**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**HOLDEN AT ABUJA**
**ON TUESDAY8THMARCH 2021**
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**
**SITTING AT COURT NO. 8, MAITAMA, ABUJA**

SUIT NO: CV/1162/2020

**BETWEEN:**

BOLA OLOTU, ESQ.
*(Practiciing under the name and style of BOLA OLOTU&COMPANY)* CLAIMANT

**AND**

UNION HOMES SAVINGS AND LOANS PLC. .. .. .. .. ..DEFENDANT

# JUDGMENT

At the material time to the commencement of the present action, the Claimant was a legal practitionerof well over 3 (three) decades of post-call experience. The Court takes judicial notice of his admission to the privileged Inner Bar as a Senior Advocate of Nigeria (SAN) in the course of proceedings in the suit. His case, as gathered from

facts pleaded in the processes filed to commence this suit, seems straightforward. Sometime in January, 2013, the Defendant, a financial institution, formally retained his services to recover an unpaid loan facility from one of her customers, **Snecou Group of Companies**,to the tune of the sum of **₦607,539,768.30k (Six Hundred and Seven Million, Five Hundred and Thirty-Nine Thousand, Seven Hundred and Sixty-Eight Naira, Thirty Kobo).** Parties agreed that the Claimant shall be entitled to 10% of any amount recovered, as his commission/professional fees. In the course of the recovery exercise, the Claimant filed an action against the said debtor and her guarantors at the High Court of the FCT. In the course of proceedings, parties agreed to an amicable resolution of the disputes in the suit, whereby the Defendant agreed to accept the sum of **₦250,000,000.00** as full and final settlement of the said customer's debt to her. The Court thereupon

entered consent judgment in the said sum of **₦250,000,000.00** in favour of the Defendant in the suit jointly and severally against the principal debtor and her guarantors. The judgment-debtors failed to pay the judgment-debt. The Claimant thereon initiated Garnishee proceedings against the judgment-debtors, pursuant to which an order nisi was obtained; which, subsequently, was made absolute.

According to the Claimant, his post-judgment efforts, including the Garnishee proceedings, yielded recovery of the total sum of **₦107,000,000.00** from the judgment-debtors, of which he was paid his agreed professional fees; leaving an outstanding judgment sum of **₦143,000,000.00** unsettled.

The Claimant's case is further that in the course of his recovery efforts, the Defendant wrote to him to unilaterally reduce his professional fees/recovery commission as originally agreed, from **10%** to **5%** of

the recovered sum; which move he resisted. As a result, and whilst the recovery efforts were still on-going, the Defendant terminated the Claimant's engagement on the recovery matter. It is the Claimant's case that after he was debriefed, the Defendant went behind his back to negotiate with the judgment-debtors for the settlement of the outstanding judgment-debt; which indeed was eventually liquidated.

Upon getting wind that the outstanding judgment-debt had been liquidated, the Claimant formally demanded payment of his **10%**commission on the said recovered sum of **₦143,000,000.00**, which sum the Defendant refused to pay, on the contention that he was not entitled to any such commission after his disengagement from the recovery matter.

Being aggrieved the Defendant's alleged refusal to pay his purported outstanding professional

fee/commission, the Claimant commenced the instant suit *vide*Writ of Summonsand*Statement of Claim* filed in this Court on 20/02/2020, wherein he claims against the Defendant the reliefs set out as follows:

1. ***The sum of ₦14,300,000.00 (Fourteen Million, Three Hundred Thousand naira) being the due and outstanding ten percent 10% recovery fee/commission of the balance sum of ₦143million duly paid to and received by the defendant of the ₦250million court judgment sum obtained, enforced and recovered by the claimant in favor of the defendant as plaintiff in Suit No. FCT/HC/CV/2288/2013- Union Homes Savings and Loans Plc Vs.Snecou Group of Companies Limited, Henry and Nick Associates Company Ltd and Owelle (Prince) C.N. Ukachukwu.***

***OR ALTERNATIVELY***

1. ***The sum of ₦14,300,000.00 (Fourteen Million, Three Hundred Thousand Naira) being the professional fee due to the claimant on the balance sum of ₦143,000,000.00 duly paid to and received by the defendant in liquidation***

***of or from and/or out of the ₦250million court judgment obtained, enforced and or executed by the claimant in favor of the defendant as plaintiff in Suit No. FCT/HC/CV/2288/2013- Union Homes Savings and Loans Plc Vs.Snecou Group of Companies Limited, Henry and Nick Associates Company Ltd and Owelle (Prince) C.N. Ukachukwu.***

2. ***10% court interest on the judgment sum from the date of judgment until the liquidation of the judgment sum.***
3. ***Cost.***

The Defendant joined issues with the Claimant and contested his claim. Her operative*Amended Statement of Defence*was filed with the leave of Court on22/12/2020. The Defendant's contention, in simple terms, is that the Claimant's fees or commission is tied only to the sum he actually, fully and successfully recovered on her behalf and which sum had been paid to him.

The Claimant in turn filed a *Reply* to the Defendant's *Amended Statement of Defence* on 05/08/2020.

At the plenary trial, the Claimant testified in person and adopted the *Statements on Oath* he deposed to as his evidence. He tendered a total of **18 (eighteen)** set of documents as exhibits to establish his claim. The Claimant also called a witnessby way of subpoena, by the name **Daniel Nwokedi,** the Managing Directorof ***Snecou Group of Companies*** who testified orally and tendered additional **5 (five)** documents in evidence in further proof of the Claimant's case. Both the Claimant and his witnesswere subjected to cross-examination by the Defendant's learned counsel.

The Defendant in turn fielded a sole witness in the person of **Mrs. OmolaraOlawunmiSoderu** who is the Defendant's Abuja Branch Manager. She adopted her *Statement on Oath* and tendered a single document in defence of the suit against heremployer. The **DW1**

was equally subjected to cross-examination by the Claimant's learned counsel.

Upon conclusion of plenary hearing, parties proceeded to file and exchange their written final addresses in the manner prescribed by the **Rules** of this Court.

