

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

ON FRIDAY 23RD JULY 2021

BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9 MAITAMA – ABUJA

SUIT NO: M/3851/2021

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS BY RIOK
NIGERIA LIMITED PURSUANT TO THE PROVISIONS OF THE HIGH COURT OF THE
FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES

BETWEEN:

RIOK NIGERIA LTD. APPLICANT

AND

- | | | |
|---|---|---------------------------|
| <p>1. MRS. (DR.) ZAINAB SHAMSUNA AHMED
HON. MINISTER OF FINANCE, BUDGET
AND NATIONAL PLANNING</p> <p>2. PATIENCE ONIHA
DIRECTOR-GENERAL, DEBT MANAGEMENT
OFFICE (DMO)</p> <p>3. ABUBAKAR MALAMI, SAN
ATTORNEY GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE</p> | } | <p>RESPONDENTS</p> |
|---|---|---------------------------|

JUDGMENT

Pursuant to leave granted by this Court on
23/06/2021 for the Applicant to bring application for

Mandamus against the Respondents, the Applicant filed the instant motion on notice on 25/06/2021, by which she sought against the respective Respondents, principal reliefs set out as follows:

1. An order of Mandamus for the 1st Respondent (Hon. Minister of Finance, Budget and National Planning) the 2nd Respondent (Director General, Debt Management Office) and the 3rd Respondent (The Attorney General of the Federation and Minister of Justice) to perform their statutory duties, ministerial duties and public duties of issuing promissory notes to the Applicant for the sum of \$143,463,577.76 USD (One Hundred and Forty-Three Million, Four Hundred and Sixty-Three Thousand, Five Hundred and Seventy-Seven Dollars, Seventy-Six Cents), disbursable as follows:

- (a) RIOK NIG. LTD \$142,028,941.95**
- (b) PRINCE ORJI NWAFOR ORIZU .. \$1,219,440.45**
- (c) OLAITAN BELLO ... \$215,195,364**

as approved and directed to the Respondents by Mr. President of the Federal Republic of Nigeria on the 24/12/2020 and brought to the knowledge of the Respondents on 11/1/2021 for implementation.

- 2. An order compelling the Respondents to issue the promissory notes to the Applicant in the manner, terms and conditions recommended by the 2nd Respondent to the 3rd Respondent (sic) without writing to notify or seek the response, ratification and consent of the Judgment debtor and to deposit the Promissory Notes with the Chief Registrar for the benefit of the Applicant or as may be ordered by the Honourable Court.*

I had proceeded to examine the application and the totality of the processes filed to support the same, including Affidavit deposed to by **Wisdom Okeke**, Administrative Manger of the Applicant; Statement containing the name and description of the Applicant and the reliefs sought; and documents annexed as exhibits to the Affidavit in support.

I had also carefully examined the Counter Affidavit deposed to on behalf of the 1st Respondent on 19/07/2021.

I had also carefully considered the totality of the arguments canvassed by the respective learned counsel for the Applicant and the 1st Respondent in their respective written addresses; as well as their oral amplification arguments canvassed on 19/07/2021, the date the application was heard.

It is borne by the records of the Court that both the 2nd and 3rd Respondents were duly served with the motion on notice and the hearing notices for the scheduled hearing date; but opted not to defend the action. The implication is that both the 2nd and 3rd Respondents are deemed in law to have admitted the case of the Applicant.

The case of the Applicant is straightforward or so it seems. As gathered from facts deposed in the Affidavit

filed in support of the instant application, the Applicant is a beneficiary of a Court judgment that proceeded from contractual relationship she had with the Incorporated Trustees of Association of Local Governments of Nigeria (ALGON). In the said judgment of the High Court of the FCT, delivered on 01/09/2014, the Claimant was awarded the sum of **\$315,619,871.1 USD**. When the Judgment-Debtor failed to pay the judgment-debt, the Applicant (as Judgment-Creditor) commenced Garnishee proceedings to attach monies belonging to the Judgment-Debtor in the custody of the Central Bank of Nigeria in the High Court of the FCT. Eventually, Order Absolute was procured by the Applicant (Judgment-Creditor) on 22/03/2017, effectively attaching the said sum of **\$315,619,871.1 USD** in custody of the Central Bank of Nigeria.

An appeal lodged by the Central Bank of Nigeria against the said Order Absolute at the Court of Appeal was subsequently dismissed on 24/05/2019.

The Applicant's case is further that upon the dismissal of the appeal lodged by the CBN against the Garnishee Order Absolute, the Hon. Attorney General of the Federation prevailed on the Applicant, upon negotiations of the judgment-debt, to agree to be paid a downward reviewed sum of **\$142,028,941.95**.

