IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS MONDAY, THE 11TH DAY OCTOBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1074/19

BETWEEN:

JUDE AMIDITOR REX-OGBUKU, ESQ. ……CLAIMANT
(Doing Business in the name and style of REX-OGBUKU & ASSOCIATES)

AND

1. **THE MINISTER OF FINANCE**
2. **THE ACCOUNTANT GENERAL OF THE FEDERATION**
3. **DIRECTOR OF HOME FINANCE, FEDERAL MINISTRY OF FINANCE**
4. **DIRECTOR OF LEGAL/SECRETARY, FEDERAL MINISTRY OF FINANCE**
5. **DIRECTOR OF FUNDS, OFFICE OF THE ACCOUNTANT GENERAL OF THE FEDERATION**
6. **UNICONTRACTORS NIGERIA LIMITED**

.. DEFENDANTS

JUDGMENT

The Plaintiff claims against the Defendants as endorsed on the writ of summons and statement of claim dated 23rd August, 2018 and filed same date are as follows:

i. **A Declaration that the purported termination of the appointment of the Claimant as attorney and/or recovery agent to the 6th defendant is null, void and of no effect, same being done at a time when the Claimant has done all that he was to do pursuant to the said appointment.**

ii. **A Declaration that the Claimant is entitled to all the monies due to him on the term of the appointment by the 6th Defendant to recover specific sum on and in its behalf.**

iii. **An Order directing the 1st – 5th Defendants to deduct and pay to the Claimant, the sum of N334, 812, 393.00 being and representing 25% of the outstanding three tranches of N446, 416, 524. 87 balance of the sum of about N1, 785, 666, 096. 00 due to the 6th Defendant and payable by the 1st – 5th Defendants.**

iv. **An Order directing a further deduction and payment to the Claimant the sum of N25, 000, 000.00 as professional fees for the Defence of Suit No.: BA/197/2016.**

v. **The sum of N500, 000.00 being the balance of the transport and filing fee for the defence of the Originating Summons filed by the Bauchi State Government in Suit No.: BA/197/2016.**

vi. **The sum of N25, 000, 000. 00 as exemplary damages.**

The 1st – 5th Defendants though served did not file a defence to the action. The 6th Defendant on its part filed a statement of defence dated 4th October, 2018 and in response the claimant filed a Reply to the defence of 6th defendant dated 18th October, 2018.

Hearing then commenced. In proof of his case, the Claimant called three (3) witnesses. **Mr. Jude Amiditor Rex-Ogbukwu**, the Claimant testified as **PW1**. He deposed to two (2) witness depositions both dated 14th January, 2020 which he adopted at the hearing. He tendered in evidence the following documents:

1. Letter by 6th defendant dated 8th August, 2016 titled "Appointment as my Attorney and/or Recovery Agents" was admitted as **Exhibit P1**.

2. Claimant's letter to the Honourable Minister, Ministry of Finance dated 16th August, 2016 and titled "Demand for payment with respect to Judgment debt in suit No. FHC/ABJ/M/538/2003 – Unicontractors Nig. Ltd V Bauchi State Govt.

and 3 ors and the Federal Ministry of Finance & 7 ors" was admitted as **Exhibit P2**.

3. Letter by Claimant dated 11th August, 2016 to the Honourable Attorney General and Minister of Justice with same heading as Exhibit P2 was admitted as **Exhibit P3**.

4. Copy of evidence of 1st tranche payment of the judgment debt due to 6th defendant was admitted as **Exhibit P4**.

5. Letter by Claimant dated 14th October, 2016 to the Honourable Minister, Ministry of Finance was admitted as **Exhibit P5**.

6. Letter by 6th defendant to the claimant dated 11th October, 2016 accepting instalmental payment of the judgment debt in four equal parts was admitted as **Exhibit P6**.

7. Letter by 6th defendant to the Manager, Guaranty Trust Bank Plc, Jabi Branch titled "Irrevocable standing payment order (ISPO) on account number: 0223473664" dated 26th September, 2016 was admitted as **Exhibit P7**.

8. Zenith Bank statement of account of claimant was admitted as **Exhibit P8**.

9. Letter by the Governor Bauchi State dated 26th October, 2016 to the Honourable Minister, Federal Ministry of Finance titled "Protest over removal at source of Bauchi State (monthly) Revenue allocation in favour of Unicontractors (Nig.) Ltd over alleged Garnishee Order absolute" was admitted as **Exhibit P9**.

10. Certified True Copy (C.T.C) of Enrolled Order of the High Court of Bauchi State in Suit No. BA/197/2015 granting an order of interim injunction was admitted as **Exhibit P10**.

11. Certified True Copy (C.T.C) of Ruling in Suit No. BA/197/2016 was admitted as **Exhibit P11**.

12. Certified True Copy (C.T.C) of consent judgment in Suit No. BA/197/2016 was admitted as **Exhibit P12**.

13. Letter by Claimant to the Honourable Minister, Ministry of Finance was admitted as **Exhibit P13**.

14. Letter by claimant to the Honourable Minister, Ministry of Finance dated 22nd February, 2018 was admitted as **Exhibit P14**.

15. Letter by Claimant to the Honourable Minister, Ministry of Finance dated 3rd August, 2018 was admitted as **Exhibit P15**.

16. Letter titled "termination of your appointment as our Attorney and or Recovery Agent" dated 2nd August, 2018 was admitted as **Exhibit P16**.

17. Enrolled order of High Court of Bauchi State in Suit No. BA/197/2016 dated 12th February, 2018 was admitted as **Exhibit P17**.

Counsel to the 1st, 3rd and 4th defendants elected not to cross-examine PW1. He was however cross-examined by counsel to the 6th defendant.

Friday Ewulu, a Banker with **Guaranty Trust Bank (GTB)**, Gwagwalada branch was subpoenaed to produce certain documents and he also testified as **PW2**. He produced in court the following:

1. The Account opening package of 6th defendant with Account number 0223473664 together with the signatory of the Account at page 27 of the package was admitted as **Exhibit P18**.

2. A Copy of the Irrevocable Standing Payment Order (ISPO) on account number 0223473664 was admitted as **Exhibit P19**.

PW2 stated that there was only one signatory to the account from the account opening package and that it is one **Prince Tijani Sani** as at 2016.

Counsel to the 1st, 3rd and 4th defendants again, chose not to cross-examine PW2.

Cross-examined by counsel to the 6th defendant, PW2 stated that the instruction to the Bank by **Exhibit P19** is that it is an irrevocable authority to deduct from the Account a certain amount from the account domiciled with them in the branch. That the deduction to be made is as contained in Exhibit P19 and that the payment was to be made immediately it was received. That if the payment is received installmentally, the payment of the percentage was equally to be made installmentally. He stated that he won't be able to know whether the Bank honoured the instructions until he checks their system. He further stated that once the money hits the account, the payment of the percentage will be done same day. He stated that Exhibit P19 was printed from their system and that it is not correct that every document printed from their system must have the logo of the Bank. He equally stated that it is not all the documents in Exhibit P18 that have the logo of the bank. That some of the documents may have the logo of the Bank which meant that he used the letter head of the Bank to print that particular document. That in the bank, they have different purposes for printing documents and except there is an express instruction to use the GTB letter head, nothing stops them from using A4 papers. That there was no specific instructions by his Employers to print Exhibit P19 on their letter head so he decided to use A4 paper. That Exhibit P19 was produced from the Bank and he was not given by anybody.

Ahmadu A. Attah testified as PW3 and the final witness for the claimant. He deposed to a witness statement dated 14th January, 2020 which he adopted at the hearing.

PW3 was not cross-examined by counsel to the 1st, 3rd and 4th defendants but he was cross-examined by counsel to the 6th defendants and with his evidence, the plaintiff closed his case.

The 1st, 3rd and 4th defendants indicated that they are not calling any witness having not filed a defence. The 2nd and 5th defendants equally did not file any defence and indeed have never put up appearance in court.

On the part of 6th defendant, they called two (2) witnesses. **Amina Tijani Sani** testified as **DW1**. She deposed to a witness statement on oath dated 21st September, 2018 which she adopted at the hearing. She tendered in evidence the following documents:

1. Statement of Account of 6th defendant with Guaranty Trust Bank (GTB) was admitted as **Exhibit D1**.

2. Letter by 6th defendant dated 19th October, 2015 to the Permanent Secretary, Federal Ministry of Finance was admitted as **Exhibit D2**.

3. Certified True Copy (C.T.C) of Counter Affidavit filed by GTB in Suit No. CV/2572/18 – Jude Amiditor Rex-Ogbuku (doing business under the name and style of Rex-Ogbuku & Associates) V. Unicontractors Nig. Ltd & 2 ors was admitted as **Exhibit D3**.

4. Certified True Copy (C.T.C) of Motion on Notice by claimant in Suit No. CV/2572/2018 (supra) was admitted as **Exhibit D4**.

