IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 8 APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA
SUIT NO: FCT/HC/BW/CV/58/2021

BETWEEN:

ERIC ABAKPORO, ESQ. --- CLAIMANT

AND

ATTORNEY-GENERAL OF THE FEDERATION --- DEFENDANT

RULING

DELIVERED ON THE 15TH JULY, 2021

By a Preliminary Objection dated the **12th day of March, 2021** but **filed on the 15th day of March, 2021** [without a Motion Number], the Defendant/Applicant sought for the following orders:

1. **AN ORDER** striking out the instant suit for want of jurisdiction.
2. **AND FOR SUCH FURTHER OR OTHER ORDER(S)** as the Honourable Court may deem fit to make in the circumstances.

The Notice of Preliminary Objection of the Defendant/Objector is premised on the under-listed grounds:

a. Plaintiff failed to show existence of a liquidated money demand.
b. Plaintiff did not serve Bill of Charges and also did not accord the Defendant a 30-day pre-action notice before the recovery of his professional fees.
c. The appropriate court to enter the Plaintiff's claims is the Federal High Court.
d. Plaintiff's claim of 25% pre-judgment interest and 10% post-Judgment interest on the anticipated judgment is not a liquidated money demand.

The Notice of Preliminary Objection of the Defendant/Objector is supported with an affidavit of five (5) paragraphs which was deposed to

by one Seun Fasheluka who described himself as a Litigation Officer in the Chambers of the Honourable Attorney-General of the Federation. There is a written address in support of the Notice of Preliminary Objection in line with the provisions of the extant Rules of this Honourable Court.

In opposition, the Claimant/Respondent offered a counter-affidavit of fifteen (15) paragraphs to which **Exhibits E, E1, E2, E3 and E4** [found variously at **paragraphs 6 and 9 thereof**] are attached. The Claimant/Respondent also accompanied his counter-affidavit with a written address.

To appreciate the factual underpinnings of the Defendant/Objector's agitations, I feel duty bound to reproduce his Affidavit particularly paragraph 3(a) to (e) thereof wherein the deponent stated thusly:

3. I was informed by Maimuna L. Shiru (Mrs) Ag. Director of Civil Litigation in her office on 12th March, 2021 at 12.00 hours of the following facts which I verily believe to be true and correct as follows:
    a. That the engagement of the Plaintiff by the Defendant is in furtherance of his constitutional mandate and alleged non-payment arising thereto (sic) is a management or executive or administrative decision of the Defendant.
    b. That the Plaintiff did not serve the Defendant with his Bill of Charges and also did not afford the Defendant the required 30-days' notice before commencing this suit.
    c. That the said unilateral sum of $US3, 000, 000 is not a liquidated money demand as there is no agreement or consensus between the parties for the said sum.

d. That the Plaintiff cannot fix or impose a professional fee in the sum of $US3, 000, 000 without a corresponding express approval of the Defendant.
e. That the Defendant does not pay interest on professional fees and there was no agreement between the parties herein on the payment of any kind of interest whatsoever and there is no deposition in the supporting affidavit stating Plaintiff's entitlement to interest.

To fight off the factual matrix projected by the Defendant/Objector, the Claimant/Respondent marshaled out the following divergent depositions found particularly at **paragraphs 4 to 12 of his counter-affidavit** found germane by me for the disposal of the instant Motion:

4. Contrary to the facts stated in paragraph 3(a) of the Affidavit in support, I know that the failure of the Defendant/Applicant to pay me the subject debt as a result of my engagement by the Defendant/Applicant which I duly accepted to work for him in the State of New York, United States of America is not a management or executive or administrative decision of the Defendant/Applicant but one for the recovery of contract debt.
5. Further, I state that I have fulfilled my own part of our contractual bargain and the Defendant/Applicant ought to have paid me for the work I did for him in New York, United States of America.
6. Contrary to the facts stated in paragraph 3(b) of the Affidavit in support, when I was contractually engaged by the Defendant/Applicant to represent the interest of Nigeria in the State of New York, United States of America, I did make it known to the

Defendant/Applicant how fees are paid for services rendered in the United States of America especially in the State of New York. I made it abundantly clear that the prevailing fee structure was one-third (1/3) of any sum of money my firm saved for the Defendant. My acceptance letter dated August 22, 2010 is herein attached and marked as "Exhibit E".

