

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1400/2017

BETWEEN:

SIMTEX INTERNATIONAL (NIG) LTD.....PLAINTIFF

AND

KATSINA STATE GOVERNMENT.....DEFENDANT

JUDGMENT

By the further amended statement of claim dated the 11th day of November, 2019, the claimant claims as follows:

1. A declaration that by virtue of the agreement between the claimant and the defendant, claimant is entitled to a fee of 10% on whatever recoveries that are made from the Federal Government on behalf of the defendant.
2. A declaration that by virtue of the agreement between the claimant and the defendant engaging the claimant as consultant for the reconciliation of the defendant's external debts, claimant is entitled to the sum of ₦1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) only being 10% of the sum of ₦14,500,000,000.00 (Fourteen Billion, Five Hundred Million Naira) only, recovered by the

claimant as the external debts of Katsina State as received by the defendant.

3. An order of court directing the defendant to pay the claimant the sum of ₦1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) only, being 10% of the sum of ₦14,450,000,000.00 (Fourteen Billion, Four Hundred and Fifty Million Naira) only, recovered by the claimant from Federal Government of Nigeria on behalf of the defendant.
4. An order that the claimant is entitled to 10% of any further payment made to Katsina State with respect to the said contract.
5. An order that the defendant pays the claimant post judgment interest at the rate of 10% per annum until final liquidation of the judgment sum.
6. The sum of ₦5,000,000.00 (Five Million Naira) only, being cost of litigation.

In the further amended statement of claim, the claimant averred that the claimant is a Limited Liability Company registered under the CAMA with its registered office at plot 446, Daki-Biyu, Abuja; and that the defendant is one of the 36 States constituting the Federal Republic of Nigeria.

The claimant averred that it specializes in debt recovery especially for governments among other professional services rendered, and that the claimant on the 3rd September, 2011 submitted a proposal to the defendant for engagement as consultant on defendant's external debt reconciliation and recovery, and in the said proposal, the claimant brought to the attention of the defendant the illegal deduction/excess deductions from the statutory

allocation to the defendant, and further to the above, the claimant sought to be engaged as consultant in respect of first line deduction in all external loans of the defendant.

The claimant averred that by the letter dated 3rd September, 2011, the claimant proposed a moderate fee of 10% charged on whatever is received from the Federal Government on behalf of the defendant, and further to the above, the claimant in its proposal to the defendant also states that the said consultant fee of 10% of the recovery sum due to the state would be recovered when the recovered sum/money is credited to the defendant's account.

The claimant averred that by a letter dated 11th April, 2012, the defendant accepted the claimant's proposal by giving approval to the claimant to commence the assignment with reconciliation of Katsina State's external debts.

The claimant averred that in furtherance of the said engagement as consultant by the defendant for recovery of the said external debts, the defendant by a letter dated 16th April, 2012, introduced the claimant as appointed consultant for the reconciliation of the defendant's external debts, to Debt Management Office.

The claimant states further that the defendant sought the co-operation of the Debt Management Office to avail the claimant with the defendant's data base, and that on the 16th April, 2012, it also caused a letter to be written to Debt Management Office to further inform the Debt Management Office of its appointment as consultant to the defendant to reconcile external debts and first line deductions from statutory allocation of the defendant.

The claimant states that attached to the letter of 16th April, 2012 sent to the Debt Management Office, are also

the letter of the defendant introducing the claimant as external debt consultant and the proposal by the claimant.

The claimant averred that in furtherance of its commitment of its appointment as external consultant; it immediately commenced work wherein the claimant attended several meetings with officers of the Debt Management Office in Abuja reduced enormous records relating to the external debts of the defendant, analyzed every record of the defendant with the Debt Management Office in Abuja and ascertained the refunds due to the defendant in respect of the defendant's external debts reconciliation and recovery.

The claimant averred that in execution of its engagement as external consultant of the defendant it discovered excess deductions in the account of the defendant and it made a submission in a detailed spread sheet to the Debt Management Office showing the excess deduction of first line charge of the sum of \$ 218,006,698.11 (Two Hundred and Eighteen Million, and six thousands, Six Hundred and Ninety-Eight dollars, Eleven cents; and the excess multilateral debt deduction of the sum of \$11,142,411.89 (Eleven Million, One Hundred and Forty-Two Thousand, Four Hundred and Eleven, Eighty-Nine cents) making a sum total of excess deductions of \$229,149,110.00 (Two Hundred and Twenty Nine Million, One Hundred and Forty-Nine Thousands, One Hundred and Ten Dollars) from the account of the defendant by the Federal Government.

The claimant averred that in the detailed spread sheet analysis dated 25th April, 2012 it submitted to the Debt Management office in Abuja, the claimant demanded for the refund of the total sum of \$229,149,110.00 (Two Hundred and Twenty-Nine Million, One Hundred and Forty-Nine thousand, One Hundred and Ten Dollars) on behalf of the

defendant, and that by a letter dated 20th April, 2012, the claimant submitted the summary of the reconciliation report showing excess deductions including first line charge and spreadsheet to Debt Management Office, and that as a result of the claimant's efforts, the Director General of the Debt Management Office wrote to the Honourable Minister of Finance addressing the Ministry to seek the president's approval to refund the said debt and excess deductions to the defendant.

The claimant averred that throughout the engagement of the claimant, the defendant has put in the mind on the excess deductions made by the Federal Government on the defendant's account, and that it made several documented and non-documented efforts for the reconciliation of the defendant's debts.

The claimant averred that bulk of the work done by it for the reconciliation of the defendant's debts were done in Abuja, within the jurisdiction of this court, and even though a delay was experienced on the release of the excess charges to the defendant by the Federal Government, His Excellency, President Muhammadu Buhari has approved the release of 50% of the excess deductions to be paid to the defendant.

The claimant averred that the sum of N14,500,000.00 (Fourteen Billion, Five Hundred Million Naira duly being 25% of the said excess deductions has been paid to the defendant and the balance would be paid when the Debt Management Office has reconciled the debt notice of the states in Nigeria, and that in accordance with the agreement between the claimant and defendant, the claimant is entitled to 10% on whatever recoveries made by the claimant from the Federal Government on behalf of the defendant, and the claimant is entitled to the sum of

N1,450,000,000.00 (Fourteen Billion, Four Hundred and Fifty Million Naira) only, released as part payment of the claimant for the excess deduction to the defendant by the Federal Government pursuant to the contract between the claimant and the defendant.

The claimant averred that by a letter dated 5th January, 2017 it made a demand for the said 10% of the total sum of N14,500,000,000.00 (Fourteen Billion, Five Hundred Million Naira) only refunded to the defendant by the Federal Government but till date, no such payment has been made to the claimant.

The claimant averred that further to paragraph 18 above, it instructed its solicitors to write a letter of demand to the defendant, and further to paragraph 19, the claimant by a letter dated 21st March, 2017 through its solicitors Messrs Rickey Tarfa & Co. further demanded that the sum of N1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) only be paid within (7) seven days of the receipt of the letter, and despite the receipt of the said letter dated 21st March, 2017 by the defendant, the defendant has refused, failed and/or neglected to pay the sum of N1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) only as consultancy fees for the recovery of the defendant's debts.

The defendant, in its further amended statement of defence dated the 19th November, 2019 averred that it is not in the position to either confirm or deny paragraph 1 of the claimant further amended statement of claim, and put the claimant to the strictest proof, and the defendant admitted to paragraph 2 of the further amended statement of claim, and also denied paragraph 3 of the further amended statement of claim.

The defendant averred that in response to paragraph 4 of the further amended statement of claim averred that a mere submission of a proposal for engagement as a consultant on the defendant's external debts reconciliation and recovery vide a letter dated 3rd September, 2011 would not amount to final engagement of the claimant, and in response to paragraphs 5 and 6 the defendant averred, that on the said proposal, the claimant made reference to the decision of the Supreme Court of Nigeria which referred to the illegal deduction/excess deduction from the statutory allocation with a particular reference to first line deductions on all external loans of the states of the Federation of Nigeria.

The defendant in response to paragraph 7 averred that going by the letter dated the 11th April, 2012 the approval and commencement of the assignment was subject to the execution of a formal agreement/contract as contained in the claimant's proposal and the fee of 10% was only to be charged on the efforts or recoveries made by the claimant in this case made no personal efforts in the said recovery.

In response to paragraph 8, the defendant averred that going by the content of the letter referred to in their paragraph 7 above, the said 10% consultancy fee would be paid if the recovery was through the personal efforts of the claimant and subject to the execution of a formal agreement/contract to be executed by both parties and none was entered thereto, and in response to paragraph 9 the defendant averred that the approval given to the claimant's proposal was conditional and subject to the execution of a formal contract/agreement between both parties.

That in respect to paragraph 10, the defendant averred that the defendant had never sought the co-

operation of Debt Management office to avail the claimant with the defendant's data base and the claimant is put to strictest proof, and in response to paragraphs 12 and 13, the defendant averred the Katsina State Government tacitly withdrew the formal introduction of the plaintiff to the Debt Management office, Abuja, to act as external debt consultants to the defendant as Riverdale Financial Services Ltd was appointed by the defendant to act as a new management consultant going by the letter dated 9th November, 2012 forwarded to the Director General, Debt Management Office, Abuja, and further to that, the defendant averred that subsequently, the Debt Management Office wrote to the defendant through a letter dated 5th February, 2016 informing it that the Debt Management Officer, Abuja was not dealing with consultants in respect of the matters relating to states debt, and hence there is no efforts that could be attributed to the claimant in recovering any amount on behalf of the defendant, and the Nigerian Governors' Forum through a letter dated the 29th February, 2016 hand off the hands of any engaged consultant from taking any further steps in state debts. That further to the deposition above, a Contract Agreement was entered between the said Riverdale Financial Services Ltd and the defendant and was signed on the 6th November, 2015.

In response to paragraph 14, the defendant averred that the subsequent meetings, if any, attended with the officers of the Debt Management office, Abuja or any purported acts carried out by the claimant, were not on the instruction of the defendant and the claimant is put on the strictest proof.

In response to paragraph 15 the defendant averred that the purported submissions to the Debt Management

Office were not on the instruction of the defendant and the claimant is put to strictest proof, and in response to paragraphs 16 and 17, the defendant averred that the defendant had not instructed the plaintiff to engage the Debt Management Office and the said letter dated 20th April, 2012 was not submitted to the Debt Management Office, Abuja on the instruction of the defendant and the claimant is put on the strictest proof.

The defendant, in response to paragraph 18, averred that it was not as a result of the claimant's effort that the Director General, Debt Management Office wrote to the Minister of Finance advising the Ministry to seek the president's approval to refund the said debt and excess deductions to the defendant and the claimant is put to strictest proof.

That the defendant, in response to paragraph 19 averred that the defendant had not acknowledged any reports of the work done by the claimant on the instruction of the defendant as there was no any communication to that effect, and that in response to paragraph 20 the defendant averred that the claimant had not made any several non documented efforts for the reconciliation of the defendant's debts as there is no way an incorporated company could engage in non documented efforts.

The defendant, in response to paragraph 21 averred that the defendant had not acknowledged any report from the plaintiff on any work done in Abuja on the defendant's instruction; and the claimant is put to strictest proof, and in response to paragraph 22, the defendant averred that the act of His Excellency, President Buhari whereby he had approved the release of 50% of the excess deductions to be paid to the defendant and not be attributed to the claimant and the claimant is put to strictest proof, and the

defendant, in response to paragraph 23, that the payment of N14,500,000,000.00 (Fourteen Billion, Five Hundred Million Naira) being 25% of the said excess deductions cannot be attributed to the acts of the claimant under the instruction of the defendant and the claimant is put to the strictest proof.

That the defendant, in response to paragraph 24, averred that there was no any agreement between the claimant and the defendant which entitles the claimant 60% or whatever recoveries made by the claimant from the Federal Government on behalf of the defendant as there was no formal agreement/contract to that effect.