The Defendant filed her final written address on 28/09/2021 wherein her learned counsel, **Racheal OsibuEsq.,** formulated a sole issue as having arisen for determination to wit:

> ***Whether from a combination of all the material facts presented and the evidence led in this suit, the Claimant has proven that he is entitled to the reliefs set out in his statement of claim against the Defendant.***

The Claimant in turn filed his final written address on 06/12/2019, wherein his learned counsel, **Karina Williams,Esq.,**distilled five issues for determination in the suit, namely:

1. ***Whether the Claimant is entitled to enforce the agreement between himself and the Defendant.***

2. ***Whether the Defendant's sole witness is a credible and honest witness whose testimony the court can rely on.***

3. ***Whether the Claimant has proved his case given the evidence before the Honourable Court and is entitled to the grant of the reliefs sought.***

4. ***Whether the testimony and documents tendered through CW2 were pleaded, are admissible and should be accorded probative value.***

5. ***Whether the Claimant's pleading of relevant facts in support of his claim is tantamount to sentiments.***

Having carefully examined the totality of the facts of this case, evidence led on the record and the totality of the circumstances of the case, my view is that the focal issue in contest in this suit is very narrow and precise. I formulate the same simply as follows:

***Whether or not, construing the agreement between the parties,the Defendant is under legal obligation to pay Claimant10% commissionof the outstanding judgment-debt recovered by the Defendant from her judgment-debtors after the Claimant's brief in the recovery matter had been withdraw/terminated.***

In resolving this narrow issue, I should state that I had carefully considered and taken full benefits of the arguments canvassed by learned counsel on both sides of the divide in their respective written submissions. I shall endeavour to make reference to learned counsel's specific submissions as I deem needful as I proceed with this judgment.

## PRELIMINARY POINT

**ARGUMENTS**:

I consider it pertinent to deal at first, as a preliminary point, with the Defendant's learned counsel's arguments as to the admissibility of the documents

tendered in evidence by the **CW1** as **Exhibits C19 – C23** respectively. The **CW1** is **Mr. Daniel Nwokedi,** the *Group Managing Director of Snecou Group of Companies*, the Defendant's principal debtor in the debt-recovery matter in issue in this suit.

The gravamen of the Defendant's learned counsel's arguments, in essence, is that the said documents were inadmissible in evidence on the ground that they were not pleaded by the Claimant. Learned counsel urged the Court, as it is empowered, to reject and expunge the documents from the records, since, according to him, the documents were improperly received in evidence. Learned counsel cited a number of relevant authorities, including *Adeyeri Vs. Okobi [1977] LPELR-8055(SC); Ugochukwu Vs. Unipetrol (Nig.) Plc. [2002] LPELR-3321(SC); Olojede Vs. Olaleye [2012] LPELR-9845(CA); Ajayi Vs. Fisher [1956] SCNLR 279; Chigbu Vs. Tonimas (Nig.) Ltd. [1999] 3 NWLR (Pt. 593) 115.*

Learned counsel had further argued that the evidence of the **CW2** contained contradictions, in that in his evidence – in – chief, hehad testified that the judgment-debtors had paid the total amount outstanding to the Defendant on the basis of their terms of settlement; but that under cross-examination he admitted that the judgment-debtor had not executed a Deed of Assignment in favour of the Defendant transferring the properties involved in the property-for-debt swap arrangement between the two parties. Learned Defendant's counsel thus argued that the latter testimony of the **CW2**that the judgment-debtors had fully paid the judgment-debt was untrue and unreliable. On that ground, learned counsel urged the Court to hold that the testimony offered by the **CW2** is incredible and unreliable, in that he blew hot and cold. Learned counsel therefore urged the Court no to accord his testimony any probative value,

relying on the authority of *NgigeVs. Obi[2006] 14 NWLR (Pt. 999) 93.*

Arguing in opposition, the Claimant's learned counsel contended that the facts pleaded in *paragraphs 32, 34,35, 38 and 41* of the *Statement of Claim*; and *paragraph 13* of the *Reply* to the *Statement of Defence* were sufficient basis for the tendering of the documents in question; and that as such, the documents were admissible. According to learned counsel, the documents in question were not only pleaded, they were also relevant to the inquiry being tried by the Court and were in law, admissible.

Learned counsel further submitted that the Defendant's learned counsel was present in Court when the said documents were sought to be tendered but failed to raise any objection thereto; that learned counsel cannot now be heard to raise any objection to the admissibility of the documents. Learned counsel relied

on a number of authorities, including *DaggashVs. Bulama [2004] FWLR (Pt. 212) 1666;Oluyemi Vs. Asaolu [2010] All FWLR (Pt. 522) 1682; Adamu Vs. Takori [2010] All FWLR (Pt. 540) 1387*.

With respect to the second ambit of the Defendant's learned counsel's objection, the Claimant's learned counsel submitted that the purported contradiction highlighted in the evidence of the **CW2** by the Defendant's learned counsel were unfounded in that indeed the **CW2** tendered the documents, **Exhibits C19-C23** to establish that the Defendant accepted from the judgment-debtor, four units of properties in exchange for the outstanding judgment-debt as full and final settlement of the debt.

**RESOLUTION**:

I had carefully examined facts pleaded in *paragraphs 32, 34, 41 and 42*of the *Statement of Claim* referred to by the Claimant's learned counsel. The purport of

those paragraphs is that after withdrawing the Claimant's brief, the Defendant went behind the Claimant's back, to secretly, subtly and deceptively continue with the enforcement of the outstanding judgment-debt; and that indeed the said judgment-debtor had paid balance of the judgment-debt to the Defendant.

In her *Amended Statement of Defence*, *paragraphs 13 and 14* thereof, the Defendant denied that the entire judgment sum had been recovered from the judgment-debtors.

To further deny this portion of the Defendant's contention in her *Amended Statement of Defence*, the Claimant, in *paragraph 13* of her *Reply*maintained that the Defendant had recovered the outstanding judgment sum after debriefing him. It is categorically pleaded further in the said *paragraph 13* of the *Reply* as follows:

> ***"The Claimant pleads the writ of fifa<u>and other documents in evidence of the continuation of enforcement of the said judgment and receipt of the balance judgment sum and shall rely on them at the trial</u>."***

(Underlined portions for emphasis)

In other to establish the pleaded facts that the Defendant continued with the enforcement of the judgment and that she had recovered the outstanding judgment-debt after debriefing him, the Claimant, through the **CW2**, tendered in evidence, **Exhibits C19 – C23**, which were documents exchanged between the Defendant and the principal judgment-debtor, **Snecou Group of Companies**, which documents purported to show that the Defendant had agreed with the debtor to accept the offer of landed property in lieu of the outstanding judgment-debt.