5. Certified True Copy (C.T.C) of Writ of Summons and Statement of Claim in Suit No. CV.2572/18 (supra) was admitted as **Exhibit D5**.

6. Copy of Power of Attorney dated 27th August, 2017 donated by Prince Tijani Sani to Amina Tijani Sani was admitted as **Exhibit D6**.

7. Corporate Affairs Commission (CAC) forms CAC 2 and CAC7 of 6th defendant together with two (2) special resolutions were admitted as **Exhibits D7 a, b and c respectively**.

8. Whatsapp message together with the Certificate of Compliance were admitted as **Exhibits 8 a and b**.

DW1 was equally not cross-examined by counsel to the 1st, 3rd and 4th defendants. She was however cross-examined by counsel to the claimant.

Rasaq Olalere A. Oyelude testified as **DW2**. He deposed to a witness statement dated 13th January, 2021 which he adopted at the hearing. He tendered in evidence three (3) statements of his account with GTB which were admitted as **Exhibits D9 a, b and c**.

Again, it was only plaintiff that cross-examined DW2 and with his evidence, the 6th defendant closed its case.

At the close of trial, parties were all ordered to file their final addresses in compliance with the Rules of Court. Despite service of hearing notices on all parties, it was only plaintiff and 6th defendant that filed and exchanged final written addresses.

In the final address of 6th defendant dated 30th March 2021 and filed same date at the Court's Registry, five (5) issues were identified as arising for determination as follows:

1. **Whether the Court has the jurisdiction to bind the 1st – 5th Defendants in a contract entered into between the Claimant and the 6th Defendant? Especially as it relates to a non-existent express-instruction purportedly given by the 6th Defendant to the Claimant to defend Suit BA/1971/2016 on its behalf.**

2. **Whether the Court has the jurisdiction to go outside Exhibit P1 (The letter of instruction of the 6th Defendant to the claimant) in interpreting the relationship between the Claimant and the 6th Defendant especially as it relates to a none existent express instruction purportedly given by the 6th Defendant to the claimant to defend Suit BA/198/2016 on its behalf?**

3. **Whether Exhibits P13, P14 and P15 (being letters written by the claimant to the 1st Defendant) in the circumstances of Exhibit P1 (The letter of instruction to the claimant by 6th Defendant) amounts to fraud?**

4. **Whether the claimant was in breach of Exhibit P1 (Letter of instruction) to warrant the termination of the contract as evidenced in Exhibit P16 (The letter of termination)?**

5. **Whether the claimant is entitled to the Reliefs sought?**

On the part of plaintiff, the final address is dated 12th April, 2021 and filed at the Court's Registry on 15th June, 2021. In the address, two (2) issues were raised as arising for determination as follows:

1. **Whether the claimant has performed all that is required of him in the recovery contract entered into between him and the 6th Defendant; if in the affirmative whether same could be terminated.**

2. **Whether the terms of contract as contained in Exhibit P1 envisaged the defence of a fresh suit from the Bauchi Government; if not whether the claimant will be entitled to his professional fees.**

The 6th defendant then filed a Reply address dated 24th June, 2021 and filed same date. I have given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidence adduced at plenary hearing.

From the pleadings which has precisely streamlined the issues and or facts in dispute, the fundamental and central key issue arising for determination in this case is simply whether the plaintiff is entitled to his professional fees predicated on the agreement of parties. This issue must necessary involve a consideration of whether he discharged his obligations as envisaged under the agreement in addition to other related matters.

In the context of the material issues and or facts streamlined on the pleadings, it is difficult to situate the basis of issues 1 and 2 raised by the 6th defendant. There is no where on the pleadings where these jurisdictional issues were identified as issues for consideration and or determination and the conduit of an address is no template to expand the remit of the grievance and issues streamlined on the pleadings and on which the dispute was contested. If it is common ground in this case that the agreement was specific and between 6th defendant and plaintiff, then it is entirely academic to raise issues on whether the contract binds non parties and whether the court can go outside the remit of the terms to construe the agreement. These are issues raised with self evident answers and it does not appear to me issues to dissipate unnecessary energy. I agree that the issue of jurisdiction is a threshold issue and can be raised at any time and even on appeal but it must have

material bearing on the very foundation of the grievance submitted for adjudication. The projection of the issues as jurisdictional will not make the issues assume any importance beyond the fact that they are largely peripheral matters with no bearing to the fundamental question(s) relating to the status of the agreement between Plaintiff and 6th Defendant. In any event the provision of **Order 13 Rule 4 of the High Court of** FCT (Civil Procedure Rules) 2018 is apposite here and provides that: **"Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found liable, according to their respective liabilities, without any amendment."** See also **Order 13 Rule 6 (1) of the FCT Rules 2018**.

The above provisions are clear and unambiguous. A determination of liabilities of parties in the extant case clearly is one of proof on established legal threshold. From the trajectory of the contest in the extant action, what is critical is simply whether the plaintiff has made out a case on the evidence and the law to entitle him to judgment against any or all of the defendants. Where no case is creditably made out against any or all of the defendants on Record, such a case must as a consequence then fail.

As stated earlier, this case must be resolved on the basis of the discharge of obligations and to what extent, of the undoubted agreement between 6th defendant and plaintiff. Again, a consideration of the agreement will certainly involve an examination of its terms and import; the question of termination on the basis of fraud and how it impacted on the agreement. Therefore, any other issue(s) can be taken in the context of this broad fundamental question earlier identified.

In the circumstances, it seems to me that the issues for determination in this action can be mare succinctly stated and encapsulated as follows:

1. **Whether the claimant has established on a balance of probabilities that he is entitled to any or all of the Reliefs sought.**

The above will be predicated on a resolution of the following sub questions:

i. **Was there a Recovery Agreement between plaintiff and 6th defendant and what were the terms?**

ii. **Have parties discharged their obligations under the agreement and to what extent?**

iii. **Depending on the answer to sub issue (ii) above, is the plaintiff entitled to the reliefs claimed?**

All the issues raised and argued by parties are subsumed under the above broad issue and the sub issues raised. These issues as formulated by court are not raised as alternatives to the issues formulated by parties. Rather all the issues distilled by parties can cumulatively be taken under the above issue and sub issues. See **Sanusi V Amoyegun (1992) 4 NWLR (pt237) 527 at 550, 551.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. Some of

the issues will be taken independently while others may be taken together where there is a confluence of facts and or evidence.

In furtherance of the foregoing, I have carefully read the very well written addresses filed by plaintiff and 6th defendant respectively. I will in this course of this judgment and where necessary or relevant refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

ISSUE 1

1. **Whether the claimant has established on a balance of probabilities that he is entitled to any or all of the Reliefs sought.**

The above will be predicated on a resolution of the following sub questions:

i. **Was there a Recovery Agreement between plaintiff and 6th defendant and what were the terms?**

ii. **Have parties discharged their obligations under the agreement and to what extent?**

iii. **Depending on the answer to sub issue (ii) above, is the plaintiff entitled to the reliefs claimed?**

Despite the volume of the pleadings, this case is essentially predicated on an agreement between plaintiff and 6th defendant on recovery of a long outstanding indebtedness due to 6th defendant which they had faced difficulties in realising. The 6th defendant through its then Chairman and Chief Executive, Prince Tijani Sani, now late, engaged the plaintiff to help recover this indebtedness for consideration. The case of plaintiff is simply that he has discharged his obligations under the agreement and is thus entitled to the remuneration as agreed. The 6th defendant through Amina Tijani Sani, a Director in the Company and Daughter of Prince Tijani Sani who took over the running of 6th defendant after the death of her father, on the other hand contends that it had terminated the relationship due to fraud and has paid the plaintiff all his dues.

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence led that we must now beam a critical judicial searchlight in resolving these contested assertions.

In this case, the plaintiff filed a **49 paragraphs statement of claim**. The evidence of the witnesses for the plaintiff are largely within the structure of the claim and the Reply to the defence of 6th defendant.

The 6th defendant on its part file a **55 paragraphs statement of defence** and the evidence of their witnesses largely was within the context of the body of facts averred in the defence.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be

proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Before addressing the key question of whether there was an agreement between parties, the terms, import and application which is a critical basis or pivot in resolving the questions posed by the extant dispute, let me make some general and prefatory remarks with respect to payment of fees for professional service rendered by a legal practitioner. A **legal practitioner** who has rendered a professional service to a client is entitled to the payment of his cost and charges by the client except of course where the professional service is rendered *pro bono*, free of

charge. The professional fee of a lawyer may be agreed upon by the lawyer and the client at the time of accepting the brief and in fact may be in writing, signed by the parties.

Alternatively, the lawyer may render the professional services to the client and bring his charges thereafter. Whatever form the charge may take, a lawyer may bring an action to recover his professional fees where the client refuses or neglects to pay same.