The defendant, in response to paragraph 25, averred that the claimant is not entitled to the sum of N1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) or any amount being 10% of the N14,500,00,000.00 (Fourteen Billion, Four Hundred and Fifty Million Naira or percentage of any amount pursuant to the contract between the claimant and the defendant as there is no any binding contract between them and the claimant is put to the strictest proof, and that the defendant in response to paragraph 26 averred that the letter dated 5th January, 2017 demanding 10% of the total N14,500,000,000.00 refunded to the defendant by the Federal Government cannot be a ground that the defendant had entered any binding contract with the claimant.

The defendant averred that, in response to paragraphs 27 and 28, that the letter dated 21st March, 2017 demanding that the sum of N1,450,000,000.00 be paid within (7) seven days cannot be agreed that the defendant had entered any binding contract with the claimant.

The defendant, in response to paragraph 29, averred that the receipt of the said letter dated the 21st March, 2017

from the claimant cannot be a ground that there is a binding contract between the defendant and the claimant, and that in response to paragraph 30, the defendant averred that the claimant is not entitled to the total sum and the defendant does not owe the claimant any amount based on any binding contract and hence the claimant is not entitled to declaration, and orders sought, and urged the court to dismiss the claimant's claim for lacking in merit.

In his reply to the defendant's further amended statement of defence, the claimant virtually re-iterated all that were encapsulated in the further amended statement of claim and denied the paragraphs of the further amended statement of defence.

In the course of the trial, both parties put in their witnesses as the claimant put in one witness, while the defendant put in two witnesses and the witnesses were duly cross-examined by their respective counsel.

Moreso, in the course of the trial, the claimant tendered the following exhibits, thus:

- (1) Proposal For Engagement as consultant on state's external debt dated the 3rd September, 2011, marked as EXH. 'A1';
- (2) Re-Proposal for Engagement as consultants on state external debts reconciliation dated 11th April, 2012, marked as EXH. 'A2';
- (3) Re-letter of appointment as consultant to Katsina State Government to reconcile external debts, marked as EXH. 'A3';
- (4) Summary of Reconciliation report For Katsina State external debt/First line charge dated the 20th April, 2012 marked as EXH. 'A4'.

- (5) Payment of Consultancy fees in respect of refund to Katsina State Government dated the 5th January, 2017; marked as EXH. 'A5';
- (6) Demand For payment of 10% in respect of the refunds recovered for Katsina State for the reconciliation of the state's external debt dated the 21st March, 2017 marked as EXH. 'A6'.

The defendant in the course of the trial tendered the following documents as follows:

- (1) Re-Proposal For Engagement as consultants on External debts reconciliation dated the 11th April, 2012, marked as EXH. B1;
- (2) Re-payment of Riverdale Financial Services Ltd as Debt Management Consultant dated 5th February, 2016 marked as EXH. 'B2';
- (3) Very urgent compilation of state Fiscal Matrix dated the 29th February, 2016 marked as EXH. 'B3'.
- (4) Contract Agreement between Riverdale Financial Services Limited and Katsina State Government marked as EXH. 'B4';
- (5) Appointment of Riverdale Financial Services Ltd as Debt Management Consultant For Katsina State dated the 4th November, 2015 marked as EXH. 'D1'

At the end of the trial, the counsel adopted their final written addresses in satisfaction of the requirement under section 294 of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

In the final written address of the counsel to the defendant, the following issues for determination were formulated, thus:

- (1) **Whether there is any valid contract between the claimant and the defendant?**
- (2) **If question one (1) above is answered in the affirmative, whether the plaintiff has proved its case/claim as required by law against the defendant and entitled to reliefs (1) (2) (3) and (4) of the further amended statement of claim?**
- (3) **Whether the plaintiff is entitled to any claim for interest and cost of litigation against the defendant on reliefs (4) (5) and (6) of further amended statement of claim?**

On the issues 1 and 2, the counsel submitted that considering the state of pleadings and the available pieces of evidence both oral and documentary before this court as well as guiding principle regarding the determination of a claim for breach of contract by a court of law, and going by the relevant averments in the pleadings of the parties, it is crystal clear that the crux of the case relates to a claim for breach of contract, and the issue is whether or not the claimant is entitled to be paid by the defendant the sum of N1,450,000,000.00 being 10% of the part payment of the excess deduction in respect of the first line charges agreed by the claimant to be recovered from the Federal Government on behalf of the defendant, and it is a well established principle of law that he who asserts must prove, and he cited the case of **Jeje V. UBA Plc (2007) All FWLR (pt 381) at 1783**; and **Yusuf N. Adogoke (2007) All FWLR (pt 385) p. 384**. It is also a principle that the burden of proof rests on the party against whom judgment would be given if no evidence were produced in respects of those facts, and the burden is fixed, and he cited the cases of **Amubare V. Sylva (2009) 1 NWLR (pt 1121) at 72**; **Amadi V. Amadi (2017) 7**

NWLR (pt 1563 at 108; and Aminu V. Hassan (2014) 5 NWLR (pt 1400) at 287.

The counsel submitted that by paragraph 30 of the further amended statement of claims are largely or essentially declaratory, and the claimant can only succeed in discharging the burden on the strength of his own case and not on the weakness of the defence, and he cited the case of **Dumez Ltd V. Nwachoba (2008) 18 NWLR (pt 1119) at 373 – 374** to the effect that a declaration of right sought by the claimant against the defendant cannot be made on admission or default of pleadings by the defendant, and he cited the case of **Bello V. Emeka (1981) 1 SC 101, Engr. Christopher Okonkwo V. Union Homes Savings and Loans Plc (2020) LPELR-51709 (CA).**

The counsel submitted that in claim for breach of contract, what is required of a claimant is to establish not only the existence of the breach but also to show that the contract upon which the said breach is predicated is in existence and enforceable, and he cited the case of **Njikonye V. MTN Nig. Comm. Ltd (2008) 9 NWLR (pt 1092) at 339, paras. C-D.** He also cited the cases of **Haido V. Usman (2004) 3 NWLR (pt 859) 65; Tsokwa Oil Marketing Co. V. Bon Ltd (2002) 17 NWLR (pt 777) 163; Jos Flour Mills Ltd & Anor V. Mr. Christopher Giwa & Ors (2020) LPELR – 551452 (CA).**

The counsel submitted that for there to be a valid and enforceable contract, there must be a definite and unconditional offer by the offeror or and a definite and unconditional acceptance by the offeree, and he cited the cases of **Njikonye V. MTN Nig. Comm. Ltd. (supra)** and the case of **Ajayi-Obe V. Executive Secretary (1975) 3 SC 1** to the effect that for a contract to exist, there must be a mutually of purpose and intention, two contracting parties must agree.

The counsel submitted that the claimant has not been able to establish that there is the existence of the valid contract as the evidence is not sufficient to establish that. The counsel submitted and quoted the evidence tendered before the court as already listed in this judgment and that the claimant also attempted to fortify its oral by tendering two letters made references to by PW1 in his testimony, those EXH. 'A1' and 'A2', he further submitted that courts do not make contract/agreement for parties, but would only interpret the agreement of parties, and he cited the case of **Opia v. Ibpu (1992) 3 NWLR (pt 231) at 658**, and the counsel posed to the effect that: considering **EXH. 'A1'** and **'A2'**, what did the parties agree to? and he submitted that a literal interpretation of EXH. 'A1' and 'A2', and that EXH. 'A2' is a mere provisional approval; and/or at best, a conditional acceptance subject to the execution of a formal agreement/contract.

The counsel submitted that going by the evidence before the court, it is not in dispute that in subsequent formal agreement/contract was executed between parties herein and none was produced by the claimant.

The counsel submitted that a close perusal of EXH. 'A1' and EXH. 'A2' which are relied upon by the claimant reveal that the content therein do not fulfill the condition warranting some to constitute a valid, binding and enforceable contract, and he quoted the content of EXH. 'A2' by underlining "Provisional approval", and "subject to the execution of a formal agreement/contract" as contained in your proposal, please.

The counsel submitted that reference to the defendant's approval as provisional approval as well as the requirement for execution of a formal agreement/contract has been incorporated therein as a condition precedent,

and there is no evidence whatsoever establishing that such condition precedent was fulfilled by the claimant, and also submitted that the DW1 gave credible evidence and uncontroverted to that effect, which evidence was corroborated by the testimony of PW1, when he testified under cross-examination that no formal agreement was executed between the claimant and the defendant more because of urgency of the issue of reconciliation of the excess deductions in respect of the first line charges required, and he submitted that documentary evidence EXH. 'A2' sought to be used to assess the oral evidence to determine the veracity, and he cited the case of **Tsokwa Mobil Oil Market Co. V. B.O.N Ltd (2002) 11 NWLR (pt 777) 163 at 207** to the effect that where a contract is made subject to fulfillment a certain specified terms and conditions, the contract is not formed and binding unless and until those terms and conditions are complied with or fulfilled. Thus, once a condition precedent is incorporated into an agreement that condition must be fulfilled before effect can follow. The counsel submitted that the above position was re-iterated in the case of **Jamb V. Nkeiruka (2008) 44 WRN 92 at 105** to the effect that the word "proposal" is defined as temporary, preliminary, tentative.

The counsel cited the case of **Incorporated Trustees of Nigerian Baptist Convension & Ors. V. Governor of Ogun State & Ors (2016) LPELR – 41134 (CA)** where the term proposal is defined to mean existing or accepted for the present time but likely to be changed; serving for the time being, and he cited the cases of **United Bank of Africa Ltd V. Tejumola & Sons Ltd. (1986) 4 NWLR (pt 38) 815**; and **BPS Construction & Engineering Ltd V. FCDA (2017) LPELR – 42516 (SC)**.

The counsel submitted that the content of EXH. 'A2' has to be given effect to and on no account the court will re-write the said exhibit for the parties by reading into the said exhibit extraneous issues which are not contained therein, and parties are bound by the term/condition in EXH. 'A2', and he cited the case of **TFA Inv. Ltd. V. Brawal Line Ltd (2010) 12 SC (pt 5) 110 at 162; Netibaye V. Narell Int. Ltd. (2009) 16 NWLR (pt 1167) 326 at 349; and Amede V. UBA (2006) 8 NWLR (pt 1090) 623 at 659-660.**

The counsel submitted that where the intention of the parties to a contract is clearly expressed in a document, the court cannot go outside the said document in search of other non-existent document to determine the intention of the parties, and he cited the case of **Olaseinde & Ors. V. F.H.A. & Ors. (2010) LPELR – 24532 (CA).**

The counsel submitted that the claimant tendered EXH. 'A3' to further show that valid and enforceable contract existed between it and the defendant which is a letter dated 16th April, 2012, forwarding a letter of introduction written by the defendant to Debt Management Office, and by the content of the said letter of introduction, he allegedly informed the Debt Management Office of the claimant's appointment as a consultant who would continue with the reconciliation exercise of the external debt and first line charge deduction on behalf of the defendant, and the defendant was said to have solicited for the co-operation of the Debt Management Office to avail the claimant with its data base, and the counsel submitted that the content of the attachment to the said EXH. 'A3' cannot be relied upon by the court in determining whether or not there exists a valid contract between the claimant and the defendant, this is because the condition precedent contained in EXH. 'A2' has precluded the

content of the said attachment EXH. 'A3' from being held to be binding on the defendant and it is an obstacle for the claimant to take the benefit of same, and this is on the trite position of the law which states the implication of a condition precedent to be none of the parties can benefit from step taken thereon without the fulfillment of the condition precedent, and in other words the condition precedent must happen before either party becomes bound by the contract. The counsel submitted that put differently EXH. 'A3' together with the said attachment is a nullity and cannot stand, unless and until the condition precedent in EXH. 'A2' is fulfilled, and he cited the case of **Burton Resources Ltd & Anor. V. First Deepwater Discovery Ltd (2021) LPELR – 54429.**

The counsel submitted that the claimant neither tendered nor led any concrete evidence to the fact that any formal agreement/contract was executed by parties, and it is settled that when an issue is left in doubt, the court cannot speculate on such, and the court cannot embark on voyage of discovery and it cannot speculate, and he cited the case of **Danjuma V. Dogari (1998) 6 NWLR (pt 553) p. 234 at 237** to the effect that when an issue is left in doubt so that the court would be required to speculate the party on whom the burden of proof rest must lose.