In my view, and this is trite, the Claimant needed not have pleaded those letters specifically in so far as he

had pleaded sufficient facts to put the Defendant on notice of the case he intends to put forward at the trial. See *Monier Construction Co. Vs. Azubuike [1990] 3 NWLR (Pt.136) 74; Okeke Vs. Oruh [1999] 6 NWLR (Pt. 606) 175.*

I am satisfied that the documents tendered as **Exhibits C19 – C23** indeed supported a combination of facts pleaded, particularly in *paragraphs 32, 34, 42* of the *Statement of Claim* and *paragraph 13* of the *Reply* to the *Statement of Defence*. The Claimant needed not have specifically mentioned the documents in his pleadings. The Defendants' learned counsel's submission that the documents were not pleaded is a clear misconception of the law and I so hold.

What is more, as correctly submitted by the Claimant's learned counsel, the said documents were tendered without objection by the Defendant's learned counsel. Save for any fundamental statutory

grounds that make the documents inadmissible in any event, and none has been cited by the Defendant's learned counsel, he is precluded from raising the instant objection to the admissibility of the documents in his final address. I so hold. Accordingly the said objection is overruled and dismissed.

With respect to the alleged contradiction in the evidence of the **CW2**, I also disagree with the contention of the Defendant's learned counsel. **Exhibit C23** is quite categorical that the Defendant had accepted the offer of 4 units of houses in the principal judgment-debtor's building site in lieu of the outstanding judgment-debt, which is consistent with the evidence of the **CW2**. As such the question of whether or not a Deed of Assignment had been executed between the parties does not arise. In any event, neither of the parties pleaded the issue of Deed of Assignment. As such the evidence of the **CW2** under cross-examination that the judgment-debtor had not

executed a Deed of Assignment in favour of the Defendant relates to unpleaded facts. As such it is proper for the Court to discountenance such evidence.

The law is elementary that evidence based on unpleaded facts, even where such evidence is elicited under cross-examination, would go to no issue. Same is bound to be discountenanced by the Court.See *ChukwurahVs. Shell Petroleum [1993] 4 NWLR (Pt. 289) 512.*

As it turns out, the piece of evidence relied upon by the Defendant's learned counsel to contend that the **CW2**'s testimonies were inconsistent related to unpleaded facts. As such, I will discountenance the Defendant's submissions in that regard.

## RESOLUTION OF SOLE ISSUE

## EVIDENCE AND COUNSEL'S ARGUMENTS:

As I remarked in my opening statements, the case of the Claimant seems clear and straightforward. It is predominantly documents-based. I will proceed to summarise the salient evidence on record. He was formally briefed by the Defendant sometime in January 2013,to recover the sum of **₦607,539,768.30k (Six Hundred and Seven Million, Five Hundred and Thirty-Nine Thousand, Seven Hundred and Sixty-Eight Naira, Thirty Kobo)** plus accrued interest from one of her customers, **Snecou Group of Companies**. (See **Exhibit C1**). The Claimant accepted the brief and upon subsequent correspondence exchanged between the two parties, it was mutually agreed that the Claimant's professional fee or commission shall be **10%** of the amount recovered by him from the said Defendant's debtor-customer (See **Exhibits C1A**and**C2** respectively).

The Claimant swung into action, filed a suit against the said debtor and his guarantors at the High Court of the FCT. In the course of proceedings in that suit, parties agreed to amicable settlement, whereby the Defendant gave exceptional concessions and agreed to accept the sum of **₦250,000,000.00** as full and final settlement of the debt owed to her by the debtors. After all, as they say, a bird in hand is worth more than two in the bush.

Terms of settlement were filed in that regard (See **Exhibit C3**). Consent judgment of Court was rendered in the agreed sum of **₦250,000,000.00**on 26/11/2013 (See **Exhibit C3A**). The judgment-debtors defaulted in settling the judgment debt. As a result, the Claimant initiated Garnishee proceedings against them in order to enforce the judgment and obtained Order nisi against seven (7) Garnishee Banks, on 12/12/2013 (See **Exhibit C4**). Whilst the Garnishee proceedings were pending, the judgment-

debtors paid the Defendant herein (as the judgment-creditor) the sum of **₦100,000,000.00** in two equal instalments of **₦50,000,000.00** each on 12/12/2013 and 15/01/2013 respectively. After some back and forth, the Defendant paid to the Claimant, the sum of **₦10,000,000.00,** representing **10%** of the said recovered sum of **₦100,000,000.00,** as both parties agreed. The Claimant thereafter obtained Garnishee Order absolute to attach the monies belonging to the judgment-debtors domiciled with the Garnishee Banks (See **Exhibit C6**). Flowing from the Garnishee Order absolute, further sum of **₦7,543,015.72** was recovered, leaving a balance of**₦142,456,984.28** unsettled judgment-debt by the Defendant's judgment-debtors (See **Exhibit C18**). Again, after some rigmarole, the Claimant was paid his full dues representing **10%** of the sum recovered from the Garnishee proceedings.

In the meantime, the judgment-debtors proceeded to lodge appeals against the substantive consent judgment and the Garnishee proceedings, which the Claimant, on his own volition, contested on behalf of the Defendant. The appeal was eventually withdrawn on 01/04/2014 and same was struck out by the Court of Appeal (See **Exhibits C7**, **C7A**and**C11** respectively).

Now, by letter dated November 26, 2014 (**Exhibit C9**), the Defendant advised the Claimant that she had reduced his commission on recovered amounts in respect of the judgment-debt from **10%** to **5%**; and that subsequently, payment to the Claimant on any further amount recovered shall be based on **5%** and not **10%**.

Naturally, the Claimant resisted this move. He fired back a response to the Defendant *vide* letter dated 9th December, 2014 (**Exhibit C9A**), by which he

rejected the Defendant's purported unilateral reduction of his commission on the recovery exercise.

It is to be noted that the Defendant's unilateral decision to reduce the commission payable to the Claimant in respect of the on-going recovery exercise at the material time became academic, as by another letter dated July 27, 2015, the Defendant wrote to the Claimant to withdraw from the recovery matter (See **Exhibit C10**).