Where a lawyer entered into a written agreement with a client over the amount of professional fees the client is to pay the lawyer for a professional work, the manner of recovery of such professional fees may differ slightly from the normal pre-conditions for recovery of fees. Where the client fails to pay any professional fees which is the subject of a written agreement with the lawyer, the lawyer may not be obliged to serve the client a bill of charges before proceeding to recover the fees in court. It appears from the authorities that the lawyer may commence an action to recover the fees in the High Court relying on the written agreement.

Where the legal practitioner is relying on the written agreement, such agreement must be fair in all the circumstances of the case and should not appear to have been made under any cloud of suspicion. The professional fee which the lawyer is claiming by virtue of such agreement should also not be excessively high or low as the case may be.

In **Oyekanmi V. NEPA (2005) 15 NWLR (pt.690) 414**, while categorizing situations where fees may be by express agreement and where a bill of charges may be needed, Uwaifo JSC said:

> ***"A legal practitioner is entitled to make a written agreement with his client in respect of any professional business done or to be done by him for a sum ….. such agreement should appear fair and ought to be such that was not made under circumstances of suspicion of an improper attempt by the Solicitor to benefit himself at his client's expense."***

Such an agreement is binding on the client and he is obliged to pay the professional fees as agreed provided that the agreement fulfills the conditions stated in the case and the Rules of professional conduct.

Having made the above remarks, I now proceed to the crux of this dispute. Now on the pleadings and evidence, there is here no real dispute that the 6th defendant through its now late Chairman/Chief Executive, Prince Tijani Sani appointed the claimant as its Attorney/Recovery Agent vide **Exhibit P1** to recover a long outstanding judgment debt in **Suit No. FHC/ABJ/M/588/2003 – Unicontractors Nig. Ltd V The Honourable Minister of Finance and Others** which the claimant accepted. For purposes of clarity and ease of understanding, it is necessary to reproduce the contents of **Exhibit P1** or letter of instructions as follows:

"8th August, 2016,

REX-OGBUKU & ASSOCIATES
Legal Practitioners & Notary Public
16 Konoko Crescent
Wuse II Abuja.

ATTENTION: J.A. REX-OGBUKU ESQ.

Sir,

APPOINTMENT AS MY ATTORNEY AND/OR RECOVERY AGENTS

I hereby appoint you as my Attorney/Recovery Agents with firm instructions to recover from the Federal Government of Nigeria (Federal Ministry of Finance and Central Bank of Nigeria as Garnishee in Suit No: FHC/ABJ/M/538/2003) – Unicontractors Nigeria Limited Vs Bauchi State Government & 3 ors and the Federal Ministry of Finance & Anor.

You are to act in your capacity above all as lawyers and will do all such things legally permissible with a view to receiving the amount remaining within the shortest possible time.

You shall be entitled to a 25% of the value or such amount as recoverable by you as your remuneration upon successful execution of this brief.

Please accept my highest regard.

Yours faithfully,

SIGNED

PRINCE TIJANI SANI
Chairman/Chief Executive"

The above **letter of instructions** or **brief** is very clear and unambiguous. It is trite principle of general application that parties to the document must be held bound by the terms of the instructions as embodied in the above Exhibit. Therefore there is no room for departure from what is stated therein or interpolations made to the Exhibit to suit a particular purpose. Indeed where there is any disagreement between parties with respect to such instructions on any particular point, the authoritative and legal source of information for the purpose of resolving that disagreement or the dispute is the document itself. The reason for such stringent position of the law vide **Section 128(1) of the Evidence Act** is to ensure that a party does not change his position midstream in his underserved advantage and to the detriment of the unsuspecting adverse party. See **Larmie V D.P.M & Services Ltd (2005) 18 NWLR (pt.958) 88 at 469 A-B.**

At the risk of sounding prolix, let me perhaps streamlined the remit of the instructions by **6th defendant to claimant** thus:

1. **Appointment of claimant as Attorney/Recovery Agent with firm instructions to recover from the Federal Government of Nigeria - Federal Ministry of Finance & Central Bank of Nigeria as Garnishee in Suit No. FHC/ABJ/M/538/2003 – Unicontractors Nig. Ltd V Bauchi State Government & 3 ors and the Federal Ministry of Finance & Anor.**

2. **The Claimant is to act as lawyer and to do all such things legally permissible with a view to receiving the amount remaining within the shortest possible time; and**

3. **The claimant shall be entitled to 25% of the value or such amount recoverable by you as your remuneration upon successful execution of the brief.**

I shall return to these instructions in the course of this judgment.

Now on the pleadings and evidence, there is no doubt that the involvement of claimant by 6th defendant clearly arose from the difficulties it faced in enjoying the

fruits of the judgment debt in Suit No. **FHC/ABJ/M/538/2003**. Indeed from the letter of instructions, the involvement of claimant was post judgment and after a partial realization of the Judgment debtor. This position is borne out by the penultimate paragraph of Exhibit P1, wherein the claimant/Chief Executive of 6th defendant stated that the claimant was to **"… do it such things legally permissible with a view to receiving the amount remaining within the shortest possible period."**

It is therefore not out of place as contended by DW1 for the 6th defendant that prior to the instructions to the claimant, the 6th defendant may have taken steps to realize the indebtedness by writing or complaining to the President of the Federal Republic of Nigeria even if no scintilla of evidence was tendered to support this pleading and may also have received some payment but this does not derogate from the inescapable fact that, the total judgment debt was not realized or paid and this was negatively impacting on 6th defendant which then compelled the need to seek the intervention of the claimant.

Let me here perhaps refer to the contents of **Exhibit D2** tendered by 6th defendant and written by the late Chairman/Chief Executive which captured the situation of 6th defendant and which then led to the involvement or engaging of claimant thus:

"The Permanent Secretary
Federal Ministry of Finance
Central Business District
Abuja.

Dear Sir,

RE: LETTER OF DEMAND IN RESPECT OF SUIT NO. FHC/ABJ/538/2003

We refer to the above judgment debt and subsequent notices of executions, terms of settlement (Copies attached) and initial payment of the sum of One Hundred Million Naira Only (N100, 000, 000.00) in 2013.

Since the payment of N100, 000, 000.00 two years ago, nothing has been paid again till date. We therefore solicit for your understanding and the immediate payment of the outstanding sum of N1, 785, 666, 099.50 (One Billion, Seven

Hundred and Eighty Five Million, Six Hundred and Sixty Six Thousand, and Ninety Nine naira, Fifty Kobo).

At great cost to us, we have exercised patience and patriotism over the years that this payment has remained outstanding and may not be so disposed in the future. Kindly therefore use your good offices to effect the immediate payment of this amount to alleviate our suffering and uphold the rule of law in Nigeria.

Thank you,

Yours sincerely,

For: UNICONTRACTORS NIGERIA LIMITED

SIGNED

PRINCE TIJANI SANI
Chairman/Chief Executive"

Now on the pleadings and evidence vide **paragraph 10** of the claim which was largely unchallenged by 6th defendant, PW1 stated that on the appointment of claimant and in executing or carrying out the mandate under Exhibit P1, he proceeded to write letters vide Exhibits P2 & P3 to the Ministers of Finance and Justice and followed up with physical contacts/meetings with the office of the Attorney General and the Ministry of Finance, Accountants Generals Office as well as the Central Bank of Nigeria.

As stated already, the 6th defendant did not in its defence controvert the pleadings of claimant's with respect to the actions they took towards the realization of the outstanding indebtedness.

The pleadings of 6th defendant vide paragraphs 10 and 11 that the claimant's engagement was to follow up **"existing approvals"** clearly would not fly. Apart from the fact that no evidence of any existing approval(s) was tendered to support the paragraph with the attendant implication that the paragraph is deemed as abandoned, the tenor of **Exhibit P1** does not allow for such interpolations.

In any event, if certain unverified steps were taken by 6th defendant as alleged, to recover the indebtedness and approvals allegedly received, it did not translate to the payment of the total outstanding indebtedness due to 6th defendant as stated earlier by Prince Tijani Sani vide Exhibit D2 hence the call for intervention of claimant.

Now on the evidence, after the letters vide **Exhibits P2** and **P3** all written in August 2016 and the meetings held already alluded to, claimant secured the approval of the Minister of Finance for payment to be made. On the pleadings and evidence of claimants, vide paragraphs 12-14, the claimant stated that further to the approval there was a meeting with the officials of the finance ministry on the difficulty of paying the judgment debt at once and that it was resolved that the payment be made in four (4) installments or tranches.

By **Exhibit P6**, the 6th defendant vide its Chairman, Prince Tijani Sani agreed to the payments in four tranches. Again, I prefer to allow the said **Exhibit P6** to speak for itself thus:

"**REX-OGBUKU & ASSOCIATES**
Legal Practitioners & Notary Public
16 Konoko Crescent
Wuse II Abuja.

