

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/0175/2017

BETWEEN:

ZIPLON CONCEPT LIMITED.....CLAIMANT/APPLICANT

VS

- 1. GOVERNMENT OF ABIA STATE**
- 2. ATTORNEY GENERAL OF ABIA STATE**
- 3. HON. MINISTER OF FINANCE...DEFENDANTS/RESPONDENTS**

RULING

Before the court are two Motions, the first with No. M/11226/2020 dated 26/10/2020 but filed on 27/10/2020 by Claimant/Applicant and the other with No. M/027/2021 dated 28/12/2020 but filed on 6/1/2021 by 1st /2nd Defendant /Applicant. The 1st/2nd Defendant/Applicant Motion is on issue of jurisdiction and shall be considered first before proceeding to determine the Claimant/Applicant's Motion.

1st/2nd Defendant/Applicant Motion is brought pursuant to Order 43 Rule 1 (1) & (2) of the Rules of Court 2018 and Section 6 (6) of the 1999 Constitution of Nigeria (As Amended) seeking the following;

- (1) An Order of the Hon. Court vacating or setting aside the Interim Order of Court made on 8th December, 2020 for want of jurisdiction.
- (2) The Omnibus Relief.

The ground upon which the application brought is that the subject matter of the Interim Order pertains to the revenue of the Government of the Federation and the Federal High Court has exclusive jurisdiction with respect thereto.

In support of the Motion is a Seven (7) Paragraph affidavit deposed to by Chinedum Amanamba, Senior State Counsel in Chambers of the Attorney General of Abia State with one Exhibit annexed and marked "A". Also filed a Written Address, adopts the said Address.

The Claimant/Respondent did not file a counter-affidavit to the Motion but her counsel, Learned Silk, J.C. Njikonye (SAN) submits that 1st/2nd Defendant/Applicant did not respond to the issues raised as to the disposition of counsel to 1st/2nd Defendant in their counter-affidavit to Claimant's Motion and that same counsel to 1st/2nd Defendant also deposed to the affidavit in support of the Motion to set aside, therefore those argument are deemed uncontested.

In the Written Address of 1st/2nd Defendant/Applicant settled by P.U. Ogubunka, Esq, only one (1) issue was submitted for determination and that is;

“Whether the Court had the jurisdiction to grant the interim application preservative orders of 8th December, 2020”.

And submit Section 251 (1) (A) of the 1999 Constitution vest exclusive jurisdiction on the Federal High Court with respect to matters relating to the revenue of Government of the Federation in which the said Government or any organ thereof or person suing or being sued on behalf of the said Government is a party. That the subject matter of the interim orders granted relates to revenue of Government of the Federation in which an organ thereof or a person being sued on behalf of Federal Government is a party. Submit the court where Claimant can sue the Director, FAAC in the office of Accountant General of the Federation for funds which is subject matter of the application is Federal High Court and not the FCT High Court because the application relates to funds which form part of the revenue of Government of the Federation, refer to case of CBN Vs Kakuri (2016) LPELR – 41468 (CA).

Having considered the submission of counsel, authorities cited and Exhibit annexed, the court finds that only one (1) issue calls for determination;

“Whether or not 1st/2nd Defendant/Applicant has made out a case and entitled to the reliefs sought”.

The grant or otherwise of an application of this nature is at the discretion of court which must be exercised judicially and judiciously. And to be able to do so, the Applicant must place before the court cogent facts to rely on. In Anachebe Vs Ijeoma (2015) ALL FWLR PT. 784 183 at 195 Para D – F, the Apex Court held;

“The discretion vested in a court is required to be exercised judicially and judiciously as it entails application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is not an indulgence of a judicial whim, but the exercise of judicial Judgment based on facts and guided by the law or the equitable decision”.

Overtime, the court have stated the grounds upon which it may set aside its Judgment or order. They are:

- (1) When the Judgment or order is obtained by fraud or deceit on the court or one or more of the parties.
- (2) When the Judgment is a nullity.
- (3) When it is obvious that the court was misled into giving Judgment under mistaken believe that the parties consented to it.
- (4) When the Judgment or order is given in the absence of jurisdiction or when the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate decision.

