

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

DATED THIS MONDAY THE 4TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/82/2022

BETWEEN:

OSOFIT INTERGRATED RESOURCES LIMITED CLAIMANT

AND

ALL PROGRESSIVE CONGRESS (APC).....DEFENDANT

JUDGMENT

The claimant approached the court by a writ of summons with suit Number: FCT/HC/GWD/CV/82/2022 dated 11th day of October, 2022, claiming the following reliefs from the defendant:

- 1. A declaration that there is a valid contract between the claimant and the defendant.**
- 2. A declaration that the claimant started performing the contract as directed by the defendant.**
- 3. A declaration that the claimant incurred cost while performing the contract.**
- 4. A declaration that the defendant terminated the contract without justification.**
- 5. An order of this court directing the defendant to pay the claimant the sum of N116,597,913.00 (One Hundred & Sixteen Million, Five Hundred and Ninety Seven Thousand, Nine Hundred & Thirteen Naira) only being the cost incurred in executing the contract before the said contract was terminated by the defendant contrary to the agreement.**

- 6. General damages of N40, 000,000.00 (Forty Million Naira) only.**
- 7. N5, 000,000.00 (Five Million Naira) only being cost of this suit.**
- 8. Exemplary damages of N20, 000,000.00 (Twenty Million Naira) only.**

Attached to the endorsed writ of summons is the statement of claim of 20 paragraphs and annexed to the statement of claim are annexures marked as Exhibit A being Review collection agreement between Osoft Integrated Resources Ltd and All Progressive Congress and the claimant's written statement on Oath deposed to by one Haruna Amos Olabo of 21 paragraphs.

The defendants on receipt of the claimant's writ of summons filed a memorandum of Appearance dated the 26th day of May, 2023 and filed the same date, accompanied with a statement of defence of 11 paragraphs and a statement of Oath of MRS OJOCHOGU AIYEJINA of No: 40 Blantrye Street Wuse II Abuja, filed alongside is a Motion on Notice for an order extending time within which the defendant/Applicant may file his processes, an order granting leave to the Defendant/Applicant to file out of time the following processes:

- 1. Memorandum of Appearance.**
- 2. Statement of Defence.**
- 3. Witness Statement on Oath, list of documents and list of witnesses and a deeming order.**

The said Motion was argued dated the 30-05-2023 and the reliefs sought therein was granted.

The claimant on receipt of the processes filed by the defendant filed the claimant's reply to the statement of defence of the defendant filed on the 26th of May, 2023 same dated 13th June, 2023 and filed same date, accompanying the claimant's reply to the statement of defence are annexures and the claimant's additional written statement on Oath of 11 paragraphs deposed to by Haruna Amos Olobo of Garki FCT Abuja.

Before proceeding to the hearing of this suit and after perusing the processes filed, the court raised and saw the need to raise the issue of an arbitration clause in the agreementsuomoto, argument was advanced and ruling delivered wherein the ruling the court ruled as follows:

“In the instant case, the defendant in this case has not taken any steps, it will be wrong for the court to proceed with this case knowing fully well that there is an arbitration clause which was agreed by parties, unless that is done, this court will not proceed with hearing of this case without first going through what was agreed by the parties in clause 26:2 of the agreement”.

The matter was then adjourned to 21/3/2023 for hearing. On the 21-March, 2023 when this suit came up the claimants counsel was in court while the defendants counsel was absent in the words of the claimants counsel, I quote:

“That on the 1-2-2023 we wrote to the defendant, however they have not responded yet, but a top official in the office of the defendant advised us that because of election season the defendant would not have the time to attend to other issues except the election is over. We took the hint and we intend to engage with the defendant after the election which has just been concluded”

Based on the foregoing the matter was adjourned to 3-05-2023.

On the 3-05-2023 when the matter came up, parties were absent in court OwobuGodday with EzeNnaemeka were present in court for the claimant while one AyodejiIbikunle represented the defendant. On this date, the defendant asked for an adjournment on the ground that they have just been briefed and they only have hearing notice, the originating process and any other processes are not within their knowledge. Based on the foregoing the matter was adjourned and the processes served on the defendant in the court and the matter adjourned to 30-05-2023.

On the 30th May,2023 both counsel were in court. The claimants counsel who informed the court that they have just been served a Motion, Statement of defence in the court and need time to peruse same to see whether they can reply. In the light of the above the defence was allowed to move Motion Number 10077/23 for extension of time, leave to file out of time and a deeming order. The reliefs were all granted and the matter was adjourned to 10-07-2023 for hearing having exchanged pleadings.

On the 10th July,2023 both witnesses were represented and the matter proceeded to hearing by the evidence of PW1.

PW1 one Haruna Amos Orobra a software engineer, Chief executive officer of the claimants company testified.

In it's testimony stated that he can remember filing a written statement on Oath on the 10/10/2023 and identified same by the passport photograph and his signature, same was adopted as his oral evidence in this suit.

The claimant's counsel in the course of the evidence made reference to paragraph 4 of the statement of claim. In response, the witness told the court that he has a written agreement between the claimant and the defendant signed by the National Secretary and the head of Legal with the defendants. The agreement titled Revenue Collection agreement between Osoft Integrated Resources Ltd and All Progressive Congress dated the 6-4-2018 was admitted in evidence without objection from the defendant's counsel, same admitted in evidence as Exhibit A. Reference was also made to paragraph 5, that the defendant wrote him a letter instructing him to commence the execution of the contract, said which he identified through the defendant's letter headed paper signed by the national secretary. The claimant's counsel sought to tender same in evidence in response by the defendant's counsel, informed the court that they left the issue of the objection on the address stage. The document captioned: Re-commencing of collection operations from All Progressive Congress dated 11-07-2018 addressed to the Managing Director of Osoft Integrated Resources and signed by Hon. Maimala Buni National Secretary was admitted in evidence as Exhibit B. Reference was also made to paragraph 7 of the statement of claim where he made mention of online platform for payment of membership registration/revalidation, same PW1 identified through the logo of their company. The Claimant's counsel sought to tender the said document in evidence but it was objected to by the defendants, but the court ruled in favour of the claimant and admitted the document in evidence same was marked as Exhibit C. Reference was also made to paragraph 8 that the claimant's produced fliers in English, Hausa, Igbo and Yoruba Languages, same identified by PW1 through the Logo of the defendant and that of the company of the defendant same was admitted without objection and marked as Exhibit D. Reference was also made to paragraph 13,14 & 16 of the statement of claim, mentioning receipt of evidence of payment. The receipt to the saidpayment was admitted in evidence and marked as Exhibit E,E1,E2 and E3 respectively.

Reference was also made to paragraph 18 and 19 of the witness statement on Oath on the issue of invoices issued for service tendered in the cause of executing the

contract. Same identified and admitted in evidence without objection same admitted and marked as Exhibit F, F1 and F2 respectively.

PW1 further in its testimony testified that he can remember filing an additional written statement on Oath on the 12-06-2023 same which he identified through his passport photo and his signature. Same was adopted as PW1's oral testimony before the court.

On being adopted reference was made to paragraph 3 of the additional statement on Oath where he testified that the claimant wrote a letter to the 36 Chairmen of the defendant including FCT, introducing the claimant as it's agent. The original letter which the witness said were submitted to all the Chairmen of the FCT same identified through the letter headed paper of the defendant and the signature of the National Secretary.