The Claimant found the Defendant's move unpalatable. He responded by letter dated 5th August, 2015, making it clear to the Defendant that her letter terminating his brief in a matter he had already obtained judgment in her favour, was of no moment. He further demanded that the Defendant immediately settled the balance of his **10%** recovery commission on the judgment-debt.

Now, it is the case of the Claimant that as at July 27, 2015, when the Defendant wrote to terminate his brief, a total sum of **₦107,000,000.00** had so far been recovered, out of which the Defendant had paid him, on the basis of the initial agreement of **10%** commission, total sum of **₦10,198,377.30**; and that the outstanding sum yet to be recovered as of that date, was the sum of **₦143,000,000.00**.

The case of the Defendant in this regard is slightly different. The **DW1** testified that as of the date the Defendant terminated the Claimant's brief, a total sum of **₦107,543,015.72** had been recovered, out of which she had paid to him the sum **₦10,754,301.57**as his **10%** commission; and that the outstanding debt as of that material time was the sum of **₦142,456,984.28**. I shall revert to these figures anon.

The case of the Claimant, supported by uncontroverted documentary evidence, is further that

the Defendant, after terminating his brief, went behind his back to recover the outstanding amount of **₦143,000,000.00** from the judgment-debtors. The documents, **Exhibits C17**, **C17A**and**C17B** revealed that the Defendant took out Writ of possession on 22/02/2017, to attach some moveable properties of the judgment-debtors.

The evidence placed before the Court by the Claimant is further that subsequently, the Defendant and the judgment-debtors came to an amicable settlement of the outstanding judgment-debt of **₦142,456,984.28**, on the basis of which they executed terms of settlement on 12th May, 2017 (See **Exhibit C18**). Part of the agreement between the Defendant and the judgment-debtors was that the Defendant shall release the moveable properties that were attached, valued at the sum of **₦28,650,000.00**, upon the judgment-debtors agreeing to pay over the said sum to the Defendant; and that the payment of

the balance of **₦113,806,981.28** shall be spread over **six (6)** months thereafter, commencing from the date of executing the terms of settlement. It is noted that one **AdekunleOsibogun, Esq.,** witnessed the said terms of settlement as the Defendant's counsel.

Evidence on record further revealed that the judgment-debtors further paid the sum of **₦33,000,000.00** to the Defendant, in further reduction of the outstanding judgment-debt and offered to offset the remaining **₦80,806,984.28** in kind by offering the Defendant some housing units at *Good Homes Development Company Limited* building site at *Apo-Tafyi District of Abuja* (see**Exhibits C19, C20, C21, C22**and**C23**respectively, tendered in evidence by **Mr. Daniel Nwokedi,** the Group Managing Director of **Snecou Group of Companies** (the principal judgment-debtor), summoned on subpoena at the instance of the Claimant to testify in this suit).

Specifically, by letter dated September 15, 2020 (**Exhibit C23**), the Defendant wrote to the Managing Director of **Snecou Group of Companies**, the principal judgment-debtor, to accept the offer of the properties at **Blocks E04, E05, E06 and E08, Plot 7201, Apo-Tafyi Layout, Apo, Abuja, *"in full and final settlement"*** of the judgment-debtor's outstanding debt. The **CW2**, who claimed to be the Group Managing Director of **Snecou Group of Companies**, confirmed, under cross-examination by the Defendant's learned counsel, that the principal judgment-debtor had issued allocation letters for the four (4) housing units mentioned in **Exhibit C23** to the Defendant in pursuance of the amicable settlement of the outstanding judgment-debt and that the transaction between the two parties with respect to the settlement had been completed.

Let me quickly state here that by the Claimant's own showing, *vide* the terms of settlement, **Exhibit C18**,

tendered by the Claimant himself, the amount recovered from the Garnishee banks, in totality, stood at the sum of **₦7,743,015.72**, thereby reducing the outstanding judgment-debt, as at the time he was debriefed, to the sum of **₦142,456,984.28** as against the sum of **₦143,000,000.00** pleaded by him. The Claimant tendered in evidence, the said terms of settlement, **Exhibit C18**. He did not challenge its content. As such, the Court accepts the state of affairs, as set out in **Exhibit C18**, as the correct position with respect to the outstanding judgment sum, as at the time the Claimant was debriefed.

## RESOLUTION OF SOLE ISSUE FOR DETERMINATION:

Now, the focal issue in contention between the parties is simply, whether or not, upon the proper interpretation of the letters of engagement exchanged by the two parties, **Exhibits C1A** and **C2**

respectively, the Claimant is entitlement to be paid **10%** commission on the outstanding judgment-debt recovered by the Defendant from the judgment-debtors, after disengaging the Claimant, *vide* the Defendant's letter, **Exhibit C10**?

In other words, was it the intention of parties that the Claimant shall be entitled to **10%** as commission on whatever amount he actually recovered from the debtor on the debt-recovery exercise or that he will be entitled to receive **10%** commission on the entire debt in any event?

The totality of arguments canvassed by the Claimant's learned counsel on this point can be summarised, in a nutshell, as follows: that by application of the ordinary and literal meaning of the words used by the Defendant in her letter, **Exhibit C2**, written in response to the Claimant's letter, **Exhibit C1A**, the clear intention of the partiesis that the Claimant shall be

entitled to recover an amount representing **10%** of the total judgment sum of **₦250,000,000.00,** obtained by the Claimant in favour of the Defendant in the suit filed against **Snecou Group of Companies,** the Defendant's debtor, and her guarantors at the High Court of the FCT; that it did not matter that the Claimant was debriefed in the course of execution of the judgment; that the Claimant, having commenced and vigorously pursued the process of executing the judgment before he was debriefed, he was entitled to be paid the agreed commission for the entire judgment sum recovered by the Defendant in the suit; that since parties did not employ the use of the words ***"amount fully recovered"*** in the letters under reference; the Court is precluded from reading such words that parties did not agree on into the agreement; that the Defendant cannot unilaterally alter the agreement between the parties by reducing the commission agreed to be paid to the Claimant on

the amount recovered by him from **10%** to **5%** as she sought to in her letter, **Exhibit C9**; and that the Claimant is entitled to be paid **10%** commission on the outstanding amount of **₦143,000,000.00**. In support of his arguments with relations to the trite principles of the law of contract and interpretation of wordings of a contract, learned counsel cited a number of authorities, including *Christaben Group Ltd. Vs. Oni [2010] All FWLR (Pt. 504) 1439; Governor, Ogun State Vs. Coker [2008] All FWLR (Pt. 406) 1900; Agbareh Vs. Mimrah[2008] All FWLR (Pt. 409) 559; D.S.A.D.P.I. Vs. Ofonye [2008] FWLR (Pt. 402) 1068; Asadu Vs. Ifeanyi [2010] All FWLR (Pt. 517) 736; Savannah Bank of Nigeria Plc. Vs. Opanubi [2004] All FWLR (Pt. 222) 1587; Oceanic Bank Int'l (Nig.) Ltd. Vs. Owhor [2009] All FWLR (Pt. 454) 1599.*