See Babale Vs Eze (2012) ALL FWLR PT 635, 287 at 341 Paras c – G. See also Igwe Vs Kalu (2002) ALL FWLR PT 122, 1.

In this instant application, 1st/2nd Defendant Applicant are praying the court to vacate or set aside its interim order made on 8th December, 2020 for lack of jurisdiction because Section 251 (1) (A) of 1999 Constitution vest exclusive jurisdiction on the Federal High Court with regards to matters

relating to revenue of Government of the Federation in which the Government or any organ thereof or person suing or being sued on behalf of the Government is a party. That the subject matter of the interim orders granted relates to revenue of the Federal Government in which an organ thereof or a person being sued on behalf of Federal Government is a party. Also that Claimant can only sue the Director FAAC in the Federal High Court and not the FCT High Court.

Section 251 (1) (A) relied upon by 1st /2nd Defendant/Applicant provide;

Section 251 (1) "Notwithstanding anything to the contrary 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 shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(A) Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party....."

A critical perusal of this Provision clearly reveals that it does not apply to the case at hand. This is because the interim orders of court granted on 8th December, 2020 does not relates to the revenue or funds of the Federal Government as canvassed by 1st/2nd Defendant/Applicant, rather are funds of Abia State Government in custody of the Federal Government. Therefore, the argument of Learned Counsel for 1st/2nd Defendant Applicant is a misconception and misapplication of the Provision of the

Section 251 (1) (A) of the 1999 Constitution. The case of CBN Vs Kakuri (Supra) cited and relied on by counsel also not applicable to this case.

On the argument that Claimant can only sue the Director, FAAC at the Federal High Court and not the FCT High Court, this argument by counsel is not tenable. I say so because it is settled law with Plethora of Judicial authorities that Section 251 (1) of the 1999 Constitution does not extend to actions based on simple contract. See the case of NNPC Vs SLB Consortium (2008) NWLR PT 1113, 297 at 304. See also FCE, Oyo Vs Akinyemi (2008) 15 NWLR PT 1109 21 at 30.

From all of these, I find this application of 1st/2nd Applicant is lacking in merit and it is hereby dismissed.

Now to the second Motion filed by Claimant/Applicant, brought pursuant to Order 42 Rules 1 and 2 of the Rules of Court 2018, Section 10 (c) and 15 (1) High Court Act Cap 510, LFN 2004. And Section 6 (6) (A) Constitution of the Federal Republic of Nigeria (As Amended) seeking the following orders.

1. AN ORDER OF COURT RESTRAINING the Director,

Federation Accounts Allocation Committee (FAAC) in the Office of the Accountant-General of the Federation (OAGF) from paying directly to the 1st Defendant/Respondent or her agents, agencies or banks the 1st Defendant/Respondent's share of the refund due to 1st Defendant/Respondent from sums short changed/underpaid the 1st Defendant/Respondent of revenue due it by way of statutory allocation from the Federation

Account in the months of September, October and November, 2010 now adjudged due and payable to the affected Oil Producing States by virtue of the Federal High Court Judgment dated 17th day of December, 2019 in Suit No. FCHC/ABJ/CS/416/2019, **UNTIL** the Defendants/Respondents fully comply with the Interlocutory Orders of this Honourable Court dated 2nd October, 2018, pending the determination of the substantive Suit.

2. AN ORDER OF COURT MANDATING the **Director, Federation Accounts Allocation Committee (FAAC)** in the Office of the Accountant-General of the Federation (OAGF) to paying into an interest yielding escrow account for safe-keeping and preservation the 1st Defendant/Respondent's share of the funds due the 1st Defendant/Respondent from sums short changed/underpaid the 1st Defendant/Respondent of revenue due it by way of statutory allocation from the Federation Account in the months of September, October and November, 2010 now adjudged due and payable to the affected Oil Producing States by virtue of the Federal High Court Judgment dated 17th day of December, 2019 in Suit No. FCHC/ABJ/CS/416/2019, **UNTIL** the Defendants/Respondents fully comply with the Interlocutory Orders of this Honourable Court dated 2nd October, 2018, pending the determination of the substantive Suit.

Any further or other orders that the Honourable Court may deem fit to make in the interest of justice.

