

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU**

**SUIT NO: FCT/HC/CV/5145/2024  
DELIVERED: ON THE 06/02/2025**

**BETWEEN:**

**LAMONDE NIGERIA LTD.....CLAIMANT**

**AND**

- 1. LINAS INTERNATIONAL LTD**
  - 2. SENATOR NED NWOKO**
  - 3. HON. MINISTER OF FINANCE**
  - 4. HON. ATTORNEY GENERAL OF THE FEDERATION**
- } .....DEFENDANTS

**JUDGMENT**

The Claimant, a private limited liability company registered under the Companies and Allied Matter Act with RC No.194012 approached this Hon. Court vide an Originating Summons dated and filed the 15<sup>th</sup> day of November, 2024 against the Defendants. The Claimant formulated the following questions for determination to wit;

- 1. Whether upon construction of the Consultant/Facilitator Agreement dated 30<sup>th</sup> January, 2010 and executed by the parties hereto, the 1<sup>st</sup> Defendant is not under obligation to share the Commission/payment made by the Association of Local Government of Nigeria (ALGON) (on account of the*

*Contract to obtain the refund by the Federal Government of all monies due to the Local Government Councils in Nigeria) with the Claimant, on equal basis.*

- 2. If the answer to the Question above is in the affirmative, whether it was not in breach of the Consultant/Facilitator Agreement for the 1<sup>st</sup> Defendant to obtain a net sum of \$224,000,000.00 on November 21, 2018 at the then equivalent sum of ₦72,800,000,000.00, in 50% payment on account of Commission earned from performance of Contract with the Association of Local Government of Nigeria (ALGON) and appropriated the entire sum to its own use, in disregard of the obligation of 50% equal share of payments obtainable under the said Consultant/Facilitator Agreement.*
- 3. If Quest 2 above is answered in the affirmative, whether the Claimant is not entitled to obtain from the 1<sup>st</sup> Defendant and its alter ego, the 2<sup>nd</sup> Defendant, 50% of all sums of monies received by the 1<sup>st</sup> Defendant as payment on account of subject Contract of recovery of all monies due to the Local Government Councils in Nigeria from the Federal Government, including the sum of ₦32,760,000,000.00 being 50% of the sum of ₦65,520,000,000.00 received by the 1<sup>st</sup> Defendant on account of subject Contract in November, 2018, as well as the sum of ₦198,307,850.595 from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, being 50% of the outstanding balance of payment due from the Federal Government of Nigeria, on Account of same Contract with the Association of Local Government of Nigeria (ALGON).*

The Claimant stated that upon the resolution of all or any of the above stated questions in favour of the Claimant, the Claimant sought for the following reliefs against the Defendants to wit;

1. *An Order of Declaration that the failure/omission/refusal of the 1<sup>st</sup> Defendant to remit 50% to the Claimant, of all sums of monies received on account of payment of Commission for services rendered to the Association of Local Government of Nigeria (ALGON) for obtaining refund from the Federal Government, of monies due to the Local Government Councils in Nigeria, including the net sum of ₦65,520,000,000.00 received in November, 2018 amounted to breach of the Consultant/Facilitator Agreement which was duly executed between the parties, for the execution of that Contract.*
2. *An Order of Court that the 1<sup>st</sup> Defendant and its alter ego – the 2<sup>nd</sup> Defendant, shall immediately pay to the Claimant:*
  - a. *The sum of ₦32,760,000,000.00 being 50% of the sum of ₦65,520,000,000.000 received by the 1<sup>st</sup> Defendant on account of Subject Contract in November, 2018.*
  - b. *20% interest thereon per annum from 21<sup>st</sup> November, 2018 till date of judgment in this Suit.*
  - c. *23% post judgment interest on the total sum of judgment award per annum, from the date of judgment till final liquidation of entire sum.*
  - d. *50% of any other sum of money previously or subsequently received by the 1<sup>st</sup> Defendant on account of subject Contract.*
3. *An Order of Court mandating the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to pay the Claimant at source, the sum of \$198,307,850.595 being 50% of the outstanding balance of \$396,615,701.19 due and awaiting payment by the Federal Government of Nigeria, on*

*account of subject Contract with the Association of Local Government of Nigeria (ALGON).*

*4. SUCH ORDER(S) OR FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case.*

The said Originating process was served on all the Defendants and upon receipt of service, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their counter affidavit to the Originating summons and Notice of Preliminary Objection. On its part, the 4<sup>th</sup> Defendant filed its counter affidavit to the Originating Summons, whereas the 3<sup>rd</sup> Respondent did not file any process before the Court.

This Hon. Court, in its wisdom heard the Notice of Preliminary Objection and determined same on the 23/01/2025. And parties herein adopted their processes in line with law and procedure on the 27/01/2025 to pave way for this Judgment.