ATTENTION: J.A. REX-OGBUKU, ESQ.

RE: SUIT NO: FHC/ABJ/M/538/2003 – UNICONTRACTORS NIG. LTD VS BAUCHI STATE GOVERNMENT & ANOR AND THE HONOURABLE MINISTER OF FINANCE & ANOR – RECOVERY OF SUMS DUE.

Our discussions on the subject matter refers.

Please take this as our instruction to accept installment payment of the said sum of N1, 785, 666, 099.50 (One Billion, Seven Hundred and Eighty-Five Million, Six Hundred and Sixty-Six Thousand and Ninety-Nine Naira and Fifty Kobo) from the Garnishee.

Our position is informed by your brief to the extent that finances of Government are very low and to insist on recovering the entire sum at one full swop (sic) may be a difficult task.

Following your explanation we are minded to accept installment of not more than four equal parts but not less.

Consequently you are to inform the Ministry of Finance and the Office of the Accountant-General of this development provided always it is understood that it must commence from October 2016 and end in January, 2017.

We are to further advise that failure or refusal will not be acceptable to us in any material particular.

Thanks for your understanding whilst expecting a favourable response from all concerned.

Yours faithfully,

Prince Tijani Sani
[Ochada-Ehe-Ankpa]
Chairman/Chief Executive"

Based on the acceptance by 6th defendant to receive payments of the outstanding indebtedness to it in four parts, the claimant then wrote to the Honourable Minister Finance vide **Exhibit P5** thus:

"The Honourable Minister
Ministry of Finance
Central Business District
Abuja.

ATTENTION: DIRECTOR OF HOME FINANCE

Sir,

RE: SUIT NO: FHC/ABJ/M/538/2003 – UNICONTRACTORS NIG. LTD VS BAUCHI STATE GOVERNMENT & ANOR AND THE HONOURABLE MINISTER OF FINANCE & ANOR.

Our correspondence and meetings on the subject matter and the eventual approval of the Honourable Minister refers.

Our client after due consideration of the economic realities and the obvious difficulties that may occasion in the event of a single payment of the total sum of N1, 785, 666, 099.50 (One Billion, Seven Hundred and Eighty-Five Million, Six Hundred and Sixty-Six Thousand and Ninety-Nine Naira and Fifty Kobo) has graciously conceded to allow for NOT MORE THAN (4) FOUR equal payment of the said sum of N1, 785, 666, 099.50 (One Billion, Seven Hundred and Eighty-Five Million, Six Hundred and Sixty-Six Thousand and Ninety-Nine Naira and Fifty Kobo) on the condition that it commences in October 2016 and determines by January, 2017.

I am therefore to convey our client's magnanimity for your consideration and immediate action please.

You are further kindly enjoined to note that the gesture is on the understanding that payment MUST COMMENCE IN OCTOBER 2016 AND END BY JANUARY 2017.

Please kindly find attached our client's letter conveying its position to us.

We are most obliged.

Yours faithfully,

J.A. REX-OGBUKU, ESQ.
Cc: Accountant – General of the Federation."

The above Exhibits are clear and speak to the efforts of the claimant and the apparent synergy with then Chief Executive Prince Tijani Sani on steps been taken to realise the outstanding indebtedness.

In **paragraphs 13 and 14 of the defence**, the 6th defendant sought to deflect from the efforts of claimant when it stated that the payment made in October 2016 to 6th defendant was due to the "pending approval", "follow up letters" and "pressures by 6th defendant" and not due to the "strength of the letters of claimant to 1st defendant."

Again, what is strange here is that none of these so called "approval" and "follow up letters" was tendered by the 6th defendant in support of these paragraphs or contention. If any "pressures" were exerted as pleaded, these "pressures" were not streamlined and nobody was identified as the person on whom it was exerted and how the pressure impacted on such person(s). Again if it was "explained to the 6th defendant that the total sum will not be paid at ones (sic) but in installment" as stated in paragraph 14, the question is who informed them? The pleadings of 6th defendant and evidence is conspicuous by its silence on such a critical matter which seeks to impugn the contents of Exhibits P5 and especially P6 signed by its Chairman and Chief Executive. Again the attempt in paragraph 15 to deny knowledge of the meeting that led to the proposal for the payment in four (4) installments is completely undermined by Exhibit P6 earlier alluded to showing that the Chairman/Chief Executive of 6th defendant was fully aware of developments on the recovery of the debt by the claimant and agreed to the payment in four equal parts.

The point must therefore be made abundantly clear that averments in pleadings do not amount to evidence. Where evidence is not led in support of averments, they are deemed as abandoned. Indeed it is trite principle, that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in the dispute with the other. Evidence must then be led to prove the facts relied on by the party or to sustain allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 FG; Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 595 A-B.**

In the circumstances, the contention that the payment made in August 2016 was because of actions taken by 6th defendant and not claimant must be discountenanced in the absence of evidence to support same. Indeed if it was true that these concerted efforts were indeed been undertaken by 6th defendant and same was bearing fruits, it would appear to me that there would have been no need to call on the assistance of **claimant** at all.

Unfortunately for the 6th defendant, the challenged and bare viva voce evidence proffered by them cannot stand the test, strength and credibility of the documents

tendered by plaintiff and evidence led on material aspects of the case as demonstrated.

In law, documentary evidence is usually the best form of evidence in proof of a case. Where documentary evidence supports oral evidence as in the extant case of claimant, oral evidence becomes more credible and compelling. This is so because, documentary evidence serves as a hanger from which to assess oral testimony. See **Mil. Gov. Lagos State V Adeyiga (2012) 5 NWLY (pt. 1293) 291; Rabiu V Adebajo (2012) 5 NWLR (pt.1299) 125**.

On the basis of the confluence of evidence in this case, I have no difficulty in holding that it was the actions and steps taken by plaintiff that led to the agreement for the payment of the total outstanding indebtedness in four (4) tranches and which ultimately led to the first tranche payment in September 2016. By paragraph 17 of the claim, and admitted to in paragraph 20 of the defence, the claimant was paid 25% of the total sum of the first tranche payment as agreed.

Now I note that in the pleadings, parties on both sides made heavy weather of whether there was an **Irrevocable Standing Payment Order (ISPO)** by 6th defendant for the payment of 25% of any payments received on the judgment debt to the claimant.

I incline to the view that since the letter of instructions vide **Exhibit P1** clearly provided that 25% of the value of what was recovered will be paid to claimant and on the evidence, that was what was paid to claimant on the first tranche payment, then the question or issue of ISPO really will lack significance since with or without the ISPO, what was due to claimant on any recovery has been specifically streamlined and or defined.

Let me however out of caution make some remarks on the **ISPO**. The claimant in paragraphs 15-17 averred that when 6th defendant agreed to the payment of the judgment debt in four (4) installments, they agreed with the Chief Executive of 6th defendant (Prince Tijani Sani) that the payment be made through the account of 6th defendant to be opened with Guaranty Trust Bank and to that effect an Irrevocable Standing Payment Order (ISPO) was issued by Prince Tijani Sani for the security and payment of claimants professional fees. The said ISPO was tendered as **Exhibit P7** dated 26th September, 2016 delineating the authorization for deduction

of 25% from any payment received from the Federal Government in respect of the Judgment debt as professional fees for claimant. The 6th defendant in paragraphs 19 of the defence denied that there was such arrangement and that they did not issue Exhibit P7. In evidence they relied on an action filed by the claimant in **Suit No. CV/2572/18: Jude Amiditor Rex-Ogbuku (Doing business in the name and style of Rex-Ogbuku & Associates V Unicontractors Nig. Ltd & 2 ors)** tendered as **Exhibit D5**.

In the said action, the claimant filed an application with Motion No. M/8410/18 tendered as **Exhibit D4** to which the 3rd defendant in the action (GTB) filed a counter-affidavit deposed to by one Happiness Emmanuel, a litigation clerk retained by Garland Chambers, Solicitors to the 3rd defendant in the case which was tendered as **Exhibit D3**. The purport of this counter affidavit was to show or rely on the deposition where the Bank stated that they never received any Irreversible Standing Payment Order (ISPO) from Unicontractors Nig. Ltd and the payment of fees they made was based on the instruction of Unicontractors Nig. Ltd and not on the ISPO.

