

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: FCT/HC/CV/1092/2021

BETWEEN:

1. IFEANYI IJEOMA UDEAJA }
2. OSINACHI PRAISE UDEAJA }CLAIMANTS

AND

1. INSHA-ALLAHU ASSETS MANAGEMENT & INVESTMENT COMPANY LIMITED }
2. INSHA-ALLAHU IMPORT & EXPORT LIMITED }DEFENDANTS
3. PEACEFUL PEACE IMPORT AND EXPORT LIMITED }

JUDGMENT

By the endorsement of claim on the writ of summons, the claimant claims as follows:

- (a) A declaration that the defendants are jointly and severally in fundamental breach of the "Investment Agreement" entered into with the 1st and 2nd claimants.
- (b) A declaration that by the express tenor of the Investment Agreement of 17th September, 2020, the defendants are jointly and severally bound to pay to the 1st claimant the sum of N400,000.00 (Four Hundred Thousand Naira only) every two months as return of investment in the principal investment sum of N2,000,000.00 (Two Million Naira only) for a period of one year ending on the 16th September, 2021.
- (c) A declaration that by the express tenor of the Investment Agreement of 24th September, 2020, the defendants are jointly and severally bound to

pay to the 1st claimant the sum of N2,000,000.00 (Two Million Naira only) every two months as return on investment on a principal investment sum of N10,000,000.00 (Ten million Naira only) for a period of one year certain ending on the 23rd of September, 2021.

- (d) A declaration that the defendants are jointly and severally in breach of the terms of contract when they failed to pay the cumulative sum of N800,000.00 (Eight Hundred Thousand Naira only) to the 1st claimant as return on investment in January, and March, 2021.
- (e) A declaration that the defendants are jointly and severally in breach of the terms of contract when they failed to pay the cumulative sum of N4,000,000.00 (Four Million Naira only) to the 2nd claimant as return of investment in January, and March, 2021.
- (f) A declaration that the claimants are entitled to repudiate, terminate and rescind the contract between them and the defendants, the latter having been in fundamental breach of the "Investment Agreements" between the parties.
- (g) Judgment of this Honourable Court lifting the veil of incorporation of the 1st, 2nd and 3rd defendants respectively as the veil has been used as an instrument for the perpetration of fraud.
- (h) Judgment of this Honourable Court directing the defendants to jointly and severally return to the 1st claimant the sum of N2,000,000.00 (Two Million Naira) representing the principal investment sum given to the defendants in furtherance of the "Investment Agreements" of 17th September, 2020

which is the subject to return by virtue of the said agreement.

- (i) Judgment in the sum of N800,000.00 (Eight Hundred Thousand Naira only) in favour of the 1st claimant against the defendants jointly and severally as the return on investment on the principal sum which had become due and payable since the 26th of March, 2021 but had not been paid.
- (j) Judgment of this Honourable Court directing the defendants to jointly and severally return to the 2nd claimant the sum of N10,000,000.00 (Ten Million Naira only) representing the principal investment sum given to the defendants in furtherance of the "Investment Agreement" of 24th September, 2020 which is subject to return by virtue of the said agreement.
- (k) Judgment in the sum of N4,000,000.00 (Four Million Naira only) in favour of the 2nd claimant against the defendants jointly and severally as the return on investment on the principal sum which had become due and payable since the 23rd of March, 2021 had not been paid.
- (l) Judgment in the sum of N200,000.00 against the defendants jointly and severally in favour of the 1st claimant as the monthly return on investment calculated from April, 17th 2021 till the date of judgment and final liquidation.
- (m) Judgment in the sum of N1,000,000.00 against the defendants jointly and severally in favour of the 2nd claimant as the monthly return on investment calculated from April, 24, 2021 till the date of judgment and final liquidation.

- (n) General damages in the sum of N5,000,000.00 (Five Million Naira only) for the psychological trauma, mental stress and hardship occasioned to the claimants by the defendants.
- (o) Judgment in the sum of N10,000,000.00 as exemplary damages against the defendants in favour of the claimant for knowingly, willfully and persistently retaining the claimants' return on investment since December, 2020 an act financially injurious to the claimants to the knowledge of the defendants.
- (p) The sum of N1,000,000.00 (One Million Naira only) being the cost of this suit.

The writ is accompanied by a statement of claim, and a written statement on oath of the claimant.

In summary and according to the statement of claim which spanned from paragraphs 30 the claimant averred that the 1st defendant through its Managing Director (CEO) induced the 1st claimant to the 2nd and 3rd defendants with a representation that the defendants are the same persons that they operate as investment companies involved in the business of exportation of wood, coconut shell, charcoal and other agricultural produce where the claimants center invest their money and get 10% monthly return on investment on the principal investment sum but payable every two months, and that it was based on the defendants' representation that the 1st and 2nd claimants invested the sum of N2,000,000.00 (Two Million Naira only) on the 17th September, 2020 and N10,000,000.00 (Ten Million Naira only) on the 24th September, 2020 respectively, and the relationship between parties was reduced into writing and same was admitted into evidence as EXH. 'A1' and 'A2'.

By the terms of EXH. 'A1' and 'A2', the 1st claimant was as of right entitled to the sum of N400,000.00 (Four Hundred Thousand Naira only) as his 20% interest which was payable by the defendants every two months within one year calculated from 17th September, 2020 to 16th September, 2021, while the 2nd claimant was as of right entitled to the sum of N2,000,000.00 (Two Million Naira only) as his 20% interest sum which was agreed to be paid by the defendants every two months within the year calculated from 24th September, 2020 to 23rd September, 2021. This agreement the defendants woefully failed and refused to uphold which caused the claimants to rescind and terminate the contract after several demands for the defendants to comply with the terms of the contracts proved abortive.

That by the express provisions of the agreement, the 1st claimant was expected to receive the total sum of N2,400,000.00 as his accruable returns on investment on his principal investment sum of N2,000,000.00 which the 2nd claimant expected accruable returns on investment was N12,000,000.00 during the contract period, but the defendants in non-compliance with the contents of EXH. 'A1' and 'A2' only paid the claimants returns of investment for the months of October, and November, 2020 but fraudulently withheld the claimants' accruable returns on investment sums of N800,000.00 for the 1st claimant and N400,000.00 for the 2nd claimant.

That as a result of the defendants non-compliance, the claimants on several occasions demanded for the entitlements to be paid to them but the defendants turned deaf ears and continually refused to satisfy their indebtedness to the claimants, hence, it is manifest breach

of trust and contract that engendered the claimants' institution of the extant suit.

The defendants filed a statement of defence dated the 11th May, 2022, and admitted to paragraphs 3, 4, 5, 6, 7, 9 and 10 of the statement of claim, and stated that he was not in a position to deny or admit paragraphs 1 and 2 as the information was within the knowledge of the claimants.

The defendants also denied paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the statement of claim. In summary, as born out of the statement of defence which spanned from paragraphs 1 to 28 and it is averred that the 1st and 2nd defendants are investment companies dealing majorly on importation of charcoal to their capital based market in Dubai, United Arab Emirate. The defendants have been in the business since 2017 and they have many investors all over the country who invested on the 1st and 2nd defendants and their return of investment has been paying as at when due since that 2017 until sometimes in November, 2020 when Security and Exchange Commission locked up the 1st and 2nd defendants' office and asked them to stop operation of charcoal and third party clearance of funds from abroad. These things made the defendants to stop operation and was unable to pay all the investors return of investment and their capital; and the claimant herein is one of the investors affected on the predicament the defendants faced for non operation as a result of the closure.