On the other hand, the argument of the Defendant's learned counsel, in summary, is that parties are bound by their agreements and that the Court is duty bound

to construe and give effect to same without much ado; that the agreement between the Defendant and the Claimant was for the Claimant to receive **10%** of the debt fully recovered by him as his fees; that a contract for legal services is a peculiar contract, not in the nature of regular contracts, in that the **Constitution** guarantees the right of every person to counsel of his choice, which includes the right to change counsel for any reason or for no reason at all; that in the circumstances of this case the Defendant exercised her constitutional right to debrief the Claimant and that the motive for debriefing him is of no consequence; and that considerations of sentiments is unknown to judicial adjudications; that the testimony of the Claimant in terms of the efforts put into the recovery matter before being debriefed by the Defendant were purely sentimental statements that have no place in law; that by the agreement between the parties, the Defendant had paid the Claimant the

amount to which he was entitled from the actual sum he recovered from the debtors. In urging the Court to dismiss the Claimant's case, learned Defendant's counsel placed reliance on a number of authorities, including *Oyeneyin Vs. Akinkugbe [2001] 1 NWLR (Pt. 693) 40; Ogun State Housing Corporation Vs. Engineer OluOgunshola [2000] 14 NWLR (Pt. 687); Niger Dams Authority Vs. Lajide [1973] 5 SC 207; Unity Bank Vs. Olatunji [2015] 5 NWLR (Pt. 1452) 203; Longe Vs. FBN Plc. [2006] 3 NWLR (Pt. 967) 228.*

From the totality of the evidence adduced before the Court, most of which were documentary in nature, it becomes clear that the resolution of the issue in contention in this suit turns on the Court's interpretation or understanding of the intention of parties when they exchanged the letters, **ExhibitsC1,C1A, C2, C8D, C9, C9A**and**C10**respectively.

The evidence on record as already narrated in the foregoing is that by the letter of January 29, 2013 – **Exhibit C1** – the Defendant retained the services of the Claimant to recover the sum of **₦607,539,768.30** owed her by one of her customers, **Snecou Group of Companies**.

It is instructive to note that in the said letter, **Exhibit C1**, the Defendant did not state any specific terms of the engagement, other than asking the Claimant to contact her staff, should he require any further information with respect to the assignment. As such, the letter, **Exhibit C1**, is at best an offer, which, construed alone, cannot give rise to an enforceable contract between the parties. I so hold.

However, it was in his acceptance letter dated 1st February, 2013, **Exhibit C1A**, that the Claimant *suomotu*introduced the issue of his professional fees.

For ease of understanding, **Exhibit C1A** states, in part, as follows:

> "...
>
> ***While we thank you for your above referred letter and express our appreciation for your patronage, please be informed as follows:***
>
> ***(i) That we have commenced action immediately on your instruction, thus this recovery.***
>
> ***(ii) That our professional fees <u>shall be (10%) of whatever sum recovered by us</u>.***
>
> ***(iii) That the bank shall bear and or reimburse us on all out of pocket and miscellaneous expenses to wit filing of court processes; service of court process; execution of court orders etc as the need may arise."***

(Underlined portion for emphasis)

It is interesting to note that the Defendant did not directly respondto the Claimant's letter, **Exhibit**

**C1A.**At least neither of the parties produced any such evidence at trial.

However, what seemed to me to be the basis of the agreement between the parties is the Defendant's letter dated June 16, 2014, **Exhibit C2**. The letter states, in part, as follows:

> ***"We refer to your letter dated July 2, 2014 on the above subject.***
>
> ***Please be informed that you were briefed to recover the money owed by the debtors wherein it was agreed that out of any amount recovered 10% shall be paid to you.***
>
> ***Kindly ensure that recovery of the balance sum is made to enable us conclude with this matter..."***

(Underlined portion for emphasis)

It is to be noted that the Defendant's letter, **Exhibit C2**, is not a direct response to the Claimant's letter, **Exhibit C1A**, written as far back as 1st February,

2013; neither is any reference made to the said Claimant's letter in **Exhibit C2**.

It is to be noted further that as at the time the Defendant wrote the letter, **Exhibit C2** to the Claimant, the Claimant had already undertaken far reaching and notable measures in the recovery exercise and was already being remunerated on the basis of his letter,**Exhibit C1A**. Part of the steps already taken by the Claimant to recover the debt, prior to the Defendant's issuance of the letter, **Exhibit C2**,are enumerated as follows:

1. The Claimant instituted a court action against the said debtor and her guarantors at the High Court of the FCT in Suit No. FCT/HC/CV/2288/13 – Union Homes Savings & Loans Plc. Vs. Snecou Group of Companies Ltd. & 2 others.

2. The Claimant superintended over settlement proposals between the Defendant and the debtors, whereby the Defendant agreed to accept the sum of **₦250,000,000.00** as full and final settlement of the original over **₦600 million** debt.

3. Consent judgment was entered in the said matter on 26/11/2013, as shown in **Exhibit C3A**.

4. When the debtors failed to offset the consent judgment-debt, the Claimant commenced judgment-execution processes by identifying banks in which the judgment-debtors had funds and filed Garnishee proceedings against them, *vide* ex parte application of 09/12/2013.