Now it is to be noted that on the evidence, it is common ground that this case never went to trial as it was **withdrawn** and **struck out**. There was thus no determination or pronouncement by the court with respect to whether an **ISPO** was issued by Unicontractors or not which was a defined issue in that case. It is difficult in the circumstances to accord any probative value to the bare deposition of the litigation clerk who deposed to the counter affidavit, **Exhibit D3** in response to a motion on notice which made or took a position countered by the counter-affidavit. The mere fact that a document has been tendered and admitted in evidence, without more, does not ipso facto amount to proof that its contents are valid and correct as in this case. The appropriate weight will still have to be attached to it with reasons given. See **Aromolaran V Kupolayi (1994) 2 NWLR (pt.325) 221 at 244 F-G.**

Indeed, in law, there is a clear dichotomy between admissibility of a document and placing probative value on it. While admissibility is based on relevance, probative value depends not only on relevance but also on proof. An evidence has probative value if it tends to prove an issue. See **Buhari V INEC (2008) 19 NWLR (pt.1120) 246 at 414 G-H.**

Most importantly, in this case, in addition to **Exhibit P7**, the plaintiff subpoenaed an official of GTB who testified as **PW3** and tendered the Account opening documents of Account number 0223433664 showing the signatory of the account at 2016 and an ISPO issued on the same account in favour of **Rex-Ogbuku and Associates, the claimant**. The ISPO printed by PW3 from the bank was tendered as **Exhibit P19**. This Exhibit is the same in all material particulars with the ISPO tendered and admitted as **Exhibit P7** showing the clear instructions given by the Chief Executive of 6th defendant, Prince Tijani Sani to the Bank (GTB). The evidence of this subpoenaed witness from the Bank with respect to the fact that an ISPO was issued by the 6th defendant was not in any manner impugned or challenged by 6th defendant during cross-examination. Indeed during trial, the 6th defendant indicated that they will also produce someone from the Bank but they ultimately did not do so.

The law is settled that where evidence is unchallenged under cross-examination, the court is not only entitled to act on or accept such evidence, but it is infact bound to do so, provided such evidence by its very nature is not incredible. Indeed where evidence given by a witness is not contradicted by any other admissible evidence, the trial judge is bound to accept and act on that evidence, even if it had been minimal evidence. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 A-C.**

On the basis of the un-contradicted evidence of PW2, I hold that the 6th defendant issued the ISPO in favour of claimant, but as stated earlier, this issue is not decisive in the context of admitted facts showing that parties have unequivocally agreed that the fees of claimant is 25% of what was recovered vide **Exhibit P1**.

Now I had earlier determined and found that the 6th defendant accepted to receive the payment of the outstanding judgment debt in four (4) installments and the first installment was paid and the 6th defendant immediately paid the 25% fees due to claimant.

On the pleadings and evidence, after this **first tranche payment to 6th defendant**, the Bauchi State Government through the Governor protested vide **Exhibit P9** to the Honourable Minister at the payment to 6th defendant from the monthly allocations to the state. It is also not in dispute that on the evidence, Bauchi State

Government took legal steps in **Suit No. BA/197/2015 and vide Exhibit P10** obtained an **interim order** from the learned Chief Judge of Bauchi State stopping any further deductions by the Federal Ministry of Finance from the allocations to the state. By **Exhibit P11**, the Chief Judge ultimately struck out the said suit as constituting an abuse of process. Indeed from the Record of the Ruling, **Exhibit P11**, the **claimant** appeared for 6th defendant in the said proceedings in Bauchi. It is also important to underscore the fact that before the case was struck out, terms of settlement were agreed by parties vide the enrolled order **Exhibit P12** which Bauchi State Government did not adhere too and again the Record show clearly that the **claimant** appeared for the 6th defendant. This proceeding in Bauchi obviously took some time and stalled further payments of the judgment debt to 6th defendant. After the failure of the challenge by Bauchi State Government, the claimant wrote the Minister of Finance vide **Exhibit P13** for further payments to be now paid through the accounts of claimant. I will return to this point shortly. It is the case of claimant that for the defence of this case at Bauchi, the Chairman/CEO of 6th defendant, Prince Tijani Sani offered to pay the claimant N25, 000, 000 professional fees upon conclusion and that N1, 000, 000 was to be paid for transportation and filing fee but that only N500, 000 was paid to him. The 6th defendant deny that there was any such offer for payment of fees and that the defence of the case in Bauchi forms part of the initial instructions to claimant to act as lawyers in the Recovery of Judgment sum due to 6th defendant in **Suit FHC/ABJ/M/538/2003**.

Now in this case, as earlier alluded to, the records attest to the fact that the claimant clearly appeared and acted for 6th defendant all through the proceedings in Bauchi. Now if there was any agreement or offer for payment of fees of N25, 000, 000 and N1, 000, 000 by the Chief Executive of 6th defendant to claimant, there is no evidence of such offer or agreement in evidence. Indeed there is absolutely no evidence of any other instructions and delineated schedule of payment for fees to claimant other that **Exhibit P1**.

Most importantly, the instructions vide Exhibit P1 to claimant was to act as lawyers in the recovery of the judgment sum due in Suit No. FHC/ABJ/M/538/2003. The proceedings or the case filed in Bauchi State clearly appear to me to form part of the process leading towards the overall realization of the long outstanding debt and the attempt to now categorise it as a distinct

transaction by claimant on the evidence, will not fly and will lack legal traction. If the instructions vide **Exhibit P1** is for claimant to **"act in your capacity above all as lawyers and … do all such things legally permissible with a view to receiving the amount remaining within the shortlist possible time"**, then it meant that the responsibility and duties of claimant as lawyers must involve or include defending the 6th defendant in any proceeding that will stall or prevent further payment or realization of the indebtedness in good time because without the judgment debt being realised, the claimant will not be able to access the 25% remuneration due to him.

Finally on this point, if claimant conceived that the case in **Bauchi was a distinct assignment** and since there is no established agreement for payment of fees on the evidence, then it was expected that the claimant ought to then prepare and serve a **bill of charges** on 6th defendant under extant provisions of the legal practitioners Act before proceeding to recover the fees in court. No such bill of charges on the pleadings and evidence was prepared and served on 6th defendant for the 2018 proceedings in Bauchi. This is fatal.

The bottom line and at the risk of sounding prolix is that **Exhibit P1** governed the relationship between the claimant and 6th defendant. I have no difficulty in holding that predicated on the terms of this letter appointing claimant as Attorney and Recovery Agent and based on the demonstrated actions of claimant in the letters written and meetings held with relevant stake holders on the issue which culminated in the offer and acceptance by 6th defendant for payment of the outstanding judgment debt in four installments or tranches; the 25% payments made to claimant on the tranches so far received; the active defence of 6th defendant by claimant of the failed challenge by the Bauchi State Government to stop further payments of the judgment debt including the settlement negotiated and reached during the proceedings which Bauchi State Government reneged on; all unequivocally translate or show that the claimant has **fulfilled his obligations under the letter of instructions, Exhibit P1**. If as the evidence show, that these streamlined processes all led to a defined payment plan of the outstanding debt in 4 tranches and payment had started but which stalled due to the intervention or case filed by the Bauchi State Government, it is logical to hold that, with the case having been taken care of, there was then nothing stopping the further payments of

the outstanding tranches and the 25% payment due to claimant as his professional fees on all remaining payments due to 6th defendant.

This then brings me back to the letter earlier referred to written by claimant to the Honourable Minister Ministry of Finance vide **Exhibit P13** dated 18th February, 2018. The letter in succinct terms gave a trajectory of the history and facts of this case and the payment so far made and the outstanding. In a portion of the said letter, the claimant stated as follows:

"… (o) Recall further that on 2nd September 2016 we wrote forwarding details of our Client's Guaranty Trust Bank account, Jabi Branch for deductions to be paid directly to it. We are minded to rescind that letter for supervening reasons and you are kindly prayed to discountenance same.

(p) Consequently, we pray your good offices that all further payment(s) be made through our office with the following details:

LOCAL CURRENCY ACCOUNT (₦)

REX-OGBUKU & ASSOCIATES
ZENITH BANK PLC

KEBBI HOUSE BRANCH
ACCOUNT NO. 1010228327
SORT CODE: 057080277

FOREIGN CURRENCY USD ACCOUNT ($)

REX-OGBUKU & ASSOCIATES
KEYSTONE BANK PLC
AMARATA BRANCH
ACCOUNT NO. 1002843961
SORT CODE: 082210148."

The claimant in Exhibit P14 dated 22nd February, 2018 to the Minister of Finance made the same demand that the payments be made into the accounts stated above. The claimant in Exhibit P15 dated 3rd August, 2018 sought to explain to the Minister of Finance the rationale as to why payment should now be made to the solicitors Account instead of the account of 6th defendant.

Now a couple of months later, the 6th defendant through **Amina Tijani Sani** sought to terminate the relationship with claimant in the letter dated 2nd August, 2018 vide **Exhibit P16**. I prefer to give full expression to the letter thus:

"ATTENTION: J.A. REX-OGBUKU ESQ.

Sir,

TERMINATION OF YOUR APPOINTMENT AS OUR ATTORNEY AND RECOVERY AGENT

The above subject refers.