7. That the Defendant/Applicant engaged me as a United States of America's Attorney and not as a Nigerian Legal Practitioner. If I was not licensed to practice in the United States of America, I would not have been able to handle the matter on behalf of the Defendant/Applicant in the State of New York. No Nigerian Legal Practitioner can appear in Courts in the United States of America.
8. I know further that the prevailing Legal Instrument in the State of New York, United States of America which regulates how fees are charged and recovered in relation to my engagement by the Defendant/Applicant does not require us to serve the Defendant/Applicant Bill of Charges since the parties know what should be paid and when to pay.
9. Further to facts contained in paragraphs 7 and 8 above, not minding the work I rendered for the Defendant/Applicant was outside the territory of Nigeria and that we are not under legal duty to serve Bill of Charges, I did serve the Defendant/Applicant at various times with Bill of Charges for work done. My letters dated February 10, 2011, January 22, 2015, May 20, 2015, May 27, 2015 and with caption: Legal Bill, Legal Bill, Agreement and Legal Bill are herein attached and marked as "Exhibits E1, E2, E3 and E4".

10. Contrary to facts contained in paragraph 3(c) of the Affidavit in support, I know that the sum of $3, 000, 000 was the agreed sum which was statutorily pegged arising from the work I rendered for the Defendant/Applicant and a result, it is a liquidated money demand.
11. Contrary to facts contained in paragraph 3(d) of the Affidavit in support, no individual has the right to fix the professional fees as same had been fixed by statute duly enacted by the State of New York, United States of America. That from the scale of legal charges prevailing in the State of New York, United States of America, my fees arose from the money which I saved for the Defendant/Applicant is the sum of $3, 000, 000.
12. Contrary to facts contained in paragraph 3(e) of the Affidavit in support, following the inability of the Defendant/Applicant to pay me my professional fees, the prevailing circumstance as a trade usage in America warrants that interest ought to be paid for non-payment of professional fees.

The Claimant also filed a written address in amplification of his position. The Defendant/Objector submitted three issues for the resolution of the Honourable Court, to wit:

i. Whether the FCT High Court is clothed with the jurisdiction to adjudicate over administrative or executive decision of the Defendant, an agency of the Federal Government.
ii. Whether Plaintiff fulfilled necessary condition precedents (sic) in action for the recovery of professional fees.

iii. Whether the Plaintiff's instant action under the Undefended List Procedure is valid and competent as to confer jurisdiction on this Honourable Court.

On behalf of the Claimant/Respondent, the following two (2) issues were concreted for the adjudication of the Court:

1. Whether on the nature of the claim herein, the Honourable Court, being the High Court of the Federal Capital Territory, Abuja has jurisdiction to hear the subject matter.
2. Whether the Claimant herein acted for the Defendant/Applicant as a United States of American's Attorney and therefore not subject to any condition precedents (sic) in action for recovery of contract debt.

When this application came up for hearing on the **1st day of July, 2021**, **Oyin Koleosho, Esq.**, appearing for the Defendant/Applicant identified the Defendant/Applicant's processes and adopted same. He informed the Court that the Defendant/Applicant shall be abandoning the 3rd issue he earlier formulated in his written address. This, according to him, was informed by the decision of this Court wherein it has transferred this matter from the Undefended List to the General Cause List thereby rendering the pursuit of the arguments advanced on the said 3rd issue otiose. He proceeded to urge the Honourable Court to grant the reliefs sought by the Motion.