In a bid to tender the said document the defence counsel informed the court that they will make their objection at the address stage. The said document from APC dated the 17-06-2018 caption: APC Membership dues/levy collection Introduction by the defendant as collection agents addressed to all 36 states and the FCT was admitted in evidence as Exhibit G to G37. Reference was also made to paragraph 4 and 5 of the additional statement mentioned, it was made to the Demand letter written to the defendant. The original which the PW1 said it was submitted to the defendant's office and acknowledgment given to them. The said letter from Osoft Integrated Resources Ltd addressed to the National Chairman Captioned: APC dues, Collection Contract awarded to Osoft Integrated Resources Ltd on the 6-4-2018 (None performance of contract was also admitted in evidence and marked as Exhibit H – H5. The claimant's counsel then closed the case of PW1, the matter was adjourned to 26-10-2023 for cross-examination of PW1 by the defendants counsel.

On the 23-6-2023 when this matter came up for cross-examination, the parties were not in court, the claimant's counsel was represented by GoddayOwobu. The defendant's counsel was absent. The claimant's counsel informed the court that he got a call from the defence counsel on the demise of his father. Based on the above, the matter was adjourned to 14-12-023 for cross-examination.

On the 14-12-2023, parties were in court and their representative counsel on the side of the claimant was OwobuGodday while that of the defendant was AbdulkarimArabo and AyodejiIbikunle.

Under Cross-examination, Question and Answer:

Q: There was a letter from APC terminating the alleged contract for Revenue collection?

A: No, there was no letter but there was a publication issuing another letter to another company.

Q: Reference to Exhibit A, referred the court to any part of the contract that creates exclusivity between the claimant and APC in respect to Revenue collection?

A: There is no exclusivity between the APC in respect to Review collection.

Q: Paragraph 11 of the statement of claim do you have copies of the Banks statement attached to show the inflow of the alleged dues?

A: We don't have the Bank statement before the court.

Q: In the course of the discussion of the contract with the APC did you even meet the National Chairman of APC?

A: Yes we did.

Q: Are you familiar with National working committee of the APC?

A: Yes we are familiar with them.

Q: Was there National working committee (NWC) resolution rectifying this contract?

A: We won't know, because it is internal.

Q: What political party did you belong to?

A: I am a business man and none participant in any political party.

Q: Reference Exhibit C, 3rd page, what is your name and did your name appear on Exhibit C?

A: Yes it does.

Q: Your name appears 3 times?

A: Yes it does.

Q: Exhibit C is supposed to be the list of people that was used by the claimant platform to pay Revenue to APC?

A: Yes you are correct.

Q: Is Exhibit C fraudulent, gratuitous, name that was imported to suggest Revenue collections on behalf of APC whereas there is nothing that ever occur i.e. that the actual collection never occurred?

A: During the Deployment of the APC collection porter, my company was asked to do a test run in all APC and I did the test run. Payment from my card to the management of APC including the National Chairman which the lawyer to the defendant is also involved.

Q: As a follow up, is Exhibit C a list of people that did the test run or the list of people that actual pay?

A: Yes it does.

Q: How can you separate it from Exhibit C?

A: That the Exhibit C is all successful payment that can be traced on the Bank account of the APC as actual payment.

Q: Are you familiar with the National Finance Secretary of the APC and familiar with his roles in such matter?

A: No I am not.

Q: Is he one of the signatory of Exhibit C.

A: No his not part.

Q: The National legal adviser of APC is a signatory to Exhibit C?

A: yes he is.

Q: Reference to Exhibit A paragraph 16 limitation of liability?

A: Read.

Q: Is your claim before the court, claim for fee?

A: No is not for fee.

Q: Exhibit A paragraph 26:1 provides for arbitration have you been to arbitration in this matter?

A: Yes we have.

No Re-examination.

The claimant then closed it's case and the matter adjourned to 13-02-2024 for defence.

On the 13-02-2024 DW1 gave evidence. In its testimony testified thus:

That she is MrsOjochoguAiyejina a Legal Practitioner (Lawyer with APC as a Deputy Director in the defendant's legal services.

That on the 26-05-2023 she deposed to the witness statement on Oath before the Registry of this court same was adopted as her statement in this matter. This is the statement of the defendant DW1.

Under cross-examination by the claimants counsel the following questions and answers were asked:

Q: When did you start working with the defendant?

A: In the year 2014.

Q: As at that time who was the Secretary of the defendant?

A: The Secretary of the defendant then was Hon Mai Mala Buniwho is the current Governor of Yobe State.

Q: Tell the court the then Treasurer?

A: I can't remember the full name but somebody Gwagwarawa.

Q: Reference to Exhibit A and B (Refer to B whether the name you mentioned is on the document?

A: Yes I saw the name by mai mala.

Q: I Also confirm Exhibit B, whether the names are on the document?

A: That the name on Exhibit B is one Hon. Mai MolaBuni who was then the National Secretary of APC.

Q: Is it true that you read the processes that was served on you?

A: Yes

Q: Did you confirm from the former principal officers whether they signed the document (Exhibit A& B)?

A: No I did not.

Q: Refer to Paragraph 4 of the statement on Oath, How did you arrive at the averments contained in paragraph 4 & 5 of your witness statement on Oath?

A: As a matter of fact parties have procedures to going into any contract with any person on establishment procedure is it the National Financial Secretary of the party who makes a proposal before the National working committee of the party, upon approval the National Chairman who is the Chief Executive Officer, who proceeds or NWC then directs the legal department to prepare every single contract the parties goes into, signed by himself the National Chairman, National Secretary, the National Treasurer and the National Financial Secretary.

There is no record of any such proposal coming before the National working committee and whether the legal department proposed any such agreement with the plaintiff. That is the basis of our statement in paragraph 4 & 5 of the statement on Oath.

Q: What you told the court is the indoor management of the defendant?

A: It is true.

Q: Refer Exhibit A the name on the Exhibit the signature part?

A: DereAgul

Q: What you read to the court is it correct?

A: Yes it is correct.

No Re-Examination.

The defendant then closed the case of the defendant.

The matter is adjourned to 18-4-24 for adoption of final written address.

On the 18-04-2024 both counsel were in court.

The defendant's counsel filed its final written address dated the 17th April, 2024 where two issues were formulated for determination and substantively argued, same was adopted as their argument and urged the court to dismiss the suit and refuse the claim of the claimant.

Adumbration: Urge the court to closely look at the following cases:

- 1. Repitio S.A Jennifa V Africa Bank Nig. Plc (2013) SC LPELR 20662 SC an element of contract on issue one of their written address in urging the court to refuse the claim of the claimant.**

The claimant on receipt of the final written address of the defendant filed his final written address dated the 21-March, 2024 same adopted in its final written address distilled a lone issue in the determination of this matter and canvassed therein in the said written address urging the court to grant their relief sought by the claimant.

In the defendant's final written address, the learned defence counsel one Abdulghani Rotimi Arobo Esq formulated two issues for determination.

- 1. Whether there is a valid contract capable of being enforced by this court between the claimant and the defendant to grant the claim of the claimant?**
- 2. Whether from the totality of the evidence addressed by PW1, the claimant is entitled to a grant of the relief sought per its writ of summons and statement of claim.**
- 3. The claimants counsel Owobu Godday on its part formulated a lone issue distilled for determination to wit:
Whether the claimant has not proved his case to entitle him the reliefs sought?**

A careful perusal of the issues for determination, issue(1) of the defendant will be taken separately while issue (2) of that of the defendant will be discussed with the claimant's lone issue. Hence two issues will be discussed in this Judgment.