The counsel submitted that it is well settled that where there is an agreed terms/conditions of contract between parties the only way an agreed conditions/terms can be varied is by another mutual agreement safe in furtherance to the terms in the earlier agreement as to variation, and he referred to the case of **A.G. Rivers State V. A.G. Akwa-Ibom (supra)** to the effect that the terms of agreement of a valid contract reduced into writing can only be varied by another agreement also in writing.

The counsel submitted that the claimant has contended in its pleading particularly paragraphs 2 and 3 of its reply to the defendant's further statement of defence that the defendant's act of making the said attachment to EXH. 'A3' has wittled down the efficacy of the condition precedent contained in EXH. A2 and as such, same cannot affect the validity of the enforceability of the said contract between it and the defendant, and the counsel quoted the answers given by the PW1 under cross examination and the concept of waiver as articulated in cases of **Nigerian Bottling Co. Plc. V. Chieuzoma Ubani (2013) LPELR – 21902; Ariori V. Elemo (1983) (pt 353) 771** and **Kano State Development Board V. Franz Construction Ltd. (1994) 4 NWLR (pt 192)** equals to simply failing to take advantage of a right very obvious to a party where it is clear that there is no other reasonable presumption in explanation of party's step so far taken than that the right is let to go, and it is akin to acquaintance, and it presupposes that the person to be bound is fully cognisant of his right but neglect to enforce them or choose one benefit instead of another. The counsel submitted that for an act of a party to amount to a waiver, express or implied, two elements must co-exist namely:

- (a) The party against whom the doctrine is raised must have knowledge or be aware of the act or omission which constitutes the waiver, and
- (b) he must have done some unequivocal act adopting or recognising the act or omission,

and he cited the cases of **Gabriel Olatunde V. Obafemi Awolowo University & Anor (1998) LPELR – 2575 (SC)**, and submitted that the act which the claimant claimed to have constituted waiver in this instant case is the fact that defendant to the Debt Management Office introducing the claimant as the consultant who

would continue with the reconciliation on their behalf, and however, there is no evidence before the court that the said letter was forwarded to the Debt Management Office by the defendant, neither is there any evidence of the acknowledgment of the receipt of the said letter by the claimant from the defendant, and no evidence has also been adduced by the claimant that the defendant was aware of forwarding of the said letter by the Debt Management Office through EXH. 'A3'.

The counsel submitted that the testimony of DW1 in chief controverting same, and he reproduced paragraphs 8, 12 and 13 and underlined same as emphasis.

The counsel submitted that further that there is nothing in the said attachment to EXH. 'A3' showing that the said letter was actually given by the defendant, and received by the claimant, and in the absence of this vital evidence, it will be out of place for the claimant to argue that the said letter constitute waiver, rather it may suggest that same or as prepared in anticipation of the execution of a formal contract between the two parties as required by EXH. 'A2'.

The counsel referred to the case of **Maryam V. Idris (2000) FWLR (pt 23) p. 1237 ratio 5**, and submitted further that the wordings of EXH. 'A2' are very clear and devoid of misinterpretation, and urged the court to so hold that oral evidence cannot be used to vary the terms of a written contractual document, and he cited the case of **Agbareh V. Nimra (2008) All FWLR (pt 409) pg. 559**, and submitted further that oral evidence will also not be allowed to vary the terms of an agreement, and he cited the case of **Dragetanos Construction (Nig.) Ltd. V. FAB Madis Ventures Ltd (2012) All FWLR (pt 616) p. 441**.

The counsel submitted that in the absence of a formal agreement/contract executed by parties, there is no valid, enforceable contract between parties, that can or was breached, and he urged the court to so hold that the claim of the claimant is confounded and be dismissed.

The counsel submitted that the position of law requires that claimant can only succeed on its claim of breach of contract by not only showing that the defendant reneged to pay the said consultancy fee as stipulated in EXH. 'A1', but also by establishing the fact that claimant also performed its own obligation therein, and he cited the case of **Tsokwa Mobil Oil Market Co. V. B.O.N Ltd (supra)** to the effect that suffice it to say her plaintiff sued for damages for breach of contract, to succeed, the claimant must show that it is the defendant who is responsible for breach before the latter can be made liable for the loses arising from the breach, that is to say, the claimant must know that it performed its own side of the bargain that it fulfilled all the conditions for it to perform as laid down, and he cited the case of **Clam (Nig.) Ltd V. Onayewo (1972) 3 SC**; and **Ogundalu V. Macjob (2015) 8 NWLR (pt 1460) 96**. He submitted further that the claimant failed to show that its fulfilled its own obligation or performed it contractual duty as stipulated in EXH. 'A1'. He also submitted that the obligation to be performed by the claimant is to ensure the reconciliation and recovery of all the excess deductions, and the evidence adduced by the claimant in a failed attempt to prove that it actually recovered some of the excess deductions from the Federal Government for the defendant which is the oral evidence of PW1 and EXH. 'A4' (the summary of Reconciliation Report dated 20th April, 2012).

The counsel reproduced the testimony of PW1 in paragraphs 16, 17, 18, 19, 21, 22, 23, 24 and 25 of the witness statement on oath.

The counsel in considering the credibility of the above testimony of PW1, he commended to the court the case of **Agbi V. Ogbah (2006) 11 NWLR (pt 990) at 113** to the effect that the Supreme Court gave a sound description to what amounts to credible evidence which a court can rely on in determination of a case, that is credible evidence must in itself credible, in the sense that it should be natural, reasonable and probable in views of the entire circumstances, and it must lead to a conclusive or definite result, and it must not be extra ordinary, in conflict with reason and probability or an affront to intelligence, and he cited the case of **Mustapha Haruna Soba V. LT. Colonel Mustapha Abdullahi (RTD) (2013) LPELR – 22630 (CA)**.

The counsel submitted that in applying the said principle of law to the testimony of PW1, it benefit of quality of a credibility, and the reason is that the claimant failed to produce any minute of the several meetings claimed to have had with the officers of the Debt Management Office, neither did he state or produce the names of the officers of the Debt Management Office who participated in the said meeting.

The PW1, he submitted, failed to produce the information and the document it obtained from the Debt Management Office which he claimed were used in preparing the report attached to EXH. 'A4'. These missing crucial pieces of evidence are vital and fundamental to the claimant's case in view of the credible and uncontroverted testimony of DW2 who denied the claimant's entire story involving the Debt Management Office in paragraphs 15, 16 and 17 of the witness statement on oath of the DW2.

To the counsel, the above crucial pieces of evidence which is uncontroverted, of DW2 part paid to the entire case of the claimant regarding performance of the mandatory obligation in the alleged contract and the report is unreliable. The counsel submitted that the alleged report attached to EXH. 'A4' relied upon by the claimant is benefit of credibility since upon which same is predicated has been outrightly denied by the Debt Management Office by having denied in any meeting with the claimant, nor grant access to the Debt Management Office data base to the claimant (as alleged) and is therefore a ruse. The counsel submitted that looking at the Report reveals that same was not signed by anybody, thereby making same to be worthless and of evidential value, and he cited the case of **Omega Bank V. O.B.C. (2005) 8 NWLR (pt 928) p. 547 at 576**, and submitted further that the document cannot be traced to any originator or maker, and the law is that unsigned document, cannot be relied upon by the court in resolving crucial issue in a case, and he cited the case of **Garuba V. K.I.C. (2005) 5 NWLR (pt 917) 160**.

The counsel relied on the case of **Davidson V. INEC (2021) LPELR – 52805; Apgt V. Almakura & Ors (2015) LPELR – 47053 (SC)** and submitted that an unsigned document carries no weight, and it is a worthless document in that it has no evidential value. The counsel submitted that apart from the fact that the report was not signed, the credibility of the content of the report attached to EXH. 'A4' was also put on issue by the testimony of DW1 to the effect that same does not emanate from the Debt Management Office. More interesting, the counsel submitted, is the fact that the evidence on record shows that the alleged report attached to EXH. 'A4' was prepared 4 days after the letter of introduction attached to EXH. 'A3' was forwarded to

Debt Management Office by the claimant, and therefore, one will wonder at what time did the claimant have the several meetings he claimed to have held with officers of the Debt Management Office, and what time was he given all the necessary information from the Debt Management Office data base required in preparing the said report, and what time did he start the preparation of same to conclusion, the counsel queried.

He submitted further that all these surrounding the preparation of the said document cast serious aspersion before the court on the circumstances leaving to the production of the report leaving same in the realm of speculation and courts do not speculate, and submitted that in line with the case of **C & C Constructions Co. Ltd V. Okhai (2003) 18 NWLR (pt 85)** to the effect that when the testimony of a witness has reached or attained the height of insipid or important exaggerations, it should be disregarded as mere petulance and treated with ignominy.

The counsel submitted that the viva voce testimony of PW1 to the effect that claimant submitted the said report attached to EXH. 'A4' to the Debt Management Office as a result of which the Director General wrote to the Minister of Finance seeking approval of the president to refund the said debt, is not only incredible but insufficient to proof the fact that it was the submission of EXH. 'A4' that caused the president's approval of the refund of the said excess deductions.

The claimant did not even produce the letter purportedly written by the Director General of Debt Management Office to Hon. Minister of Finance, it did not also show any concrete evidence showing that the Federal Government acted upon the EXH. 'A7'. More so, when the defendant adduced uncontroverted evidence through the

DW2 as contained in paragraph 17, 18 and 19 of the witness statement on oath of the DW2, and submitted that the evidence of the claimant in proof of the purported efforts it claimed to have made in performing its own duty/obligation in the contract, between it and the defendant is non-existent, unreliable and worthless, apart from being unreasonable, and hence no probative value ought to be attached to same in the determination of this instant case, and he urged the court to so hold.

The counsel submitted that as far as the reliefs sought by the claimant in the writ of summons/statement of claim are essentially declaratory and same are not granted by the court as a matter of course, and a declaratory action lies within the discretion of the court which the claimant prays to the court to declare an existing right in law as may be discernable in the statement of claim, and therefore, to the counsel, a person claiming such right must show the existence of a legal right subsisting and in future, and that right is contested.

He submitted that the burden of establishing that right must be credible, convincing, positive and affirmative, must be evidence in accordance with the pleadings, and he cited the cases of **Arowolo V. Olowookere (2011) 18 NWLR (pt 1278) 280**; **Nwaogu V. Atuma (2013) 11 NWLR (pt 1364) 117**; and **Omisore V. Aregbesoga (2015) 15 NWLR (pt 1482) 205**, and that the court does not make declarations without cogent, credible and compelling evidence, and he cited the case of **CPC V. INEC (2011) of NWLR (pt 1279) 493 at 538**.

The counsel submitted that before the claimant can obtain a declaratory order, the claimant must lead evidence in proof of the facts upon which it raised the reliefs, and he cited the case of **Consolidated Ltd V. Abofarben (Nig.) (2007) 6 NWLR (pt 1030) 221**, and

submitted that the claimant has not placed or led any credible evidence before this court to entitle it to the reliefs sought, and therefore, urged the court resolve the issues Nos. 1 & 2 against the claimant and dismiss the claim.

On the issue No. 3, the counsel submitted that the claimant is not entitled to any post judgment interest of 10% per annum until final liquidation of judgment sum (relief No. 5) as it failed woefully to place and prove its entitlement to same. The claimant has not proffered any evidence in support of its claim for interest, and he cited the case of **Sani Abacha Foundation for Peace & Unity V. U.B.A Plc (2010) All FWLR (pt 522) p. 1668** to the effect that a claimant, in order to succeed in a claim for interest must show how the entitlement for such interest arose, i.e. whether by law, by contract or by agreement on pleaded facts showing that the defendant's wrong doing imposed on him. It is not enough to say that the claimant is claiming interest, the basis of the claim for interest must be made manifest on the pleading; and he cited the cases of **Barclays Bank D.C.O V. Alabi (1961) All NLR 536; UBN Plc V. SC DOK (Nig) Ltd (1998) 12 NWLR (pt 598) 439; London Challam & Dover Railway V. South Eastern Railway (1893) A 429 p. 1674 paras. D-E;** and the case of **Int'l Trade Bank Plc V. Kautak Hairu Co. Ltd (2006) All FWLR (pt 292) 116** to the effect that for a claim of interest to exist properly for determination in the court of law, it must be stated in the enforcement of the claims to the writ of summons or on the statement of claim, and also the grounds upon which the claim is based as contract or statute.