For the Claimant/Respondent, the Learned Silk, **D.A. Awosika, SAN** [with whom **N.F. John [Miss]** appeared, identified the processes of the Claimant/Respondent to the Motion, adumbrated and expatiated on the issues canvassed in his written address and urged the Honourable Court to dismiss the Motion of the Defendant/Applicant.

The issue or issues for determination contained in a written address or brief of argument which is an essential element or component of a brief of argument has been defined as a succinct and precise question based on one or more grounds of appeal [in this case, grounds on which the application is premised] for the determination of the Court, **Danfulani v. Shekari (1996) 2 NWLR (Pt.433) 723**. It must be cogent, weighty **ODELEYE & ORS V. ADEPEGBA & ORS (2000) LPELR-6799(CA**) and compelling, **Adewumi v. A.-G., Ondo State (1996) 8 NWLR (pt.464) 73**. The overriding purpose of formulating issues or questions for determination in a brief of argument is to make parties in litigation to narrow down the issues in the interest of accuracy, identity and brevity, **Okwo v. Oko (1996) 6 NWLR (Pt.456) 584**. In**Abisi & ors. v. Ekwealor & anor. (1993) 6 NWLR (Pt. 302) 643**, Ogundare, J.S.C. while relying on the earlier authority of **Olowosago v. Adebanjo (1988) 4 NWLR (Pt. 88) 275, 283**per Karibi-Whyte, J.S.C. observed that like pleadings to litigation between the parties, the issues formulated are intended to accentuate the real issues for determination before the Court.

In the case at hand, I prefer the issues formulated by the Claimant/Applicant's Learned Senior Counsel to that formulated by the Defendant/Applicant in disposal of the issues generated by this Motion. The Defendant/Applicant's issues far more precisely lays out the core issues in controversy as between the parties. I say this against the presumptuousness portrayed by issue one framed by the Defendant/Applicant in a manner erroneously suggestive that it is already a settled point between the contending parties that the decision of the Defendant to engage the Claimant is an "*administrative or executive decision of the Defendant, an agency of the Federal Government*". This is misleading because the

Claimant/Respondent vehemently refuted such conclusion which the Defendant/Applicant wishes this court to draw which this Court is yet to make a finding on.

ISSUE ONE (1):

DEFENDANT/OBJECTOR'S ARGUMENT:

Relying on **Section 251(1)(p)&(r) of the amended 1999 Constitution** and particularly calling in aid the case of **NPA V. AMINU IBRAHIM & CO. & ANOR (2018) LPELR-44464 (SC)**, Counsel for the Defendant/Applicant submitted that it was in furtherance of the Defendant's constitutional duty that the Defendant engaged the Claimant for an injunctive order against the alleged executive decision of administrative action of the Defendant not to pay him. He ventilated the view that the Claimant's action as constituted is one to be located within the jurisdictional province of the Federal High Court and not that of this Court, FCT High Court.

CLAIMANT/RESPONDENT'S ARGUMENT:

Per contra, the Learned Senior Advocate of Nigeria, Awosika, SAN, submitted for the Claimant/Respondent derided as untrue the Defendant/Objector's submission to the effect that the "*Plaintiff's case is for the Hon. Court to command or order the Defendant to perform an administrative or executive function*." The Learned Silk laboriously pointed out that from the Claimant's claims as endorsed on the Writ of Summons and the constituent parts of the Affidavit in support of the Writ of Summons, it is discernible that the claim of the Claimant is of simple debt recovery arising from a contractual relationship between the Claimant and the