The Claimant in support of the Originating Summons, filed a supporting affidavit of 14 paragraphs deposed to by one Adebayo Abidemi, a Litigation Executive in the Law Firm of Messrs Ola Olanipekun, SAN & Co. Counsel to the Claimant.

From the affidavit in support, the deponent who stated that he got his information from Mrs. Doris Azipu, the General Manager of the Applicant stated that sometimes in January, 2010 the Defendant approached the Claimant to facilitate the performance of its contract with the Association of Local Government of Nigeria (ALGON) to obtain the refund by the Federal Government of all monies due to

the Local Government Councils in Nigeria. That the Claimant consented and Consultant/Facilitator Agreement was executed between the parties, on the 30/01/2010.

It is the deposition of the Claimant that its responsibilities were to make all necessary contact with the relevant authorities to ensure the refund of the money and be responsible for any Court filing fees. And parties shall share on equal basis of **50%** without regards to any expenditure that the 1<sup>st</sup> Defendant might incur in the course of the project.

The Claimant stated further that the contract was duly performed and payment was made but the 1<sup>st</sup> Defendant obtained 50% of the fees/proceeds of the contract and never remitted 50% of the funds to the Claimant. That the 1<sup>st</sup> Defendant obtained the sum of **₦65,520,000,000.00** net **10%** withholding tax in November, 2018 but did not remit **50%** of this sum to the Claimant and also the sum of **\$1,700,000.00** at another time without given the Claimant **50%** as agreed.

It is further the deposition of the Claimant that due to inflation and devaluation of the Naira currency, the interest rates have continued to go higher at the rate **20%** interest from 2018 to 2019, **23%** from May, 2023 and **35%** from July, 2024.

The Claimant avers that in due course, the outstanding payment of the proceeds of the contract which is **₦396,615,701.19** and under the direction of the 3<sup>rd</sup> & 4<sup>th</sup> Defendants is now due for payment and unless payment of **50%** thereof, being the sum of **50%** of

**\$198,307,850,595** is made directly to the Claimant, the 1<sup>st</sup> Defendant would further breach the subject matter agreement.

The following documents were annexed to the Originating summons;

- (1) Facilitator Agreement as Exhibit LD1**
- (2) Payment of Legal/Consultancy fees Exhibit LD2**

In line with law and procedures, a written address was filed wherein learned Counsel for the Claimant formulated two issues for determination to wit;

- (1) Whether 1<sup>st</sup> and 2<sup>nd</sup> Defendants breached the Consultancy/Facilitator Agreement dated 30/01/2010 and executed between the Claimant and the 1<sup>st</sup> Defendant.
- (2) Whether the Claimant is deserving an order of specific performance of Consultancy/Facilitator Agreement dated 30/01/2010 and executed between the Claimant and the 1<sup>st</sup> Defendant.

Learned Counsel argued the issues formulated together in urging the Court to grant all the reliefs sought by the Claimant.

Reacting to the Originating Summons, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a 19-paragraph counter affidavit deposed to by the 2<sup>nd</sup> Defendant himself.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants stated that the Claimant is not a legal person known to law and that behind the Claimant is Senator Owelle Rochas Okorocho, who in 2010 indicated interest to aid the 1<sup>st</sup>

Defendant in execution of its contract with the Local Government of Nigeria.

That parties executed Facilitator/Consultancy Agreement (Exhibit **LD1**) and in the said Exhibit **LD1**, it provides in clause 3.1 as follows:

**3.1 “The parties mutually agree that the scope of the relationship between the parties shall be as follows:**

- a. The facilitator shall make necessary contact with all relevant authorities to ensure the refund by the Federal Government of all monies due to the Local Government Council in accordance with the irrevocable Power of Attorney.**
- b. The facilitator shall be responsible for any Court filing fees arising in this matter, but not including legal fees and other costs.**
- c. The role of the Consultant is as defined in the irrevocable Power of Attorney by various Local Governments.**
- d. The Consultant and the facilitator shall be responsible for obtaining contract agreements or Power of Attorney from the Local Governments.**

That the Claimant did not make any contact with any authority to ensure the refund by the Federal Government Council in accordance with the irrevocable Power of Attorney. And that the Claimant never paid for any Court filing fees arising in this matter, that is, Suit No. **FHC/ABJ/CS/130/2013**.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants stated further that the 1<sup>st</sup> Defendant's legal team prosecuted the suit without any contribution whatsoever by the Claimant either by way of moral support or payment of Court filing fees until judgment was obtained on the 03/12/2013 and also garnishee proceeding was carried out without the contribution of the Claimant.

That the Defendant never breached any of the contract agreement rather it was the Claimant that breach the agreement and therefore not entitle to any reliefs sought.