It is averred that the plaintiff's position before this court is that the defendant has breached the contract agreement executed between them and demanded for the returned of the investments they subscribed to in the sum of N10,000,000.00, the sum of N2,000,000.00 principal investment of the 2nd claimant, N2,000,000.00 as return on

investment, N800,000.00 to the 1st claimant as the return on investment, the sum of N4,000,000.00 to the 2nd claimant as return on investment for January and March, 2021 and N1,000,000.00 cost of action.

That in the defendants' defence as defence to the plaintiff's claims of breach of contract, the defendants relied on paragraph VII of the investment agreements executed between the plaintiffs and the defendants on the 17th September, 2020 that there was nothing like breach of investment agreement that the contract is being frustrated by the government policy which made it impracticable for the defendants to perform their obligations, and the defendant relied on EXH. 'B1', 'B2' and 'B3', and the said paragraph made the investment agreement executed between the plaintiffs and the defendant unenforceable because of the force majeure provided under paragraph VII of the said agreement.

The claimants also filed a reply to the statement of defence of the defendants dated the 18th May, 2022 and is accompanied by additional written statement on oath.

The trial commenced and the claimants put in one witness, while the defendants put in one witness, and both adopted their witness statements on oath, and were cross examined by the opposing counsel of the two parties.

In the course of the trial, the claimants tendered the following documents:

1. Investment Agreement dated the 17th September, 2020 marked as EXH. 'A1'
2. Another Investment Agreement dated 24th September, 2020 marked as EXH. 'A2'
3. A circular issued by the defendants marked as EXH. 'A3'

4. Payment Receipt in the sum of N1,000,000.00 issued from the solicitors of the claimants dated 30th April, 2021, marked as EXH. 'A4'
5. The photograph accompanied by a certificate of compliance with section 84 of the Evidence, marked as EXH. 'A5'.
6. Investment Agreement between Obi Ugochukwu Innocent Gregory and the defendants made on the 17th December, 2020, marked as EXH. 'AB'. While the defendants tendered the following documents:
 1. Exporters' Registration Certificate, marked as EXH. 'D1'
 2. A letter addressed to the Managing Director of the 3rd defendant dated the 26th November, 2020, marked as EXH. 'D2'.
 3. Certified True Copy of Vanguard Newspaper of Wednesday July, 21st, 2021, marked as EXH. 'D3'.

At the conclusion of the trial, counsel to both parties filed this final written address and adopted same in satisfaction of the requirement of section 294 of the Constitution, 1999 (as amended).

In his written final address, the counsel to the defendants formulated two issues for determination, thus:

- (i) **Whether the plaintiff has proved her case on the preponderance of evidence to be entitled to the prayers sought before this Honourable Court?**
- (ii) **Whether the defendants breach the investment agreement executed between the plaintiff and 1st defendant that will warrant the court to award damages against the defendants in favour of the plaintiff?**

The counsel submitted that going by the evidence put before the court by the plaintiffs they failed to prove their case on preponderance of evidence against the defendants that will warrant this Honourable Court to grant all her prayers as contained in the statement of claim, and that they failed to discharge their duty in order to shift to the defendants to discharge their own.

The counsel submitted that the PW1 testified before the court that the 1st plaintiff and the 1st defendant entered into investment agreement on 17th September, 2020 and 2nd plaintiff entered into the agreement with the 1st defendant on 24th September, 2020 but failed to pay return of investment on January, and March, 2021, and upon enquiry, the two parties have problem with Security and Exchange Commission.

The counsel submitted that through EXH. 'A3' which was supported by EXH. 'A4' which is the SMS conversation between the plaintiff and the management of the defendants, there is a point raised by the defendant about the issue of Security and Exchange Commission, and that they would continue operation and start paying the investors including the plaintiffs when the defendants are being cleared by SEC, and the PW1 confirmed this position during cross examination.

The counsel submitted that the hindrance by the government policy had been provided for in the paragraph VII of EXH. 'A2' that the defendants cannot be held for non performance of their obligation as a result of government policy.

The counsel submitted that although the ban on exportation of charcoal was pronounced in December, 2020 but the implementation commenced on the 21st July, 2021, and to him, all these were established through the

defendants' witness and therefore submitted that the plaintiffs have not proved their case on the preponderance of evidence.

The counsel submitted that it is clear that the defendants adduced more relevant, credible and conclusive evidence to show that of the plaintiffs who have failed to put up their case on the preponderance of evidence and on balance of probability.

The counsel cited the case of **Akanni V. Olajide (2004) All FWLR (pt 218)** that it is not the number of witnesses called in a case that matters to the court but the degree of preponderance of evidence that is probable, and he cited also the case of **Richard Ezeanya & Ors V. Gabriel Okeke & Ors (1995) 4 SCNJ 60 at 65, particularly at 87.**

The counsel quoted the dictum of **Biyeye JCA** in the case of **Akanni V. Olajide (supra)** to the effect that a civil case is decided on preponderance of evidence.

The counsel submitted that the fact that the Security and Exchange Commission that shut down the defendants for the defendants to register with them is admitted by the plaintiffs' witness during cross-examination, and therefore the defendants do not need to prove same again, and he cited the cases of **Osondu V. Akhigbe (1999) 7 SCNJ I; N.R.T.E. V. Anyanwu (2005) All FWLR (pt 256) p. 1266 at 1282;** and **Niger-Benin Transport Co. Ltd V. Okeke (2005) All FWLR (pt 256) 1286** on all the principle that fact admitted needs no further proof.

The counsel urged the court to resolve issue No. 1 in favour of the defendants.

On the issue No. 2, the counsel submitted that considering the argument canvassed on issue No. 1, that the defendants have not breached the investment agreement executed between the plaintiffs and the 1st

defendant that will warrant the court to grant the plaintiffs' their prayer for damages, and submitted that a claim of damages must be proved with credible and uncontroverted evidence most especially claim of damages in an action for breach of contract, and he cited the case of **Umoetuk V. Union Bank Plc (2001) FWLR (pt 81) 1849; O.U. Davidson Group Const. Nig. Ltd V. Bees Elec. Co. Ltd & Ano. (2001) 9 NWLR (pt 719) 507; and Maiden Electronic V. A.G. Federation (1974) 1 SC 53.**

The counsel posed this question: **Have the plaintiffs put anything before this Honourable Court to be entitled to damages?** The counsel answered in the negative, and submitted that paragraph VII provided for force Majeure which he quoted the paragraph from the agreement, and posed this question also: **Can we say that the defendants are in breach of the agreement considering the position of SEC stated above which is in evidence and banned of exportation of charcoal in Nigeria EXH. ;B2' and 'B3' showed?** And the counsel answered in the negative that the plaintiffs are not entitled to damages as the contract is frustrated by the government policy, and frustration is a defence to breach of contract, that the defendants would have been liable for the breach for non-performance of contractual obligations but for the occurrence of fundamental event that makes the contract impracticable or impossible to perform, and he cited the case of **Onuigbo V. Azubuike (2013) LPELR – 22796 CA;** and he cited the case of **NBCI V. Standard Nig. Co. Ltd (2002) 8 NWLR (pt 768) p. 104** to the effect that frustration of a contract is the premature determination of an agreement between parties, and he cited the case of **Mazin Eng. Ltd. V. Tower Aluminium (1993) 5 NWLR (pt 295) p. 526.**

The counsel submitted that for an intervening event or circumstances to lead to the frustration of an agreement, it must be so fundamental as to destroy the basis of agreement. That if the terms of the agreement shows that the parties contemplated the possibility of such intervening circumstances arising, frustration does not occur, and it does not arise where one of the parties had deliberately brought about the intervening event by his own making or choice. To him, this is so because the principle of frustration is that the frustrating event was not caused by the fault of either parties to the contract, and he cited the case **Tower Aluminium V. Mazin Eng. Ltd (supra)**.