Defendant/Applicant, that is; the case before the Court is of a contract executed by the Claimant in which the Defendant/Applicant refused to pay the Claimant. He marshaled out the cases of **F.C.E. OYO V. AKINYEMI (2008) 15 NWLR (Pt. 1109) 21; OKOYODE V. FCDA (2006) ALL FWLR (Pt. 289) 1204** and a host of similar authorities wherein the Courts, in subjecting **Section 251(1) (p) &(r) of the amended 1999 Constitution** to merciless judicial x-ray, have expressed the unanimous view that matters of simple debt, simple contract and simple debt recovery are within the subject-matter jurisdiction of the State High Courts or the FCT High Court as the case may be regardless of whether the party in question is an agency of the Federal Government. Senior Advocate further called in aid the authority of **Adetayo vs. Ademola (2010) 1 NWLR (Pt. 1251) 169** where it was emphatically held that the era of using Federal Government or its agencies as a blanket cover to give Federal High Court jurisdiction on matters which are clearly outside **Section 251 of the 1999 Constitution** and where it has no jurisdiction is over. It is a Court with exclusive jurisdiction on specified matters unlike the High Court which has a general jurisdiction. Senior Advocate implored the Honourable Court to view the arguments of the Defendant/Objector as holding no water and the said Preliminary Objection being incompetent.

RESOLUTION OF ISSUE ONE (1):

The hub of the Defendant/Applicant's objection argued as issue one is the jurisdiction of this Court. While he contends that this Court, the FCT High Court, is denuded of the obligatory jurisdiction to enter into adjudication of the Claimant's claim, the Claimant submits per contra. Who is right, who is wrong? Let us go to the law. Jurisdiction is indeed a matter of hard law and

one which, in almost all litigations, parties are always steely resolved to fight to a finish by pursuing same to the hilt. This disposition is not surprising, for it is supported by our law which has consecrated and proclaimed jurisdiction as the livewire of every adjudication, **Elabanjo vs. Dawodu (2006) 15 NWLR (PT. 1000) 76**. So indispensable is this jurisdiction that authorities are now legion or bountiful supporting the proposition that even when none of the parties before the Court raised the issues of jurisdiction but all the materials needed to put the Court on its enquiry have amply crystallised before the Court, the said Court, like this Court, can raise the issue *suo motu*, **Obikoya vs. Registrar of Companies (1975) 4 SC 31, 35;**that is, on its own motion, **NNPC vs. Orhiowasele and Ors (2013) LPELR-20341 (SC)**. In other words, as soon as sufficient facts or materials are available to do so, a Court can raise the issue of jurisdiction *suo motu*, **Ndaejo v. Ogunnava (1977) 11 SC 11;** even without the promptings of any or all of the parties before it, **Akegbeja V. Ataga (1998) 1 NWLR (Pt. 134) 459**. Interestingly, the parties themselves, have by this Motion, ferociously joined issues on the issue of this Court's jurisdiction and have very frontally fought same through this Motion. Jurisdiction is indeed a threshold matter, **Okoya v. Santilli (1990) 2 NWLR (Pt. 131) p. 172**. Proceedings of the Court or judgment resulting therefrom in the absence of jurisdiction are a nullity, **Elelu-Habeeb v. AGF (2012) 13 N.W.L.R. (Pt. 1318) S.C. 423 at pages 472-473**. There is no iota of doubt that a court does not exist of its own but rather derives its existence from its establishment statute, **Ezomo v. Oyakhire (1985) 2 SC P. 260; (1985) 1 NWLR (Pt. 2) 195**. Put more correctly, every court is midwifed by a statute, **Madukolu v. Nkemdilim (1962) NSCC Volume 2, 374 at pages 379-380**. Conspiracy, collusion, silence, ignorance of relevant laws,

or agreement by the parties before the Court cannot confer jurisdiction on a Court which otherwise lacks one, **Bronik Motors Ltd & Ors v. Wema Bank Ltd. (1983) 1 SCNLR P. 296.**In ***Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) S.C. 55 at page 83***, Rhodes-Vivour, J.S.C. aptly described jurisdiction as the *'heart and soul'* of every adjudication. Once a court lacks the jurisdiction to hear a suit and it goes ahead to hear the suit as if it had jurisdiction, no matter how well the suit was decided the proceedings and judgment would amount to a nullity*,* **Osafile v. Odi (No1. 1) (1990) 3 NWLR (Pt. 137) p. 130***.* As it should be, the Court and the parties labour in vain where the Court has no jurisdiction, **OBI vs. I.N.E.C. (2007) 11 NWLR (Pt. 1046) 560**. Fruitless endeavour can only be the outcome since jurisdiction is not only the forerunner but also the spinal cord of adjudication, **OHAKIM vs. AGBASO (2010) 19 NWLR (Pt. 1226) 172**.