The following documents were annexed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as Exhibit 1 to 4, to wit;

- (1) Judgment of Federal High Court**
- (2) Consent of the Attorney General of the Federation**
- (3) Garnishee Order absolute**
- (4) Judgment of Court of Appeal**

A written address was filed wherein the following issues were formulated for determination to wit;

- 1. Whether in the absence of a valid affidavit in support of the Claimant's Originating Summons the claims therein ought not fail and the suit dismissed.**
- 2. Whether the Claimant having not shown any evidence of performance of contract is entitled to the Reliefs sought in this suit.**
- 3. Whether the Claimant can take the benefit of a Judgment sum with respect to a suit which it was not a party to.**

Learned Counsel argued the above issue succinctly in urging the Court to dismiss the suit in the interest of justice.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants equally filed a further counter affidavit deposed to by Joe Agi SAN, a perusal of the further affidavit will reveal that same has similar depositions with the one review above, therefore no need of repetition.

On the part of the 4<sup>th</sup> Defendant, a 6-paragraph counter affidavit was filed deposed to by one Zakary Friday, a Litigation Assistant in the Department of Civil Litigation and Public Law, Federal Ministry of Justice, Abuja.

It is the deposition of the 4<sup>th</sup> Defendant that, the 4<sup>th</sup> Defendant is neither party nor privy to the transactions or relationship between the Claimant and the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant as spelt out in the Consultant/Facilitator Agreement and therefore not aware of any breach of the agreement.

That the 4<sup>th</sup> Defendant is not in custody of the sum of **\$396,615,701** or any other sums stated in the reliefs in the Originating Summons, and the 4<sup>th</sup> Defendant does not have the power to approve the payment of the said sum either in favour of the Claimant or the 1<sup>st</sup> Defendant herein.

The 4<sup>th</sup> Defendant filed a written address wherein two issues were formulated for determination to wit;

- (1) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants breached the Consultant/Facilitator Agreement dated 30/01/2010 and executed between the Claimant and the 1<sup>st</sup> Defendant.

- (2) Whether the Claimant is deserving of an order of specific performance of the Consultant/Facilitator Agreement dated 30<sup>th</sup> January, 2010 and executed between the Claimant and the 1<sup>st</sup> Defendant.

Learned Counsel argued the above issue citing relevant cases in urging the Court to dismiss the case against the 4<sup>th</sup> Defendant.

The Claimant upon been served with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants counter affidavit, filed a further and better affidavit of 19 paragraphs deposed to by one Amen Rochas, the Operational Director of the Claimant.

It is the deposition of Amen Rochas that the Claimant is a legal person known to law as it was registered with RC No. 194012.

That the Claimant rendered, as required of the facilitator under the agreement, by leveraging on its goodwill and the clout of its Chairman/Chief Executive Officer Owelle Anayo Rochas Okorochoa in making contacts with all the relevant personalities which resulted to the payment of initial sum of **\$1,700,000** (One Million, Seven Hundred Thousand USD) to the Defendant and a later sum of **₦65,520,000,000.00** (Sixty Five Billion, Five Hundred and Twenty Million Naira) which sum was paid in November, 2018.

That the transaction between the parties predated the formal execution of an agreement as the 2<sup>nd</sup> Defendant had prevailed on the Chairman/Chief Executive Officer of the Claimant to intervene in his predicament of inability to discharge the responsibility and that

the Claimant has made all contacts to the relevant authorities contrary to the allegation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

It is the deposition of the Claimant that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had earlier admitted to the Claimant's performance through Exhibit **LD4, LD5, LD6 and LD7**.

The Claimant also filed a reply on point of law in urging the Court to grant all the reliefs sought.

On the part of Court, I have gone through the case of the parties before me as presented vide their various affidavits and written addresses of Counsel alongside documents annexed. I shall now consider issues raised in the case in the interest of Justice.

Originating Summons as a process has its own peculiarities which are geared towards expeditious determination of the cause of the parties which cause is not burdened by facts that are likely to be in dispute, and where the sole or principal question in issue is or is likely to be one directed on constructions of written law, the constitution or other document, or other question of law. In other words, Originating Summons is used for non-contentious action or matter where facts are not likely to be in dispute. See **DAPIANLONG VS. DARIYE (2007) 8 NWLR (PT. 1036) 332 (SC)**.

A careful reading of the case before the Court will reveal that the grouse of the Claimant is basically anchored on and derived from Exhibit LD1 (Consultant/Facilitator Agreement) between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

It is interesting to note that both the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are on the same page with respect to the existence of Exhibit LD1 (Consultant/Facilitator Agreement) between them. However, both parties have divergent views with respect to the execution and performance of the contract/agreement. Indeed, both parties had stated their part of the case through their various affidavits.

In civil cases, the burden of proof is governed by the balance of probabilities, requiring parties to present evidence that is more likely true than not true. The Act outlines a procedural framework for the allocation of the burden of proof ensuring equitable distribution and thorough adjudication of the pertinent issues.