GROUND UPON WHICH THE APPLICATION IS BASED

- i. Sometimes in 2011, the 1st Defendant/Respondent engaged the services of the Applicant to recover from the Federal Government of Nigeria, wrongful deductions made by the Federal Government on the 1st Defendant /Respondent's Statutory Allocations by way of First Line Charges purportedly for the Foreign Loan Services, especially on Paris Club Debt Services and Debt Exit Payments.
- ii. Promptly after the engagement of the Applicant by the 1st Defendant/Respondent the Applicant swung into action to execute the assignment. The Applicant made a monumental discovery to the effect that rather than being indebted to the Federal Government, the 1st Defendant/Respondent was entitled to refunds from the Federal Government.
- iii. The Applicant established that the Federal Government was indebted in the sum of \$318,900,446.76 to the 1st Defendant/Respondent.
- iv. The Federal Government has refunded more than ₦16,347,090,392.44 (Sixteen Billion, Three Hundred and Forty-Seven Million, Ninety Thousand, Three Hundred and Ninety Two Naira, Forty Four Kobo) to the 1st Defendant/Respondent

in several tranches as a result of the discovery made by the Applicant.

- v. The 1st Defendant/Respondent has failed and or refused to pay the Applicant's Consultancy Fee from the monumental refunds it has thus far received despite several and repeated demands by the Applicant.
- vi. Consequently, the Applicant commenced this Suit, resulting to the Interlocutory Preservative Orders of court dated 2nd October, 2018.
- vii. The Defendants have connived amongst themselves and 3rd Defendant/Respondent failed, neglected and refused to obey court order of 2nd day of October, 2018 till date.
- viii. The Applicant has got wind that the **Director, Federation Accounts Allocation Committee (FAAC)** in the Office of the Accountant-General of the Federation (OAGF) is about to pay the 1st Defendant/Respondent a minimum sum ₦120,000,000.00 (One Hundred and Twenty Million Naira) only being the 1st Defendant/Respondent's share of the refunds due to the 1st Defendant/Respondent from sums short changed/underpaid the 1st Defendant/Respondent of revenue due it by way of Statutory Allocation from the Federation Account in the months of September, October, and November, 2010 now adjudged due and payable to the affected Oil Producing States by virtue of the Federal High Court Judgment

dated 17th day of December, 2019 in Suit No. FHC/ABJ/CS/416/2019.

- ix. Except this Honourable Court intervenes by making the Orders sought, the Defendants would not voluntarily obey the Interlocutory Orders of this Court dated 2nd October, 2018 thereby holden the Court in Contempt.
- x. The Defendants/Respondents have a duty to obey the Order of this court dated 2nd October, 2018.
- xi. From the antecedent of the 1st Defendant/Respondent, once it receives the payment now sought to be preserved, it would dissipate same and the Defendants/Respondents would continue to hold the court in contempt.
- xii. The sum sought to be preserved does not form part of the 1st Defendant/Respondent's monthly Statutory Allocation. It is lost fund which the 1st Defendant/Respondent would otherwise not have been aware of but for the Judgment of the Federal High Court dated 17th day of December, 2019 in Suit No. FHC/ABJ/CS/416/2019.

The Motion is supported by a 21 Paragraph affidavit deposed to by Patrick Mokogwu, a Director of the Claimant with two Exhibits annexed and marked "A" and "B". Also filed a Written Address and adopts the said Written Address.

In response, 1st/2nd Defendant filed a 16 Paragraph counter-affidavit dated 6/1/2021 sworn to by Chinedum Amanamba Esq, Senior State Counsel in the Chambers of the Attorney –General of Abia State Ministry of Justice with Four Exhibits attached and marked “A” – “D”. Also filed a Written Address and adopts the Address.

The 3rd Defendant did not file any process in response to the Motion and was not represented at the hearing of the application.

In the Written Address of Claimant/Applicant, Learned Silk for Claimant/Applicant, J.C. Njikonye (SAN), formulated a sole issue for determination:

“Whether the Applicant is entitled to the Interlocutory Preservation Order sought by the Applicant in its application”.