I have examined very carefully the arguments advanced by the parties in this forensic battle. There is no doubt that it is the claim(s) which the Claimant has tabled before the Court that the Court is to examine in resolving the issue of whether it has the requisite jurisdiction or not. Indeed, it has never been the defence that the Defendant may have to the Claimant's claim that the Court looks to in resolving any issue or challenge to its jurisdiction. The approved practice is that when issue of jurisdiction is raised, the Court must carefully peruse the claim of the plaintiff in order to determine the crucial issue of jurisdiction, **Shell B P Ltd vs Onasanya (1979) NSSC 334**; **Opiti v Ogbewi (1992) 4 NWLR (pt 234) 184 at 195**. The Supreme Court authority of **Adeyemi v. Opeyori [1976] 9-10 SC 18**further confirms this proposition without any scintilla of controversy. I have undertaken a clinical and an in-depth survey of the claims tabled by

the Claimant in his Writ of Summons which is part of the Court's file. I have chosen to do this because as a matter of settled principle, the law is that a Court of law is entitled to look into its record own and make use of any document that is relevant for the purpose of determining an issue before it, **FUMUDOH VS ABORO (1991) 9 NWLR (PT.214) 210**. The case of **AGBAREH VS MIMRAH (2008) ALL FWLR (PT. 409) 559**reflects the same jurisprudential bent. This is quite apart from the fact that the Claimant/Respondent at **paragraph 1.1 of its written address** firstly reproduced his claims as per his Writ of Summons so as to more effectively draw the attention of the Court to the nature of the claim before it. I find as a fact that the claim of the Claimant before me verges on ***simple debt recovery arising from a contractual relationship between the Claimant/Respondent and the Defendant/Applicant***. The contention of the Defendant/Applicant that *"Plaintiff's case is for the Hon. Court to command or order the Defendant to perform an administrative or executive function"* completely falls to the ground. It is a ruse, a red-herring. The Defendant/Applicant does not have the capacity to lead this Honourable Court up the garden path. I say this because even though the Court in **Adetayo vs. Ademola (supra)** has emphatically held that the era of using Federal Government or its agencies as a blanket cover to give Federal High Court jurisdiction on matters which are clearly outside **Section 251 of the 1999 Constitution** and where it has no jurisdiction is over, the Defendant/Objector, by his contention before me, appears to be desirous of dragging us all back to the era already wisely denounced by their Lordships. On my part, this Court shall not follow him back to the Biblical Egypty. Supreme Court authorities are in great proliferation to the effect that the subject matter of the present action, which is premised on payment of