He submitted that where the performance of an agreement becomes impossible by reason of an intervening event such intervening event or circumstances would automatically determine the contract, and the parties would therefore be discharged from further liability hereunder.

The counsel submitted that frustration operates to determine a contract or an agreement where:

- (i) It occurs or takes place before the breach of the agreement or the contract;**
- (ii) It was without the fault of either parties;**
- (iii) It was due to fundamental change of the circumstance beyond the control and initial contemplation of the parties, and he cited the case of NBCI V. Standard Nig. Eng. Co. Ltd (2012) 8 NWLR (pt 104); and Mazin Eng. Ltd V. Tower Aluminium (supra).**

The counsel submitted that from the above cited case and the facts and evidence before the court, the defendants, since the inception of the contractual relationship between them and the plaintiffs have never

defaulted on performing their obligations until when the plaintiffs suppose to receive their return of investment on the investment for due time in 2020 and the reason for the default is based on the SEC shut down of the defendants' business in the name of registration and also ban of exportation of charcoal which is the defendants' major business, and the government policies occurred in November/December 2020 before the breach, and it is the circumstances beyond the control of the defendants, this has been envisaged by the EXH. 'B2' which makes provision force majeure.

The counsel submitted that the contract between the plaintiffs and the defendants is being frustrated by the government policy and the defendants cannot be said to have breached the contractual relationship.

The counsel relied on the provision of Laws Reform (Contract) Act Cap. 517 Laws of FCT more particularly section 4 which provides that frustrated contract will not be enforceable so far the frustration does not caused by either party most especially if the monetary involved in the contract has been used by the party that ought to have execute the contract. He then urged the court to resolve issue No. 2 in favour of the defendants.

In his final written address of the counsel to the claimants, he raised two issues for determination, thus:

- (1) Whether in view of the totality or evidence led at the trial, the claimants have successfully discharged the burden of proof required of them in law to be entitled to the grant of reliefs (a) – (p) as endorsed on the face of the originating process?**
- (2) Whether by the clear provisions of paragraph VII of EXH. 'A1' and EXH. 'A2' the**

defendants' defence of frustration, force majeure and governmental policy, would obviate liability in the circumstances of this?

The counsel submitted that it is a settled position of law that the burden of proof in civil proceedings lies on the claimant and as such a burden must be discharged on the preponderance of evidence and balance of probabilities, and he quoted the provisions of sections 131, 132, 133, and 134 of the Evidence Act 2011, and the case of **Nkechi & Anor. V. Anyalewechi (2021) LPELR-55681 (CA)**, and submitted that from the totality of the evidence led at the trial, the counsel posed this question:

Was the claimants evidence cogent, credible and compelling for them to be entitled to the grant of the reliefs sought?

The counsel submitted that it is settled position of law that where a party claims declaratory reliefs before the court, the law places the legal and evidential burden on the party to establish the claim by preponderance of evidence on the balance of probabilities, and he cited the case of **Waya V. Akaa & Ors (2023) LPELR – 60096 (SC)**. The counsel argued that EXH. 'A1' and 'A2' are the claimants investment agreements of 17th September, 2020 and 24th September, 2020 which created contractual relationship between the claimants and the defendants, and the PW1 testified that the defendants represented to the claimants that they are investment companies involved in business of exportation of wood, coconut shell, charcoal and other agricultural produce. The defendants told the claimants that they would invest their monies into their business and the claimants would be entitled to returns on investment on their principal investment sums. That the PW1 further testified that based on the defendants' representation, the

claimants invested the sum of N2,000,000.00 while the 2nd claimant invested the sum of N10,000,000.00 in the defendants' companies and this investment gave birth to EXH. 'A1' and EXH. 'A2', said by the counsel. He further submitted that the 1st claimant would be paid 20% of the investment sum of N2,000,000.00 i.e. N400,000.00 every two months during the contract period spanning 17th September, 2020 to 16th September, 2021 while the 2nd claimant would be paid 20% of the investment sum of N10,000,000.00 i.e. N2,000,000.00 every two months during the contract period spanning 24th September, 2020 to 23rd September, 2021. The counsel submitted that this was clear and explicit agreement of the parties of which the 1st claimant was expected to receive N2,400,000.00 as his total profit on his invested sum, while the 2nd claimant was expected to receive N12,000,000.00 but the defendants' willfully, deliberate and knowingly failed to abide by the terms of the contract which made the defendants to only pay the claimants their expected profit for the months of October, and November, 2020 contrary to the agreement of parties and the defendants are in breach of the contract for the month of December, 2020, January, February, and March, 2021 to the tune of N800,000.00 for the 1st claimant and N4,000,000.00 for the 2nd claimant.

The counsel submitted that EXH. 'A1' and 'A2' are the binding documents between the claimants and the defendants, and he referred to the case of **Are V. Owoeye (2014) LPELR 41096 (CA)** as to the factors that must be present in a valid contract.

The counsel submitted that the defendants are in contravention of the terms of the agreement they freely entered into with the claimants, and he cited the case of **A.G. Rivers State V. A.G. Akwa Ibom State (2011) NWLR (pt**

1248) 31 at 81 to the effect that parties are bound by the express terms of the agreement.

The counsel also posed this question:

When then can it be said that a breach has been committed or a party is guilty of a breach?

The counsel answered that it has been long held in a long host of authorities that a breach of contract would arise when a party fails, refuses and or neglects to perform an obligation undertaken to perform, and he cited the case of **NITEL TRUSTEES Ltd & Anor V. syndicated Investment Holdings Ltd (2022) LPELR – 58842 (SC)**.

The counsel submitted that from the totality of the pleadings and evidence before this court, it is crystal clear that the claimants already discharged their obligations by investing the sum of monies and the claimants expected their returns on investment every two months as well as their principal investment sum at the end of the contract period and the defendants failed and neglected to do so, and it is safe to say that the defendants are in breach of the contracts and this caused the claimants to rescind, terminate and repudiate the contracts with the defendants, and he cited the case of **Sonabeverages Ltd. V. Tranproject (Nig.) Ltd & Ors (2022) LPELR – 58850 (CA)** to the effect that a breach of term of contract can give the other party the right to repudiate the contract.