Firstly, whether there is a valid contract capable of being enforced by this court between the claimant and the defendant to grant the claim of the claimant?

Before I proceed to answer the first issue for determination, I will first of all reproduce the reliefs sought by the claimant which was reproduced by the defendants counsel in its written address for ease of reference.

The claimant claims before this court the following reliefs:

- 1. A declaration that there is a valid contract between the claimant and the defendant.**
- 2. A declaration that the claimant started performing the contract as directed by the defendant.**
- 3. A declaration that the claimant incurred cost while performing the contract.**
- 4. A declaration that the defendant terminated the contract without justification.**
- 5. An order of this court directing the defendant to pay the claimant the sum of N116,597,913.00 (One Hundred & Sixteen Million, Five Hundred and Ninety Seven Thousand, Nine Hundred & Thirteen Naira) only being the cost incurred in executing the contract before the said contract was terminated by the defendant contrary to the agreement.**
- 6. General damages of N40, 000,000.00 (Forty Million Naira) only.**
- 7. N5, 000,000.00 (Five Million Naira) only being cost of this suit.**
- 8. Exemplary damages of N20, 000,000.00 (Twenty Million Naira) only.**

It is the submission of the learned defence counsel in its written address on the claimant on what constitutes a legally binding contract on this he cited the case of Eyiboh V Mujaddadi&ors (2021) LPELR -57110 (SC) PP. 17 Paragraph C where KekereEkun JSC had this to say:

As legally submitted by learned counsel for the respondents, the essential requirements of a valid contract which must co-exist are:

- a. Offer**
- b. Acceptance**
- c. Intention to create legal relations**
- d. Capacity to contract**

See Bilante International Ltd V N.D.I.C (2011) 15NWLR (1270), 40, ALFOTRIN LTD V ATTORNEY GENERAL OF FEDERATION & ANOR. (1996) 9 NWLR (PT 475) 634, BPS CONSTRUCTION &ENGINEERING CO.LTD V FCDA (2017) 10 NWLR (PT 1572) 1. In ALFODTRIN V A.G FEDERATION (SUPRA)

“It was held that for there to be an enforceable contract, there must be concluded bargain which has settled all essential condition that are necessary to be settled and leaves no vital term or condition unsettled”

On thishe submits that though all of the able requirements are conjunctively essential for the formation of a contract, the requirements for contracting parties to have the capacity to enter into contract as well as the intention to create legal relation is a desideration which is at the heart of everything. Based on the above submitted that the Defendant in this suit is a statutory entity by the provision of Section 222 of the 1999 Constitution of the Federal Republic of Nigeria which provides thus:

“No Association by whatever name called shall function as a party unless”:

- a. The name and address of its National Officers are registered with the INEC.**
- b. The membership of the Association is open to every citizen of Nigeria irrespective of his place of origin, circumstances of birth, sex, religion or ethnic group;**
- c.**
- d.**
- e.**
- f.**

He Submitted that, the operation of a political party must be superintendent by executives with different roles and responsibilities as provided for in section 223, 224 & 225 of the 1999 Constitution of the Federal Republic of Nigeria laid out in extensor the structure of a political party and therefore submitted that the provision of 1999 Constitution of the Federal Republic of Nigeria are binding on all and sundry with exercise of exception see UDENWANE & ANOR V UZODINMA & ANOR (2012) LPELR – 22283 (SC).

The learned defence counsel posits the following question:

“How does the provision of the 1999 Constitution of the Federal Republic of Nigeria concern the instant case of alleged contract between the claimant and the defendant?”

On this contended that by section 222 of the 1999 Constitution of the Federal Republic of Nigeria the Defendant is statutory entirely created by law and the claimant is by that taken obligation to reckon with the content of the Defendant's constitution mandated by the 1999 Constitution of the Federal Republic of Nigeria before entering into any contract with it.

That this is vital to ensure that the appropriate members of the executive of the Defendant enter the said contract in accordance with the constitutionally endowed powers. This he said will guaranty capacity to contract as well as invest the requisite intention to be bound on the Defendant. That absence of this submitted that the contract relied on by the claimant becomes an invalid contract incapable of being enforced by this court.

Further submitted that any contract with the Defendant is a specie of contract with a public institution created by statute. That the right of an executive in the Defendant to contract on behalf of the Defendant must be established by reference to the constitution of the Defendant see *Nixon V Attorney General* (1931) ARC 184 and *Attorney General for Leylon V Silva* (1953) AC 461 where the courts mentioned that:

“The right of contract on behalf of the crown must be established by reference to statute or otherwise merely being a crown servant is not enough”

In this instant case, the central point of dispute between the parties was whether there was a valid contract entered between the claimant and the defendant.

The claimant in this case by his statement of claim that, in 2018, the Defendant engaged the claimant to collect Revenue from it's members in the 36 States of the Federation including FCT. The agreement between the parties was reduced in writing. The Defendant wrote a letter dated 11th June, 2018 that the claimant should commence operation of the contract on the 25th day of June, 2018. The Revenue collection agreement between Osoft Integrated Resources Ltd and APC dated 6-04-2018 was tendered and admitted in evidence as Exhibit A signed by Hon. Mai Mala Buni, the National Secretary and a letter dated 11th June 2018 by the same National Secretary addressed to Managing Director Osoft Integrated Resources Ltd for commencement of collection operations admitted in evidence as Exhibit B. That he also wrote a letter to the 36 States Chairmen of the Defendant including the FCT introducing the claimant as the agent for Revenue collection of

the Defendant membership dues/levies. The said letters were all admitted as Exhibit as Exhibit G to G37. Upon the letter by the Defendant to all the 36 States Chairmen including FCT Abuja, the claimant launched the Defendant's membership registration/revalidation and the online platform for payment of membership dues/levies said online platform for payment of membership dues/levies was also admitted in evidence as Exhibit e, Upon the online platform being raised, the claimant produced flyers in English, Hausa, Igbo and Yoruba Languages for mobilization of the Defendants members said tendered as Exhibits D. Upon the said flyers been raised the claimant sent it's staff to the 36 States of the Federation including FCT to discharge it's obligation as contained in the agreement.

That claimant avers that the consideration for the service was 20% of dues/levies collected as contained in appending 1 of the agreement.

Furthermore avers that the performance of the contract by the claimant was running smoothly as members of the Defendants paid dues/levies into the accounts of the Defendant (Zenith Bank 1015740325 and UBA – 1021325769 the receipts of payment together with invoices generated by the Defendants for services rendered to the Defendant were all admitted as Exhibits E,E1,E2 and E3 and F,F1 and F2 respectively.

The claimant avers that when the former National Chairman (Adams Oshomole of the Defendant took over from John Oyegun, the Defendant terminated the contract without justification by instructing the 36 Chairmen including the FCT of the Defendants not to deal with the claimant anymore. This is where the crux of this matter ensued or arose.

On this premise, it is the submission of the Defendant where he cited the case of AZUBUIKE & ANOR V GOVT. OF ENUGU STATE & ANOR (2013) LPELR – 20381 (CA) Where the court held thus:

“The central point of dispute between the parties was whether the award of the contract by the Chairman of the committee can be said to be an award made by the Enugu State Government or with its authorization? There was nothing to show the powers, functions and authorized activities of the committee, No evidence was led to show the objects and purpose the committee was established and authorized to pursue. There is No letter or any

other instrument from the Government of Enugu State conveying actual authority to the committee to locate and recover the properties of the central investment company Ltd (involuntary liquidation).