To arrive at justice, the Court hereby formulate a lone issue for determination to wit; **Whether given law, fact and circumstances of this case, the Claimant has proved his case to be entitled to the grant of all the reliefs sought:**

The law is that the initial burden of proof in any given case rest squarely on the Claimant. Where a Claimant alleging a fact, plead that fact and produce evidence in proof of it, the onus will shift to the Defendants to adduce evidence in rebuttal. See section 131(1) and 134 of Evidence Act, 2011. See also **SUN PUBLISHING LTD VS. ELEMA & ANOR (2024) LPELR 62922 (CA)**.

The Claimant's allegation before this Hon. Court is that sometime in January 2010, the 2<sup>nd</sup> Defendant approached it to facilitate the performance of its contract with the Association of Local Government of Nigeria (ALGON) to obtain the refund by the

Federal Government of all monies due to the Local Government Council in Nigeria which he agreed and same was documented and executed as Consultant/Facilitator Agreement. The said agreement was annexed as Exhibit LD1.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants that executed the said agreement with the Claimant admitted the existence of the document but however denied that the Claimant has performed its part of the contract.

Indeed, it is elementary principles of law that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is because party cannot ordinary resile from a contract or agreement just because he later found the condition of the contract or agreement not favourable to him. This is the whole essence of the doctrine of the sanctity of contract or agreement. The Court is bound by the terms of the contract or agreement and the terms only in the event of an action arising there from. *ARJA VS. A.M.S LTD (2003) 7 NWLR (PT. 820) 577.ASHAKA VS. NWACHUKWU (2013) LPELR 20272 (CA)*.

On whether there exists a valid contract between the parties, I shall consider same shortly by looking at Exhibit LD1 and other documents in evidence. But before considering the documents, I shall deal with preliminary issues raised by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant in their counter affidavit first to ascertain whether the Claimant is proper party and whether there is a valid supporting affidavit before the Court.

In paragraph 3 of the counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the deponent stated that the Claimant is not a legal person known to law.

The law is that once a company has been incorporated or registered, it obtains a legal entity separate from the owners and the people running the company. This means the Company becomes a legal person that has rights and obligations. For example, it can own property/assets, it can also sue and be sued in its own right. See *SALOMON VS. A. SALOMON & CO. LTD (1897) AC 22*.

In response to the question on legal personality of the Claimant, a further affidavit was filed by the Claimant and deposed to by the Operational Manager of the Claimant Amen Rochas wherein the deponent stated that the Claimant is a legal person known to law and Registered with Companies and Allied Matters Act (CAMA) with RC No.194012, the Certificate of Incorporation was annexed as Exhibit LD3.

I have seen Exhibit LD3, which is the Certificate of Incorporation of the Claimant. With RC No.194,012 and same was registered in 1992. From the above revelation therefore, it is obvious that the Claimant is a legal person known to law and I so hold.

I shall now turn to the competence of the affidavit in support of the Originating Summons. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant submitted that there is no competent affidavit in support of the Claimants Originating Summons and therefore no prima facie admissible evidence in proof of the claims therein.

It is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the affidavit of Adebayo Abidemi, who is a litigation executive in the law firm of Messrs Ola Olanipekun, SAN & Co., Counsel to the Claimant, in support of the Originating Summons is nothing but hearsay and inadmissible.

Indeed, an affidavit meant for use in Court stands as evidence and must as near as possible conform to oral evidence that is admissible in Court. An affidavit evidence used in aid of an Originating Summons as in the instant suit takes the place of oral evidence/witness statement on oath in an action commenced by a writ of Summons and therefore such affidavit must conform to rules of evidence. ***LAGOS STATE GOVT. VS. NDIC (2021) 2 NWLR (PT. 1760) 297 at Page 316 para B.***

It is not in doubt that, the affidavit in support of the Originating Summons was deposed to by one Adebayo Abidemi, a litigation Executive in the law firm of the Claimant's Counsel, Ola Olanipekun SAN & Co.

Paragraph 3 of the affidavit in support read as thus;

**“That I was informed by Doris Azipu, the General Manager of the Applicant on the 8<sup>th</sup> day of November, 2024 at our Abuja office by 1pm and verily believe to be true of the following facts.”**

It is instructive to state here that section 115(1) (3) & (4) of the Evidence Act, 2011 has the following provision.

**115(1) Every affidavit used in the Court shall contain only a statement of fact and circumstances to which the witness deposes either of his own person knowledge or from information which he believes to be true.**

**(3) When a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge; he shall set forth explicitly the facts and circumstances forming the grounds of his belief.**

**(4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant and the time, place and circumstance of the informant.**

It is in evidence that the Claimant is company which operates through individuals. The source of the information deposed to by the deponent was from the General Manager of the Claimant and more so that, the case before the court is documentary and distinguishable from the case of **NIGERIA PORT AUTHORITY VS. AMINU IBRAHIM & CO. (2010) 3 NWLR (PT 1182) 487 PP. 500-501** which had to do with a witness statement on oath.