And submit that in a consideration of the facts contained in the supporting affidavit, Claimant/Applicant is entitled to the court’s discretion in its favour. That in exercising its discretion, the court is guided by the need to preserve the dignity and sanctity of court and its orders and prevent a situation where orders are treated with contempt and impunity. Submit the Defendant’s conduct is contemptible in that 3rd Defendant blatantly refused to obey an extant order of court made on 2nd October, 2018. That Order of Court must be obeyed until set aside. Commend the court to several judicial authorities; Mobil Oil (Nig) Ltd Vs Assan (1995) 8 NWLR PT. 412 129 at 143, F.A.T.B Vs Ezegbu (1992) 9 NWLR PT. 264, 132, Ezekiel Hart Vs Ezekiel –Hart (1990) 1 NWLR PT 126, 276, Governor, Lagos State Vs

Ojukwu (1986) 1 NWLR PT. 18, 621, Odogwu Vs Odugwu (1992) 2 NWLR POT225, 539, Shugaba Vs UBN Plc (1999) 11 NWLR PT 627m 459.

Further submit the Rules of court and High Court Act empower the court to make orders for the preservation of the Res in the circumstances sought by Applicant and refer to Order 42 Rules (1) (2) of Rules of Court, Sections 10 (c), 15 (1) High Court Act and case of Kigo Vs Holman (2001) 47, 1 at 12 and 13.

In the Written Address of 1st/2nd Defendant settled by P.U. Ogubunka, 1st/2nd Defendant adopts the sole issue formulated by Claimant/Applicant with slight modification and that is;

“Whether the Claimant/Applicant is entitled to the Orders sought in the application”.

And submit that an Interlocutory application for preservative orders raises issue of exercise of discretion by court, which is to be exercised judicially and judiciously, refer to Ogunsola Vs Usman (2000) 14 NWLR PT 8788, 636 at 653, Adenuga Vs Odumeru (2001) 10 WRN 104 (SC), Stallion Vs EFCC (2008) 7 NWLR PT 1087 461 at 474. That in the instant, the orders sought, with regard to 1st Defendant’s share of refund from sums short changed/underpaid the 1st Defendant of revenue due it by way of Statutory Allocation, is not endorsed in the Writ of Summons and its not live issue between parties in the substantive Suit and person against whom the order is sought not a party in the substantive Suit. Further that the Suit did not join the Director, FAAC as party nor endorse any claim against the person whom the orders are sought. That court has no power to grant an order

against person who is not party to a Suit, refer to Abdullahi Vs Adetutu (2012) LPELR – 7973 (CA), Ayogu Vs Nnamani (2004) LPELR – 11013 (CA). Submits this application is predicated on the Ruling of Court on 2nd October, 2018, and appeal duly lodged and entered at Court of Appeal against the Ruling and the court would cease to have jurisdiction to hear any application when the records of appeal is received at Court of Appeal and refer to SPDCN Vs Amadu (2011) 14 NWLR PT 1226 157 at 193.

Having considered this instance application, the affidavit, submission of both counsel, judicial authorities cited and the annexed Exhibits, the court finds that only one (1) issue calls for determination which is;

“Whether or not on the face of the affidavit evidence, the Claimant/Applicant has established a case to be entitled to the reliefs sought”

Again, the grant or otherwise of this application is at the discretion of the Court which must be exercised judicially and judiciously taken into cognizance of the facts placed before the court. See Anachebe Ijeoma (Supra).

In this instance application, Claimant Applicant contend that sometime in 2011 was engaged by 1st Defendant to recover from Federal Government wrongful deductions made on its Statutory Allocations by way of 1st line charges purportedly for Foreign Loans Services especially on Paris Club Debt Services and debt exit payments. After the engagement, swung into action and made monumental discovery to the effect that rather than being indebted to Federal Government, 1st Defendant was entitled to refunds.

That Claimant/Applicant established the Federal Government was indebted to 1st Defendant in the sum of \$318,900,446.76 and Federal Government has refunded more than ₦16,347,090,392.44 in several tranches as a result of the discovery made by Claimant/Applicant. That 1st Defendant has failed and or refused to pay Claimant/Applicant consultancy fee from the monumental refunds it has received so far despite several and repeated demands. That consequent upon this, Claimant/Applicant commenced this Suit resulting to the Interlocutory preservative orders of court on 2nd October, 2018. That Defendants have connived amongst themselves and 3rd Defendant fails, neglected and refused to obey order of court of 2nd October, 2018. That they got wind that the Director, FAAC is about to pay minimum sum of ₦120,000,000 to 1st Defendant in the months of September, October, and November 2010. That the sums sought to be preserved does not form part of 1st Defendant monthly Statutory Allocation but its lost fund which 1st Defendant would otherwise not have been aware of but for the Judgment of the FHC. All these averments are contained in Paragraph 6 – 17 of the Claimant/Applicant's affidavit.