Thereafter, the Federal Government of Nigeria, through the offices of the Ministry of Finance and the Debt Management Office (DMO), conducted verification processes to ascertain the validity of the debt; and upon being satisfied, the 1st Respondent, by official communication of 14th December, 2020, through the Chief of Staff to the President, made representations to the President of the Federal Republic of Nigeria to request for approval for

payment of the debt. Indeed, the President approved the payment as recommended by the 1st Respondent on 24/12/2020 and the President's approval was formally communicated to the 1st and 2nd Respondents by the Chief of Staff to the President, **Prof. Ibrahim A. Gambari**, on 11th January, 2021, that the debts be liquidated *vide* issuance of Promissory Notes; and not cash payments, given Federal Government's revenue challenges.

The Applicant's case is further that in spite of the approval granted by the President to the 1st and 2nd Respondents to pay the said debt, they continued to delay in payment, resulting in the Applicant, through her Solicitors, to write letters to the respective Respondents to demand payment of the said debt.

The Applicant further discovered that the non-payment of the debt was as a result of directive from the 1st Respondent to the 2nd Respondent to pay the Applicant

only after notification, ratification and consent of the Judgment-Debtor, which move, according to the Applicant, runs contrary to the 1st Respondent's letter to the President, on which the President acted to grant approval for the payment in the first place.

The Applicant exhibited to the Affidavit in support, all documents and Court processes material to the facts deposed to in the support of the application, which the Court has taken cognizance of in determining the instant action.

I had examined facts deposed in the Counter Affidavit filed by the 1st Respondent to oppose the instant application. The 1st Respondent does not seem to deny the material facts deposed by the Applicant, as to the existence of the judgment-debt and the approval granted by the President for the same to be paid vide issuance of Promissory Notes.

The 1st Respondent maintained the allegation made by the Applicant that she directed the 2nd Respondent to notify the judgment-debtor of the President's approval and to obtain their responses before the debts could be paid as directed by the President.

The 1st Respondent further maintained that she, together with the other Respondents, were working on the issuance of the Promissory Notes and that this shall be done as soon as the processes and procedures are completed in line with due process requirement; and that there is no basis for the instant application as there has not been any failure, neglect and/or refusal by the 1st and 2nd Respondents to perform the duties of their offices as it relates to the issuance of the Promissory Notes to the Applicant as approved by the President.

Now, the law is trite that where a person or body has a duty of public nature to perform or discretion of a

public nature to exercise, an order of mandamus can be issued to compel the performance of such duty provided a request to do so preceded it. See Fawehinmi Vs. IGP [2000] 7 NWLR (Pt. 665) 481; Comptroller General, Nigeria Customs Service & Ors Vs. Minaj Holdings [2017] LPELR-43055.

As also correctly submitted by the Applicant's learned counsel, the Federal or State Government and public servants working under them as well as public statutory bodies can be compelled to perform duties imposed on them by law. See Jauro Vs. Hon. Minister of Lands [2013] LPELR-20849(CA).

Moreover, it is an important factor in obtaining a mandamus order for the Applicant to have sufficient legal interest in the matter to which the application relates. See also Shitta-Bay Vs. Federal Public Service Commission [1981] 1 SC; Ayida & Ors Vs. Town Planning Authority & Anor. [2013] LPELR- 20410(SC).

In the instant case, it is clear that the Applicant is the direct beneficiary of the public duty the Respondents, by the instant application, are sought to be compelled to perform. As such, it is not in question that the Applicant has the *locus standi* to have filed the instant application; and that she has the legal interest in the subject matter to which the instant applicant relates, which is the payment of negotiated judgment-debt to the Applicant, as approved by the President of the Federal Republic of Nigeria.

The records of the Court further bear out that the Applicant, through her Solicitor, **Prince Orji Nwafor-Orizu**, of **Orji Nwafor-Orizu & Associates**, wrote separate letters dated 9th April, 2021, to the respective Respondents, to make a demand for compliance with the directive of the President for payment of the judgment-debt, in the manner approved by the President. Acknowledged copies of

the letters were duly attached to the Affidavit in support of the Application.

Again, it is also not in question that the duties the Applicant seek the order of this Court to compel the Respondents to perform are public duties attached to the public offices they hold.

The case put forward by the Applicant is further that even though the directive of the President to the 1st and 2nd Respondents to pay the said judgment-debt, vide issuance of Promissory Notes, to be funded by equal monthly deductions from the Statutory Allocations due to the affected States and Local Government Areas over a period of ten (10) years, *inter alia*, were formally conveyed to them as far back as 11/01/2021, but that they had continued to prevaricate on the payment.