5. The Claimant obtained Garnishee order nisi against seven (7) Garnishee Banks on 12/12/2013, *vide***Exhibit C4**.

6. The Claimant obtained Garnishee order absolute against the Garnishee Banks on 7th April, 2014, *vide***Exhibit C6**.

7. The judgment-debtors appealed the consent judgment of the High Court of FCT which was later withdrawn and was struck out by the Court of Appeal, Abuja Division, on 1st April, 2014, *vide***Exhibit C11**.

8. The Judgment-debtors appealed against the Garnishee order absolute and filed a motion at the Court of Appeal, Abuja Division, on 22nd May, 2014, to stay execution of the said order absolute, *vide***Exhibit C7A**.

9. Sums of money of over **₦100,000,000.00** had been recovered by the Claimant from efforts enumerated in the foregoing, prior to the time the Defendant wrote the letter, **Exhibit C2**. See

the letters **Exhibits C8, C8A, C8B and C8C**respectively, which detailed the amounts the Claimant recovered from the Garnishee Banks upon the conclusion of the Garnishee proceedings.

So, it was after all the recovery activities enumerated in the foregoing had taken place at the instance of the Claimant that the Defendant wrote the letter, **Exhibit C2** to him on June 16, 2014, in which the agreement of the parties that the Claimant shall be paid **10%** of any amount recovered was reinforced.

Now, in response to the said **Exhibit C2**, the Claimant wrote the letter dated 4th July, 2014, **Exhibit C8D**, to the Defendant. In **Exhibit C8D**, the Claimant did not evince any objection to the Defendant's categorical statement about his fees being **10%** of any amount recovered by him. All he said, in confirmation of the agreement between the parties is: ***"That we are not***

***unmindful of our recovery mandate in this suit No. FCT/HC/CV/2288/13."***

The trite and fundamental principle of interpretation is that where the words used in a document are clear and unambiguous, the Court must give the operative words in the document their simple, ordinary and actual grammatical meaning. See *Union Bank of Nigeria Plc Vs. Ozigi [1994] 3 NWLR (Pt. 333) 385, Adewunmi Vs. Attorney General, Ekiti State [2002] 2 NWLR (Pt.751) 474.*

Again, the Court must construe a document according to the clear intention of the parties appearing in the four corners of the document itself; in other words, the Court examines the words used in a document to arrive at the intention of the parties. See *Abbey Vs. Alex [1999] 14 NWLR (Pt.637) 146;Isulight (Nig.) Ltd Vs. Jackson [2005] 11 NWLR (Pt.937) 631.*

By my understanding of the contents of the Defendant's letter, **Exhibit C2,** which seemed to be in consonance with the Claimant's earlier letter of 1st February, 2013, **Exhibit C1A;** and the Claimant's response to **Exhibit C2,** the letter **Exhibit C8D,** I am not in doubt; and it is not too difficult to understand; that both parties were *ad idem* that the Claimant's commission or professional fees with respect to the recovery brief, shall be **10%** of any amount physically or actually recovered by the Claimant from the recovery brief given to him by the Defendant.I so hold.

I must further state that the intention of the parties, which is that the Claimant shall be entitled to **10%** of actual recoveries made by him is not difficult to discover when one further considers the patterns by which the Claimant had demanded from the Defendant, payment of his commissions on the sums he actually recovered from judgment-debtors per time. It

is seen thatwhenever the Claimant recovered any portion of the judgment-debt, he swiftly wrote to the Defendant to demand for his unpaid or outstanding commission for the recovered amounts. This pattern was particularly demonstrated in the letters, **Exhibits C5, C5A, C8, C8A,C8B**and**C15**respectively, written by the Claimant to the Defendant. There was never a time the Claimant demanded for advance payment of commission on any sum of the judgment-debt that he had not actually recovered.

All of these therefore clearly confirm that the Claimant was never in doubt that the agreement and understanding between him and the Defendant at all material times was that he will be entitled to **10%** of any amount actually recovered by him and no more. I so hold.

I further dismiss the arguments of the Claimant's learned counsel that since the words**"actually"** or

**"fully"**were not employed in any of the letters under focus, it must mean that the Claimant was not restricted to claim **10%** commission on the actual amount he recovered.

In my view, it will be the height of absurdity to suggest that the words ***"our professional fees shall be 10% of whatever sum recovered by us"*** (as in **Exhibit C1A**) and the words ***"you were briefed to recover the money owed by the debtors wherein it was agreed that out of any amount recovered 10% shall be paid to you"*** (as in **Exhibit C2**), meant any other than that the Claimant will be entitled to be paid **10%** of any part of the debt he actually recovered. I so hold.

Now, as time went on, the Defendant, for unstated reasons, wrote letter dated November 26, 2014, to the Claimant informing him of the decision of the management of the Bank, from that time onward, to

reduce his commission on the recovered judgment-debt from **10%** to **5%**. The letter states in part:

> ***"We refer to our letter dated June 16, 2014 (Exhibit C2) on the above subject and hereby advise that Management has approved the reduction of payment of recovered amounts as fees/commission from 10% to 5% (See attached).***
>
> ***Subsequently payment on any amount recovered would be based on 5% and not 10%."***

(Safe to note that the document was not tendered with the purported "attached")

The Claimant, expectedly, swiftly responded to the Defendant's letter, **Exhibit C9**, by his letter of 9th December, 2014, **Exhibit C9A**, by which he conveyed his rejection of the Defendant's purported unilateral reduction of his commission for the recovery job, from the mutually agreed rate of**10%**of recovered sum to **5%**.

Evidence on record however revealed that the Defendant did not implement the decision in her said letter, **Exhibit C9**, in that the outstanding recovery fees as at the time the letter was written were paid to the Claimant at the agreed rate of **10%**; and that subsequent to the time the letter was written, the Claimant did not recover any further amount of the judgment sum up until July 27, 2015, when the Defendant wrote to convey the directive of the Management of the Bank to him to withdraw from the recovery matter.