The counsel submitted that the claimant is not entitled to the claim of interest because the principal claim has failed; and he also cited the case of **N.S.C. Ltd V. Mojec International Ltd (2005) All FWLR (pt 262) p. 475 at 495 per**

Ikongbeh JCA, and that the best method of satisfying a court about the existence of a ground or award of interest is by adducing credible and sufficient evidence; and he cited the case of **Hausa V. First Bank Plc (2000) FWLR (pt 29) 2515 & 2525**. To him, relief 4 is not only fantastic but speculative full of (its) and not certain, and he cited the case of **Mohammed V. Wamako (2018) 7 NWLR (pt 1619) 573 at 590**.

The counsel submitted that to make any order that the claimant is entitled to 10% any further payment made to Katsina State with respect to the said contract, when there is no evidence of any actual payment based on any performance before the court, is nothing, but a mere variant of imaginative guess which even when it appears plausible should not be allowed by the court being a speculative relief, and neither parties nor the court is adhered to speculate anything, and he cited the case of **Ikenta Best (Nig.) Ltd V. A.G. Rivers (2008) LPELR – 1476 (SC)**, and he urged the court to refuse relief 4 as sought.

On the claim of cost of litigation (relief No. 6), it is settled law, the counsel submitted, that cost of litigation or solicitors fees is not something questionable in taxation. The courts have made a practice of not awarding solicitors fees as an item of damages or cost, and he cited the case of **Nwanji Coastal Services (Nig.) Ltd (2004) 11 NWLR (pt 885) 552 at 570**. The counsel submitted that an award of cost of litigation or attorney's fees for breach of contract runs contrary to the legally recognised principle for the award of damages for breach of contract, and the lacks power to award such claim, and he cited the cases of **UBA Plc V. Vertex Agro Ltd (2020) 17 NWLR (p. 467 at 515; Nwanji V. Coastal Services Ltd (supra); and Nbanugo V. Nseeili (1998) 2 NWLR (pt 537) 343**, and he urged the court to resolve issue No. 3 in favour of the defendant.

In the final written address of counsel to the claimant dated 21st November 2022 and filed on the 23rd of November 2022, a sole issue for determination was formulated thus:

Whether there is a binding contractual agreement between the Claimant and the Defendant to warrant the grant of the reliefs sought by the Claimant.

Learned counsel to the claimant postulated that for a contract to constitute a binding contractual relationship between parties, there must be consensus ad idem which is the meeting of the minds, which mutual consent relates to offer and acceptance. She submitted that an offer is the expression by a party of its readiness to contract on terms specified by him which if accepted by the offeree gives rise to a binding contract and then the offer matures to a contract where the offeree signifies a clear and unequivocal intention to accept the offer. She referred the Court to the case of **BILANTE INT’L LTD V NDIC (2011) 15 NWLR (PT 1270) AT P.423 PARAS D – E** in support of her position.

She also cited to the Court the dictum of Honourable Justice Bage J.C.A. (as he then was) in the case of **NWANGWU V FBN PLC (2009) 2 NWLR (PT 1125) AT PG 227** where he cited chatting on contracts definition of contract to mean:

“An agreement gives rise to obligation which are enforced or recognized by law”

Counsel postulated further that to establish a contractual obligation, the Claimant must establish the following:

There is an existing valid contract.

The Claimant performed its obligations under the contract.

The Defendant has committed a breach of its obligations under the contract.

She also submitted that in order to establish a valid contract, certain conditions must be present, which are offer, acceptance, consideration, intentions to create legal relations and capacity to contract.

She submitted that by the evidence of CW Shamhul Oni, the General Manager of the Claimant and project co-ordinator for the execution of the contract between the Claimant and the Defendant, the Claimant via letter dated 3rd of September, 2011 (Exhibit A1), submitted a proposal to the Defendant for engagement as consultant on state's external debt reconciliation and recovery. She contended that the content of the said Exhibit A1 is very clear and unambiguous and it is an unequivocal agreement by the parties as an offer made by the Claimant to the Defendant for engagement as consultants on the Defendant's external debt reconciliation and recovery.

She submitted further that the Defendant upon receipt of the said Exhibit A1 responded with their own letter dated 11th of April, 2012 (Exhibit A2) which content shows clearly that they accepted the claimant's offer by stating therein that:

"I wish to refer to your letter dated 3rd September, 2011 on the above subject matter and inform you that His Excellency; the Executive Governor has given provisional approval for your company to commence the assignment subject to the execution of a formal agreement/contract as contained in your proposal please".

In dispelling the contention of counsel to the Defendant in his Final Written Address that the absence of a formal agreement/contract makes the contract between the Claimant and Defendant invalid, learned counsel argued

per contra that the position of the law is settled that an agreement can be oral, written or can be implied from the conduct of parties thereto. She referred the court to the case of **TRADE BANK PLC V DELE MORENIKEJI (NIG) LTD (2005) 6 NWLR (PT 921) 309** and the Supreme Court's decision in the case of **OKUBULE V OYAGBOLA (1990) 4 NWLR (PT 147) 723 AT PAGES 741 – 742 PARA H – A** where Agbaje JSC held:

“In general, two main rules govern acceptance of an offer. The first is that there must be positive evidence from which the court may infer an acceptance. This may consist simply in intention for a mere mental acceptance is not enough. The second rule is that the acceptance must be communicated to the offeror. This is however subject to certain exception, the most important of which concerns community sent through the post. Here the general rule is that the acceptance is completed as soon as it is posted. Acceptance inferred from conduct.

Once it is clear that a definite offer has been made by one party it is necessary to show that that offer has been accepted by the other party. As has been indicated above, this acceptance may be by demonstration of the conduct of the parties as well as by their or by documents”. Learned counsel submitted further that Exhibit A2 falls within the category of the rules set out by the Supreme Court such that Exhibit A2 is so positive as the Defendant gave its approval to the Claimant to commence the assignment. She contended that the Defendant wholly accepted the offer by the Claimant via Exhibit A2 but further accepted the offer by its conduct as clearly shown in Exhibit A3 which is the letter of the Claimant to the Director General of Debt Management office, informing him of its appointment as consultants to the Defendant to reconcile external debts

and First Line Charge deduction with the attached documents, particularly the first letter attached dated 16th of April, 2012, written by the Defendant to the Director General of debt Management Office in Abuja and signed by Mohammed Lawal Jari, Honourable Commissioner, Ministry of Finance, Budget and Economic Planning dated 16th of April, 2012.

Learned counsel urged the court to note that Exhibit A3 clearly shows the acceptance of the offer by the conduct of the Defendant in writing to Debt Management office introducing the Claimant as its external debt consultants in the ongoing external debt and First Line Charge Reconciliation exercise without a formal contract. She opined that this means that the Defendant by its conduct has jettisoned the requirement of a formal contract and the word "Provisional" as Exhibit A2 is of no moment.

She also urged the court to note the evidence of DW1, Nasiru Nayayawho confirmed that the Defendant introduced the Claimant to the Debt Management Office, Abuja via the letter dated 16th of April, 2012. She cited the deposition of DW1 in his evidence in chief at paragraph 9 of his statement of 20th November, 2019 where he said:

*"9. That the Katsina State Government tacitly withdrew the formal introduction of the Plaintiff to the Debt Management Office, Abuja to act as external Debt Consultants to the Defendant as RIVER DALE FINANCIAL SERVICES LTD was appointed by the Defendant to act as a new Management Consultant -----
-----"*

It is the submission of counsel that the above evidence of DW1 in examination-in-chief, confirms that the Defendant

by conduct jettisoned the requirement of a formal contract, as it is clear from the evidence before the court that a purported withdrawal allegedly took place, shows that the Defendant by conduct jettisoned the need for a formal contract.

Learned counsel submitted further that by Exhibit A4 which is the letter of the Claimant to Debt Management Office of the Summary of Reconciliation Report for Katsina State External Debt/First Line Charge and Request for Refund dated 20th of April, 2012 with the attached bundle of documents titled Report on the Reconciliation of Katsina State External Loans Deductions by Simtex International (Nig.) Ltd 2012, it is clear that the Claimant has fully performed the said contract. She urged the court to note that there is no evidence contradicting this performance by the Claimant and there is no documentary evidence whatsoever even from Debt Management Office stating that this Exhibit A4 was not received by Debt Management Office. She stated that Exhibit A4 shows the received stamp of the office of Debt Management who received the said Exhibit A4 on the 20th of April, 2012.

Counsel submitted further that DW1 (Nasiru Nanyanya) during cross examination on the 4th of March, 2021 confirmed that the Defendant had jettisoned the requirement for a formal contract between the Claimant and the Defendant.

It is the contention of counsel that the evidence of DW1 further confirmed that upon the introduction of the Claimant to the Debt Management Office, there is nothing in the letter of introduction stating that the said introduction was subject to a formal agreement or contract and the same DW1 retracted his evidence in paragraph 8 of his evidence before the court and during cross-examination,

clearly stated that he no longer maintained the position that the Defendant never sought the co-operation of DMO to avail the CLAIMANT of Katsina State Data Base.

She submitted further that without Exhibit A3, the Claimant would not have had access to commence the assignment of reconciliation which DW1 affirmed during cross examination.

It is the contention of counsel that the evidence of CW1 and DW1 shows that the Claimant fulfilled its part of the contract by reconciling the Defendant's external debt and forwarding the report to both DMO and the Defendant and there is no evidence before the Court contradicting this fact. She submitted that the position of the law is settled that no person will after reaping benefits from a transaction to be heard to say such a transaction is void when it comes to fulfilment of his obligation under the transaction, so far as the other party has done all it pledged to do under it. She referred the Court to the cases of **DANGOTE FARMS LIMITED V. PLEXUX COTON LIMITED (2018) LPELR – 46581 (CA) AT 61 PARAS A-D; IBRAHIM V. OSIM (1988) 3 NWLR (PT. 82) @ P. 257 and PROFESSIONAL CLEANING SERVICES LIMITED V. BENUE STATE GOVERNMENT & ORS (2020) LPELR – 52278 (CA) P. 32 PARAS B-E** where it was held that;

“...Furthermore, the appellant performed its obligation under the contract and so the respondents took benefit from it. No person shall, after benefiting from a transaction to which he is party, be heard to say that such a contract is illegal, void or voidable when it comes to him to fulfill his obligation under the transaction so far as the other party has done all he pledged to do under it.”

Counsel also submitted that the Defendant having issued letter dated 16th April, 2012 which is attached to Exhibit A3, the Defendant, due to its conduct, will be said to have waived the terms of the formal contract. She opined that the position of the law is settled that if one party by its conduct leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict right when it will be inequitable for him to do so. She cited the decision of the Supreme Court in the case of **Nigerian Bank for Commerce V. Industry and Integrated Gas (Nig.) Ltd & Anor (2005) 4 NWLR (part 916) pg. 617 at pages 642-643,**

“Whether it is called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he evinced an intention to affect their legal relations. He made in effect a promise not to insist on his strict legal right. That promise was intended to be acted on and was in fact acted on. He cannot afterwards go back on it (Charles Richards Ltd V. Oppeheim (1950) 1 K.B. 616 Per Denning, L.J. Pg. 623)”.

Counsel again reiterated that the Claimant performed his side of the contract and even the officials of the Defendant knew and participated in the contract which led to the submission of same to the Debt Management Office. She quoted CW on the 5th of December, 2019 during cross examination where he stated clearly thus;

“PW1: The summary report was prepared by the claimant and the officials of Katsina State Government and was submitted to the defendant.”

To further buttress the performance of the contract by the Claimant, learned counsel cited the evidenced of CW1 on the 11th of February, 2020 during cross examination.

Counsel also urged the court to note that the Defendant never denied the fact that payment had been received in respect of the reconciled external debt of Katsina state. She said the Defendant contended that it appointed Riverdale Financial Services Limited as the debt management consultant for Katsina state and also relied on a contract between Riverdale Financial Services Limited and Katsina state dated 6th of November 2015 and tendered before this Court as Exhibit B4 and the said Riverdale Financial Service Limited was introduced to the Debt Management Office as the consultant via a letter dated 4th of November, 2015 and the said letter of appointment introducing Riverdale Financial Services Limited as Debt Management Consultant of the Defendant was admitted in evidence as Exhibit D1.