It should be recalled that vide a letter dated August 8, 2016 and executed by our Chairman/Chief Executive Prince Tijani Sani, you were authorized to act as our agent to recover the amount remaining as judgment debt due to our company in suit No. FHC/ABJ/M/538/2003 within 'the shortest possible time.'

On behalf of our company, and acting within the provisions of the law as and the only co director and share holder of the company with our chairman/chief executive, who has been sick for some time now, and as a result have not been actively involved in the day to day activities of the company. I thank you for all your efforts towards the recovery already made to wit: 25% (twenty-five percent) commission was dully paid to you on the two tranches of the payment made to us while you acted. The last of this remittance to you which I personally authorized the bank was made on the 1st day of August 2018 in good faith despite the information available to use at the time of this payment.

I hereby on behalf of our company TERMINATE your appointment as the attorney and or the recovery agent of the company in respect of suit No.: FHC/ABJ/M/538/2003 immediately and further withdraw all the powers so granted to you vide a letter dated August 8, 2016 by our company forthwith.

The decision of the company for a avoidance of doubt is premised on the following:

1. **Your letter dated 13th February, 2018, addressed to the Honourable Minister of Finance, requested the Honourable Minister of Finance to make the payments due to our company directly to you. In the said letter**

you furnished the Honourable Minister of Finance with your Naira and USD Bank details <u>WITHOUT THE CONSENT AND AUTHORIZATION</u> of our company and thereby sought to divert the payment due to our company to yourself. This act is beyond your mandated/instructions and a breach of trust. The company finds it intolerable and will definitely refer same to the appropriate authorities for further action.

2. **Your insistence on the telephone that I should pay you additional 30% (Thirty percent) of the recovered sum, failure of which you will hands off the recovery process on behalf of the company and stall the remaining payments is unacceptable and embarrassing to us and again breached our earlier instructions to you.**

In view of the above, we thank (sic) again and wish you well in your future endeavours.

Yours faithfully,

SIGNED
AMINA TIJANI SANI
(DIRECTOR)"

The above letter is clear.

So much has been made of this termination but I am not too sure it really has much bearing or impacts in a negative sence on the critical and material facts on which this case rest as I will again shortly demonstrate. The right of the 6th defendant to terminate the relationship at any time is not in doubt subject of course to its meeting any obligations, if any, due to the claimant. The point to perhaps underscore is that a client including 6th defendant is at all times entitled to employ a lawyer of his choice to represent him in a matter, be it litigation or other legal services.

As an aside, and as a matter of practice, where a client elects to for example change his lawyer to a new one, the new lawyer is expected to ensure that any outstanding fees due to the other are adequately settled by the client.

The relevant question here is whether the exercise of the right to terminate the relationship between claimant and 6th defendant impacted in any way on the accrued rights due to the claimant arising from discharge of his duties pursuant to **Exhibit P1**? On the evidence as already demonstrated, the answer is certainly in my opinion, in the negative.

In this case, I have severally highlighted all the steps taken by claimant up to the final letter **Exhibit P13** written to the Minister of Finance indicating that all legal challenges has been dealt with and that further payments on the judgment debt should continue and which also contains the paragraphs saying that further payments be made to the solicitors account of claimant. This same position was again highlighted by the claimant in his letter to the Minister of Finance vide Exhibit P15 dated 3rd August, 2018. At that point really, the claimant has executed or carried out the mandate covered by Exhibit P1 and any concluding payments made to 6th defendant must equally be subject of the 25% payment of fees allowed by the same Exhibit P1. There is no greater endorsement of the reality than the payment of 25% made by 6th defendant on 1st August, 2018 to claimant after the payment of the 2nd tranche of the judgment debt to 6th defendant vide Exhibit P16.

In the third paragraph of the letter, Exhibit P16 the 6th defendant stated thus:

"…On behalf of our company, and acting within the provisions of the law as and the only co director and share holder of the company with our chairman/chief executive, who has been sick for some time now, and as a result have not been actively involved in the day to day activities of the company. I thank you for all your efforts towards the recovery already made to wit: <u>25% (twenty-five percent) commission</u> was dully paid to you on the two tranches of the payment made to us while you acted. The last of this remittance to you which I personally authorized the bank was made on the 1st day of August 2018 in good faith despite the information available to use at the time of this payment…"

This payment to claimant was also specifically alluded to in **paragraph 31 of defence of 6th defendant**. These payments are a clear recognition of (1) the efforts of claimant which culminated in the agreement for the entire debt to be paid in four tranches, with two installments already paid and (2) compliance with the contents

of **Exhibit P1**. If this 25% payment of fees was made by 6th defendant on the 2nd tranche payment, it is then difficult to situate any basis, legal or factual to prevent the payment of the fees of claimant as agreed on the remaining 3rd and 4th tranche payments of the outstanding judgment debt. As at the time this letter of termination was written, **nothing more needed to be done by anybody except for the payment** which was on going but for the legal intervention of Bauchi State Government which stalled further payments and where the interest of 6th defendant was competently defended by claimant up to the striking out of the case.

Let me quickly state that I note that the claimant sought to impugn the narrative that he was not paid **25% fees** on the **2nd Remittance**. Exhibit D1, the statement of account of 6th defendant presents a different narrative showing these payments in the **same amount** on **31st October, 2016** and **1st August, 2016** were clearly made to the claimant. This documentary evidence was not challenged or impugned at all and must be accorded probative value. PW1 contends that the second payment made to his account relates to a different transaction; unfortunately no **scintilla** of evidence was produced situating any other transaction with 6th defendant other than the agreement made vide Exhibit P1. The second payment made to him on the 2nd tranche payment and alluded to by him in Exhibit P15 clearly has not been impugned. Indeed in the letter dated 3rd August, 2018 to the Minister of Finance, the claimant stated as follows:

> ***"Suffice to state that subject matter has been a product of tortuous and meticulous litigation spanning over two decades (21 years precisely). For this reason we thank your good offices for the two remittances we have gotten so far. We are truly grateful."***

The claimant here by Exhibit P15 acknowledges that **two remittances** have so far been received. If claimant was not paid as it is been contended now, it is curious that no demand or complaint was made for the payment of 25% fees on the second tranche payment as agreed under Exhibit P1 at any time.

I incline to the view that having **acknowledged** that two **remittances** were received, claimant would have not kept "quiet" as it were if indeed the second 25% fees was not paid. Indeed, he would have not continued with his efforts if the 6th

defendant had reneged from fulfillment of the terms of **Exhibit P1** following the second remittance to 6th defendant.

The bottom line is that on the evidence, there is nothing situating a different transaction between plaintiff and 6th defendant, other than Exhibit P1 and the payments received by claimant from 6th defendant is clearly in relation to **Exhibit P1**. Exhibit P15 written by claimant recognizes clearly that **two** remittances have been received by 6th defendant. Equally, **Exhibit D1** the statement of account of 6th defendant, shows the payments made to 6th defendant and the sums paid to claimant all in the same **amount**. The question to ask is this: Are the same sums paid at different times in 2016 and 2018 to claimant a coincidence? I don't think so. I am in no doubt that on the evidence that the payments are predicated on Exhibit P1.

The principle to make abundantly clear is that a lawyer is entitled to payment of his professional fees by his client for any professional work he does for his client. The legal work may involve a variety of work including litigation, writing of letters, meetings, drafting of instruments or rendering professional advice etc. It is therefore the primary duty and indeed obligation of the client to ensure prompt, adequate and immediate payment of the professional fee charged by counsel or agreed to by the client and counsel.

In the light of the above, the contention that the **termination was because of fraud** clearly is of no significance precisely because the right to change counsel appears to me inalienable and sacrosanct. The 6th defendant is at liberty to terminate the relationship but that cannot affect the obligations already due and accrued on the relationship. The termination here will not impact on obligations of 6th defendant due to claimant. For whatever it is however worth and at the risk of being accused of dealing with an issue that is largely now academic in the circumstances, let me however still again out of abundance of caution consider the issue of **fraud**.

In **paragraph 5 of the defence**, the 6th defendant pleaded that the termination of the appointment of claimant was for **"attempting to defraud the 6th defendant."** From the particulars of the fraud pleaded, the case made out and also contained in the letter of termination Exhibit P16 is that in the letter dated 13th February,

admitted in evidence as Exhibit P13, written by the claimant to the Minister of Finance, the claimant stated that payments due to the 6th defendant should now be made directly to claimants solicitors Account without the consent and authorization of the 6th defendant and therefore that claimant sought to divert the payment due to the company. That the action of claimant exceeded the mandate or instructions given to him and a breach of trust.

Now in this case, there is no doubt that the claimant as stated earlier in its letter dated 13th February, 2018 vide **Exhibit P13** after the conclusion of the case filed by the Bauchi State Government stated that any further payments be made to a designated solicitors Account. This position was again reiterated by claimant in another letter to the Honourable Minister of Finance dated 3rd August, 2018 vide Exhibit P15, where as stated earlier, the claimant sought to explain why the payment should now be made to their Solicitors Account.