It is therefore my Ruling that the case of ***DANYARO VS. MAI-LAFIA & ORS (2024) LPELR 62838 (CA)*** cited and relied upon by the Claimant's counsel is more relevant to this issue. For avoidance of doubt it was held as thus; ***“On the allegation that the averments in the affidavit of the respondents were offensive and ought to be struck out in the light of section 115 (1) & (2) of the Evidence Act, 2011.”***

I have gone through the depositions of the two separate counter affidavits of the respondents. For the purposes of clarity, let me begin by reproducing the provisions of section 115 (1) and (2) of the Evidence Act 2011; 115 (1) every affidavit used in the court shall contain only a statement of facts and circumstances to which the witnesses deposed either of his own personal knowledge or from information which he believes to be true. (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion. “The submission of the appellant as he had made no particulars reference to section 115 of the Evidence Act 2011. It is the law that he who assert must prove. See the case of *AFESOJAIYE VS. ATESOJAIYE & ANOR (2015) LPELR 24768 (CA)*. Both counter affidavit were deposed to respectively by the litigation secretary in the 2<sup>nd</sup> and 3<sup>rd</sup> respondent’s counsel’s chambers and the litigation secretary in the Hon. Attorney General Chambers. I do not find any objections, extraneous matters, legal arguments or prayers in the said counter affidavit. In a nutshell both affidavits do not offend section 115 (1) & (2) of the Evidence Act 2011 per Musale JCA Pp. 20-21 para. D-E.”

From the above authority, therefore, it is my Ruling that, the objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants counsel with respect to, the affidavit in support of the Originating processes does not hold water, and therefore dismiss.

Having dismissed the contention of learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with respect to the affidavit in support of the Originating Summons, I shall now move to the substantive case. I shall do so by examining the documents annexed to the Originating writ and that of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

I must state here that the best form of evidence is documentary evidence and a document which is tendered in court is the best proof of the content of such document. Oral evidence cannot be allowed to add to or subtract from or alter or contradict a written document. See ***BAKARI VS. OGUNDIPE & ORS (2020) LPELR 49571 (SC)***. ***AINA & ANOR VS. DADA & ANOR (2024) LPELR 62505 (SC)***.

As I stated earlier, the main document between the parties which is not in dispute is Exhibit LD1 (Consultant/Facilitator agreement). The said Exhibit LD1 spelt out clearly the scope of the relationship between the parties.

I shall therefore reproduce relevant paragraphs of the agreement (Exhibit **LD1**) for better appreciation of this case.

**Paragraph 3.1** “The parties hereby mutually agree that the scope of relationship between the parties shall be as follows:-

- a. The facilitator shall make the necessary contact with all relevant authorities to ensure that the refund by the federal government of all monies due to the local government councils in accordance with the irrevocable power of attorney.
- b. The facilitator shall be responsible for any court filing fees arising in this matter, but not including legal fees and other costs.
- c. The role of the consultant is as defined in the irrevocable power of attorney by various local governments.

- d. The consultant and the facilitator shall be responsible for obtaining contract agreement or power of attorney from the local government.

**paragraph 3.2.1** “the parties mutually agree that the facilitator shall be entitled to 10% out of the twenty 20% consultancy commission due to the consultant pursuant to the letter of engagement or fifty 50% percent of any fee due to the consultant.

**Paragraph 3.2.2.** “For avoidance of any doubt the consultant hereby agrees and undertakes that the 10% due to the facilitator shall not in any way be affected by any business relationship between the consultant and any other party.

**Paragraph 3.2.4.** “This agreement shall act as a direct instruction to the bank to pay the facilitator the amount due as prescribed in this agreement.

I pause here to state that the purposive rule of interpretation will not avail a judge where the intention of the parties is clear, precise and unequivocal, so much that, a person can say, yes, this is what the parties have in mind. The purposive rule does not allow the judge to destroy the intention of the parties. ***ABUBAKAR & ORS VS. YARADUA & ORS (2008) LPELR 51 (SC).***

It is the contention of 1<sup>st</sup> and 2<sup>nd</sup> Defendant’s that the Claimant never rendered any of the services contemplated in Exhibit LD1 reproduced in the preceding part of this Judgment. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants also stated that the Claimant never made any contact with any government authority for the payment of funds due to the

Local Government Council. It is further stated in paragraph 10 of the counter affidavit as thus;

**“That the Claimant never paid for any court filing fees arising in this matter that is Suit No. FHC/ABJ/CS/130/2013 or any other matter at all pursuant to the 1<sup>st</sup> Defendant’s execution of its consultancy services to the local government of Nigeria and ALGON. All the filing fees were born by me and the 1<sup>st</sup> Defendant’s team of lawyers. The trajectory of the suit leading to judgment thereon for the recoveries made for the local governments of Nigeria and giving rise to the 1<sup>st</sup> Defendant’s outstanding consultancy fee now due to be paid.”**

Indeed, I have seen and carefully read the duties of the Claimant with respect to Consultant/Facilitator agreement (Exhibit Ld1) reproduced earlier. The duty of the Claimant is clearly provided for in paragraph 3(a) (b) (c) and (d) of the agreement to include.

