main contract has the right to sue the third party to enforce terms of the collateral contract and vice versa. This is one of the common law exception to the doctrine of privity of contract.

The learned senior counsel argued based on the above doctrine where in it's written address submitted that the 1<sup>st</sup>, 2<sup>nd</sup>& 4<sup>th</sup> defendants are sister companies liable to the claimants claim on. This he referred to the status report of the CAC of the 1<sup>st</sup>, 2<sup>nd</sup>& 4<sup>th</sup> defendants and exhibit Oranto A & B & C which established the facts that the 1<sup>st</sup>, 2<sup>nd</sup>& 4<sup>th</sup> defendants are sister companies by the arrangement of each other shareholders that the 1<sup>st</sup> 2<sup>nd</sup>& 4<sup>th</sup> Defendant have a common managing Director in the persons of Nwangwu George who is also on the Board of Directors of the 1<sup>st</sup>& 2<sup>nd</sup>& 4<sup>th</sup> Defendants and that the said Mr. Nwangwu George is a common signatory in the shares subscription signatures columns of the 1<sup>st</sup>, 2<sup>nd</sup>& 4<sup>th</sup> Defendants indicating that the 1<sup>st</sup>, 2<sup>nd</sup>& 4<sup>th</sup> Defendant share a common ownership.

The above to my mind falls under the exception of privity of contract hence I shall agree with the claimant counsel submission that there is a privity of contract between the claimants and the 2<sup>nd</sup> & 4<sup>th</sup> Defendants in this case. Hence the argument canvassed by the 2<sup>nd</sup> & 4<sup>th</sup> Defendants cannot hold, hence I shall also resolve this issue infavour of the claimant counsel. I so hold.

On the last issue for determination being a question as to whether the claimant's case been contentious and not suitable for matters to be decided on originating summons.

It is trite that an originating summons is a procedure used to commence actions where it is required by a statute on which is concerned with matters of law where there is unlikely to be any dispute of facts.

The learned counsel to the 2<sup>nd</sup> & 4<sup>th</sup> Defendants argued that, the facts deposed in the affidavit in support of the originating summons and those deposed in the 2<sup>nd</sup> & 4<sup>th</sup> Defendants counter affidavit will show that the issue in this suit are highly contentious, in effect that legal proceedings may be commenced by originating summons when the principal question in issues is or is likely to be any instruction of a written law or any instrument or of any deposed or will or contract which involves no substantial dispute. Referred to the case of National Bank of Nigeria V Lady AyodeleAlakiya (SC) 139/1979/1978)10 where the court stated thus:

**“originating summons is merely a method of procedure for non-contentious matter and not that is meant to enlarge the Jurisdiction of the court and that even where the facts are not in dispute, the originating summons should not be used, if the procedure are hostile.**

Also the case of Doherty V Doherty (1968) NWLR 24.

Furth more, that this suit was designed to look like a mere interpretation of a document. But that the document sought to be interpreted is a memorandum of understanding (MOU) between the claimant and the 1<sup>st</sup> Defendant therefore it will be necessary for the parties to lead evidence for or against the allegation. the learned counsel finally submitted that urged the court not to determine this suit on originating summons but to make the necessary orders for pleadings to be filed.

The claimant counsel in response stated that the claimant's reliefs on the face of the originating summons has nothing whatsoever to do with the administration of companies, but the suit calls for the interpretation of the MOU executed by the parties coupled with the effects of correspondence exchanged,

urged the court to discountenance the argument of the 2<sup>nd</sup> & 4<sup>th</sup> Defendants in their Preliminary Objection.

I have carefully gone through the submission of the learned counsel to the 2<sup>nd</sup> & 4<sup>th</sup> Defendants and the response by the learned senior counsel to the claimant as well as the reliefs sought by the claimant in this suit. A careful perusal of all the reliefs sought therein deals mainly with the issue of interpretation of the (MOU) memorandum of understanding between the claimant, the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant's letters dated 1/8/23 12/8/22, 8/12/22 and 5/1/2023 and claimant letters dated 9/8/22, 17/8/22, 24/8/22, 6/9/22, 23/11/22, and 16/12/22 and the 3<sup>rd</sup> Defendant's letter dated 9/12/22 while in respect of the 4<sup>th</sup> Defendant's value of 40% shares to be sold by the 2<sup>nd</sup> Defendant and acquired by the claimant in the 4<sup>th</sup> Defendant.

As rightly stated above, I will Disagree with the submission of the learned counsel to the 2<sup>nd</sup> & 4<sup>th</sup> Defendants counsel on the issue as to whether to transfer or order pleadings to be filed while on the face of the reliefs sought the main issue is a mere interpretation of the position of memorandum of Understanding between the claimant, the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants and the shares i.e. 40% shares agreed by the board in the 4<sup>th</sup> Defendant during the subsistence of the binding and enforceable memorandum of Understanding as to whether the claimant is entitled to the 40% shares as agreed.

I hold that this matter being an issue of interpretation of the memorandum of understanding (MOU) are matters suitable to be decided based on the originating summons as it is strictly on the interpretation of the memorandum of understanding. Hence the argument of the learned Defence counsel to the 2<sup>nd</sup> & 4<sup>th</sup> defendant cannot hold.

In view of the forgoing I hold that all issues detailed for determination by the 2<sup>nd</sup> & 4<sup>th</sup> Defendant Counsel has no merit/substance, hence the preliminary objection is hereby dismissed. Parties to bear their respective cost.

This is my ruling.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. Abdul Mohammed (SAN) with A. I. Malik and D. O. Nwokike for the Applicant.
2. Victor C. Chimezie for the 1<sup>st</sup> Defendant and hold the brief of the 2<sup>nd</sup> & 4<sup>th</sup> Defendant.