These is important because it will help to determine whether the state on whose behalf the agent acted can be bound by the action of the agent. There is no doubt that if the action is outside the authorized powers, functions and objects of the agency, the state cannot be bound by such action. It is therefore necessary that in any action against the government of state on account of a contract made by its agent, the plaintiff plead in the statement of claim and adduce evidence of facts showing its relationship with the government of the state and that the contract was made in pursuance of the purpose and objects for which it is set up and in exercise for the power and functions authorized by the state. This will help show the capacity to make the contract on behalf of the state one of the essential ingredient for the existence of a valid contract is the capacity of contract.

Furthermore referred the court to the case of **OBAIKE VS B.C.C PLC (1997) (1) NWLR (PT 525) 435** WHERE IT WAS HELD THUS:

A legally enforceable agreement which a contract is, has the following necessary ingredients,

- a. Offer**
- b. Acceptance**
- c. Consideration**
- d. Intention to create legal relationships and**
- e. Capacity to contract.**

It has been repeatedly held that these 5 (Five) necessary requirements must co-exist and a contract cannot in law be formed in the absence of any of the Five ingredients in part of the legal duty of the plaintiff to prove his case includes pleading facts in the statement of claim to show the existence of a legally enforceable contract

In the instant case, submitted that not only did this claimant fail to plead facts showing that the signatories to exhibit A indeed had the capacity to enter in such contract on behalf of the Defendant.

The claimant to debunk this claim by the Defendant submitted that, the burden of proof lies on the party who desires the court to give Judgment in his favour and who will lose where no evidence is adduced. Reference to section 131 and 132 of the evidence Act 2011, on this cited the case of OKOYE & ORS V NWANKWO (2014) LPELR – 23172 (SC) PG 34 Para A-D where the Supreme Court held as follows:

“Generally the burden of proof of establishing facts upon which legal rights and liability depends, in accordance with sections 135 and 136 of the Evidence Act, Cap 112 LFN 1990 (Now 2004 section 131-132 is in the person who asserts the facts section 131 (1) of the Evidence Act provides that whoever desires any court Judgment as to any legal right which liability is depended on the existence of facts which he asserts must prove that those facts exist. Section 132 of the same act provides further that the burden of proof in a suit in proceedings lies on the person who will fail if no evidence at all were given on either side”

On this it is the submission of the claimant counsel that all the averments in the written statement of Oath of PW1 were not discredited during cross-examination on the following grounds:

- a. Exhibit A is the contract agreement signed by the claimant and also signed by the principal officers of the Defendant pursuant to the said agreement.**
- b. Exhibit B is an instruction by the Defendants instructing the claimant to commence the performance of the said contract.**
- c. Exhibit G-G37 is a letter by the Defendant introducing the claimant to its 36 state Chairman including the PW1.**

Upon the receipts of Exhibit B, the claimant commenced the performance of the contract and established Exhibit C for online registration of the Defendants members and payment of dues and levies. The claimant produced Exhibit D in English, Hausa, Igbo and Yoruba Language which covered the 36 states including

the FCT. The claimant also initiated a program on the Defendants membership registration and payment of dues/levies online.

On this, I wish to state that, the normal test for determining whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other see AKINYEMI V ODUWA INVESTMENT CO. LTD (2012) 17 NWLR PT 209 (SC). To constitute a binding contract there must be undertaken and precise offer and an unconditional acceptance of the terms mutually agreed upon by the parties, thereto In other words, the parties to the agreement must be in consensus ad idem as regard the terms and condition freely and voluntarily agreed upon by them.

Furthermore, promise of cash must be supported by consideration see BEST (IG) LTD V B.H (NIG) LTD (2011) 5 NWLR (PT 1239) 95 SC.

To infer an acceptance, will be whether there has been an acceptance by one party of an offer made to him by another party of an offer made to him by other document that had passed between him or any which may be inferred from their contract see COOP DEV. BANK PLC V EKANEN (2009) 16 NWLR (PT 1168) 585 CA.

The principle of freedom of contract or laissez faire philosophy enjoins the court to enforce the intention of the parties as demonstrated from the agreement between them.

In the instant suit it is clear that exhibit A being the agreement signed by the claimant and the principal officers of the Defendant and pursuant to the said agreement, the Defendant instructed the claimant via exhibit B to commence the performance of the said contract. The Defendant also pursuant to the said contract introduced the claimant to it's 36 state Chairmen including FCT via exhibit G to G37. And upon the receipt of exhibit B, the claimant commenced the performance of the contract and established exhibit C for online registration of the Defendants members and payment of dues and levies. Furthermore to that the claimant produced Exhibit D in English, Hausa, Igbo and Yoruba language which covered the 36 states including the FCT. The claimant then launched a programe on the Defendants membership registration and payment of dues and levies online.

The above to my mind shows that the essential element that constitutes a binding contract has been made that is offer, acceptance, consideration and the intention to create legal relationship.

The argument by the learned Defendant counsel in its paragraph 5.09 of its written address to the effect that in Exhibit A, the claimant fails to plead facts showing that the signatories in the said exhibit A indeed had the capacity to enter into such contract on behalf of the defendant and that the said signature or contractual obligation by the defendant was not signed by the National Chairman, National Legal Adviser or Financial Secretary of the defendant, said who are supposed to sign such contract and that the Ratification of the National working committee was not obtained vide a Resolution on this, he stated that the claimant answered that it was an “indoor management” of the Defendant.

Furthermore, the learned defence counsel stated that it is the obligation of the claimant to plead the capacity of the signatories of exhibit A to contract on behalf of the defendant. That the claimant has the evidential burden to establish this through cogent credible evidence, submitted that on this the claimant failed to discharge this requirement of law. On this held that the contract was void.

Still on the above, submitted that the procedure as it ought to be was stated by DW1 where DW1 stated thus:

“A proposal being brought before the National working committee (NWC) of the defendant approved of the NWC preparation of the contract by legal department of the defendant signing of the contract by the National Chairman, treasurer and National Financial Secretary”.

Furthermore, the learned defence counsel submitted in paragraph 5.14 of the written address that on the face of exhibit A, and by the signatories shown thereon, and the apparent lack of pleadings and/or evidence adduced by the claimant to establish the authority of the said signatories, it is an invalid contract for reason of lack of authority and or capacity of the signatories to enter in the said contract on behalf of the court to the case of ITOWELL V FALMOUTH BOAT CONSTRUCTION CO. LTD (1951) AC 837.

In addition to this submitted that exhibit B which was issued allegedly by the National Secretary was issued without capacity to so do rendering said exhibit B the fruit of a poisonous tree? As such exhibit B cannot confer any legal right on the claimant capable of being litigated. On this referred this court to the case of BALIVE (NIG) LTD V NAVCON (NIG) LTD (2010) LPELR – 717 (SC) PP D Para B.

On this, I wish to state that on the entire exhibit A tendered being an agreement between Osoft Integrated Resources Ltd and APC there is nothing to show in the argument canvassed by the Defendant showing that the signatories to the contract must reflect all the above, i.e the National Chairman, National Legal adviser or Financial Secretary of the Defendant who are supposed to sign such contract and that the ratification of the National working committee, neither in the cause of the evidence is there a denial by the Defendant that the said signature of the National Secretary and Head Department of Legal service dated 6-4-2018 was either obtained by fraud or misrepresentation on the agreement it is clear from the said document exhibit A that the Defendants were represented by the National Secretary, Head Department of legal service, National Treasurer and the Chief of staff to the National Secretary were all the signatories to the said document not only being the signatories to the said contract were all the principal officers of the defendant i.e by Exhibit A.