1st Defendant, on the other hand, had contended the Paris Club refund to states was the result of normal financial relations between States and Federal Government and not the result of any unilateral exertion by Claimant. That Federal Government never claimed that 1st Defendant is indebted to it, that the refund pertained to the 36 States and the FCT and not peculiar to 1st Defendant. Further that contrary to the claim of Claimant/Applicant, the refunds were specific to excess deduction on account of States in respect of the Paris Club servicing and was the result of

combined efforts of a Committee of the Nigerian Governors Forum, the Finance Minister and the Debt Management Office. That Defendants did not neglect or refuse to obey Order of Court on 2nd October, 2018, rather 1st/2nd Defendant filed an appeal at Court of Appeal to determine jurisdiction of the court to issue the said order. Further that the said funds in respect of which the preservation orders were granted were no longer in the custody of 3rd Defendant. Also contend, the Director, FAAC is not party to this Suit and no reliefs sought against the Director, FAAC in the substantive Suits. Also that the Defendants were not parties in the Suit at the FHC. See Para 8, 9, 10 1, 12 of the counter-affidavit.

I have carefully considered the affidavit evidence before me and find that this is an occasion where the court should exercise its discretion in favour of Claimant/Applicant. First, the fact that 1st/2nd Defendant has filed an appeal or that an appeal has been entered does not operate as a stay. See *Olori Motors Co Ltd Vs UBN Plc* (2006) 10 NWLR PT 989 586 at 594 (SC). See also *NI CVs Oyefesobi & Ors* (2013) PLELR – 20660 (CA). In any event, there is no proof that the appeal has been lodged nor entered before this court.

All the other issues raised by the 1st Defendant are in the view of court, issues for the substantive suit.

In all, having considered the affidavit evidence, the court hereby ordered as follows:-

1. An Order of Court restraining the Director, Federation Accounts

Allocation Committee (FAAC) in the Office of the Accountant-General of the Federation (OAGF) from paying directly to the 1st Defendant/Respondent or her agents , agencies or banks the 1st Defendant/Respondent's share of the refund due to 1st Defendant/Respondent from sums short changed/underpaid the 1st Defendant/Respondent of revenue due it by way of statutory allocation from the Federation Account in the months of September, October and November, 2010 now adjudged due and payable to the affected Oil Producing States by virtue of the Federal High Court Judgment dated 17th day of December, 2019 in Suit No. FCHC/ABJ/CS/416/2019, until the Defendants/Respondents fully comply with the Interlocutory Orders of this Honourable Court dated 2nd October, 2018, pending the determination of the substantive Suit.

2. An Order of Court mandating the Director, Federation Accounts Allocation Committee (FAAC) in the Office of the Accountant-General of the Federation (OAGF) to pay to the Chief Registrar of the FCT High Court the 1st Defendant/Respondent's share of the refunds due the 1st Defendant/Respondent from sums short changed/underpaid the 1st Defendant/Respondent of revenue due it by way of statutory allocation from the Federation Account in the months of September, October and November, 2010 now adjudged due and payable to the affected Oil Producing States by virtue of the Federal High Court Judgment dated 17th day of December, 2019 in Suit No.

FCHC/ABJ/CS/416/2019, until the Defendants/ Respondents fully comply with the Interlocutory Orders of this Honourable Court dated 2nd October, 2018, pending the determination of the substantive Suit in the interest of Justice and in line with the Order of this Hon.Court dated 2nd October, 2018.

The said sums to be paid by the Chief Registrar into an interest yielding account for preservation pending the final determination of the substantive Suit. I so order.

This is the Ruling of the Court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

15/3/2021

APPEARANCE:

J.C. NJIKONYE (SAN) FOR THE CLAMANT/APPLICANT

C.I. AMANAMBA ESQ FOR THE 1ST /2ND DEFENDANT/RESPONDENT

NO REPRESENTATION FOR THE 3RD DEFENDANT.