The counsel submitted that on the relief in paragraph (g), it is trite law that a company upon registration becomes a legal person distinct and separate from its members who acts for it, he said that it is pertinent to state that though a company nonetheless a distinct legal personality and in fact seen as a person in law, a company acts through its agents who are usually the directors or principal officers and shareholders of the company. And where the directors

would not be allowed to hide behind the veil of incorporation, rather this judex may lift the corporate veil of incorporation so as to render the directing minds of the company vicariously liable to the company's creditors, and he referred and quoted the provision of section 316 of the Companies and Allied Matters Act 2020. The counsel referred to the case of **Nev-kom Microfinance Bank Ltd & Ors V. Nkanga (2022) LPELR – 58171 (CA)**.

The counsel submitted that it is trite law that if a party alleged fraud in a civil matter, the material facts and detailed particulars for the establishment of fraud must be specifically pleaded and further submitted that the claimants have specifically pleaded and strictly proved the fraudulent activities of the defendants. The counsel submitted that the PW1 testified that the defendants diverted their principal investment sum and expected returns on investment to their personal use of which the defendants generated profits but failed to satisfy their indebtedness to the claimants.

The counsel referred to paragraph 15 of the reply to the statement of defence where the claimants specifically pleaded the particulars of the defendants' fraud in satisfaction of the requirement of the law and same was strictly proved at the trial. The counsel submitted that EXH. 'A5' was admitted in evidence to show that the defendants diverted the funds into transportation business that was still very much operational throughout the period the claimants expected returns on investment were due and payable. The counsel submitted that EXH. 'A6' as to show that the defendants fraudulently continued collecting monies from unsuspecting Nigerians even after their purported letter of November, 2020 and the defendants intend to defraud the

claimants when the defendants included in paragraph VII of the investment agreement.

The counsel submitted that the defendants failed to produce their bank accounts, audited report, book of accounts, balance sheets, statement of account and every material documents explaining the movement of the claimants' funds, and it is trite law that where a party withhold evidence which could be produced and if not produced, the court can presume such evidence would be unfavourable to the party that withholds it, and he cited section 167(d) of the Evidence Act 2011 and also the case of **Bakari V. Ogundipe & Ors (2020) LPELR-49571 (SC)** and submitted that the failure on the part of the defendants to produce those documents in proof of how the claimants' funds were invested and expended despite the claimants' notice to produce give to the defendants at paragraph 17 of the reply to the statement of defence.

The counsel submitted that the court has the jurisdiction to lift the veil of incorporation of the defendants companies to make the human minds liable to the claimants for the investment and he relied on the case of **Oboh & Anor. V. Nigeria Football League Ltd. & Ors. (2022) LPELR – 56867 (SC)** to the effect that the doctrine of lifting the corporate veil has been utilised by the courts when it becomes necessary to expose the individual hiding behind the corporate entity for the purpose of doing justice. The application of the doctrine is not exclusive to the jurisdiction of the Federal High Court. He referred to the case of **Acade V. Alie (Nig.) Ltd (2012) All FWLR (pt 563) 1849.**

The counsel urged the court to so hold that the claimants have proved their entitlement to the grant of relief (g).

On proof of the reliefs (h) (k), the counsel submitted that EXH. 'A1' and EXH. 'A2' and the oral testimony of PW1 already proved that the claimants invested the sum of N2,000,000.00 and N10,000,000 in the defendants business, and at paragraphs 6 and 7 of the claimants witness statement on oath that was adopted before the court and he quoted the testimony in those paragraphs, and while the sum of N22,000,000.00 was to have been received by the 2nd claimant on the 23rd September, 2021, and these pieces of evidence were neither challenged nor controverted by the defendants and it is the law that facts not challenged are deemed admitted and the court can act upon the facts as true and he cited the case of **Govt. of Kogi State & Ors V. John (2022) LPELR 58891(CA)**.

The counsel submitted that the defendants never denied that there was a contract between the claimants and the defendants and that the claimants invested the sum of N2,000,000.00 and N10,000,000.00 which birthed EXH. 'A1' and EXH. 'A2', and that there is no dispute that the claimants are entitled to their return of investment bimonthly at the rate of 20%, and by arithmetic calculation 20% of N2,000,000.00 is N400,000.00 which is accruable returns of investment payable by the defendants over two months throughout the contract and in the case of the 2nd claimant 20% of N10,000,000.00 is N2,000,000.00 which is accruable returns of investment payable by the defendants to the 2nd claimant bimonthly throughout the contract period. The counsel referred to paragraphs 7 and 8 of the witness statement on oath of the claimants, and even during cross examination the PW1 said that he was paid the return of investment once, that was 10% and another 10% and that was N2,000,000.00 put together, the counsel submitted; and

that flowing from the above argument prayers in paragraphs (l) and (m) are also worth granting by this court.

The counsel submitted that it has already been established that by the agreement between the claimants and the defendants, the claimants are entitled to 20% of the investment sum bimonthly, and by arithmetic calculation 10% of N2,000,000.00 is N200,000.00 while 10% of N10,000,000.00 is N1,000,000.00, and the claimants are seeking 10% of their investment sum calculated on a monthly basis from April, 2021 to January, 2024 which is 34 months which is that the 1st claimants is entitled to N6,800,000.00 as 10% return on investment, while the 2nd claimant is entitled to N34,000,000.00 calculated from April, 2021 to January, 2024, and he urged the court to enter judgment in favour of the claimants. The counsel urged the court to enter judgment in favour of the claimants of 10% of the investment from calculated from February, 2024 till the date of judgment and final liquidation of the entire sum, and he cited the case of **Nitel Trustees Ltd & Anor. V. Syndicated Investment Holdings Ltd (2014) LPELR – 22950 (CA)** to the effect that in equity where there is a breach of contract, and in the circumstance in which deposit sought to be returned, and the deposit is not returned timeously and the debtor kept the creditor out of his money while enjoying the benefit of it, it is equitable that the money be returned with interest.

On the claim of general damages, the counsel submitted that general damages flows directly from the harmful act complained of and same needs not to be specifically pleaded and proved, and he cited the case of **Cameroon Airlines V. Otutuizu (2011) LPELR – 827 (SC)**; and the case of **Royork (Nig.) Ltd V. A.G. and Commissioner for Justice, Sokoto & Anor (2021) LPELR-55023(CA)** to the effect

that general damages are awarded at the discretion of the court and such discretion must be exercised judiciously and judicially, and submitted further that it would be right for this court to grant in favour of the claimants, general damages in the sum of N5,000,000.00 to assuage for the loss occasioned, and he cited the case of **Iyere V. Bendel Fed and Floor Mill Ltd (2008) LPELR – 1518 (SC)**.

On the claim of exemplary damages in the sum of N10,000,000.00, it is settled law, the counsel submitted that, where the defendants' action is grossly in breach of an obligation, is fraudulent, devious or fiendish, exemplary damages would lie, the evidence in the trial has shown the existence of the above parameters as admonished by the Court of Appeal in the case of **Olorundare V. Minister of FCT & Ors (2022) LPELR- 58132 (CA)** to the effect that in law exemplary damages are damages awarded in addition to actual damages when the defendant had acted with recklessness, malice or deceit. They are specific damages by way of penalising the wrong doer or making an example to others.

The counsel also argued that in this case, it was shown the reprehensive conducts of the defendants and it is within the ambit of the law for exemplary damages in the sum of N10,000,000.00 be awarded in favour of the claimants as against the defendants.