She argued that a cursory look at the said Exhibit D1 and Exhibit B4 will show that Exhibit D1 dated 4th of November, 2015 which is the letter of introduction of Riverdale Financial Services Limited to the Director General of the Debt Management Office was issued even before a formal contract, Exhibit B4 between Riverdale Financial Services Limited and the contract was executed. The said Exhibit B4 was dated 6th of November, 2015. In essence, it was done after Riverdale was introduced to DMO which is the usual pattern of the Defendant.

She also referenced the evidence of DW1 during cross examination on the 20th of October, 2021 and submitted that the argument of the Defendant that a formal contract must be executed as a condition before introduction does not hold water, as the said Defendant tactically avoided

tendering Exhibit D1 knowing fully well that same will not support its case.

Counsel submitted further that Exhibit B2, which is the letter from Debt Management Office, Abuja to the Defendant does not affect the claim of the Claimant as the contract between the Claimant and the Defendant had been long concluded before Exhibit B2 was issued and Exhibit B2 was issued on February 5th 2016, whereas the Claimant had long submitted the Report since 20th of April, 2012 which is four years after the completion of the contract by the Claimant. She submitted further that Exhibit B2 shows that the said Exhibit B2 from the Debt Management Office, Abuja to the Defendant is in respect of the appointment of Riverdale Financial Services Limited and not as to the appointment of the Claimant.

She argued also that it is simply logical that the Defendant having appointed the Claimant to reconcile its external debt at the Debt Management Office and same having been effectively concluded by the Claimant, the Defendant cannot reappoint external consultant to reconcile its debts four years later.

Regarding Exhibit B3 which is a circular titled "*Very Urgent: Compilation of States Fiscal Matter*" dated February 29, 2016 which is a letter of the Governors' Forum, counsel argued that it does not have any correlation with the claim of the Claimant before this Court having been issued four years after the Claimant had concluded the contract by sending the reconciled external debt of Katsina State via a report to Debt Management Office, Abuja. She also argued that the said Exhibit B3, did not make reference or state the concluded contract between the Claimant and the Defendant.

Regarding the testimony of DW2, Ajiya Joseph Bwalami, a Civil Servant, also an Assistant Chief Operating officer of the Debt Management Office, Abuja who was subpoenaed, counsel submitted that DW2 who works in Debt Management Office and not a party to the contract between the Claimant and the Defendant obviously will not be aware of any other contract as he clearly stated of the contract between the Claimant and the Defendant has shown in his evidence before the court during cross examination on the 9th of December, 2001.

On the above, she submitted that the import of the doctrine of privity of contract is that as a general rule, a contract cannot confer or impose obligations arising under it on any person except the parties to it. In support, she cited the case of **Idufueko V. Pfizei Products Limited (2014) 12 NWLR (PT. 1420) pgs. 122-124 paras C-F SC** and submitted that Debt Management Office is not a party to the contractual agreement between the Claimant and the Defendant.

She submitted also that the basis of his deposition in his statement on oath was as a result of the processes in court that he obtained which in essence has nothing to do with his knowledge of the relationship between the Claimant and the Defendant.

She reiterated further that by the evidence of DW2 during cross examination, it was clearly stated that there was no evidence or document wherein Debt Management Office rejected exhibit A3 which is the letter to DMO informing DMO of the appointment of the Claimant and that DW2 did not also provide any evidence before this Court contradicting the reconciliation report attached to exhibit A4 dated 20th April, 2012.

Counsel postulated that oral evidence cannot be used to contradict documentary evidence as decided in the case of **Global Soap and Detergent Industries Limited V. Sunshine Oil Chemical Development Company Limited (2020) 1 NWLR (PT. 1704) pages 116-117 para H-H.**

She reiterated further that the issue of the Governors' Forum took place in 2016, four years after the Claimant had concluded the said contract.

Still on the above, counsel submitted that during cross examination, DW2 confirmed that the DMO has not responded via any document to support his oral evidence that the summary reconciliatory report and spreadsheet attached to the letter of the Claimant dated 2012 Exhibit A4 did not emanate from DMO Management database and as such, the oral evidence of DW2 cannot be relied upon. She submitted further that DW2 in the above stated evidence before this court also confirmed that he does not have any evidence or fact before the court showing that the NGF (Governors' Forum) reconciled the debts of all the states particularly that of Katsina State.

Learned counsel submitted that paragraph 2.32-2.33 of the Final Written Address of the Defendant be discountenanced as the contractual agreement is between the Claimant and the Defendant and DW1 in his evidence before this Honourable Court confirmed the said contractual agreement and the performance of same by the Claimant. She stated that all the exhibits tendered by the Claimant were not controverted by the Defendant and the position of the law is settled that uncontroverted evidence needs no further proof. She cited the cases of **Wortheplus Ltd V. Oxygen Healthcare Ltd & Ors (2021) LPELR – 55871 (CA) at page 16 paras D-F; Chief Malachi Idion V. The Traditional**

Rulers Council, Ikot Abasi (2013) LPELR – 21389 (CA) pg. 20 para E.

She reiterated that in order for a contract to constitute a binding contractual relationship between the parties thereto, there must be a meeting of the minds, often referred to as consensus ad idem. The mutual consent relates to offer and acceptance. An offer is the expression by a party, of readiness to contract on the terms specified by him which if accepted by the offeree gives rise to a binding contract. The offer matures to a contract where the offeree signifies a clear and unequivocal intention to accept the offer. She cited the case of **Bilante Int'l Ltd V. NDIC (2011) 15 NWLR part 1270 at P. 423 paras D – E and Nwangwu V. F. B. N. Plc (2009) 2 NWLR part 1125 at page 227.**

Counsel submitted further that for a party to succeed in an action for breach, he must establish not only that there was a breach but also that there was in existence an enforceable contract which was breached as decided in the case of **BEST (NIG) LTD V B.H. (NIG) LTD (2011) 5 NWLR (PT 1239) PG 95.**

On the implication of an offer, she cited the decision of the Supreme Court in **SPARKLING BREWERIES LTD V UBN LTD (2001) 15 NWLR (PT 737) 539** where it was reiterated that an offer is an expression of readiness to contract on the terms specified by the offeror, that is the person making the offer which if accepted by the offeree will give rise to a binding contract. She stated further that an offer is a display of willingness to enter into a contract on specified terms made in a way that would lead a reasonable person to understand that an acceptance, having been sought will result in a binding contract.

Counsel referred again to Exhibit A1 and reiterated that it provides proof of elements of a valid contract which is the offer and the proposition of the consequent consideration to be paid to the Claimant. She added that paragraph 5 of the said exhibit disclosed the intention of the claimant to provide its services and offered its services.

She submitted further that PW1 and DW1 confirmed the existence and authenticity of Exhibit A1 and its content and as such, its content can safely be said to be uncontroverted and binding on the parties to the Agreement.

She reiterated that Exhibit A1 shows that a definite offer was made by the Claimant and exhibit A2 discloses positive evidence from which the court may infer acceptance on communication of the acceptance to the Claimant.

On this, she cited the case of **OKUBULE V OYAGBOLA (1990) 4 NWLR (PT 147) 723 AT PAGES 741 – 742 PARA H – A** where Agbaje JSC held that:

“In general, two main rules govern Acceptance of an offer. The first is that there must be positive evidence from which the court may infer an acceptance. This may consist simply in intention for a mere mental acceptance is not enough. The second rule is that the acceptance must be communicated to the offeror. This is however subject to certain exceptions, the most important of which concerns communication sent through the post. Here the general rule is that the acceptance is completed as soon as it is posted. Acceptance inferred from conduct. Once it is clear that a definite offer has been made by one party it is necessary to show that that offer has been accepted by the other party. As has been indicated above, this acceptance may be by

demonstration of the conduct of the parties as well as by their words or by documents”.

Counsel further reiterated that Exhibit A2 is proof of acceptance on the part of the Defendant as it gave its approval to the Claimant to commence the Assignment. She reiterated that the acceptance of the offer by the Defendant was demonstrated by the introduction of the Claimant of the Debt Management Office (DMO) by the Defendant stating that Simtex had be appointed to continue with the reconciliation exercise of the Defendant's external debt. She argued that this act by the Defendant diminishes whatever they sought to achieve by referring to the portion of Exhibit A2 which provides the phrase “provisional approval” as the law is trite that when a term is inserted in a contract which has no application, it should be regarded as meaningless and ignored or severed from the contract without impairing the contract itself. She said that DW1 under cross-examination testified after reading Clause Nos. 3 and 4 of Exhibit A3 confirmed that indeed the Defendant introduced the Claimant to the DMO as having been appointed to act in the manner described in EXH. A1 and A2.

On the argument of the Defendant that there was no formal agreement/contract executed by parties, counsel argued per contra that the argument is not the true position of the law as the court has a duty to scrutinize and examine closely all contractual documents admitted as exhibits to determine whether there exists a contract between the parties and the documents must be read together. She cited the case of **Mekwunye V WAEC (2020) 6 NWLR (pt 1719) Page 1**. She reiterated that the Defendant cannot be spared by stating that there was no formal contract when

the Exhibits A1, A2, A3 and A4 possess the characteristics or element of a valid contract.

Counsel argued further that while the law provides for condition precedent, the argument of the Defendant that the creation of a contract was a condition precedent will not avail the Defendant in this circumstance because the law is that when one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief and he does act on it, then the first party will not afterwards be allowed to insist on the strict rights when it would be inequitable for him to do so. On this she cited the case of **NBCI V INTEGRATED GAS (NIG) LTD (2005) 4 NWLR 9 (PT 916) PAGE 617.**

She opined that the inference this Court will draw of the existence of the letter from the Defendant to Debt Management Office introducing the Claimant, is that the Defendant clearly knew of the pendency of the Claimant's relationship with it, agreed to it and sought the immediate action of the Claimant in dealing with the Debt Management Office.

On the cases of **BURTON RESOURCES LIMITED & ANOR V FIRST DEEPWATER DISCOVERY LIMITED (2021) LPELR – 54429; DANJUMA V DOGARI (1998) 6 NWLR (PT 533) P 234, AT 237** cited by the Defendant, learned counsel argued that while those cases provide general principles of law as it relates to contract, the circumstances and facts in the authorities are not on all fours with this suit.

She contended further that it is misleading and prejudicial for the Defendant to argue that there is nothing on the said attachment to EXH. A3 to show that the said letter was actually given by the Defendant and received by the Claimant as the content of the said attachment are

clear and direct. She stated also that the said document was never challenged or controverted during cross examination but in fact agreed and accepted by DW1 during cross examination. She maintained that the said document emanated from the Defendant and same was admitted by DW1 thus binding on them.

Learned counsel postulated that the probative value of a document must be determined regarding proof of its content and in so doing, the entire document is considered along with the oral evidence before the court in order to find if it is credible and valuable to the fact it seeks to establish. She relied on the case of **JWAN V ECOBANK (NIG) PLC (2021) 10 NWLR (PT 1758) PAGE 449**. She reiterated that the attachment to Exhibit A3 seeks to establish an acceptance by conduct, a waiver of the condition of formal contract, and confirmation of an intention to contract by the Defendant and the evidence of DW1 during cross examination has established all of them.

Counsel further contended that the argument of the Defendant that the Claimant seeks to alter the terms of a written contract orally will not avail the Defendant as the evidence that the Defendant introduced the claimant to the Debt Management Office was documentary and the only oral evidence from CW1 and DW1 under cross examination seek to establish the content of the attachment to EXH. A3 is credible and reliable. She submitted further that Parties are bound by the Agreement they willingly enter into and the only function of the court is to interpret the agreement in enforceable terms without more. She cited the case of **N. S. C. (NIG) LTD V INNIS PALMER (1992) 1 NWLR PART 218 at P. 434 PARA F**.