monetary debt arising from a simple contract of professional service between the Claimant and the Defendant, does not fall within **Section 251 of the amended 1999 Constitution, Onuorah v. K.P.R.C. Ltd. (2005) 6 NWLR (Pt. 921) 393; Adelelan v. Ecu-Line (2006) 12 NWLR (Pt. 993) 33** and a host of kindred others. The case of **NPA V. AMINU IBRAHIM & CO. & ANOR (2018) LPELR-44464 (SC)** cited and relied on heavily by the Defendant/Objector did not sanction the Federal High Court entertaining matters of simple contract or debt recovery arising from a simple contract. There is yet another side to the authority of **NPA V. AMINU IBRAHIM & CO. & ANOR (supra)** which is that while the said decision was handed down by the Supreme Court in 2018, later in 2020, the same Nigerian Supreme Court now went further to expansively hold, in the case of **Crestar Integrated Natural Resources Limited vs. The Shell Development Company of Nigeria Limited & 2 Ors**delivered on the **5th day of June, 2020** in **Appeal No: SC.765/2017**, that the Federal High Court is a Court of limited jurisdiction and as a consequence, it is the "**subject matter**" of the suit that determines whether or not the Federal High Court can rightly exercise jurisdiction over it. In fact, the Supreme Court went as far as declaring that there is no aspect of breach of contract, be it simple or complex contract, that the law confers jurisdiction on the Federal High Court to adjudicate on. It is instructive that in that case, the parties thereto were parties to a Joint Operating Agreement in relation to Oil Mining Leases (OML). Where does this leave the Defendant/Applicant with his argument on this score? Obviously in the rain, unsheltered and drenched. For all I have been saying, I return the answer to the issue one, as formulated by the Claimant/Respondent, in the affirmative by declaring that this Court, the FCT High Court, has the requisite jurisdiction to entertain

the claims tabled by the Claimant. It is resolved in favour of the Claimant/Respondent and against the Defendant/Applicant.

ISSUE TWO (2):

DEFENDANT/APPLICANT'S ARGUMENT:

Counsel argues that the present action of the Claimant is premature and incompetent on the account of the glaring failure of the Plaintiff to fulfill the condition laid down in Section 6 of the Legal Practitioners Act before a Legal Practitioner can file an action to recover his fees. Invoking the authorities of **SHELIM & ANOR V. GOBANG (2009) LPELR-3043(SC) and POPOOLA V. AKANBI & ORS (2019) LPELR-49178 (CA),** Counsel submitted that the Trinitarian conditions precedent to the institution of an action by a Legal Practitioner for the recovery of his professional fees as embedded in **Section 16(2)(a) of the Legal Practitioners Act** were not fulfilled in the case of the Claimant before he presented the instant suit thereby making his action premature and divesting the Honourable Court of its jurisdiction to hear the instant matter.

CLAIMANT/RESPONDENT'S ARGUMENT:

Learned Senior Counsel for the Claimant/Respondent referred to and reproduced paragraphs 6, 7, 8 and 9 of the Claimant's counter-affidavit and submitted that the Legal Practitioners Act was enacted solely for persons duly called to the Nigerian Bar and its effects only operates within the Nigerian territorial boundary as same does not extend to regulate Attorneys who were enrolled at the Supreme Court of New York City, United States of America. Learned Senior Counsel submitted that the Claimant was enrolled as an Attorney based in the United States of America and his affairs as to

charges and recovery of professional fees are well prescribed by the law and rules of conduct provided for in the United States of America. It is the further submission of the Learned Senior Advocate of Nigeria that the Claimant was not engaged by the Defendant/Applicant as a Nigerian Legal Practitioner to defend him in the State of New York City's Court in the United States of America. The case of **CAMAC Nigeria Limited vs. Sabaco Limited (2016) LPELR-40520** was cited and relied on. Counsel again submitted that even though the Claimant's engagement by the Defendant/Applicant is not regulated by the Legal Practitioners Act, the Claimant yet served on the Defendant/Applicant various Bill of Charges. **"Exhibits E1, E2 and E3"** were called in to buttress this submission and to counter as untrue the Defendant/Applicant's submission that the Claimant did not serve him with the Bill of Charges.

RESOLUTION OF ISSUE TWO (2):

I have undertakena dispassionate review of the agitations of the warring parties regarding the matter on which they frontally joined issues. It is whether or not the provisions of the Legal Practitioners Act (LPA for short) applies to the Claimant especially Section 16(1)(a) thereof circumscribing the Trinitarian conditions precedent the fulfillment of which must precede the institution of an action by a Legal Practitioner for the recovery of his professional fees.