On the claim of cost of this suit, the counsel submitted that it is a well established principle of law that cost follows event and that a successful party is entitled to cost, and he cited the case of **Egypt Air Ltd V. Ibrahim & Anor (2021) LPELR-55882 (CA)**. The counsel went further and submitted that in the instant case the claimants paid the sum of N1,000,000.00 for the institution of this suit which can be gleared from EXH. 'A4'. The counsel submitted that the

claimants have proved their case and are entitled to the grant of the reliefs, and urged the court to exercise its discretion in favour of the claimant, and he cited the case of **Aso Savings and Loans Plc V. Wiwa (2021) LPELR – 52840 (CA)**.

On the issue No. 2, the counsel submitted that the defendants did not deny entering into contract with the claimants but relied on the defence of frustration, force Majeure and governmental policy as their defence to obviate the liability of the claims. The counsel submitted that the defendants are in the fundamental breach of investment agreements entered into with the claimants and that such breach defeated the claimants' purpose of entering into the contracts, and he cited the case of **Access Bank Plc V. Zateco Construction Co. Ltd. & Anor (2022) LPELR – 58938 (CA)**, and further submitted that it is the position of the law that a party is in fundamental breach of the contract, such a party cannot rely on exemption clause to escape liability as in the case of **Chevron Nig. Ltd. V. Titan Energy Ltd (2013) LPELR-21202 (CA)** to the effect that an exemption clause may take many forms, but one common thing in all such clauses is that they exempt a party from a liability which he would have borne had it not been for the clause. And that under the common law a party can only be awarded of an exclusion clause when such party abides by the terms and conditions of the contract, and therefore, the exemption clause is not available to a party who is in breach of a contract, and he cited the case of **Aminu V. Nwankwo (2017) LPELR – 42502 (CA)**.

The counsel quoted paragraph VII of the EXH. 'A1' and EXH. 'A2' and submitted that the defendants are in fundamental breach of the contract and cannot be allowed to rely on the above paragraph to escape liability

or obligation to the claimants as it is the law that a party who committed illegality should not be allowed to benefit from the same illegality as captured in the maxim *nullus commodum capere potest ex sua injuria*, and he cited the case of **Jonathan V. INEC & Ors (2023) LPELR – 60081 (CA)**.

The counsel submitted that the defendants while trying to abdicate obligations even stated that it was the agreement of parties that these defendants and claimants would share the profit and loss, however, during cross examination of DW1 the counsel to the claimants put a question to the DW1 that if in the contract executed with the claimants, there is nowhere the claimants agreed to bear liabilities arising from the defendant's fraud and misrepresentation, and the DW1 answered that there is nowhere.

The counsel referred to the case of **NSITF V. Access Bank Plc (2015) LPELR – 25790 (CA)** to the effect that parole evidence is not allowed to vary, add, alter or contradict written agreement, the counsel urged this court to discountenance same.

The counsel submitted that the said paragraph VII of the Agreement is vague and ambiguous and it is a settled law that where the wordings of a contract are ambiguous or uncertain, the *contra proferentum* rule apply, in that the words of the written contract are construed more forcibly against the party using them, and he referred to the case of **MTN Communication Ltd V. Amadi (2012) LPELR – 21276 (CA)** to the effect that the courts have generally been hostile to exclusion clauses. Once there is any ambiguity on the clause, it will be construed against the person who is trying to rely on the clause, and he cited the case of **Delmas V. Sunny Ositez Int'l Ltd (2019) 9 NWLR p. 323, para. B** and he submitted that paragraph VII of the Investment Agreement

is ambiguous, vague, unprice and uncertain as to what type of interference of government would affect the business of the defendants, and he urged the court to discountenance the argument of the defendants and hold that paragraph VII cannot obviate the defendants' obligations to the claimants.

The counsel argued that the defendants also relied on the defence of frustration by government policy that made it impracticable for them to perform their obligation, and he cited in aid the case of **Federal Ministry of Health V. Urashi Pharmaceuticals Ltd (2018) LPELR-46189 (CA)** to the effect that where a contract is frustrated, further performance is excused only if; (a) the frustration occurs before the breach of contract (b) the frustration is without the fault of either party and (c) the frustration is due to a fundamental change of the circumstance beyond the control and original contemplation of the parties, and he cited the case of **Mazin Eng. Ltd. V. Tower Aluminium Nig. Ltd (1993) 5 NWLR (pt 295) p. 526**, and the counsel quoted the provisions of section 38(1) of the **Investment And Securities Act 2007** to the effect that no one is to operate in the Nigerian capital market as an expert or professional or in any other capacity as may be determined by the commission or carry on investment and securities business unless the person is registered in accordance with the Investment and Securities Act 2007 and the rules and regulations made there under.

The counsel argued that by the provision quoted above, it can be deduced that for a company to operate as an investment company, such company must be registered with the Securities and Exchange Commission, and it is evidenced that the defendants did not register with SEC which led to the suspension of their business activities. The defendants did not have the licence to carry out

investment activities and obtain monies from innocent Nigerians under the guise of being a licenced investment company with clear intent to defraud innocent investors, and the frustration was solely caused by the defendants right from the onset of the contract and was not an unforeseen occurrence, and the circumstances were entirely within the control of the defendants and if, and only if, the defendants complied with the requirement of law, the disruption of their business activities by SEC would not have occurred in the first place, and the deference of frustration cannot avail the defendants.

The counsel also submitted that even the defence of force majeure cannot make the defendants escape liability and he cited the case of **L.G.G. Nig. Ltd. V. Augustine & Ors (2010) LPELR-8592 (CA)** to the effect that force majeure is an event or effect that can neither be anticipated nor controlled. It includes both natural and human acts and the human acts may be of political in nature including riots, strikes or war. The counsel cited the case of **Globe Spinning Mills (Nig.) Plc V. Reliance Textile Industries Ltd (2017) LPELR – 41433 (CA)** where the Court stressed the fact that for an act to amount to act of God or force majeure as envisaged in the agreement by the 1st defendant in clause VII such incidence or act must be unforeseen or unexpected by the parties and the defences cannot in any way hold water because the events that caused the defendants to breach the contract were within the purview of the defendants and as such the defendants can be held liable to the claimants, and the counsel urged the court to so hold and to note that the Newspaper publication of 21st July, 2021 being relied upon does not represent the decision of the Federal Government as it is the position of the law that Newspaper publication is not evidence of executive decision. Such

decision, he argued, must emanate from the Federal Government Gazette or of a state as the case may be, and the production of the Gazette shall be the prima facie proof of any official communication of the government of Nigeria, and he cited the case of **Our Line Ltd V. SCC (Nig) Ltd & Ors (2009) LPELR – 2833 (SC)**. Finally, the counsel urged the court to tilt in favour of the claimants.

Thus, having reviewed the statement of claim, statement of defence of the defendants, the both counsel's submissions in the final written address, it is incumbent upon this court to evaluate the evidence with a view to ascribe a probative value to the one that is credible. See the case of **Obi V. Ozoewulu (2022) All FWLR (pt 1135) 340 (SC)**.

The PW1 was asked to tell the court as to how much he got as a return on investment, and the PW1 answered it was once, and the PW1 was asked as to how much was he paid as return of investment, and he answered that he was paid 10% of the investment, and when asked whether that was the only amount that he was paid, and he answered in the affirmative.