In countering the argument of the defendant that the element of waiver was not proved submitted that the law is the elements, which is that the party against whom the doctrine is invoked must have knowledge or be aware of the act which constitute the waiver and there must be unequivocal act adopting or recognising the act of omission. She argued that the Defendant clearly knew of the consequence of writing to introduce the Claimant to the Debt Management Office. She added that DW1 and DW2 admitted in evidence that there was no document or evidence where after the introduction of the Claimant to the Debt Management office, the Defendant wrote the Claimant to terminate or determine the Defendant's relationship with the Claimant and as such the elements of waiver were established and the facts were clearly pleaded and elicited during cross examination of the Defendant's witness.

On Consideration, counsel submitted that the best evidence of the contents of a document is the production of the document itself and in proof of the Claimant's suit, CW1 testified that the Claimant was entitled to the sum of N1,450,000,000.00 (One Billion, Four Hundred and Fifty Million Naira) only, being 10 percent of N14,500,000.00 (Fourteen Billion, Five Hundred Million Naira) only which was arrived at due to the existence, validity and bindingness of Exhibit A1, item 6 which provides that the Claimant will charge a moderate fee of 10% on whatever recoveries are made from the Federal Government on behalf of the Defendant. She opined that this evidence was not controverted and the said consideration is not only direct, unambiguous but also the right, interest profit accruable to the Claimant.

On Intention to Contract, counsel cited the case of **CANNITEC INTL CO. LTD V SOLEL BONEH (NIG) LTD (2017) 10 NWLR (PT 1572) PAGE 66** where the Supreme Court reiterated that conduct of parties to a contract is a guide towards deducing what their actual intention is. She submitted that all the exhibits, particularly Exhibits A1, A2 and A3 disclose a clear intention to contract. She reiterated that the evidence of CW1, DW1 and DW2 support the position of the Claimant that there exists an agreement and it is trite law that reliefs are granted to a party if he succeeds in proving his claim.

On Capacity to Contract, counsel gave the meaning as the legal competence of a person to enter into a valid contract. She submitted that only parties to a contract can sue or be sued on it and as such, whoever is not a party to it is not privy to it and cannot therefore, enforce it, even if the contract has been made for his benefit and purported to give him the right to enforce it as decided in the case of **UNION BEVERAGES LTD V. PEPS. COLA INTERNATIONAL LTD (1994) 3 NWLR (PT 330)**.

Learned counsel submitted that the argument of the defendant that the report attached to Exhibit A4 was not signed is unsupported in law and the authority of **MAKU V AL-MAKURA (2016) 5 NWLR (PT 1505)** supports the position of the Claimant. she maintained that the content of the document was not impeached during cross examination and also that the existence of exhibits A1, A2 and A3 gave credence to Exhibit A4 which is to establish the effort by the Claimant pursuant to Exhibits A1 and A2. She argued further that CW1 testified of the Claimant's efforts and same was not impeached or controverted during cross examination. She added that throughout the period of the existence of exhibits A1, A2, A3 and A4 there was nothing to establish

that the relationship between the Claimant and Defendant was terminated before the payment by the Federal Government.

In response to the argument of the Defendant on post judgment interest, counsel submitted that this court is empowered to award post judgment interest on the sum it has awarded a successful party and as such does not need to be specifically claimed as the award of post judgment interest is discretionary. She cited the case of **OAN OVERSEAS AGENCY (NIG) LTD V BRONWEN ENERGY TRADING LTD (2022) 11 NWLR (PT 1842) PAGE 489.**

On the relief for cost of litigation, counsel submitted that it is borne out of a pleaded fact and a relief sought. She argued that the authorities cited by the Defendant state the importance of pleading same which was done by the Claimant thus grantable by this court. She cited the case of **DHL INT'L NIG LTD V EZE-UZOAMAKE (2020) 16 NWLR (PT 1751) PAGE 445.**

In conclusion, she urged the Court to resolve the sole issue in favour of the Claimant and grant all the reliefs sought.

Learned counsel to the defendant filed a Reply on Points of Law in response to the claimant's lawyer's final written address. The reply is dated 1st of March 2024 and filed on the 3rd of March, 2024.

Arguing in response to the claimant's counsel's submission that the Witness Statement on Oath dated 10/04/2017 and 30/11/2017 is shabby as same was made in the introduction part of the Defendant's Final Written Address, counsel submitted that the way and manner arguments are canvassed in a written address is a matter of style as there is no law stating that a particular style must be adopted in proffering arguments before the Court and as

such, that line of argument is puerile and he urged the court to discountenance same.

In response to the submission in paragraphs 3.13-3.24 of the Claimant's final address, learned counsel submitted that for the purpose of amendment of pleadings, the witness Statement on Oath forms part of the pleading and it is settled law that when a pleading (which includes statement of claim and all other accompany processes) is duly amended by the order of court, what stood before the amendment is no longer material before the court and no longer defined the issues to be tried before the court thereby making it immaterial in the determinations of issues to be tried in the proceedings. He cited the decision of the Court of Appeal in the case of **SANI V.ISIYAKU RABI'U & SONS LTD & ANOR (2022) LPELR-57479 (CA)**.

Counsel opined that pleading which defines the issues between the Claimant and the Defendant before the Court is the Claimant's Further Amended Statement of Claim filed on 12th of November, 2019 to which a witness statement on oath was deposed to by the Claimant's sole witness, Defendant's Further Amended Statement of Defence filed on the 20th of November, 2019 and the Claimant's Reply to the Defendant's Further Amended Statement of Defence on the 4th of December, 2019. It is the submission of counsel that the case of **Onyiorah VS Onyiorah (2019) 15 NWLR (PT 1695) 227 @ 248 para G** relied upon by the Claimant is most inapplicable to the instant case because unlike in the instant case, the issue raised therein has nothing to do with amendment of Pleadings. He argued that Pleadings was defined by the Apex court in that case based on the fact and circumstances contained therein and what informed the definition given by the Apex court is to distinguish averment in a pleading from evidence to be used in

proving the said averment. He urged your lordship to discountenance the said case.

Learned counsel also argued that contrary to the Claimant's argument in paragraphs 5.01-5.15 of the Claimant's final written address to the effect that Exhibit A3 suffices to be the positive evidence from which this Honourable can infer that there was an acceptance to the Claimant offer as contained in Exhibit A1, Exhibit A3 cannot be said to be and is not a waiver of the condition stated in Exhibit A2. He argued that Exhibit A3 is just a mere notice to the DMO in anticipation of the Claimant fulfilling the condition precedent and cannot override the fulfillment of the condition precedent clearly stated in Exhibit A2. He argued further that the condition provided for in Exhibit A2 was a mandatory one that sets to motion upon execution the validity or life of the agreement. He cited the case of **Suberu V. A.I.S.L LTD (2007) 10 NWLR 1043 pg 590 @ 612 PARA C-D**, where the court held that:

"Where parties have entered into what in law is a conditional contract, the condition precedent must happen before either party becomes bound by the contract, in other words, the condition must be fulfilled before the effect can flow. In the instant case, it was clear from exhibit Di that not until exhibit D2 was executed, the contract remained conditional and that the interest rate would be changed in the mortgage contract agreement, exhibit D2. Thus, the interest was 21% as stated in the said exhibit D2".

Counsel submitted that the argument of the Claimant that "Exhibit A3" written to the Debt Management Office by the Defendant to an implied jettison of the requirement of a formal agreement is puerile and does not have any legal

basis upon which same can stand. He argued that the decision of the Apex court relied on heavily by the Claimant in the case of **Okubule VS Oyagbola (1990) 4 NWLR (PT 147) 723** is most inapplicable to the instant case as it was it was expressly stated in the cited case that for there to be any inference of an acceptance to an offer, positive evidence must be adduced and that such acceptance must be communicated to the offeror. He argued that this was not the case in this instant case as Exhibit A3 is a mere mental acceptance which by law is not sufficient and cannot in any sense be said to be positive evidence from which an inference will be made. He maintained that the said Exhibit A3 which the claimant is brandishing as evidence of acceptance was never a communication to the Claimant but rather a communication to the DMO.

He submitted that neither "EXH. A2" nor "EXH. A3" falls within the rules set out by the Apex court in the above-mentioned case. He urged the court to discountenance the arguments of the claimant in this regard.

Counsel argued further that the Defendant cannot be said to have varied the condition precedent for the contract which is a formal agreement/contact as contained in EXH. A2 because conduct if any, must be direct and so it is a constructive fraud for the Claimant to go ahead in the exercise in their proposal (Exhibit A1) without fulfilling the condition for the validity of the contact being execution of formal agreement/ contract as stated in "EXH. A2".

In response to the argument of the Claimant in paragraph 5.16-5.17, counsel opined urged the court to note that the Claimant never updated the Defendant about the progress of the work carried out by them neither did the Claimant ever deliver the said "Exhibit A4" to the

Defendant. He said the contract, if any, is between the Claimant and the Defendant and not between the Claimant and Debt Management Office which makes the Claimant liable to forward "Exhibit A4" to the Defendant.

On the issue of consideration, counsel submitted that both the Claimant and the Defendant cannot be said to have agreed to the 10% of the total sum recovered by the Claimant because the Claimant in their "EXH. A1" was an offer to the Defendant and the Defendant gave a provisional approval subject to execution of a formal agreement in which the parties are meant to agree on the terms and conditions of the contract including consideration.

He argued that the Claimant in this case unilaterally decided on the consideration of the contract, if any. He cited the case of **Jegade V. Mayor Engineering & Sons Co Ltd (2013) LPELR-20284 (CA)** where it was held that for there to be a valid contract, all the ingredients of a contract must be present and be complied with. He noted also that the ingredients of a valid contract are conjunctive not disjunctive which means that the absence of any of the ingredients of a contract in a contractual relation invalidates the contract.

Counsel argued that assuming but not conceding that Claimant could act without the fruition of the condition precedent, there cannot be a liability in any specific sum against the Defendant since the contract to be entered into with the Claimant would specify amongst other things, terms as it relates to payment, mode of payment which were never agreed upon. He submitted that the claim of 10% of the total sum recovered by the Claimant cannot legally stand since something cannot be placed on nothing as decided in **UAC V Macfoy 1961 AC**.

Counsel opined further that Exhibit A3 which was written to Debt Management Office introducing the Claimant was a correspondence between the Defendant and Debt Management Office which the Claimant was never a party to or copied in the correspondence and so the letter cannot be said to vary the letter of acceptance which makes the execution of a written agreement mandatory. He said the reason for this is because the Claimant and Defendant were yet to sign/execute a written agreement even though Defendant already recognized Claimant as an agency.

Counsel argued in conclusion that the Claimant has failed from the totality of their case to prove that there exists a valid contract between the Claimant and the Defendant.

Having reviewed the further amended statement of claim and the further statement of defence of the defendant, and the claimant's reply together with the final written addresses of the both counsel, let me quickly adopt the issues for determination as already formulated by the defendant as I found that so apt, thus:

- 1. Whether there is any contract between the claimant and the defendant?**
- 2. If question one (1) above is answered in the affirmative, whether the plaintiff has proved its case/claim as required by law against the defendant entitled to reliefs (1) (2) (3) and (4) in the further amended state of claim?**
- 3. Whether the plaintiff is entitled to any claim for interest and cost of litigation against the defendant in reliefs (4) (5) and (6) of further amended statement of claim?**

Before finding an answers to the above written issues for determination, let me also evaluate the evidence of

both parties with a view to ascribe any probative value to the one that is credible. See the case of **Anekwe V. Anekwe (2014) All FWLR (pt 739) p. 162 at 1175-1177, paras. H-A** where the Supreme Court held that before a court before whom evidence is adduced by the parties in a civil case comes to a decision as to which evidence it believes or accepts and which evidence it rejects, it should first of all put the totality of the testimony adduced by both parties on an imaginary scale, it will put the evidence adduced by the plaintiff on one side of the scale and that of the defendant on the other side and weigh them together. It will then see which is heavier, not only by the number of witnesses called by each party but by the quality or probative value of the testimony of those witnesses. This is what is meant when it is said that a civil case is decided on the balance of probabilities.

The PW1 was asked during cross-examination that apart from his communication to the defendant since 2011, was there any communication with the defendant, and he answered that he had meetings with the officials of the defendant, and was also asked whether there is any evidence that he had meetings with the officials of the defendant, and he also answered that the summary report was prepared by the claimant and the officials and the officials of Katsina State Government and was submitted to the defendant.