The question here is simply whether fraud has been established in the context of the established narrative of this case.

It is settled principle of law that an allegation of **fraud** is analogous to imputation of crime and ought to be proved beyond reasonable doubt. See Section 135 (1) of the Evidence Act. Fraud requires a higher degree of probability for its proof. See **Durbar Hotel Ltd V Kasaba United Ltd (2017) 2 NWLR (pt.1549) 1; Famuroti V Agbeke (1991) 5 NWLR (pt.189) 1.**

Now if the case of 6th defendant is that the claimant exceeded its mandate in writing to the Minister for payment into its account without its consent and authorization, then let us have, again recourse to the letter of instructions, **Exhibit P1**.

I had earlier reproduced the entire contents of **Exhibit P1**, the letter of appointment. I need not repeat the entire Exhibit but it is relevant to quote the second paragraph thus:

"You are to act in your capacity above all as lawyers and will do all such things legally permissible with a view to receiving the amount remaining within the shortest possible time."

The above paragraph is clear and instructive. There is nothing in the letter of instructions **specifically** directing that when any of the outstanding judgment sum is received, that it was to be paid directly to the 6th defendant's account. Since there is no such specific mandate, the complaint that claimant exceeded his mandate in praying that the money be paid into the claimants "solicitors account" or that he needs the consent or authorization of the 6th defendant before making such prayer or that complainant breached the trust of 6th defendant" completely lack any foundation and must be dismissed as unfounded speculative posturing. As stated severally in this judgment, there cannot be additions or interpolations made to **Exhibit P1** to suit any self serving purpose.

Indeed the letter of instructions states that the claimant was to do **"all such things legally permissible with a view to receiving the amount remaining…"** which for me allows for element of exercise of discretion by claimant. He could receive the money and remit same to the 6th defendant or chose or indeed elect to have the judgment debt paid directly to the 6th defendant as done here. To further situate the fact that there was no specific instructions as to how the moneys due to 6th defendant is to be received, the 6th defendant through the chairman/chief executive, Prince Tijani Sani, in his **letter to claimant** accepting the offer to agree for the payments of the judgment debt to be made in four installments vide Exhibit P6 dated 11th October, 2016 stated as follows:

"ATTENTION: J.A. REX-OGBUKU, ESQ.

RE: SUIT NO: FHC/ABJ/M/538/2003 – UNICONTRACTORS NIG. LTD VS BAUCHI STATE GOVERNMENT & ANOR AND THE HONOURABLE MINISTER OF FINANCE & ANOR – RECOVERY OF SUMS DUE.

Our discussions on the subject matter refers.

Please take this as our instruction to accept installment payment of the said sum of N1, 785, 666, 099.50 (One Billion, Seven Hundred and Eighty-Five Million, Six Hundred and Sixty-Six Thousand and Ninety-Nine Naira and Fifty Kobo) from the Garnishee.

Our position is informed by your brief to the extent that finances of Government are very low and to insist on recovering the entire sum at one full swop may be a difficult task.

Following your explanation we are minded to accept installment of not more than four equal parts but not less.

Consequently you are to inform the Ministry of Finance and the Office of the Accountant-General of this development provided always it is understood that it must commence from October 2016 and end in January, 2017.

We are to further advise that failure or refusal will not be acceptable to us in any material particular.

Thanks for your understanding whilst expecting a favourable response from all concerned.

Yours faithfully,

Prince Tijani Sani
[Ochada-Ehe-Ankpa]
Chairman/Chief Executive."

The above letter again is clear and self explanatory. The letter to claimant commences with **"…please take this as our instructions to accept installment payment of the said sum of N1, 785, 666, 099.50…"**

This letter was not challenged or impugned.

If the claimant chooses, to even accept the sums due directly, this letter in addition to Exhibit P1 provides the authority to do so. For me, I see this complaint by **DW1, Amina Tijani Sani** now in charge of 6th defendant after the death of her father who engaged claimant as simply a red herring to create an excuse to avoid paying claimant his rightful dues under Exhibit P1. The ultimate remit of Exhibit P1 is for the 6th defendant to get the **judgment debt**. That is the goal or objective. The conduit or how it is processed should not matter at all, as long as the process is legal and proper and the 6th defendant gets its due entitlement. No more.

On the pleadings and evidence, absolutely no case was made that the claimant at any time diverted any amount due to the 6th defendant or made any attempt to do so. If no moneys of 6th defendant were paid at any time to claimant and no complaint of any kind was made at the conduct of claimant all through the rather protracted process of securing the payment of the judgment debt, one then finds it difficult to situate any fraud or attempted fraud in the context of the long established relationship between claimant and the Chief Executive of 6th defendant, the late Prince Tijani Sani who dealt with plaintiff at all material times and from when the relationship was established. It is not enough to plead fraud or attempted fraud when the evidence in support shows no such thing particularly where the fraud alleged here is a crime which has to be proved on the correct standard, that being beyond reasonable doubt, which is not going to be sidelined or jettisoned because the suit in dispute is civil. The pleading of fraud or attempted fraud simpliciter as done by 6th defendant here without any scintilla of credible evidence in support is of no value since pleadings cannot translate to evidence. See **Durbaar Hotel Ltd V Kasaba United Ltd (supra); Yakubu V Jauroyel (2014) 11 NWLR (pt.1418) 205 and NNB Plc V Denclag Ltd (2005) 4 NWLR (pt.916) 549.** The complaint of fraud or attempted fraud in the absence of credible evidence must be deemed as abandoned.

As stated earlier, I only considered the issue of **fraud** out of abundance of caution. For whatever reason(s) DW1 now representing the 6th defendant chose to end the relationship, it does not derogate from the manifest actions taken by claimant which has now effectively led to the payment of the balance of the long outstanding indebtedness due to 6th defendants. For these actions, the claimant is entitled to the remuneration of 25% as agreed under Exhibit P1 on the remaining **two tranches** payment whenever it is received by 6th defendant particularly when it is noted that claimant has already been paid the agreed remuneration due to him for the first **two instalmental payments** made to 6th defendant.

The above extensive pronouncements and findings on very critical elements of case presented on both provides broad factual and legal template to address the final issue of whether the Reliefs sought by plaintiff are availing. Let me also quickly state that some of the reliefs sought here by claimant are inelegant and could have been better framed or formulated. The court cannot however go

outside the remit of the Reliefs claimed except of course where consequential orders enure.

In the circumstances, it appears incumbent to make the point clear that Reliefs are the live wire of an action. Reliefs puts in specific demanding language the cause of action. Where there is no relief sought in an action or it is not precisely and clearly claimed, there is really nothing for the court to grant. The Reliefs are therefore the bedrock of the entire action as a case stands or fall by the reliefs sought. The language of a relief must therefore be precise, concise, simple and clear and should not be fluid, ambiguous or vague. See **Uzokwu V Ezeonu II (1991) 6 N.W.L.R (pt.2000) 708 at 784.**

The law is settled and indeed the Apex Court has made it abundantly clear that where a relief is sought, it must not be a matter of speculation or doubt as to what it entails as in this case. A court therefore cannot be expected to make an order which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the plaintiff intended to ask for. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd. V. Cooperative Development Bank Ltd. (2003) 35CM 39 at 105.**

Relief (i) seeks a Declaration that the purported termination of the appointment of the Claimant as attorney and/or recovery agent to the 6th defendant is null, void and of no effect, same being done at a time when the Claimant has done all that he was to do pursuant to the said appointment.

As stated in my consideration of key issues in this case, I had held that the 6th defendant had a right to terminate the appointment of claimant as their lawyer for any reason subject of course to payment of any outstanding due professional fees as in this case. Whether the claimant "has done all that he was to do pursuant to the said appointment" or not does not in any way fetter the exercise of the right to terminate. I say no more. **Relief (i)** is not availing.

Relief (ii) seeks for a declaration that the Claimant is entitled to all the monies due to him on the term of the appointment by the 6th Defendant to recover specific sum on and in its behalf.

This relief essentially calls for the enforcement of the agreement vide **Exhibit P1**. As stated severally in this judgment, by a confluence of established evidence, both oral and documentary, the claimant has lived up to his commitments under the letter of instructions and payment have since commenced to 6th defendant. In law a person or party who seeks enforcement of an agreement must show, as claimant has done here, that all conditions precedent thereto has been fulfilled and that he has performed his part or performed all the terms which ought to have been performed by him. See **FGN V Zebra Energy Ltd (2002) 3 NWLR (pt.754) 471 at 491-492 FF**. As stated in the judgment the payment of the judgment debt was to be made in four (4) tranches and the first two remittances have so far been made. The 6th defendant agree that it has paid the 25% fees due to the plaintiff on the 1st and 2nd tranche payments made by the Ministry of Finance. See paragraphs 31, 39, 40 and 43 of the defence of 6th defendant. The claimant in **Exhibit P15** equally concedes that two (2) remittances have so far been received from 1st defendant Ministry of Finance. In the circumstances, the claimant is entitled to the 25% fee as agreed in Exhibit P1 on the remaining two remittances to be made. **Relief (ii)** has merit and will be granted on terms as streamlined here under.