There is overwhelming evidence that the Claimant entered into the contract, the subject of this litigation, in his capacity as an Attorney licensed to practice in the New York, United States of America. He was to perform and indeed did perform the said contract in his capacity as an Attorney licensed to practice in the New York, United States of America. These salient facts

are not disputed as between the parties. The Claimant deposed to these facts and supported them with documentary exhibits. I have critically examined both the depositions and the documentary exhibits attached. I find as fact that the Defendant/Applicant has accepted as correct the depositions contained in **paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Claimant/Respondent's counter-affidavit** that speak to the fact of him (the Claimant) being a licensed Attorney to practice in the New York, United States of America and being engaged in that capacity by the Defendant/Applicant for the contract that snowballed into the instant proceedings. The Defendants/Applicants lifted no finger in refutation of those critical depositions contained in the Claimant/Respondent's counter-affidavit by way of a further and better Affidavit. The implication in law is very well-known. The chilling effect of not challenging depositions in a counter-affidavit by way of further and better affidavit (on the case of a party who fails to) was discussed by the Supreme Court in the case of **HENRY STEPHENS ENGINEERING LIMITED v. S. A. YAKUBU NIGERIA LIMITED (2009) LPELR-1363(SC)** thusly:

> **"I will therefore, pause here to state that it is now settled that failure to swear to a further-affidavit where there is a counter-affidavit which is unchallenged, it is deemed that the counter-affidavit, is admitted as being correct. In other words, where there is anunchallenged counter-affidavit evidence, the Court is at liberty, to accept it as true and correct. See the cases of Jumbo Nwanganga & 5 ors. v. Military Governor of Imo State & 2 ors. (1987) 3 NWLR (Pt.59) 182 @ 193 C.A. and Attorney-General of Plateau State**

v. Attorney-General of Nassarawa State (2005) 4 SCNJ 120 @ 175; (2005) 4 S.C. 55."

The Court of Appeal followed in this same footstep in **HOPE UZODINMA v. SENATOR OSITA B. IZUNASO & ORS (2011) LPELR-20027(CA)** when it eloquently held thusly:

"...where facts in respect of anything deposed to in a counter-affidavit or further counter- affidavit are not met or addressed by the other party in a further and better affidavit, the proper conclusion to reach is that the facts stated in the counter-affidavit or further affidavit remain unchallenged. See the following cases:-Ondo State vs. A.G. Ekiti State (2011) 17 NWLR Part 748 Page 706 at 749-750 -F.B.N. Plc v. Ndarake & Sons Nig Ltd. (2009) 15 NWLR Part 1164 Page 406 at 414 to 415 -Ex-Parte Adesina (1996) 4 NWLR Part 42 Page 254 at 261-262."

From the totality of all that I have been saying, the unavoidable summation is that the arguments raised on the Defendants/Applicants issue two (2) are unavailing, feeble, and tenuous. I consequently resolve the said issue against the Defendants/Applicants and in favour of the Claimant/Respondent. Inexorably, I am minded to and do hereby enter an order dismissing this Notice of Preliminary Objection filed by the Defendant/Applicant. I recall that this Court earlier ordered accelerated hearing of this case against its peculiar factual backdrop. I take judicial notice of the industrial action embarked on by the Judicial Staff Union of Nigeria [JUSUN for short] that grounded Courts across the country for over two (2) months including the FCT High Court thereby resulting in a further

delay which this matter suffered. It is in this light that I am minded to now order the Claimant to proceed with the needed dispatch to open his case. Notice of Preliminary Objection filed by the Defendant/Applicant on the 15th day of March, 2021 but dated the 12th day of March, 2021 is hereby dismissed as lacking in merit. This shall be the Ruling of the Court which earlier I reserved on the 15th day of July, 2021.

APPEARANCE

N. F. John Esq. for the claimant.

Oyin Koleosho Esq. with me

B. U. Ohabughind Esq. for the defendant

Sign

Hon. Judge

15/07/2021