Making necessary contact with all the relevant authorities to ensure the refund by the federal government of all monies due to the local government council in accordance with the irrevocable power of attorney.

The question is: has the Claimant performed or made contact as provided in the contract agreement above?

It is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the Claimant did not make any contact whatsoever with the relevant authorities with respect to the contract agreement and therefore is not entitle to benefit from the proceed of the contract.

In debunking the allegation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Claimant filed a further and better affidavit wherein it maintained that it rendered as required of the facilitator under the agreement all relevant and essential services by leveraging on its goodwill and the clout of its chairman/chief executive officer Owelle Anayo Rochas Okorocho. The Claimant annexed Exhibit LD6 to proof the above assertion.

Indeed, a trial court has the onerous duty of considering all documents placed before it in the interest of justice. *A.I.C LTD. VS. PIVOT ENGINEERING CO. LTD. & ANOR (2015) LPELR 25857 (CA)*. Exhibit LD6 (written by the 2<sup>nd</sup> Defendant) was annexed in proof of the Claimants case. For clarity sake relevant part of Exhibit LD6 are hereby reproduced?

**Paragraph 1 “I write with reference to the above and wish to express my concern over the delay in executing the above project which largely has to do with timely availability of funds. You have made available to date the sum of ₦500,000 out of the earmarked amount of ₦10,000,000.00.”**

**Paragraph 4 Nasarawa State**

**Following your discussion with the executive Governor, I traveled to Lafia on 3 different occasions. Again I am pleased that I have the signed document. I spent N150,000.00k on the 3 trips.”**

**Other states**

**I had a meeting with your support staff last week Friday and I have given them a detailed background to the project. It is now left for us to work out a practicable itinerary of visits to the remaining states, you may recall that I discussed my meeting with ALGON president who has agreed to invites at least 18 states chairman to Abuja to assist us if we agree to fund their visits. We need to discuss and review the merit of this action visa-vis your contact.**

Indeed, a document which constitutes an admission by a party against his interest is admissible in law. This is so because where there is an admission by a party against his interest, such an admission will be admissible against him. See *SYLVA VS. INEC (2018) 18 NWLR (PT 1651) 310*.

For an admission against interest, in order to be valid in favour of the adverse party, it must not only vindicate or reflect the material evidence before the court, it must also vindicate and reflect the legal position. Where an admission against interest does not vindicate or reflect the legal position, it will be regarded for all intents and purposes as superfluous and a court of law is entitled not to assign any probative value to it. *ORAKWE VS. ORAKWE & ORS (2018) LPELR 44763 (CA)*.

From the content of Exhibit **LD6** written by the 2<sup>nd</sup> Defendant, it is obvious that the Claimant has performed by making contact to the relevant authorities as envisaged by the Consultant/Facilitator agreement Exhibit (LD1). However, from the said Exhibit LD6, it is obvious that what the 1<sup>st</sup> and 2<sup>nd</sup> Defendants construed as non-

performance is the payment of the expenses the 2<sup>nd</sup> Defendant incurred during his journey.

The question is, was the payment of money part of the facilitators duties as envisage in Exhibit **LD1** (Consultant/Facilitator agreement)?

I have gone through the said Exhibit LD1 which is the foundation of this case. There is no doubt that the Consultant agreement between the parties is a contract between them. It is a well settled general principle of law that when parties enter into an agreement, and they have reduced same into writing that is what should govern their relationship. There is any dispute, the agreement will be the reference point and none of the parties would be allowed to vary, add, subtract or resile from it i.e. no parole evidence would be allowed in the court in respect of that agreement. See *KAFINTA VS. ABDULLAHI (2024) LPELR 62091 (CA)*.

As I stated earlier, throughout Exhibit **LD1** no mentioned was made for the Claimant to provide monies for journey of the 2<sup>nd</sup> Defendant to visits states. Imputing it here now would not work as that would amount to bringing extraneous issue into the agreement of the parties. The contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with respect to non-performance is hereby refused as there is evidence of performance as is clearly admitted by the 2<sup>nd</sup> Defendant vide Exhibit LD6 earlier reproduce.

Having held thus, I shall now move to the 2<sup>nd</sup> duty of the Claimant as provided in Exhibit **LD1**. Clause 3.1 (b) provide as thus; **“The facilitator shall be responsible for any court filing fees arising in this matter, but not including legal fees and other costs.”**

It is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the Claimant never paid for any court filing fees arising in this matter that is Suit No. **FHC/ABJ/CS/130/2013** or any other matter and all the filing fees were borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and team of their lawyers.