The PW1 was asked by the counsel to the defendant as to whether that counsel was right that by paragraph 11 of the statement of claim it was stated that the payment was made once in two months, and the PW1 answered in the affirmative that payment was 20% for two months.

The PW1 was asked whether he was telling the court a lie when he said he was paid once, and he answered in the affirmative, and also told the court he was paid 10% and another 10% making 20% once.

The PW1 was asked whether since when the payment was stopped, he has written to the defendant, and the PW1 answered that there were series of electronic communication between him and the company. The PW1

was asked whether he means he did not write any demand letter, and the PW1 said that he could not remember.

The PW1 was asked if he has ever visited the office of the defendant physically, and he answered that in the affirmative, and was asked when was that, and he told the court that he could not remember.

The PW1 was asked whether he was aware that the office of the defendant was sealed by the Law Enforcement Agency, and he answered that he saw the seal on the door of the office of the defendant.

The PW1 was asked whether he was aware that the office of the defendant has been sealed by the Law Enforcement Agency, and he answered that he was not aware of the closure of the company.

The evidence of the PW1 was challenged when he first say that he saw the door of the office of the defendant was sealed, and later he told the court he was not aware that the office of the defendants was closed.

The PW1 was asked whether the business of the defendants in which he invested is the business of charcoal, and he answered in the negative, as he said it goes beyond that. He was asked to tell the court what other business does the defendant do, and he answered that there is a host of them which he could not remember.

The PW1 was asked whether he agreed that the defendants deal with transportation of charcoal, and he answered that charcoal is one of the businesses the defendants do. And he was asked whether he was aware of Federal Government ban on importation of charcoal, and he answered that he would not know.

The PW1 also told the court that he was not aware whether the defendants lost millions of dollars due to ban

and they have not been able to export the charcoal, and he answered that he was not aware.

The PW1 was asked whether he conducted a due diligence on the defendant before investing in them, and he answered in the negative.

The PW1 was asked whether as at the time of the investment, the defendant was processing his permit with the Security and Exchange Commission, and the PW1 answered in the negative, and was also asked whether it implies that in November, 2020 SEC stopped the defendant doing business pending when the permit would be out, and the PW1 answered that he did not know.

The PW1 was asked to read paragraph 7 of EXH. 'A1' and 'A2', and he read and was asked to tell the court what paragraph means, and he answered that he is not the maker of EXH. 'A3', and that he was the first person to invest before his son (the 2nd claimant) and he introduced the 2nd claimant not for a commission.

The evidence of the PW1 was challenged during cross examination that the witness's ability or capacity to recall events accurately as he has answered most of the question that either he is not aware or that he does not know, this is with respect to the oral testimony of 28/2/2022.

However, with respect to the testimony of 26/9/2022, the PW1 referred to his additional witness statement on oath of 18th May, 2022 and was asked to tell the court about the Investment Agreement of 17th December, 2020 and he told the court the same document was referred to in paragraph 16(e) of the additional witness statement on oath which the original of it was with the subscriber whose name is on the document and a photocopy of it was given to him.

The PW1 told the court that he could not remember when he was asked as to how he got to know the

defendant, and later he told the court the date he come to know the defendant is on the agreement.

The PW1 told the court that this particular investment was in his name and the name of his son, and that he got the return of investment once or twice. He was asked to tell the court as to whether he bothered to visit the office of the defendant since, when the payment stopped, and he answered in the affirmative, and that the response was that they (the claimants should calm down the monies would come in and that was the message in the website.

The PW1 was asked as to what was content of the message and the website, the PW1 told the court he can't remember.

The PW1 was asked whether he bothered to find out the main reason why the payment of return on investment stopped, and he answered that he was only a privy to what the defendant told him.

The PW1 was asked whether he was aware that the defendant had issue with the Security and Exchange Commission, and he said he was not aware but he knows the defendant registered address, and he was also asked to tell the court the last time he visited the defendants' address, and he answered that the last time was when the defendants moved out of the premises, and it was since the inception of this case. The PW1 contradicted himself when he said he was not aware of the issue between the defendants and the Security and Exchange Commission, however, he visited the defendants last address and found out that they moved out of the premises. The PW1's witness is found not to be credible because he was not responsive to questions and that he was evasive, and therefore the evidence has no probative value and it is hereby rejected.

The DW1 was asked as to the fact that his company did not comply with the requirement of Security and Exchange Commission before starting to collect investors' money, and he answered that it is not true, and he was also asked whether there is any document before the court to establish that SEC approved his operation, and he answered in the negative. First the DW1 said that it is not true that he did not comply with the requirement of SEC, while in another breadth he said he was not having any evidence establishing that SEC approved his operation.

The DW1 was also asked that in the investment agreement, there was no where the claimant agreed to bear or share the liabilities arising from his fraud and misrepresentation, and the DW1 answered in the negative. While the DW1 in his evidence in chief told the court that he has agreed with the claimant to share the liabilities, and he also contradicted himself when he answered in the negative.

The DW1 was asked whether this Newspapers of 21st July, 2021 is a Federal Government Gazette, and he answered that he is not aware. The evidence of DW1 was challenged during cross examination and was contradicted, and therefore the evidence has no probative value and I so hold.

EXH. 'A1' tendered by the claimants reads:

***INSHA-ALLAHU ASSETS MANAGEMENT
& INVESTMENT LIMITED
INVESTMENT AGREEMENT
BETWEEN
IFEANYI IJEOMA UDEAJA
AND
INSHA-ALLAHU ASSET MANAGEMENT***

**& INVESTMENT COMPANY LIMITED
RC/517704**

This investment agreement is entered into on the 17th day of September, 2020.

The agreement being entered into is in respect of investment on exportation of coconut shell, charcoal and other agricultural product to their base market under the joint business between the above name parties. Return payment is based on the following details:

Investment Plan	Premium
Amount Invested	2,000,000
Profit rate	20%
Return payment amount per two months	400,000.00
Return payment duration	12 months
Total profit expected	2,400,000
Expected Amount in Return	4,400,000
Date of First Payment	17/11/2020
Date of Agreement Termination	16/09/2021
Return payment mode transfer	

TERMS AND CONDITIONS

An intending individual or corporate investors shall obtain an application form for free, either hardcopy at the Peaceful Pace Import and Export Limited head office or download a soft copy from the website: peacefulpieceimportandexport.com.

- i. For any investment deposit being made a copy of the evidence payment shall be attached to the corresponding package registration form.**
- ii. The investor shall be entitled to his/her capital only after the agreed investment duration is completed unless otherwise mutually agreed by both parties in writing.**

- iii. An investor can change his/her investment package only after the initial agreement deal is over.**
- iv. The termination of this agreement howsoever occurring shall not affect the right and liabilities of the parties already accrued at such time nor after the continuance in force of such of its provisions as are expressed or capable of having effect after such termination.**
- v. This agreement shall be personal to the parties hereto and no party shall have the right to assign or transfer any right or obligation hereunder in whole or in party to any third party without the written consent of the other party.**
- vi. Any notice required or permitted to be given under the terms of this agreement shall be in writing and shall be delivered either:**
 - (a) Personally;**
 - (b) By pre-paid registered post**
 - (c) Courier service**
 - (d) Be transmitted by fascinate machine with printed confirmation of successful transmission to the appropriate fascinate number of the address of the receipt.**
 - (e) By any other commercially acceptable means of communication. Provided that in all cases the sender is under a duty to establish that there is proof of delivery of the notice.**

This agreement shall be governed in accordance with the laws of the Federal Republic of Nigeria.