That the claimant submitted that, that all the averments in the written statement on Oath of PW1 was not discredited during cross-examination. The Exhibit A is the contract agreement signed by the principal officers of the Defendant pursuant to the said agreement i.e the Defendant instructed the claimant vis Exhibit B to commence the performance of the said contract. On this it is in the evidence of DW1 when under cross-examination where he was asked to confirm whether the principal officers who signed the contract were principal officers of the Defendant but DW1 answered he was not sure if they actually signed the contract, all that DW1 stated was that the internal procedures of the Defendant for making its contract was not followed. This DW1 did not tender any document to proof the alleged internal procedures. But rather told the court that the Principal Officers who signed the said contract are supposed to sign contract between the Defendant and other party. Query who are the other party? This the Defendant has no answer. In view of the foregoing the learned claimant counsel submitted that the evidence of the claimant was not discarded hence remains fertile. Therefore hold that there is a valid contract between the claimant and the Defendant.

As I rightly stated in this Judgment that from the document presented exhibits A,B,C,D uphold Exhibit G to G32 it is clear that the essential ingredient of contract which are offer, acceptance, consideration and intention to create legal relationship had been well articulated by the evidence of PW1.

It is trite law that it is the duty of every reasonable citizen to honour the obligation in an agreement he has voluntarily entered into. Public policy in Nigeria supporting the fact that parties should be made to honour obligations entered into voluntarily between themselves see E.H INT. LTD V NERFUND (209) 8NWLR (PT 1144) 535 CA. It is equally trite that a party would not be allowed to enter into a transaction with the full knowledge of it's irregularity, take the benefit and then turn around to repudiate the transaction if there is one thing more that another which public policy refuses, it is that men of full age and competent outstanding shall have the utmost liberty of contracting and that their contracts when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of Justice. However parties to an illegal contract cannot seek any remedy over such illegal contract in court and no one can be allowed in good conscience and in equity to benefit from his own wrong and resile from a contract after taking the benefit there from. Therefore, when parties to a transaction are both at fault rendering the transaction irregular or faulty, it is said that the condition of the Defendant is better in that the claimant who is also at fault should stand no better chance in repudiating the transaction though found or if turned out to be irregular as he was also at fault see STANBIC IBTC BANK PLC V LGC LTD (2018) 10NWLR (PT 1626) 96 CA.

From the foregoing the evidence presented by the Defendant cannot be sustained in respect to relief One. Hence I resolve the issue in favour of the claimant/

On the relief 2 and 3 of the Claimant's claim it is clear that on receipt of Exhibit A being the contract agreement, and acting on Exhibit A the Defendant authorised Exhibit A instructing the claimant to commence the performance of the said contract, the letter dated 11th of June, 2018 that the claimant should commence operation of the contract on the 25th of June, 2018 was admitted in evidence as exhibit B its caption"

“The commencement of collection operation dated 11th June, 2018 by the National Secretary Hon Mai Mala Buni (APC) addressed to the Managing Director Osoft Integrated Resource Ltd representing the commencement of the operation in all the 36 states and the FCT on the 25th of June, 2018.

Based on the letter dated 25th June, 2018 the claimant commenced the performance of the contract and established exhibit C for online registration of the Defendants members and payment of dues and levies. The claimant who produced Exhibit D in

English, Hausa, Igbo and Yoruba Language which caused the 36states including the FCT and the programmed was launched on the Defendants membership registration and payment of dues and levies online.

It is therefore the duty of the parties to honour the obligation in an agreement he has voluntarily entered into. The principles of freedom of contract or laissez faire philosophy enjoins the court to enforce the intention of the parties as demonstrated from the agreement between them see COOP DEV BANK PLC V EKANEM (2009) 16 NWLR (PT 1168) 585 CA. The entire law of contract is founded on the “consensus” with theory of contract, which asserts that contractual obligations and by definition self-imposed and in terms of the function of the courts, finds expression in the idea that the exclusive case of a court in contract cases is to discover what the parties have agreed and give to it except in cases of mistaken, duress and illegality see COOP DEV. BANK PLC V EKANEM (SUPRA0.

In this instant case, there has not been any other agreement apart from exhibit A that has validated the terms reduced into writing by the parties.i.e Exhibit A unless there is another agreement which terms varies the agreement in Exhibit A.

The reasons given was that, when the former National Chairman (Adams Oshomole) of the Defendant took over from John Oyegun, the Defendant terminated the contract without justification by instructing the 36 Chairmen including FCT of the Defendant not to deal with the claimant anymore.

The Defendant in it’soral testimony testified that the signing of the contract was to be done in accordance to the APC board which constitute and not limited to the National working committee.

And by exhibit A, the agreement there is nothing to show that the National working committee is involved in the said contract. It is trite law that extrinsic evidence will not be allowed to contradict, vary or alter the effect of a written contract, see LAUSUEKO V PFIZER PRODUCTS LTD (2014) 12 NWLR (PT 1420) 96. Therefore oral termination of a duly signed contractual agreement cannot vary nor alter Exhibit A.

The primary duty of court as an impartial arbitrator is to interpretcontract entered into between parties in the light of their clear intention as conveyed by the agreement. I hold therefore that the agreement canvassed by the defendant counsel cannot stand.

The Defendant also raised the issue of an Arbitration clause in the agreement. Paragraph 26 of Exhibit A deals with dispute Resolution. This section provides thus:

26.1 Negotiated settlement and mediation.

“In the event of any dispute the parties shall seek to resolve any such dispute amiable between themselves or through a negotiated settlement and in the event of their inability to resolve the dispute as aforesaid, the parties shall explore a mediated settlement with both parties appointing one mediator who shall act as a catalyst nor resolution provided that where it is impossible to agree on a mediator, the logos court of Arbitration shall appoint one”

26.2 Arbitration

“If at any time the parties are unable to amicably resolve any disputes through negotiated settlement or mediation either party shall refer the matter to be finally settlement by arbitration in accordance with the Arbitration and conciliation Act Cap A18 LFN 2004, by Arbitration committee of three(3) Arbitrators, each party shall appoint one Arbitrator within seven(7) days of notice to commence arbitral proceedings and the two arbitrators shall appoint the third arbitration of either party does not appoint its own Arbitrator, such Arbitrator shall be appointed in accordance with the rules of the Arbitration and conciliation Act Cap A19 LFN 2004. The Arbitrator shall take place in locus Nigeria and be conducted in English Language and the parties shall bear the cost of arbitration equally.

On this, it is the submission of the learned counsel to the claimant, in it's written address paragraph 3.12 that it is sad that the defendant could treat the claimant the manner it did. Even when the claimant wrote to the defendant pursuant to the ruling of this court to explore the Arbitration clause in the agreement, the Defendant instead filed it's statement of defence thereby waiving its right to explore arbitration clause in the agreement in consonance with section 5(1) of arbitration and mediation Act 2023. Hereby the evidence of PW1 under cross-examination, he was asked exhibit A paragraph 26.1 provides for arbitration, have you been to Arbitration in this matter and the answer was Yes.

On this I wish to state that any application at all made to the court after specifically filing a defence amounts to taking steps.