As I stated earlier in the preceding part of this Judgment, parties are bound by the contract they freely entered into. The Claimant in response to the allegation that it did not pay filing fees, annexed Exhibit **LD7** written by the 2<sup>nd</sup> Defendant as evidence that filing fee was indeed paid. I shall again reproduce the relevant paragraphs of Exhibit **LD7** for better appreciation of this case. The said Exhibit **LD7** dated 13/05/2010 titled **“Breach of contract in respect of refunds due to Local Governments from the Excess Crude Funds used by the Federal Government in settlement of foreign debts.”**

Paragraph 1 of Exhibit **LD7** read;

**“Upon our engagement as consultants for ALGON in respect of the above subject matter, we thought it fit to liase with you in order to accomplish our assignments. Consequently, we entered into two contracts with you. Unfortunately, you breached these contracts and failed to perform your obligations under the agreements we reached with you resulting to unquantifiable hardship to us.”**

Paragraph 2

**“The first understanding we had with you stipulated that you would provide a sum of N10,000,000 (Ten Million Naira) only to enable us host all the local government chairman in order to obtain their irrevocable powers of attorneys as stipulated in our letter of engagement from ALGON . You breached the agreement. You paid only ₦700,000 after so much prevarication.”**

Paragraph 3;

**“The second understanding we had with you stipulated that you provide the sum of N4,500,000.00 (Four Million, Five Hundred Thousand Naira) only as cost of institution and prosecution of the different suit that were to be filed against ALGON, the minister of finance and accountant general of the federation for breach of contract. Sadly, you also breached this agreement. Again, you paid only N600,000 after the event. My previous letters to you in this regard are self-explanatory. The consequences was that we on our part had to borrow at huge cost to foot the bills for institution and prosecution of the actions albeit, belatedly.”**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants kept on making reference to their understanding with the Claimant with the respect to the contract agreement. The position of the law is where there is a contradiction between oral evidence and documentary evidence, the court is bound to look at the documentary evidence to proof same. Oral evidence cannot be used to contradict documentary evidence. Document speaks for itself and it is the best evidence of its contents. See. **REGISTERED TRUSTEES OF THE**

***CATHOLIC ARCHDIOCESE OF ABUJA & ANOR VS. AGBOCHUNU (2020) LPELR 51191 (CA).***

From the provision of Exhibit **LD1** (Consultant/Facilitator agreement) between the parties it is clear that the duties of the Claimant is restricted to the filing fee only and not including legal fees. Also, from paragraph 3 of Exhibit **LD7** reproduced above, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants admitted clearly that it requested for the sum of **₦4,500,000** (Four Million, Five Hundred Thousand Naira) only as cost of institution and prosecution of the different suits that were to be filed but that the Claimant only paid **₦600,000**.

The implication of the above statement is that these suits were not yet filed, but the Defendant needed filing money in line with the provision of the Consultant/Facilitator agreement (Exhibit **LD1**) and Defendant in that letter admitted that **₦600,000** was given to them as filing fees.

The question is how much is the filing fees?

The Defendants annexed Exhibits 1, 2, 3 and 4 showing the process of the court and the judgment it obtained. A perusal of these judgment will reveal that the filing fees were not clear or readable.

The question is how much is the filing fee?

Where is the receipt of the filing fees?

I ask the above question because, the duty of the Claimant in the contract agreement is restricted to filing fee only.

The presumption of withholding evidence under section 167(d) of the Evidence Act arises only where it is established that the party accused of withholding the evidence has the piece of evidence in his possession and refused or neglected to produce it. ***IFLORBBY INTERPRISES (NIG). LTD VS. NDIC & ORS (2019) LPELR 47273 (CA).***

The Defendants has the duty to tendered the receipt of the filing fees to ascertain the **₦600,000** given to them as filing fee by the Claimant is inadequate but they failed to do so. The court must therefore hold it against them.

I have equally read the further affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants duly deposed to by one Joe Agi SAN wherein he corroborated the affidavit of the 2<sup>nd</sup> Defendant and suggested that he is the counsel who actually handled the cases for the Defendants that led to Judgment.

It is instructive to state here that, paragraph 3.2.2 of Exhibit **LD1** is very clearly with respect of the relationship of the Claimant with 3<sup>rd</sup> party i.e. Joe Agi SAN. The paragraph read:

**3.2.2 “for the avoidance of any doubt the consultant hereby agrees and undertakes that the ten (10) percent due to the facilitator shall not in any way be affected by any business relationship between the consultant and any other party.”**

From the above, it is obvious that whatever relationship the said deponent Joe Agi SAN has with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is completely independent of the contract agreement between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Privity of contract is connection or relationship which exists between two or more contracting parties as it is elementary principles of law of contract that as a general rule, a contract cannot confer rights or impose obligations on stranger to it. See. ***REBOLD INDUSTRIES LTD VS. MEGREOLA & ORS (2015) LPELR 24612 (SC)***.