I Ifeanyi Udeaja Ijeoma hereby undertake that the funds/capital herein proposed/deposited for the purpose of investment in Peaceful Peace Import and Export Limited and/or its associate companies, is not the proceeds if any crimes committed in or out of Nigeria and I agree to be bound by this agreement and the above terms and conditions, and also allow the company's access to my capital which I can only withdraw after the 17 day of 09 2019.

Company's Witness Detail

Name L.S. Ntuk Esq

Address: Suite 022, Trinity House, Mabushi, Abuja.

Phone No: 08035512814

Signature date signed 17/9/2019

Investor's Witness Details

Name – Ogah Michael

Address – 24, Bola Ajibola Crescent Katampe Ext.

Phone No: 07038090037

Signature date signed 17/09/2019

Signed

Investor's Signature

Management Stamp

Sign/Date

Before me

Commissioner for Oaths/Notary Public

Thus, from the content of EXH. 'A1', it can be seen that the parties agreed that the investment was for 2,000,000.00 on 20% with a return for two months at the sum of N400,000 for the period of twelve months within an expected profit of 2,400,000 and the date of first payment was 17/11/2020 and the agreement would be terminated on the 16th September, 2021. It can also be seen that no condition as to what is called force majeure, and all the parties have signed the agreement.

The defendants relied on EXH. 'D2' a letter written by the police to the defendants, and it reads:

CR: 3000/SEC HQ/NPF/Vol. 8/452

26th November, 2020

**Managing Director
Peaceful Peace Import and Export
2nd Floor Suites S12
ABM Plaza
Opposite Utako Market,
Utako.
Abuja.**

INVESTIGATION ACTIVITIES

This unit is investigating a case of fraudulent activities criminal conspiracy and illegal capital market operation received from the Securities and Exchange Commission (SEC) in which your company is featured prominently.

In view of above, it is requested that you kindly report to the Unit with officers of the above account to interview the undersigned through DSP Onuoha Onuoha on 08034142964 on Monday 30th November, 2020 at 10:00Hrs.

Accept the assurances of my best wishes and esteem regards.

Signed

SP Hayatu Ibrahim Kojoli

Head

NPF Unit – SEC

From the content of the letter quoted above, it can be seen that the letter does not seem to suggest that the business of the defendants was closed, but only that the Managing Director was invited for an interview with the police based upon the complaint made by SEC.

Even though it was in evidence of the PW1 that he visited the defendants' office and found it locked, the PW1

did not continue to tell the court the closure was for what purpose.

EXH. 'D2' is a photocopy of the original and being a letter written by the police, it has become a public document which has to be certified, and it is not certified and no foundation has been laid as to whereabouts of the original before its admissibility. The letter being a photocopy of the original is not admissible in law for it being not certified and it was admitted by the court. What the court in the circumstances is to expunge it from its record. See the case of **Okoh V. Igwesi (2005) All FWLR (pt 264) 897 at 906, paras. C-E** where it was held that a court or tribunal can only act on legally admissible evidence and where any inadmissible evidence is through oversight or otherwise admitted, it is the duty of the court when it comes to give judgment to treat the inadmissible evidence as if it had never been admitted. In the instant case, I will treat EXH. 'D2' as if the court had never admitted it, and it is hereby expunged. So, the issue of governmental interference is no longer applicable to this case as in the EXH. 'D2' no reference is made to the stoppage of the business of the defendants, but only that the Managing Director was invited for an interview, and this cannot be said that EXH. 'A2' is a stoppage to the business of the defendants, and I so hold.

To add to the above, what is alleged by the Security and Exchange Commission as per EXH. 'D2' is criminal conspiracy and illegal capital market operation, however, what is contained in EXH. 'A1' was in respect of investment on exportation of coconut shell charcoal and other agricultural product, and this does not affect the business upon which the investment was made. I therefore so hold that the defendants are bound by the agreement in EXH.

'A1'. See the case of **Agbareh V. Minra (2008) All FWLR (pt 409) p. 564 at 586, paras. A-B.**

From the content of EXH. 'A1' there is no clause for force majeure at all and therefore the defence of majeure is not applicable to the defendant, and I so hold.

EXH. 'A2' reads:

**INSHA-ALLAHU ASSET MANAGEMENT &
INVESTMENT LIMITED
INVESTMENT AGREEMENT
BETWEEN
OSINACHI PRAISE UDEAJA
AND
PEACEFUL PEACE EXPORT AND
IMPORT LIMITED RC 1403962**

This agreement is entered into on the 21st day of September, 2020.

The agreement being entered into is in respect of investment on exportation of wood charcoal to our base market under the joint business between above name parties.

Return of investment is based on the following details:

Investment Plan Premium

Amount Invested 10,000,000

Profit rate 20%

***Return payment amount per two months
2,000,000.00***

Return payment duration 12 months

Total profit expected 12,000,000

Expected Amount in Return 22,000,000

Date of First Payment 24/9/2020

Date of Agreement Termination 23/09/2021

An intending individual or corporate investors shall obtain shall obtain an application form for free,

either hardcopy at the Insha-Allahu Asset Management and Investment Company Limited head office or download a softcopy from the website www.peacefulpeaceimportexport.com.

- i. For any investment deposit being made a copy of the evidence payment shall be attached to the corresponding package form.***
- ii. Are investor can change his/her investment package only after the initial agreement deal is over.***
- iii. The termination of this agreement howsoever occurring shall not affect the right and liabilities of the parties already accrued at such time nor after the continuance in force of such of its provisions as are expressed or capable of having effect after such termination.***
- iv. This agreement shall be personal to the parties hereto and no party shall have the right to assign or transfer any right or obligation hereunder in whole or in party to any third party without the written consent of the other party.***
- v. Any notice required or permitted to be given under the terms of this agreement shall be in writing and shall delivered either:***
 - (a) Personally;***
 - (b) By pre-paid registered post;***
 - (c) Courier service;***
 - (d) Be transmitted by fascinate machine with printed confirmation of successful transmission to the appropriate fascinate number of the address of the receipt.***

vi. This agreement shall be governed in accordance with the laws of the Federal Republic of Nigeria.

vii. Neither party shall be liable to the other for failure to perform its obligations in connection with the business when performance is hindered or prevented by National or industrial wide strikes, lockdown or lockout, riot, war (declared or undeclared), act of God, insurrection, interference by government or other cause beyond reasonable control of such party, herein referred to as force majeure.

I, Udeaja Ifeanyi hereby undertake that the funds/capital herein proposed/deposited for the purpose of investment in Insha-Allahu Asset Management and Investment Company Limited and/or its associate companies, is not the proceeds or any crime committed in or out of Nigeria and I agree to be bound by this agreement and above terms and conditions, and also allow the company's access to any capital, which I can only withdraw after the 16 day of 09 2021.

Signed

Investment Signature/Date

29/9/2020

Management

stamp/Sign/Date

Company's Witness Detail

Name – Latifat I. Adams

Address – Suite 512 – 2B ABM Plaza Utako Abuja.