In compliance with clause 26:2 dealing with arbitration, the claimant initiated a letter dated the 1st Feb, 2023 addressed to the National Chairman of APC 40 Blantyre Crescent Wuse 2 Abuja the letter caption:

“Notice to activate Arbitration clause as contained in Article 26.2 of the contract document between Osoft Integrated Resources Ltd and APC in the matter between Osoft Integrated Ltd V APC with suit NO: GWD/CV/82/22 pending before the FCT High Court.

And a letter of reminder dated the 18th April, 2023, addressed to the National Chairman of APC same acknowledged dated the 19-04-2023 in the office of the National Chairman of APC Headquarter reminding the National Chairman of APC pursuant to the ruling of this court on the 27th of January, 2023 on the arbitration clause as contained in Article 26.2 in the said agreement the claimant is bound by the Arbitration clause, hence it is notice to act at same.

The Defendant despite accompanying the said letter proceeded to file a defence to the claimant’s suit not minding clause 26.2 of Exhibit A meaning taking steps by filling his statement of defence.

Proceeding SEE OBEMBE V WEMABOD ESTATE LTD (1977) LPELR – 2161 (SC) The decision on the option available to a defendant in an action filed in breach of an arbitration agreement will allow parties who seeks to stay proceedings pending reference to arbitration to file their defence to arbitration agreement without waving their right to have the proceedings stayed. It is equally trite that an arbitration clause in an agreement generally does not oust the jurisdiction of court or ipso facto preclude parties from having recourse to the court.

In the instant case, despite the arbitration clause in exhibit A the defendant did not take the coverage of the clause but went ahead to file it’s defence to the claimant’s suit, thereby waving his right by filing a defence meaning that the defendant has waived his right to have the matter before an arbitration tribunal so I hold.

The defendant in it’s written address also raised the issue as to whether the claimant seeking declaratory reliefs failed to disclose burden, on this submitted that, a party seeking declaratory reliefs is only bound to succeed on the strength of his case and not on the weakness of the defence proffered against the said

declaratory reliefs on this referred the court to the case of ATTORNEY GENERAL OF CROSS-RIVER STATE V ATTORNEY GENERAL OF FEDERATION & ANOR. (2012 LPELR – 9333 (SC) PP. 72 PARA B. The Apex court held that:

“The above is clearly a declaratory relief sought by the plaintiff who has relied on the weakness of the defence if any see ALI UCHE V MARTINS ELECHI (2012) MRSCJ (VOL.1) 79 @ 104. In DUMEX NIG. LTD V NWAKHOBA (2008) 18 NWLR (PT 1119) 361 @ 373-374 this court pronounced that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence”.

The defendant’s counsel posits the following question:

“Whether or not the claimant herein discharged this burden”

On this answered in negative, and invited the court to interrogate the case made out by the claimant reference to paragraph 2:2 of Exhibit A (Payment and collection) On this submitted that the claimant was obligated to:

“.....deploy its customized membership portal and database and integration with the Remitta platform for the use of the platform user to facilitate delivery of electronic payment instruction to banks and collection of dues, levies, donations and other payments from members of the party both in Nigeria and in diaspora”

That by this provision, the claimant was obligated to do the following:

- a. Build and deploy a customized membership portal for the defendant.**
- b. Interrogate this portal with Remitta platform.**

Furthermore submits that the claimant would not have performed it’salleged contract with the defendant if it did not undertake the twin obligations listed in 5:219a) and (b) above. This he referred to Appendix 2, S/No 2 which states the duty of the claimant.

“Development and deployment of a customized membership portal and database with referencing system that is integrated to the Remitta payment gateway to aid members make payment directly on APC portal development by Osoft for this purpose?”

On this submitted that the claimant woefully failed to carry out this twin obligation. That keen evaluation of Exhibit C which the claimant purported to be evidence of the platform built for the defendant will reveal that exhibit is neither a customized electronic membership of the defendants nor is it shown to be a platform connected to Remitta.

Furthermore comments the court that exhibit C contains repetition of the same names which cannot be found in the membership register or portal same as in exhibit e the name Hauwa sent was repeated 4 times, AlkhamessBatureAbdullahiis repeated 2 times and Ibrahim AdamuSanusi is used inter-changeably 6 times that one of the names on this page exhibit C is testing pharmacy.

Furthermore that PW1, who testified under cross-examination stated that he does not belong to any political party, has his name contained on this same page 37 exhibit C the names of PW1 appears 10 times.

Furthermore, that in exhibit C there is no stamp of any one of Remitta which is customary to any transaction done on Remitta. That the claimant was also bound to interrogate the said platform with Remitta per exhibit A from the above submitted that Exhibit C is clearly a print out of a demo or dummy platform in its instant stage of development on this stated that PW1 during cross-examination denied being a member of the defendant but admitted that his name appeared more than 10 times in exhibit C because it was in the testing phase.

The defendant’s counsel further stated or submit that, the platform was still under construction and not the same thing as one that is fully developed. That on this, the claimant never provide a shred of evidence to show that indeed it developed and deployed the said platform as well as integrated it with Remitta.

That this is further buttressed by the failure of the claimant to perform the obligations in paragraph 3.2 of Exhibit A which states that:

“Subject to the provision of this agreement, Osoft shall grant an exclusive right of access to named authorized officers of the platform user to access and view the customized membership

portal and database platform, but not to alter same in whatever manner or form”

On this submitted that the claimant in its statement of claim, list the officers of the defendant whom it granted exclusive right of access to the fully developed and deployed platform? That as there was no such platform the claimant never bothered to plead facts and lead evidence to show that it indeed performed this crucial and vital part of the purported contract. On this submitted that this is fatal to the claimant's cause because it is good law that for a claimant seeking reliefs for breach of contract as the instant claimant, it must adduce strong evidence that it has fulfilled its own obligation under the contract as the instant claimant, it must adduce strong evidence that it has fulfilled its own obligation under the contract on this referred this court to the case of BIKAY ENGINEERING LTD V GOVERNOR OF ONDO STATE & ORS (2013) LPELR – 20890 (CA).

The argument of the learned defence counsel centered on exhibit G – G34 where the APC wrote a letter dated 13th June, 2018 to all the Chairman of the 36 states including the FCT. The letter Caption: APC membership dues/levies collection. Introduction of Osoft Integrated Resources Ltd as collection agents.

The letter Caption:

Please be informed that Osoft Integrated Resources Ltd is the APC membership Dues/Levies collection agent approved by the party to deploy the Remita system for the collection of membership dues and levies and other payments from existing and new members of the party.

Please assist them in any way possible to facilitate their operations signed Hon. Mal Mala Buni (National Secretary).

Based on the said letter exhibit C was generated containing service name, service description, service amount, Receiving Bank, Date created and date. The said Exhibit C or service description contains APC donation, APC penalty, APC dues and APC levy. It is therefore not out of place to see a name appeared four times or different head of service description on exhibit C. The question then is, is the defendant denying exhibit C which said Exhibit clearly shows the Bank or the Receiving Bank of the membership donation, APC Penalty, dues and levies?

On this it is the submission of the learned claimants counsel that paragraphs 4 of the statement of defence only exists in the imaginary world of the defendant, the

defendant did not only sign the formal contract but also wrote letters of introduction to the 36 states Chairman including FCT of the defendant. Defendant introducing the claimant as collection agent.

On the payment of membership dues, the claimant in paragraph 10 of it's statement of claim stated that the claimant avers that, the consideration for it's service is 20% of dues, levies collected as contained in the appendix of the agreement, clause II of the statement of claim provides thus:

“The claimant avers that the performance of the contract by the claimant was running smoothly as members of the defendant paid dues/levies into the account of the defendant (Zenith Bank 1015740325 and UBA 1021325769.