From the revelation so far in this case, it is obvious that the Claimant has performed his part of the contract, this can be seen from Exhibit **LD6** written by the 2<sup>nd</sup> Defendant wherein he admitted performance, and secondly it is also on record that, the Claimant has paid the legal fees. This can be seen from Exhibit **LD7** wherein the 2<sup>nd</sup> Defendant again admitted receiving the sum of **₦600,000** from the Claimant as filing fee.

From the above it is clear that the Claimant has established its case against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, I so hold.

Assuming but without conceding that the Claimant never perform in accordance with Exhibit **LD1** (Consultant/Facilitator agreement) as alleged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, why did the 1<sup>st</sup> and 2<sup>nd</sup> Defendants not terminate the contract? I have seen Exhibit **LD7** titled “Breach of contract in respect of refund due to local government from the Excess Crude Funds used by the Federal Government in Settlement of Foreign Debts” written by the Defendant to the Claimant. The relevant paragraphs of the said Exhibit **LD7** has already been reproduced in the preceding part of this judgment.

I must state categorically that the Exhibit **LD7** is not and could not serve as termination letter but rather complaint letter and admission of performance.

The procedure for termination of the contract between the parties was spelt out in the contract agreement duly executed on the 30/1/2010. For avoidance of doubt, the procedure for termination of the contract is as follows:-

**6.1. This agreement may be terminated upon the occurrence of all or any of the following;**

**(a) Mutual consent of the parties agreeing to terminate the agreement at the completion of the consultancy project or any other cause.**

**(b) The breach by one party of the terms of this agreement in which case the party not in breach may exercise a choice to terminate the agreement by giving the other party 30 days written notice.”**

Throughout the paragraphs of the counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, they never mention that they have terminated the contract agreement between them and the Claimant.

Similarly, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not annex any documents showing they had given the Claimant 30 days written notice of termination of the contract in accordance with clause (6b) to warrant this Hon. Court given them Judgment by dismissing this suit.

On the defence of the 4<sup>th</sup> Defendant, it is not in dispute that the Attorney General of the Federation can be sued as a Defendant in all civil matters in which a claim can be properly made against the Federal Government or any of its authorized agencies arising from

any act or omission complained of. See *A.G. KANO STATE VS. A-G FEDERATION (2007) 6 NWLR (PT 1029) 164 SC*.

Having sued Hon. Minister of finance, it is not out of place and in fact proper to join Attorney-General of the Federation as chief law officer. I so hold.

Indeed, when the empty weight of the counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant is compared to the affidavit of the Claimant, the pendulum certainly will tilt in favour of the Claimant as the Claimant affidavit is more reliable and cogent than that of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Flowing from the above, therefore I shall proceed to enter Judgment for the Claimant against the Defendants. Consequently, Judgment is hereby entered in favour of the Claimant and I hereby order as follows:-

1. **A declaration is hereby made** that the failure/omission/refusal of the 1<sup>st</sup> Defendant to remit **50%** to the Claimant, of all sums of monies received on account of payment of Commission for services rendered to the Association of Local Government of Nigeria (ALGON) for obtaining refund from the Federal Government, of monies due to the Local Government Councils in Nigeria, including the net sum of **₦65,520,000,000.00** received in November, 2018 amounted to breach of the Consultant/Facilitator Agreement which was duly executed between the parties, for the execution of that Contract.
2. **I hereby ordered** that the 1<sup>st</sup> Defendant and its alter ego – the 2<sup>nd</sup> Defendant, to immediately pay to the Claimant:
  - a. The sum of **₦32,760,000,000.00** being **50%** of the sum of **₦65,520,000,000.00** received by the 1<sup>st</sup> Defendant on

account of Subject Contract in November, 2018 **is hereby granted.**

- b. **10%** post judgment interest on the total sum of judgment award per annum, from the date of judgment till final liquidation of entire sum **is hereby granted.**
  - c. **50%** of any other sum of money previously or subsequently received by the 1<sup>st</sup> Defendant on account of subject Contract **is hereby granted.**
3. **I further make an order** mandating the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to pay the Claimant at source **50%** any outstanding balance due and awaiting payment to the 1<sup>st</sup> Defendant, as commission, by the Federal Government of Nigeria, on account of the subject Contract with the Association of Local Government of Nigeria (ALGON).

**SIGNED:**  
**HON. JUDGE**  
**06/02/2025.**

**Appearance:**

*A.U. S. Oguajamma, Esq, for the Claimant*  
*Chinonso L. Obasi, Esq, for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.*  
*Oyinlade koleosho, Esq, for the 4<sup>th</sup> Defendant.*