I find totally untenable, unacceptable, unfounded, unjustified, irresponsible, reckless and dishonest, the 1st

Respondent's directive to the 2nd Respondent, as reflected in the 2nd Respondent's Memo of 13 April, 2021, copy of which is attached to the Affidavit in support, to the extent that the Promissory Notes be issued to the Applicant only after notification, ratification and consent of the Judgment-Debtor. Apart from the fact that this posturing, purporting to seek ratification and consent of a Judgment-Debtor before a judgment-debt is paid, is unknown to law and tended to countermand the approval of the President; it is in fact a direct contradiction of the position put forward by the 1st Respondent in her Memo to the President, of 14 December, 2020, where she stated categorically as follows:

“iv. On whether the States and Local Governments have formally signed off on the proposed equal monthly deductions from their Statutory Allocations over a period of ten (10) years to defray the relevant expenses incurred by the FGN on their

behalf, in relation to the claims of the Category A Judgment Creditors, it is pertinent to state that the consent of a Judgment Debtor (in this case the States/Local Governments) is not required before a valid judgment of a court of competent jurisdiction can be enforced. However, both the former Chairman of the Nigeria Governors Forum (NGF) and the Association of Local Governments of Nigeria (ALGON), had in 2019, given an Indemnity and No Objection Letters authorizing deductions from relevant Statutory Allocation to meet the Paris Club related claims, especially the claims by Riok Nigeria Limited and Dr. Ted Iseghohi Edwards...”

The 1st Respondent’s *volte face* as reflected in the said Memo of 13 April, 2021, and the deposition in paragraph 15 of the Counter Affidavit deposed on her behalf, seeking to notify the Judgment-Debtor of the President’s approval for the debt to paid by issuance of Promissory Notes and obtaining their consent or

responses has exposed the 1st Respondent's unjustifiable aversion to the payment of the debt.

It is again deposed in paragraph 18 of the Counter Affidavit as follows:

“18. That the Respondents, especially the 1st and 2nd Respondents are working on the issuance of the Promissory Notes and will issue the same as soon as the processes and procedures are completed in line with due process requirement and in compliance with the directives of Mr. President.”

However, the 1st Respondent failed to explain or depose to the details of the so-called **“processes and procedures”** and **“due process”** involved in the issuance of Promissory Notes which had caused the same to be protracted since 11 January, 2021, when the President granted the approval for the payment to be made.

As far as this Court is concerned, the depositions in paragraph 15, 18, 19 and 20 of the 1st Respondent's Counter Affidavit are no more than afterthoughts and needless bureaucratic grandstanding; and it is viewed as an affront to and an attempt to undermine the constituted authority of the President of the Federal Republic of Nigeria and to further frustrate the Applicant. I so hold.

The law, as it is well known, is that a successful litigant is not lightly denied of the enjoyment of the fruits of his judgment, except in very exceptional circumstances. In the present case, the Respondents have not put forward any convincing or tangible reason(s) to have caused the delay in issuing the said Promissory Notes, for over five (5) months, from the date the President approved payment to the Applicant on 11/01/2021, up to 25/06/2021, the date the Applicant approached the Court to seek order for the

Respondents to be compelled to perform their public duties.

On the basis of the foregoing analysis of the facts and materials placed before the Court and the applicable law, therefore, the Court is clearly satisfied that all the elements that must be present in order for the Applicant to bring the instant application and to succeed thereby, have been firmly established. As such, the Application hereby succeeds and the same is hereby granted.

Accordingly, order of Mandamus is hereby issued compelling the 1st Respondent (Hon. Minister of Finance, Budget and National Planning); the 2nd Respondent (Director General, Debt Management Office); and the 3rd Respondent (The Attorney General of the Federation and Minister of Justice) to perform their statutory duties, ministerial duties and public duties of issuing Promissory Notes to the Applicant for the sum of

\$143,463,577.76 USD (One Hundred and Forty-Three Million, Four Hundred and Sixty-Three Thousand, Five Hundred and Seventy-Seven Dollars, Seventy-Six Cents), disbursable as follows:

(i) RIOK NIG. LTD \$142,028,941.95

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(iii) OLAITAN BELLO ... \$215,195.364

as approved and directed to the Respondents by Mr. President of the Federal Republic of Nigeria on the 24/12/2020 and brought to the knowledge of the Respondents on 11/1/2021 for implementation.

The Respondents are hereby further ordered and compelled to issue the said Promissory Notes to the Applicant in the manner, terms and conditions recommended by the 2nd Respondent to the 1st Respondent without writing to notify or seek the response, ratification and consent of the Judgment-

Debtor and to deposit the Promissory Notes with the Chief Registrar of this Court forthwith for the benefit of and for onward transmission to the Applicant.

I award costs of this application, in the sum of **₦2,000,000.00 (Two Million Naira)** only in favour of the Applicant, against the 1st and 2nd Respondents, jointly and/or severally.

OLUKAYODE A. ADENIYI

(Presiding Judge)

23/07/2021

Legal representation:

Prince Orji Nwafor-Orizu (with **S. N. Anichebe, Esq.;**
Ugochukwu Ifeakandu, Esq. & E. I. Umunnakwe, Esq.) –
for the Applicant

Chinedu Achumie, Esq. (with **Olaoluwa Ajoni, Esq.**) –
for the 1st Respondent

2nd and 3rd Respondents were unrepresented by counsel