The defendant in it's defence claims that there is no remittance of the said dues/levies as the claimant did not tender Bank statement of the collection dues/levies as there was no compliance to Appendix 2,5 No 2 that is system that is integrated to the Remitta payment gateway to aid members make payment directly on the APC portal development by Osoft for this purpose” That exhibit C is neither a customized electronic membership of the defendant nor is it shown to be a platform connected to Remitta. On this, under cross-examination the defendant asked that in exhibit C fraudulent, frivolous, names that was imported to suggest Revenue collection on behalf of APC whereas, there is nothing that ever occurred i.e that actual collection never occurred. In answer the witness PW1 stated that, during the deployment of the APC collection portal, his company was asked to do a test run in all APC 36 states and FCT and they did the test run. Payment from my card to the management of APC including the National Chairman and chairmen in each of the offices to the defendant and the invoice. Further questions that as a follow up, is exhibit C a list of people that did the test run or the test of people that actually paid. In answer, that it is a list of people that actually paid.

Furthermore asked, that how can he separate it from exhibit C in answer he PW1 stated that exhibit C is all successful payment that can be traced on the Bank account as actual payment.

From the above question and answers it is clear that the dues/levies on exhibit C was the actual payment made through the Osoft Integrated resource Ltd portal to the designated Bank. Therefore hold that, the argument canvassed by the

defendants counsel cannot hold. Hence this issue is equally resolved in favour of the claimant.

On the claim that the defendant terminated the contract without justification. On this in paragraph 12 of the statement of claim it provides thus: That when the former National Chairman Adam Oshomole of the defendant took over from John Oyegun, the defendant terminated the contract without justification by instructing the 36 Chairman including the FCT of the defendant to deal with the claimant any more.

Here it trite that contract termination is the process of ending a contract before the obligation within it has been fulfilled by all parties.

In a legal parlance a contract when made can be terminated in the following circumstances.

1. In accordance with your contract, a contract may allow a party or both parties to elect to bring it to an end for no specific reason.

I, Termination for breach of contract

ii. Discharge by agreement

iii. Recision

iv. Force majeure

V. Frustration

VI Void contract

First of all as right set down in this Judgment, that a contract is a legally binding document that ties two or more parties to an agreed set of terms and conditions. They are the ground work for a business relationship, establishing each party's obligations. However, the involved parties must have an exit clause if their circumstances change and they cannot meet their agreed terms and conditions. Contract termination is legally ending a contract before one or more parties have met their obligation only the parties that have signed the contract can terminate the contract.

Typically, there may be an express or implied right to terminate the contract, allowing a party to cease the agreement under a termination clause before the

agreed end date usually, termination clause link to causes like a breach of contract and insolvency.

Now by exhibit A clause 13 deals with termination.

Clause 13:1 provides thus:

“Either party may only terminate this agreement by giving the other party not less than three(3) months written notice of its intention to do so”.

13:2 Notwithstanding any provision in this agreement, any termination of this agreement after the completion of implementation and use of the system Osoft shall remain entitled to the payment 5(5) due to it as and when due in accordance with the provision of this agreement”

13:3 the right given by this clause to terminate this agreement shall not prejudice any other right or remedy of either party in respect of the breach concerned or any other breach.

Clause 13:3 If the platform user or Osoft pursuant to this clause terminates the whole of this agreement before completion of obligation to either party, the parties shall commission a consensus nominee of both parties to undertake an independent assessment of the value of work done and the accrued payment due to either party and the parties agree to comply with the result of such assessment.

In this instant suit the termination was not in accordance to the provision set above, it was as a result of change of leadership of the party. There was no compliance with the set down section, reproduced above. Hence the termination of the said contract was wrong and entitle the claimant to seek for damages.

On this it is the defence of the learned counsel to the defendant when he submitted that for a claimant to seek reliefs for breach of contract it must adduce strong evidence that he has fulfilled its own obligation under the contract on this referred this court to the case of BIKAY ENGINEERING LTD V GOVERNOR OF ONDO STATE & ORS (SUPRA) where the court hold thus:

“It is an action for breach of contract it is necessary for a plaintiff to plead facts showing the existence and subsistence of a valid contract as well as its express or implied terms. It is also necessary to show what or which of its terms was breached and in what

manner i.e particulars of breach. A party seeking to enforce rights under a contract must show that all that was needed to be fulfilled by it had been fully performed. All such terms requiring to be performed are conditions precedent to the enforcement of any right there under. Therefore the onus is on the party who asserts breach of contract to prove same before the burden will shift to the other party”

Furthermore submit that, if the claimant was not satisfied turning in evidence that undercut his claim for damages against the defendant, it offered up the icing on the cake in the form of exhibits EE1 – 3 and Exhibits F, F1 and F2.

That PW1 testified that there were evidence of payment for printing fliers and other promotional materials that was it for a demo/dommy platform unconnected to Remitta? Do these exhibits in themselves prove that the claimant paid for anything?

To strengthen it's argument submitted that, the claimant had a duty to show through evidence that those invoices were issued after money had passed from it to the issuing entities. That the claimant should have done this by presenting copies of debit from its bank statement which would reveal actual debits from the claimants account. That why did this claimant fail to avail this court with such crucial evidence? Does it have something to hide? Are these invoices manufactured evidence to hoodwink it is court into granting sums the claimant never actually spent as claimed? On these urge this court to discountenance the so called invoices as they do not prove any aspect of the claimant's case. In totality contend that the claimants case is bound to fail for lack of credible and cogent evidence to prove the case put forward by the claimant let alone meet the threshold of declaratory reliefs sought hence urge the court to dismiss this suit.

In response by the learned claimant counsel submitted that there is a valid contract between the claimant and defendant and pursuant to the said contract, the claimant commenced the performance of the contract at the behest of the defendant and he unceremoniously terminated the contract and the claimant demanded for the cost it incurred in performing the contract. But the defendant deliberately refused to pay the claimant the quantum meruit even after writing several demand letters.

Furthermore, on this submitted that, there is no evidence that the said contract was obtained by fraud, mistake, deception or misrepresentation. That a party cannot ordinarily resile from a contract just because he later found that the terms of the

contract are not favorable to him. This he referred to the case of ATTORNEY GENERAL RIVERS STATE V ATTORNEY GENERAL AKWA IBOM STATE (2011) 8NWLR (PT 1248) where the Supreme Court desirable as the doctrine of sanctity of contract.

Further submitted that, exhibit B is a clear documentary evidence that the defendant induced the claimant to commence the performance of the contract consequent upon which the claimant incurred cost and therefore by the doctrine of e stopped a man is not allowed to blow hot and cold to affirm at one time and deny at the other or appropriate and reprobate. A contract will be stopped if it is clear and unequivocal and must have led the other party to suffer loss.

To strengthen it's argument, submitted that exhibits E-E3 and exhibits F-F2 was the cost incurred by the claimant in performance of the contract and that the claimant is entitled to be paid the said amount which it expended in performing the contract at the behest of the defendant. This amount was what the claimant expended to commence and was not disputed and remains unchallenged. On this referred the court to the case of ALTOTRIN LTD V ATTORNEY GENERAL OF FEDERATION (1966) 9 NWLR (PT 475) P. 659 Paragraphs D – E the Supreme Court held thus:

“The law is settled that, where a plaintiff can prove the contract is admissible in evidence of the value of the services rendered and he may recover on a quantum meruit basis, put differently, where work is done or services are rendered by the plaintiff, at the request of the defendant and of which the defendant has the benefit, the plaintiff can recover the value of the work done or service rendered in quantum meruit”.