The said letter of withdrawal of brief, **Exhibit C10**, states essentially as follows:

> ***"Please be informed that after an internal review of the case, management has directed that you withdraw from the case."***

In response to the letter of termination, **Exhibit C10**, the Claimant wrote the letter dated 5th August, 2015,

**Exhibit C12**, to the Defendant, wherein he stated, *inter alia*, as follows:

> ***"Responding to your above referred letter and reiterating the content of our 9th December 2014 letter, kindly inform the bank's management that since we have obtained court judgment and progressively enforced same in this suit, we cannot be directed to withdraw from the matter without the management settling fully our 10% recovery commission on the court judgment obtained. ...***
>
> ***Consequently, please be informed that kindly inform your management that the directive that we withdraw from this matter wherein we have already obtained judgment in favour of the bank does not and cannot arise now, as such directive is of no moment and rather suspicious.***
>
> ***We therefore hereby demand and shall appreciate the immediate settlement by the bank of the balance of our 10% recovery commission on the judgment***

***obtained in this matter. This is the honourable thing for the bank's management to do at this point."***

(Underlined portion for emphasis)

The Claimant's stance, as can be deduced from his letter above reproduced, on the one hand, is that the Defendant lacked the competence to withdraw the recovery matter from him; and, on the other hand, that even if the matter is withdrawn from him, the Defendant is obligated to pay him **10%** commission on the outstanding judgment-debt.

The Claimant's stance, as stated, thereafter formed the basis of his demands from the Defendant in the letter written on his behalf by his Solicitor, **Biodun Akin-Aina,Esq.**, of **Biodun Akin-Aina& Co.**, on 27th April, 2018, **Exhibit C13**. In the said letter, the Claimant's position is that since he has not shown nor exhibited any form of inability/disability to fully recover the outstanding judgment-debt balance of

**₦143,000,000.00**, payable to the Defendant by the judgment-debtor, that he is entitled to be paid the sum of **₦14,300,000.00** being **10%** of the stated outstanding judgment-debt.

The Defendant, in response to the Claimant's solicitor's letter, **Exhibit C13**, wrote letter dated June 4, 2018, **Exhibit C13B**, to the Defendant through her solicitor, **OluniyiAdediji, Esq.**, and rejected the Claimant's claim, contending that the Defendant reserves the constitutional right to counsel of her choice; and that based on the agreement between the two parties, the Claimant cannot claim any commission for monies not recovered during his engagement by the Defendant.

It is to be noted and as the Court had found in the foregoing, *vide* the documents, **Exhibits C18 – C23**, that whilst trial of this suit progressed, the Defendant recovered the total outstanding judgment-sum of

**₦142,456,984.28**, partly in cash and partly by landed property in lieu of cash.

As I had found in the foregoing, it cannot be faulted that the intention of parties was for the Claimant to be paid **10%** of the amount of money recovered by him from the Defendant's debtor, according to brief handed to him.

It is also pertinent to clarify that by **Exhibit C1**, the letter by which the Defendant instructed the Claimant, the mode or manner of the recovery was not specified. It was therefore up to the Claimant to employ his best professional endeavours and expertise to achieve the desired results for the Defendant. As such, the Claimant was not bound, under the agreement with the Defendant, to employ litigation to recover the debt.

Having made this point, I now return to the focal question, which is whether having terminated the

Claimant's brief to proceed with the recovery exercise, the Defendant is legally bound to pay him **10%** commission on the outstanding sum he had not recovered at the time his brief was withdrawn. Did the fact that the Claimant had secured judgment in favour of the Defendant and had vigorously and tenaciously pursued the execution processes to some point entitle him to be paid commission on the outstanding sum he had not recovered as at the time his brief was withdrawn?

This leads me to a consideration of the authority of *Unity Bank Vs. Olatunji(supra)*, cited by the Defendant's learned counsel. This case, in my view, has provided answers to the critical questions in dispute in this suit. The facts of the case are materially similar to those of the present case. In that case the Defendant contracted the services of the Claimant, a legal practitioner, for the recovery of the indebtedness of its customers; at a fee of **10%** of the sum recovered

by the Claimant. The Claimantfiled a suit against the customer and obtained judgmentagainst the customer in favour of the Defendant.The customer paid part of the judgment-debt for which the Claimant was paid his agreed fees. Whilst the recovery exercise was still ongoing, the Defendant withdrew the brief from the Claimant. The Claimant was aggrieved and sued the Defendant for breach of contract. He also claimed **10%** of the outstanding judgment-debt which was yet to be satisfied as at the time he was debriefed. The trial Court found in his favour. The Bank appealed the decision of the trial Court and the Court of Appeal, Kaduna Division, upheld the appeal and reversed the judgment of the trial Court.

I painstakingly digested the decision of the Court of Appeal in this case. One of the areas of difference in that case and the instant case is that whereas, in the *Unity Bank* case, the Claimant sued the Bank for breach of contract; however, in the present case the

Claimant did not allege breach of contract and did not claim damages in that regard. As such, in the present case, the issue as to whether or not the Defendant wrongfully withdrew the Claimant's brief cannot arise, contrary to the submissions of the Claimant's learned counsel. I so hold.

In any event, the Court of Appeal, in the *Unity Bank* case, underscored the constitutional right of a litigant to counsel of his choice, when it was held, *per***Abiru, JCA**, as follows:

> ***"It is a settled principle of law that every person in this country has a right to instruct or brief any Counsel of his choice in respect of any issue, matter or case he is involved in and inherent in this right is the power of the citizen to change his Counsel as he desires at any stage of the issue, matter or case, without giving any reason for doing so and to engage as many law firms as he can afford to represent him on the issue, matter or case. It is a***

*right guaranteed by the Constitution to every person in Nigeria and it is clearly implicit in the provisions of section 36 of the 1999 Constitution which guarantees every citizen of this country who desires a determination of his civil rights and obligations, including any question or determination by or against any government or authority, a right to fair hearing - Okoduwa Vs State (1988) 2 NWLR (Pt.76) 333, Atake Vs Afejuku (1994) 9 NWLR (Pt.368) 379, Akuma Vs Ezikpe (2001) 8 NWLR (Pt.716) 547 and Ukweni Vs Governor, Cross Rivers State (2008) 3 NWLR (Pt.1073) 33.*

*...Therefore, in the instant case, while it is correct that the letter of engagement of the Respondent, Exhibit 1, did not contain a termination clause, this cannot derogate from the right of the Appellant to debrief and terminate the legal services of the Respondent and to instruct another Counsel in any stage it desired. The right must be read into the terms of the letter of engagement of the Respondent"*

What then is the legal effect or consequence of the constitutional right exercised by the Defendant in the present case, to debrief the Claimant from further handling the recovery matter at the stage she did? In other words, having regard to the nature of the agreement between the parties,on which the Court had made findings in the foregoing, is the Defendant liable to pay to the Claimant the sum representing **10%** of the unrecovered judgment-sum as at the time she debriefed him?