The PW1 was asked to look at EXH. 'A4' at page 3, the summary of the part or what he had to Debt Management Office, and he answered it is part of it to justify the demand.

The PW1 was asked to read page I of EXH. 'A4', and he read it, and he was further asked whether the summary of the loan stocks contained in page 3, and whether it is part of the summary that he is referring to, and he answered it is

part of it and it was dated April, 2012. The PW1 was asked to show the date on the report, and he could not find the date, and further said that the report is covered by a letter indicating the content of the report, and the attachment are so elaborate how the summary conclusion was arrived at, because the attachment was based upon the record made available by Debt Management Office. The PW1 also told the court during cross examination, when he was asked as to who signed the report, it was signed by the Chief Executive of the plaintiff's company. The PW1 was asked to show to the court where the report was signed, and he answered that the letter includes the report.

The PW1 was asked whether he communicated the report to the defendant, and he answered that it was communicated to the defendant through the commissioner of finance, and he was also asked whether there is any evidence to show that he delivered the report to the defendant, and he answered that the report was not meant to be acknowledged by the defendant as it was sent to Debt Management Office.

Now, it is the contention of the defendant the phantom reconciliation exercise as alleged by the claimant, in the report (attached to EXH. 'A4') was purportedly done without any formal agreement between the parties, contrary to the mandatory term/condition in the provisional approval, EXH. 'A2', while it is the contention of the claimant that the claimant fulfilled its parts of the contract by reconciling the defendants' external debts and forwarding the report to both Debt Management Office and the defendant, and there is no evidence before this court contradicting this fact, and the argument of the claimant's counsel is that it is settled law that no person will after reaping benefits from a transaction to be heard to say

such transaction is void when it comes to fulfillment of his obligation under the transaction, so far as other party has done all it pledged so to do under it, and relied on the case of **Dangote Farms Ltd V. Plexux Coton Ltd; Ibrahim V. Osim (supra); Professional Cleaning Services Ltd V. Benue State Government & Ors.**

Now to whom the report was submitted? Certainly, it is evidenced that the report was submitted to Debt Management Office, however, the submission to the defendant is in dispute, what is the position of law where there is a dispute that a document was delivered to a person who denies receiving it, proof of delivery to such person can be established by:

- (a) Dispatch book indicating receipt or
- (b) Evidence of dispatch by registered post, or
- (c) Evidence of witness, credible enough that the person was served with the document.

See the case of **Registered Trustees of Acts of the Apostle Church V. Fatunde (2010) All FWLR (pt 510) 668, at 678, paras. F-G.**

In the instant case, there is a proof of acknowledgement by the defendant indicating the receipt, but no evidence of dispatch by registered post, or evidence of dispatch book post, or evidence of dispatch book indicating receipt or evidence of witness, credible enough that the defendant was served.

The PW1 has not tendered the dispatch book, or tendered dispatch by registered post or present any witness that the report was delivered to the defendant, and therefore, the evidence of the PW1 was challenged under cross examination by the defence counsel.

More so, the letter EXH. 'A4' and the attachment, that is the report, have the same effect as to admissibility. See

the case of **Olly V. Tunji (2012) All FWLR (pt 654) p. 46 at 69, paras. B-C** where the Court of Appeal held that where a document is validly admissible, its attachment go with it. A document and its attachment have the same legal weight. In the instant case, the letter which is EXH. 'A4' and its attachment, which is the report, have the same weight. So the argument of the counsel to the defendant that the report (attachment) to EXH. 'A4' is not signed and is discountenanced.

The PW1 was asked whether EXH. 'A2' which is a letter adduced to the chairman of the plaintiff, whether there is any formal agreement between the parties and the PW1 answered that the formal agreement was waived by the defendant, by the letter dated 16th April, 2012 EXH. 'A3', and its attachment, it is a law that it is possible for a contract to emerge from series of correspondence between two parties. But it must be apparent from the exchange of correspondence that parties have come to an agreement. See the case of **Nneji V. Zakhem Con. (Nig) Ltd (2006) All FWLR (pt 330) p. 1023 at 1032, para. G.**

The DW1 told the court during cross examination, the letter dated 11th April, 2017, the defendant gave a provisional approval for the claimant to commence the assignment of the reconciliation of the external debt of Katsina State.

The DW1 answered in the negative when he was asked whether by the letter dated 16th April, 2012, written by the defendant to Debt Management Office Abuja which introduced the claimant as external debts consultant to Katsina State Government and solicited the co-operation of the Debt Management Office Abuja to avail the claimant access to the Data base of Katsina State to enable the claimant to carry out the assignment for reconciliation of the external debts of Katsina State.

The DW1 was asked to have a look at EXH. 'A3' whether it is the letter, and he answered that it is the letter and he read items Nos. 3 and 4 of the said letter, and was asked again whether he is still maintaining the earlier position after the reading the letter, and the DW1 also answered in the affirmative.

By these, the DW1 was challenged on the fact that the defendant has given a letter to Debt Management Office Abuja introducing the claimant to be given access to Katsina State Data base for reconciliation of the external debts of Katsina State Government.

The DW1, after confirming the dates of EXH. 'A2' and 'A3', that will be 11th April, 2012 and 16th April, 2012, the DW1 agreed that the EXH. 'A3' was written after EXH. 'A2' was written, and that in the EXH. 'A3' dated the 16th April, 2012, which the defendant introduced the claimant as the consultant, there is nothing "subject to formal agreement or contract", and the DW1 answered in the affirmative.

The DW1 was referred to paragraph 8 of his witness statement on oath wherein he stated that the defendant have never sought for the co-operation of Debt Management Office to avail the claimant of Katsina Data base, and was asked whether he is still maintaining the same position in his witness statement on oath, and he answered in the negative.

The DW1 answered in the affirmative when he was asked that without the letter EXH. 'A3' dated 16th April, 2012 written by the defendant to Debt Management Office, Abuja, the claimant would not have access to commence the assignment.

The DW1 was asked to look at a letter dated 4th November, 2015 which was a letter written to the Director General Debt Management Office, Abuja in respect of an

appointment of a company Riverdale Financial Services Ltd which the DW1 made mention in paragraphs 9 and 11 of his witness statement on oath, and was asked whether it is the letter, and the DW1 answered that it is the one, and the letter was admitted as EXH. 'D1'.

The DW1 was also asked to look at EXH. 'B4' and 'D1', which is that EXH. 'B4' is the contract agreement between Riverdale Financial Services Ltd and Katsina State Government dated 6th November, 2016, and the DW1 answered in the affirmative, and he also answered in the affirmative that EXH. 'D1' is the letter by the Katsina State Government to the Debt Management Office, Abuja dated 4th November, 2015.

The DW1 was asked whether the letter dated the 4th November, 2015, appointing Riverdale Financial Services Ltd predated the contract agreement dated 6th November, 2015, and the DW1 answered in the affirmative. The DW1 was also asked whether the counsel would be correct to say that the letter dated 4th November, 2015 to the Debt Management Office, Abuja, and as at the time the said letter was written, there was no formal contract between Riverdale Financial Services Ltd and Katsina State Government, and the DW1 agreed with the counsel.

The DW1 was asked whether in the letter dated the 4th November, 2015 to Debt Management Office, Abuja that the earlier appointment of the claimant has been repudiated or revoked, and the DW1 answered in the negative.

The DW1 was asked to look at EXH. 'A4' and 'D1', EXH. 'A4' is the summary of the reconciliation report for Katsina State External Debt and First Line and request for a refund dated the 20th April, 2012 submitted by the claimant on behalf of the defendant to Debt Management Office,

Abuja, and was asked to confirm whether EXH. 'A4' has been submitted to Debt Management Office, Abuja.

The DW1 was referred to EXH. 'A5' dated 5th January, 2017 by the claimant to the defendant for payment of the due consultancy fee, and EXH. 'A6' dated 21st March, 2017 which is the letter of the solicitor to the claimant demanding for the payment for the 10% commission with respect to the return of the work done by the claimant to the defendant, and it is correct to say that the defendant did not respond to the two letters, and the DW1 answered that there is no response.

Now from the totality of the evidence of the DW1 during cross examination, he was seriously challenged and discredited on almost every questions set to him.

The DW2, being an Assistant Chief Operation Officer of Debt Management Office told the court that he joined the Debt Management Office in 2003, and the DW2 was asked, if the counsel is correct, that he is not seized of the transaction between two parties, and he answered that he was not aware.

The DW2 was asked to confirm to the court that there is any letter by the Debt Management Office on the 20th April, 2012, which three years before the issuance of EXH. 'D1' dated the 4th November, 2015, and the DW1 answered in the affirmative.

The DW1 was asked to confirm to the court whether EXH. 'B2' is the response from Debt Management Office, Abuja dated 5th February, 2016, and the DW1 answered in the affirmative, and also EXH. 'B3' is dated 29th February, 2016, and was also asked whether the counsel is correct that EXH. 'B2' and EXH. 'B3' come after EXH. 'A4', and the DW1 answered in the affirmative.

The DW1 also answered in the affirmative when he was asked that EXH. 'D2' and 'B3' come barely four years after the existence of EXH. 'A4' dated the 20th April, 2012.

The DW1 was also asked to confirm to this court that EXH. 'B2' by Debt Management office, Abuja dated 5th February, 2016 is in response to the appointment of Riverdale Financial Services Ltd, and not the appointment of the claimant, and the DW1 answered in the affirmative. The letter dated 16th April, 2012, and the DW2 said he was not aware.

The DW2 was asked and referred to paragraph 14 to the effect that the presentation was subsequently made to Katsina State Government in their response to its letter introducing another consultant Riverdale Financial Services Ltd as a management consultant to Katsina State Government, and the DW2 answered in the affirmative. He was also asked to have a look at EXH. 'B2' and 'D1' and to confirm that EXH. 'B2' is the letter the DW2 referred to as Debt Management Office's response to Katsina State Government, and the DW2 answered that EXH. 'B2' is a reply to EXH. 'D1', and he also confirmed that the date on EXH. 'B2' is 5th February, 2016, and he also confirmed that in that EXH. 'B2', there is no reference to the letter of the claimant dated the 15th April, 2012, and in the letter he made reference to in paragraph 12 of his deposition on oath, and the DW2 answered that it is none.

The DW2 was also asked that in his paragraph 17 of his witness statement on oath, he stated that the letter dated 20th April, 2012 received by the Debt Management Office on the same date was also disregarded as the information contained in the plaintiff's purported summary of reconciliation report and spreadsheet attached thereto does not emanate from Debt Management Office

database, or its record, and was also asked whether there is any letter or evidence before this court wherein Debt Management Office disregarded the claimant's letter dated the 20th April, 2012, and the DW2 said that not to his knowledge. He was also asked whether there is any response from the Debt Management Office is rebuttal that the summary of the reconciliation report and spreadsheet attached thereto do not emanate from Debt Management Office database, and suddenly there was an objection that the DW2 would not volunteer with opinion on whether it is a rebuttal evidence, and the counsel reframed the question.

The DW2 was asked again whether he was aware of any letter from the Debt Management Office stating the summary of reconciliation report and spreadsheet attached thereto the letter of the claimant dated 20th April, 2012 does not emanate from the Debt Management Office management base, and the DW2 answered that they have not responded so to him.

The DW2 was asked to look at paragraph 18 of his witness statement on oath where he stated of the Nigerian Governors' Forum that it was the Forum that ensure the reconciliation of all states debts including that of Katsina State, and was asked whether he has any evidence that the Forum reconciled the debt of all the states particularly that of Katsina state, and the DW2 said he did not have particular for such evidence.

From the questions and answers series of the cross examination, the DW2 has known that he lacks knowledge of the issues and did not have the ability to recall the events, and therefore is discredited. See the case of **Morka V. State (1998) 2 NWLR (pt 537) 294** where the court held that in such circumstances, to properly evaluate the evidence, the trial judge ought to take into consideration

the knowledge of facts to which the witness testifies, his disinterestedness, integrity and veracity, and whether his evidence was contradictory or contradicted by surrounding circumstances. In the instant case, the DW2 appeared to have no knowledge of the facts and what happened in his office, and his evidence is not worthy of acceptance.