Further submission, that the claimant in this case has rendered service at the request of the defendant pursuant to the said contract. The claimant therefore is entitled to be paid for the costs incurred in performing the contract see SAVANNAH BANK (NIG) PLC V OPANUBI (2004) 15 NWLR (PT 896) PG. 437 and FBN PL V OZOKWERE (2014) 3 NWLR (PT 1395) 439.

Now to the statement of claim of the claimant paragraph 13,14,15,16,17,18,19 and 20 reproduced below:

- Para.13: That the claimant avers that it paid N12, 800,000.00 (Twelve Million Eight Hundred Thousand Naira) to produce flyers for the execution of the contract same were admitted in evidence as exhibit D.
- Para. 14: The claimant avers that it paid another N26, 000,000.00 (Twenty Six Million Naira) only to produce another set of flyers for the execution of the contract.
- Para. 15: The claimant avers that it also paid N21, 000,000.00 (Twenty One Million Naira) only to produce another set of flyers for the execution of the contract.
- Para. 16: That the claimant avers that it paid N23, 170,000.00 (Twenty three Million, One Hundred and Seventy Thousand Naira) only to produce final setoff flyers and Banners.
- Paragraph 17: The claimant avers that it expended N18,250.00 (Eighteen Million, Two Hundred and Fifty thousand Naira) only for the development and deployment of customized membership portal Database and membership status verification interface for the online registration and payment of dues/levies by members of the Defendant.
- Paragraph 18: The Claimant avers that it expended the sum of N12, 620,000.00 (Twelve Million, Six Hundred and Twenty Thousand Naira) only for site optimization (SEO Awards), facebook Aids 6M-10M likes Twitter Trend, Instagram AOS and influencers.
- Paragraph 19: The claimant avers that it expended N2, 554,913.00 Two Million Five Hundred and Fifty Four Thousand, Nine Hundred and Thirteen Naira) only.
- Paragraph 20: The claimant avers that through its alter ego (Amos Olobo) wrote letter of Demand demanding for payment of N116,597,913.00 (One Hundred and Sixteen Million, Five Hundred and Ninety Seven Thousand, Nine Hundred and thirteen Naira) only being the amount the claimant expended in executing the contract before the contract was terminated by the Defendant without justification on this under cross-examination by the Defendants counsel to PW1 he asked “There is no letter from APC terminating the alleged contract for Revenue collection”.

In answer PW1 stated that No there was no letter but there was a publication issuing another letter to another company.

This the Defendant in its statement of Defence denied paragraph 20 and further denied owing the claimant the sum of N116,597,913.00 (One Hundred and Sixteen Million, Five Hundred and Ninety Seven Thousand, Nine Hundred and Thirteen Naira) or any other sum for this matter.

Based on the foregoing can the claim of the sum of N116, 597,913.00 be sustainable against the defendant in favour of the Claimant?

On this I will say Yes that by the statement of claim of the claimant it is clearly stated that, the agreement between the claimant and the Defendant was reduced in writing, the Defendant wrote, in a letter on the 11th of June,2018 that the claimant should commence operation of the contract on the 25th of June,2018. It is also on record that, the Defendant wrote letters to the 36 States Chairman of the defendant including FCT to introduce the claimant is the agent for Revenue collection of the defendant's membership dues/levies. It is also on record that based on the said letter, the claimant launched the Defendant's membership registration/revalidation and the online platform for payment of membership dues and levies. It is also on record that the claimant produced flyers in English, Hausa, Igbo and Yoruba Languages for mobilization of the Defendants material also that its staff to the 36 States of the Federation including FCT to discharge it's obligation as contained in the agreement and the payment was made into the accounts of the Defendant (Zenith Bank – 1015740375 and UBA – 1021325769. On this under cross-examination the Defendant asked whether the claimant witness have copies of the Banks statement attached to show the inflow of the alleged dues. On this answered that we don't have the Bank statement before the court.

From the evidence, Exhibits before the court hold that the claimant had discharged all the burden placed before it on the reliefs sought therein in its claim. As there is no auto of doubt during the hearing or testimony of this case that will warrant this court from granting the reliefs sought there.

In view of the foregoing I shall grant reliefs I – V of the claimants claim.

On reliefs VI being general damages of N40,000,000 (Forty Million Naira) only, on this I wish to state that the object of an award of general damages is to compensate plaintiff as far as money can do, for the damages, loss or injury he has suffered. The guiding principles is restitution integrum.

This envisages that a party which has been indemnified by the act which is called in question will be put in the position he would have been if he had not suffered the wrong which he is being compensated for, the loss inevitably unavoidably flowing from the breach, see MTN (NIG) COMM. LTD V CORPORATE COMM. INV. LTD (2019) 9NWLR (PT 1678) 427 SC.

In the award of general damages a wide spread power is given to the court comparable to the exercise of discretion of the court. It is enormous and far reaching. The measure of general damages is awarded to assuage such a loss which flows naturally from the defendants act. It suffices if it generally averred. It is presumed to be the direct and probable consequence of that complained of.

In view of what I have said on this Judgment, the claimant is entitled to general damages, on this I award the sum of N5,000,000 (Five Million Naira) only against the defendant while on the issue of exemplary damages of N20,000,000 claimed by the claimant is hereby refused, like wise the claim of N5,000,000 being cost of this suit, as nothing was presented nor evidence adduced in respect of same for the court to be convinced to award such an amount to the claimant hence also two heads of claim have failed and are not capable of any award by this court.

On this he relied on the following authorities on the cost of action. The law is that the claim should have been specifically proven before it can be awarded. It is not clear whether the sum claimed is legal fee paid to the court or out of pocket expenses.

In Divine Ideas Ltd V Umar (2007) All FWLR (pt 380) @ 1509 Paragraphs A-D the court of Appeal Abuja Division held thus:

“Cost of action or solicitors fees are in the realm of special damages which must be specially pleaded and strictly proved. In the instant case, the applicant did not specially and specifically plead the detail of the amount of money expended by it in the prosecution of the litigation. In the trial court it also did not adduce any evidence in proof of this”.

It is also deemed that this non-specific claim has been abandoned. The appellant is therefore not entitled to be awarded any amount as general damages and or cost of the action. In the trial court Also in GUINNESS (NIG.) PLC V NWOKE (2000) 5 NWLR (PT 689) 140 @ para C per Ibitoye JCA held:

“It is unethical and an affront to public policy for a litigant to pass on the burden of his solicitors fee to his approval on suit”.

In the light of the above, I hold that whatever cost of prosecuting this action stands for it is not grantable by this court as no such claim was proved before me.

This court is not a Father Christmas and moreover this is just July, December is not near at all. The head of claim is hereby dismissed.

In the final analysis of the Judgment of this court, I hold that the claimant has proved it's case and I therefore grant the following.

I grant reliefs i, ii, Iii, iv and v on relief vi, I hereby grant the sum of N5, 000,000 as general damages while reliefs vii and Viiiare hereby refused.

This is the Judgment of this court.

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Hon Justice A. Y. Shafa

Appearance:

1. Lesley A. Mukoro for the claimant.
2. AyodejiIbekun holding the brief of AbdulkarimArobo for the defendant.