Phone No. 07087831370

Signature date 29/09/2020

Investors Witness Detail

Name – Femi Oguntado

Address – 005 Restaurant Wuse II Abuja

Phone No. 08034831382

Signature date 29/9/2020

Signed

Investor’s signature/Date

Signed

Management Stamp/Date

Now the defendants are relying on clause VI of the agreement which reads:

“Neither party shall be liable to the other for failure to perform its obligations in connection with the business when performance is hindered or prevented by national or industrial wide strikes, lockdown or lockout, riot, war (declared or undeclared), act of God, insurrection, interference by government or other causes beyond the reasonable control of such party, herein referred to as force majeure.”

The defendants also is relying on the Newspaper report of 21st July, 2021. The Newspaper report of 21st July, 2021 seems to be a Certified True Copy of the original.

However, looking at it thoroughly, it can be inferred that it has not been certified correctly to the satisfaction of the provision of section 104(1) and (2) of the Evidence Act, 2011 which provides:

“(1) Every public officer having the custody of a public document which any person has a right to impact shall give that person on demand a copy of it on payment of such document or part of it as the case may be.”

“(2) The Certificate mentioned in sub-section (1) of this section shall be dated and subscribed by such officer within his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such

copies so certified shall be called certified copies.”

Looking at EXH. ‘D3’ which is the Newspaper report of Vanguard of 21st July, 2021 which is the photocopy of it, it can be seen that there is no name of the officer who was alleged to have certified it, and it is not written Certified True Copy of the original, and therefore, the Newspaper report falls short of the requirements of certification and therefore fall short of the requirement of admissibility. Even though admitted by the court, I will deem it as if it has never been admitted for the fact it is inadmissible. See the case of **Okoh V. Kwesi (supra)** and I therefore expunged it from the record of this court. See the case of **Kubor V. Dickson (2013) All FWLR (pt 676) p. 399 at 429, para. H and p. 430, paras. F-G, para. D**, where the Supreme Court held that what determines the issue of admissibility of evidence is relevancy. It is the duty of counsel to object to inadmissible evidence, but notwithstanding, this evidence is still through oversight or otherwise admitted, then it is the duty of the court to when it comes to give judgment to treat the inadmissible evidence as if it had never been admitted. The only admissible secondary evidence of public document is a certified true copy of same. The court went ahead to add that in the instant case, where the computer printout of newspaper rendered by the petitioner was not a Certified, the tribunal rightly expunged same. In the instant case, the photocopy of the Newspaper publication dated 21st July, 2021 it being not correctly certified is hereby expunged accordingly.

I also agree with the submission of the learned counsel to the claimants that it is the position of law that a Newspaper publication is not an evidence of executive decision as such decision must emanate from the Federal

Government Gazette and upon production of such gazette and shall be prima facie proof of any official communication of the government of Nigeria. See the case of **Our line Ltd v. S.C.C. (Nig.) Ltd & Ors.** See also the case of **OGG (Nig) Ltd V. Augustine & Ors (supra)** where the Court of Appeal held that force majeure is an events of effect that can neither be anticipated nor controlled. In the instant case the defendants' right from the onset did not obtain the licence or permit from the relevance government authorities to commence the business, and therefore the defendants cannot be allowed to escape liability.

EXH. 'A6' is an investment agreement dated 17th December, 2020 between Obi Ugochukwu Innocent Gregory and the defendants, and Obi Ugochukwu Innocent Gregory is neither a party and neither was the agreement entered between any of the parties for the benefit of Obi Ugochukwu Innocent Gregory, and therefore, the exhibit goes to no issue and it is hereby expunged accordingly.

I therefore do not agree with the documentary evidence produced by the defendants in defence of this case, and I find the documents presented by the claimants to have probative value and are therefore reliable, and I so hold. See the case of **Adakole V. Ogbuagu (2015) All FWLR (pt 782) p. 1754 at 1777 paras. C-E** where the Court of Appeal, Makurdi Division held that where the viva voce evidence of parties in litigation are irreconcilable, the law gives the court the licence to raise any available evidence as the barometer to determine their veracity. Any party whose evidence is supported by a documentary evidence is taking as saying the truth, this is because documentary evidence is permanent. In the instant case, I use the

documents presented by the claimants, they being in their original form to determine the issues between the parties.

Certainly, the defendants are in breach of the terms of the agreement, the exemption clause of government interference having not proved to exist. See the case of **I.M.N.L V. Pegofor Industries Ltd (2005) All FWLR (pt 270) p. 2021 at 2027, paras. C-D & F.G.** to the effect that the consequence or effect of an exemption clause on a fundamental breach of contract or breach of a fundamental term is not a rule of law, but in each case, the question is one of interpretation of contract to determine whether the exemption clause was intended to give exemption from the consequences of a fundamental breach.

It is therefore declared that the defendants are jointly and severally in fundamental breach of the investment agreements entered into with the 1st and 2nd claimants.

It is declared that by the express tenor of the Investment Agreement of 17th September, 2020, the defendants are jointly and severally bound to pay to the 1st claimant the sum of N400,000 every two month as return of investment on the principal investment sum of N2,000,000.00 for a period of one year ending on the 16th September, 2021.

It is declared that by the express tenor of the Investment Agreement of 24th September, 2020, the defendants are jointly and severally bound to pay to the 2nd claimant the sum of N2,000,000.00 every two months as return on investment on a principal investment sum of N10,000,000.00 for a period of one year certain ending on the 23rd September, 2021.

It is declared that the defendants are jointly and severally in breach of the terms of the contract when they

failed to pay the cumulative sum of N800,000.00 to the 1st claimant as return of investment in January and March, 2021.

It is declared that the defendants are jointly and severally in breach of the terms of contract when they failed to pay the cumulative sum of N4,000,000.00 to the 2nd claimant as return of investment in January, and March, 2021.

The defendants are hereby directed to jointly and severally return to the 1st claimant the sum of N2,000,000.00 representing the principal investment sum given to the defendants in furtherance of the Investment Agreement of 17th September, 2020 which is subject of return by virtue of the said agreement.

The defendants are hereby directed to pay the sum of N800,000.00 in favour of the 1st claimant as the return on investment on the principal sum which had become due and payable since 16th of March, 2021 but had not been paid.

The defendants are hereby directed jointly and severally return to the 2nd claimant the sum of N10,000,000.00 representing the principal investment sum given to the defendants in furtherance of the Investment Agreement of 24th September, 2020 which is subject to return by virtue of the said agreement.

The defendants are hereby directed to jointly and severally pay the sum of N4,000,000.00 in favour of the 2nd claimant as the return of investment on the principal sum which had become due and payable since the 23rd March, 2021 but had not been paid.

The defendants are hereby directed to pay the sum of N2,000,000.00 jointly and severally as general damages for

the psychological trauma and hardship occasioned to the claimants by the defendants' action.

The sum of N8,600.00 is awarded as cost of filing the processes as assed in the faces of the processes as cost of this action.

In the circumstances of this case, there is no need to break the corporate shell of the defendants since the issues have been determined appropriately.

Hon. Judge

Signed

18/3/2025

Appearances:

F.A. Ekuahorovwe Esq appeared for the claimant.

CC-CT: It appears that the defendants are not in court and are not represented.

REG-CT: I called both sides for the judgment.