On the whole, I so much believe in the evidence of the claimant than that of the defendant because of the reasons below. See the case of **Popoola V. State (2019) All FWLR (pt 1004) 249 (SC)** to the effect that the trial court has to give reasons for believing of the evidence of witness of either of the parties.

The reason being that the PW1 was only challenged as to whether the report of reconciliation and spreadsheet attached to the letter of the claimant to Debt Management Office, Abuja dated the 16th day of April, 2012 (EXH. 'A3') was delivered to the Katsina State Government or not, however, whether it is so material issue that the EXH. 'A3' must be delivered to the defendant, and to me, if is not so material in that it is not indicated anywhere in all the documents that EXH. 'A3' would be delivered to the defendant, and whether the PW1 was challenged during cross examination was not on any material issue, and I so hold. The evidence of PW1 is credible in the sense that it is worthy of belief and credit as it is proceeded from credible sense and is credible in itself. See the case of **Agbi V. Ogbeh (2006) All FWLR (pt 329) p. 949 at 969, paras. E-F.**

EXH. 'A1' is the proposal for engagement as a consultant on state's external debts reconciliation and recovery dated the 3rd September, 2011 written by the claimant to the Governor, Katsina State, and in paragraph 6 of the letter which reads:

“Your Excellency, a moderate fee of 10% on this type of assignment is charged on behalf of the state. It is also important to note that the settlement of the consultant fee would be made only when recovered money is credited to the state’s account. Therefore this exercise has no cost to the state Government as it is a “No Recovery no pay” exercise”.

By the above quoted paragraph of the proposal it can be inferred that the claimant had proposed 10% as the consultant fee and this would be paid after the recovery by the state government and is credited to the state’s account.

EXH. ‘A2’ is the provisional approval of the EXH. ‘A1’ and the content of such letter reads:

RE-PROPOSAL FOR ENGAGEMENT AS CONSULTANT ON EXTERNAL DEBTS RECONCILIATION AND RECOVERY

I wish to refer to your letter dated 3rd September, 2011 on the above subject matter and inform you that His Excellency, the Executive Governor has given provisional approval for your company to commence the assignment, subject to the execution of a formal agreement/contract as contained in your proposal, please.

Please accept our best regards.

Signed

Mohammed Lawal Jari

Honourable Commissioner.

By the above quoted content of the letter EXH. ‘A2’, a provisional approval was given and that it was subject to the execution of a formal agreement/contract as contained in the proposal. It is worthy of note that two expressions have become of concern to this Honourable

Court, those are: **“Provisional approval”** and **“subject to the execution of a formal agreement/contract as contained in the proposal”**.

Thus, in the case of **Egbota V. Plateau Inv. & Property Dev. Co. Ltd (2005) All NWLR (pt 285) p. 464 at 476, paras. A-D** where the Supreme Court held that the phrase “Subject to” is often used to introduce a condition, a proviso, a restriction and indeed a limitation, and the effect is that the expression evinces an intention to subordinate the provisions of the subject to the section referred to which is entered nor to be affected by the provision of the latter. In the instant case the provisional approval is subject to the execution of the agreement/contract between parties, while the expression “provisional” is defined as temporary, preliminary, tentative. See the case of **J.A.M.B. V. Nkeiruka (No.2) (2007) All FWLR (pt 381) p. 1765 at 1772 – 1773, paras. H-A.**

So, in the letter EXH. ‘A2’, it could be said that the defendant gave temporary approval for the claimant to commence the assignment of the reconciliation of the external debts of Katsina State. Then came EXH. ‘A3’ and in the attachment is a letter dated 16th April, 2012 wherein it reads:

RE-APPOINTMENT OF SIMTEX INTERNATIONAL NIG. LTD AS EXTERNAL DEBT CONSULTANTS TO KATSINA STATE.

The above subject refers.

- 2. I write to express our appreciation for the co-operation given to the state by the staff of Debt Management Office in respect of the ongoing external debt and first line charge reconciliation exercises.**
- 3. In addition, I wish to inform Debt Management Office of the recent appointment of Simtex**

International Nig. Ltd, who on behalf of the state, will continue with the reconciliation exercise of the state's external debt.

- 4. In line with this, I would like to solicit for the co-operation of the Debt Management Office to avail the consultant with the state's database he might require.**
- 5. Accept the highest regard of His Excellency, the Governor of Katsina State.**

**Signed
Mohammed Lawal Jari
Honourable Commissioner.**

By the above quoted content of the attachment to EXH. 'A3' dated the 16th April, 2012, it is to be noted that EXH. 'A2' and the attachment to EXH. 'A3' bear the same signature, that is to say, it was the same person that wrote the two letters.

Let me point out the effect of using the word "**RE**" in the a letter, that is to say "in another occasion different from the one in EXH. 'A2'. See the case of **F.U.T.A. V. A.S.U.U. (2013) All FWLR (pt 707) p. 684 at 699, para. H.**

In the instant case, the use of the word "**Re**" means in an occasion different from the one in granting the provisional approval.

It is very clear and unequivocal that the defendant introduced the claimant as the one appointed as the consultant, on behalf the state who will continue with the reconciliation exercise in the attachment to EXH. 'A3', that is by items 3 & 4 of the said letter dated the 16th April, 2012. The letter dated 16th April, 2012 attached to EXH. A3 was written after EXH. A2, and in the letter dated 16th of April, 2012 attached to EXH. 'A3', there is no expression "subject to the execution of formal agreement/contract", and the

claimant argued that by the letter dated 16th April, 2012, it supersedes the EXH. 'A2', that is to say, the defendant has waived the requirement of executing a formal agreement/contract.

Now, the question that agitates in the mind of the Honourable Court is:

Can the attachment to EXH. 'A3' be deemed as a waiver to EXH. 'A2'?

The Supreme Court has given a definition of waiver in the case of **C.C.B.D.C. Ltd V. Hon. Minister of Environment Housing & Urban Development & Anor. (2020) All FWLR (pt 1030) p. 326 at 341, para. E** that waiver means to abandon, throw away, surrender a claim, privilege, a right or opportunity to take advantage of some defect, irregularity or wrong. To give up right or claim voluntarily; Black's Law Dictionary, 6th Edition was referred. In the instant case, by the letter attached to EXH. 'A3' can be construed to mean that the defendant has abandoned or relinquished the issue of executing a formal agreement with the defendant, and the defendant is estopped from enjoying the benefit of executing a formal agreement/contract. See the case of **C.C.B.D. V. Hon. Minister, E.H.U.O (supra)**. See also the case of **Aroo V. INEC (2018) All FWLR (pt 918) p. 43 at 73, paras. D-E** as to the definition of waiver. See also the case of **Esezobo V. Shaba (2018) All FWLR (pt 949) p. 1522 at 1544, paras. B-C**.

EXH. 'A4' and its attachment are the letter written to the Director General Debt Management Office forwarding the reconciliation report that shows the deduction including first line charge, which means, the claimant did the assignment. Even though the defendant argued that the report is not signed, however, on the authority of **Olly V. Tunji (2012) All FWLR (pt 654) p. 46 at 69, paras. B-C**, the

Court of Appeal, Lagos Division held that where a document is validly admissible, its attachment go with it. A document and its attachment have the same legal weight. So in the instant case, the argument of the learned counsel to the defendant is discountenanced for the fact that the letter dated 20th April, 2012 was admitted, it goes with the summary of reconciliation report. It is evident that the report was forwarded to the Debt Management Office, Abuja. More so, the DW2 told the court that the reconciliation report was disregarded since it does not emanate from Debt Management Office Database or its record, but there is no evidence before the court wherein Debt Management Office disregarded the claimant's EXH. 'A4' and its attachment as the Debt Management Office did not respond to the letter EXH. 'A4'. There is also no evidence before the court adduced by the defendant that the Nigerian Governors' Forum reconciled the debt of all the states particularly that of Katsina State.

EXH. 'A5' is a letter to the Executive Governor, Katsina State which was received on the 6th day of March, 2017 written by the claimant and in paragraph 3 of the letter, the claimant alluded to the fact that in the course of the exercise, they made several submissions to the Debt Management Office on behalf of the state, and that the First line charge to be refunded to Katsina State was put at \$227,274,991.01 and a refund of N279,149,110.0 was requested on behalf of the state, and that the President Muhammadu Buhari has approved part payment of N14.5B of the over deductions to be paid to Katsina State Government, and that the sum of N14.5B was refunded to Katsina State Government, and the claimant requested for the payment of 10%. The defendant vehemently opposed it in the course of the proceedings and asked the claimant to

prove that. No evidence was led on behalf of the claimant that the sum of N14.5B was paid to Katsina State Government, however, no evidence exist from the side of the defendant, either statement of account or any other source that the Katsina State Government did not receive the amount. See section 136 of the Evidence Act 2011 which provides:

“(1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.

(2) In considering the amount of evidence necessary to shift the burden of proof, regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.”

It is on the above quoted provisions of section 136 of the Evidence Act 2011, that the burden was shifted to the defendant because of the opportunity of knowledge that the respect to the fact to be proved, that is to say, **whether or not the sum of N14.5B was paid into the account of Katsina State Government or not.** No evidence of any kind was produced before the court by the defendant that the sum of N14.5B was not paid to the state.

EXH. ‘A6’ is a letter of demand of 10% commission in respect of the refund recovered for Katsina State for the reconciliation of State’s external debts record and recovery of illegal deductions arising there from and the defendant did not respond to the demand.

EXH. 'B1' is the Certified True Copy of the provisional approval for the claimant to commence the assignment, which the court earlier evaluated.

EXH. 'B2' is the letter dated the 5th February, 2016 for the attention of Muhammed Nasir Yahaya (Ag. Director from the Debt Management Office, Abuja informing the person to whom the attention was called that the Debt Management Office does not deal with consultants in respect of matters relating to states debt in order to avoid such third parties misrepresenting the Debt Management Office before the states and vice versa. However, any state that has issues relating to its debt should address such directly to the Debt Management Office for appropriate action. This EXH. 'B2' is a reply to EXH. 'D1', and in EXH. 'B2' there is no reference made to the letter of the claimant dated 16th April, 2012, and the information does not concern the claimant, and it goes to no issue as EXH. 'B2' came after EXH. 'A4' as the interval between EXH. 'B2' and EXH. 'A4' is barely four years. EXH. 'B2' is a response from Debt Management Office, Abuja with respect to the appointment of Riverdale Financial Services Ltd, and the defendant did not withdraw the appointment of the claimant as there is no evidence before the court showing that.

EXH. 'B3' is a Certified True Copy of a circular dated 29th February, 2016 to the Governor of Katsina State, and EXH. 'B4' is a contract agreement between Riverdale Financial Services Ltd and Katsina State Government dated 6th November, 2015.

EXH. 'D1' is a letter from the defendant introducing Riverdale Financial Services Ltd as its consultant dated the 4th November, 2015 which was responded by Debt

Management Office in a letter dated the 5th February, 2016 EXH. 'B2'.

On the whole, I come to the conclusion that there is a waiver on the part of the defendant. See the case of **Sylva V. I.N.E.C. (2017) All FWLR (pt 875) p. 1998 at 2047, paras. F-G**. In the instant case, the defendant will not be allowed to mislead the claimant into believing in a state of affairs which he had represented does not exist at all or as represented by him and is therefore estopped from doing that. The defendant did not exercise due diligence in the whole transactions. See the case of **S.M. (Nig.) Ltd V. Toyota Motor Corp. (2022) All FWLR (pt 1160) p. 198 at 214, para. E**.

I therefore answer issues nos. 1 and 2 in the affirmative that the contract between the claimant and the defendant exist, and the claimant has been able to prove that he is entitled to 10% of the sum of N14.5B having being engaged as a consultant, and the defendant is hereby ordered to pay the claimant the sum of N1.45B.

The defendant shall pay post judgment interest of 10% per annum until the judgment sum is fully liquidated. See Order 39 Rule 4 of the Rules of this court.

The claimant could not prove the entitlement of N5,000,000.00 as cost of litigation and thus, the claim fails as no evidence is led.

Hon. Judge
Signed
20/1/2025

Appearances:

The claimant is represented by Shamhul Oni.

R. Okolie Eboh Esq appeared with O.U. Archibong Esq and J. K. Omotosho Esq for the claimant.