These questions were again adequately answered by the Court of Appeal in the *Unity Bank* case, where His Lordship, **Abiru, JCA**, further held as follows:

> ***"A court must treat as sacrosanct the terms of an agreement freely entered into by the parties as parties to a contract enjoy their freedom to contract on their own terms so long as same is lawful. The terms of a contract between parties are clothed with some degree of sanctity and if any question should***

*arise with regard to the contract, the terms in any document which constitute the contract are the invariable guide to its interpretation. The duty of the court, where a dispute arises between parties to a contract, is to construe the surrounding circumstances, including the written or oral statement, so as to effectuate the intention of the parties - Omega Bank (Nig) Plc Vs O.B.C. Ltd (2005) 8 NWLR (Pt.928) 547, BFI Group Corporation Vs Bureau of Public Enterprises (2012) 18 NWLR (Pt.1332) 209, Daspan Vs Mangu Local Government Council (2013) 2 NWLR (Pt.1338) 203, Afrilec Ltd Vs Lee (2013) 6 NWLR (Pt.1349) 1. ...*

*The next question is whether the Respondent is entitled to be paid legal fees in respect of monies paid by the debtors after the termination of his brief by the Appellant. As stated earlier, a contract for legal services is a peculiar contract, and not in the nature of other contracts, because the Constitution of Nigeria 1999 guarantees the right of every person*

*to a Counsel of his choice at any point in time, and this includes the right to change Counsel for no reason or for any reason at all. Thus, the ordinary rules applicable to termination of other contracts, will not apply to termination of a contract for legal services. It must be noted that this right does not foreclose the entitlement of the Counsel whose brief was terminated from being paid agreed legal fees. The resolution of the question of the entitlement of the Respondent to legal fees in respect of monies paid by the debtors after the termination of his brief must thus necessarily depend on the terms of his letter of engagement, Exhibit 1.*

*The agreed fee of the Respondent was "10% of the amount recovered". The operative words "amount recovered" is used in the past tense and not in the future tense. Thus, they refer to the actual amount that was paid by the debtors in the life span of the brief, and not the amount that the debtors later paid after the termination of the brief and/or have promised to pay in future. Parties are bound by the*

*terms of agreement they have voluntarily entered into and nothing must be read into the contract. To hold that since the later payments were due to or that the future payments will be as a result of the efforts of the Respondent and that as such he should be entitled to legal fees on them is to read words into the terms of agreement and also to be swayed by sentiments. There is a saying in jurisprudence that law and morality are not synonymous. Hence, an act that is morally reprehensible may not be legally punishable - Attorney General, Federation Vs Abubakar (2007) 10 NWLR (Pt.1041) 1.*

*The Supreme Court has stated over and over that the Court is for espousing the law and not a place for sentiments and that sentiments command no place in judicial adjudication - Ezeugo Vs Ohanyere (1978) 6-7 SC 171, Oniah Vs Onyia (1989) 1 NWLR (Pt.99) 514, Mbachu Vs Anambra-Imo River Basin Development Authority, Owerri (2006) 14 NWLR (Pt.1000) 691. andUdosen Vs State (2007) 4 NWLR (Pt.1023) 125. Thus, it is settled law that if there is a*

***right to do an act, the fact that the motive for doing the act is bad or self-serving will not affect its validity or legality. Similarly, where there is no right or the thing done is illegal, the purity of the motive or magnanimity of the act done will not alter the legal consequence - Chukwumah Vs Shell Petroleum Development Corporation (1993) 4 NWLR (Pt.289) 512, Anosike Building & Commercial Co Vs Federal Capital Development Authority (1994) 8 NWLR (Pt. 363) 421, Ebongo Vs Uwemedimo (1995) 8 NWLR (Pt.411) 22 and Nwajagu Vs British American Insurance Co. (Nig.) Ltd (2000) 14 NWLR (Pt.687) 356."***

It cannot be contested that the decision of the Court of Appeal, reproduced in the foregoing, squarely applies to the material facts and circumstances of this case and for that reason, this Court is bound by it. The Claimant's case is that having put so much effort into the recovery processes as instructed by the Defendant, it was unconscionable for the Defendant to

debrief him at the stage she did without paying him **10%** commission on the outstanding judgment-debt yet to be recovered; since, according to him, it was his effort that the Defendant built upon to realize the outstanding judgment-debt. No doubt, this argument is morally sound and appealing. However, it is not in consonance with the agreement between the parties, which is that the Claimant will be entitled to **10%** commission of any amount recovered by him only.

As much as the Court sympathizes with the Claimant, who, as it were, was used and dumped by the Defendant; nevertheless his agreement with the Defendant, which remains sacrosanct, restricted him to be paid commission on amounts he actually recovered whilst his brief lasted; not on amounts recovered after his brief had been terminated. I so hold.

I must say that the attempt by the Claimant's learned counsel to distinguish the ***Unity Bank*** case from the

facts and circumstances of the present case in that the reason the Bank terminated the lawyer's brief in the former was as a result of his indolence; whereas such is not the case in the present case, is of no moment. The position is that in a lawyer/client relationship, the motive for terminating the lawyer's brief is irrelevant insofar as the lawyer's fees; as agreed to by them; is not denied him. See also the authority of *Savannah Bank of Nigeria Plc. Vs. Opanubi (supra),* cited by the Claimant's learned counsel, decided on the claim for breach of lawyer-client contract on *quantum meruit* basis.

On the basis of the comprehensive analysis of the evidence on record and applicable law as undertaken in the foregoing, I must and I hereby resolve the sole issue for determination in this suit against the Claimant.

In the final analysis, the inescapable conclusion the Court must arrive at is that the Claimant's case lacks in merit and in substance. It must be and it is hereby accordingly dismissed. There shall be no orders as to costs.

**OLUKAYODE A. ADENIYI**
**(*Presiding Judge*)**
**08/03/2022**

***Legal representation*:**

**Karina Williams, Esq.** –*for the Claimant*

**Racheal Osibu, Esq.**(with**IfeomaEnwere, Esq.**)– *for the Defendant*