Relief (iii) is for an order directing the 1st – 5th Defendants to deduct and pay to the Claimant, the sum of N334, 812, 393.00 being and representing 25% of the outstanding three tranches of N44, 416, 524. 87 balance of the sum of about N1, 785, 666, 096. 00 due to the 6th Defendant and payable by the 1st – 5th Defendants.

As stated earlier in this judgment, the parties subject of **Exhibit P1** are the claimant and the 6th defendant. A contract or letter of appointment such as **Exhibit P1** affects only the parties thereto and cannot be enforced by or against a person who is not a party to it. See **Makwe V Nwakor (2001) 14 NWLR (pt.733) 356; Agrareh V Mimra (2008) 2 NWLR (pt.1071) 378 at 412.** In the circumstances, it is difficult to situate the basis for the order sought under **Relief (iii)** against 1st – 5th defendants who are non-parties to **Exhibit P1**.

Indeed the established facts of this case undermine the position of claimant. All the payments so far made with respect to the **1st and 2nd tranche payment** were all made to 6th defendant which then lived up to its commitments by paying the 25% fees as agreed to claimant. Under the specific and clear terms of **Exhibit P1**, there

is no jurisdiction in court to expand the remit of Exhibit P1 or to alter same. I had affirmed for the validity of Exhibit P1 under **Relief (ii)** and the entitlement of claimants to 25% each on the 3rd and 4th tranche payments to 6th defendant whenever it is made by 1st defendant.

Again on the evidence, the payments now due to claimant is in respect of the remaining **two tranches** or remittances and not **three** as claimed in Relief (iii). Indeed the claimant in Exhibit P15 dated 3rd August, 2018 expressed **"thanks"** to the **"good offices"** of Minister of Finance **"for the two remittances we have gotten so far."** This clear admission by claimant undermines any claim that there are **three** remittances still due from the Ministry of Finance. As stated earlier, on the pleadings and evidence, **two remittances** have so far been received by 6th defendant and the claimant has been paid his 25%. Exhibit D1, the Statement of Account of 6th Defendant situates the two remittances and the 25% payment made to claimant. Even the letter of termination, Exhibit P16 equally underscores the 25% payments made to claimant on the two remittances already received by 6th defendant. This dynamic must necessarily continue in the context of the clear terms of **Exhibit P1**. Flowing however from the facts of this case and the holding of court with respect to issue (ii), it appears to me imperative to make a consequential order which flows directly and naturally from the decision or order of court made on the issues in litigation and inevitably consequent upon it. See **Akapo V Hakeem-Habeeb (1992) 6 NWLR (pt.247) 266 at 304 E.**

Now the principle that the court can only grant reliefs sought or incidental is well established. This court has inherent powers to make orders even if not sought, where they are incidental to the prayers sought. See **Akapo V Hakeem Habib (Supra) 297 D**. It is equally settled that a consequential order is an order founded on the claims of the successful party. It is merely incidental to a decision properly made but one which gives effect to the decision. It is also an order which flows necessarily, naturally, directly and consequentially from a decision of judgment delivered by a court in a matter. It arises logically and inevitably by reason of the fact that the order in question is per-force obviously and patently consequent upon the decision given by the court and does not need to be specifically claimed as a distinct or separate head or item of relief. See **Aisagbonbuomwan Ogbahon V. The Registered Trustees of Christ's Chosen Church of God & Anor (2002) 1 NWLR (Pt.749) 675 at 701, (C.A.)**. See also **Liman V. Mohammed (1999) 9**

NWLR (pt.617) 116; Rivers State Civil Service Commission & Anor V. Toboinengi Fubara (2002) 5 NWLR (pt.759) 109 at 117, (C.A.).

By **Exhibit D1**, the Statement of Account of 6th Defendant earlier alluded to shows clearly that two remittances have so far been received both in the sum of **N446, 416, 524.87** and the sums of **N111, 604, 131.22** was paid to claimant on 31st October, 2016 and 1st August, 2018 representing 25% of claimant's fees. The remaining two remittances to be paid logically will be in the same amount as paid in the first two payments and the 25% payment of fees will be on same terms as the two earlier payments. It is to be noted and underscored that the 6th defendant through the late Chairman, Prince Tijani Sani vide Exhibit P6 agreed to the payment of the entire judgment sum in four (4) tranches which claimant communicated to the Minister of Finance vide Exhibit P5. The total outstanding sums due to 6th defendant vide Exhibits P5, P6 and D2 is in the sum of N1, 785, 666, 099.50 **(One Billion, Seven Hundred and Eighty Five Million, Six Hundred and Sixty Six Thousand, Ninety Nine Naira, Fifty Kobo)** and this they agreed should be paid in four (4) tranches or remittances.

On the evidence, but for the intervention of the Bauchi State Government, the two remaining remittances would have been paid to 6th defendant by now. That challenge is since over and the 1st defendant is ready to conclude all outstanding payments to 6th defendant.

Flowing from the above and as a logical corollary, having found that the outstanding judgment debt is to be paid in four (4) tranches and so far two remittances have been made or paid to 6th defendant and that 6th defendant lived up to its commitments by making 25% fees payment on each of the two tranches so far made, in line with their commitments under Exhibit P1, **it is hereby ordered in the interest of justice and in line with the instructions vide Exhibit P1 that the 6th defendant pays claimant 25% each on the remaining two remittances due from 1st defendant, whenever it is received.**

The orders of court to be streamlined at the end of the judgment with respect to this relief is an offshoot of the main **Relief (ii)** and flows directly and naturally and inevitably consequent upon it. It simply gives effect to the judgment already given.

Relief (iv) is for an order directing a further deduction and payment to the Claimant the sum of N25, 000, 000.00 as professional fees for the Defence of Suit No.: BA/197/2016 and **Relief (v) is for the sum of N500, 000.00 being the balance of the transport and filing fee for the defence of the Originating Summons filed by the Bauchi State Government in Suit No.: BA/197/2016.** I will take these Reliefs together.

As stated in the course of this judgment, the defence of the originating summons in Bauchi Stated by claimant forms part of the assignment covered by **Exhibit P1** and is not a separate or distinct assignment. I had also indicated that if the claimant conceived the assignment as separate, then there must be credible evidence of this separate instruction. No evidence of such instruction and the fees agreed was tendered or produced. If that is the position, the claimant ought to then prepare and serve his bill of charges before he can then commence any action for recovery of fees for the assignment in Bauchi covered by Reliefs (iv) and (v). No such bill was prepared or served and that is fatal. On the whole, **Reliefs (iv)** and **(v)** are irredeemably compromised and are not availing.

The final **Relief (vi)** is for **N25, 000, 000** exemplary damages.

On exemplary damages, the Supreme Court in **Allied Bank of Nigeria V. Akubueze (1997) 6 NWLR (pt.509) 1** stated thus:

> ***"Exemplary damages properly so called may be awarded in actions in tort but only in three categories; these are:***
>
> ***i. In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.***
>
> ***ii. Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.***
>
> **iii.** ***Where there is an express and authorization by statute."***

See also **Guardian Newspaper V. Ajeh (2005) 12 NWLR (pt.938) pg. 205 at 215** where it was held that:

> ***"Punitive or exemplary damages are damages on an increased scale, awarded to the Plaintiff over and above what will barely compensate him for his loss where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud or wanton and wicked conduct on the part of the defendant and are intended to solace the plaintiff for mental anguish and punish the defendant."***

On the basis of the above principles and applied to the facts of this case, it is difficult to situate the basis of this relief. The claimant and 6th defendant had an agreement vide **Exhibit P1**. Four tranches of payment on the evidence are to be made to liquidate the total indebtedness due to 6th defendant. Two tranches have been paid to 6th defendant and his fees paid. There is nothing on the pleadings and evidence denoting that the final remaining (2) two remittances have been paid to 6th defendant and that they have refused to pay the 25% fees as agreed. Indeed, if anything, the delay that perhaps resulted in the failure to pay the remaining two remittances, can be attributed to the legal intervention or challenge of a third party, the Bauchi State Government. In the circumstances, there is really no legal or factual basis to situate the relief on exemplary damages. **Relief (vi)** fails.

As I round up, it is imperative to emphasize on the imperative of parties keeping strict fidelity to terms of instructions or engagement. It does not appear to me fair or reasonable that after all efforts have been put into realizing a judgment debt that has not been paid for years, all sorts and manners of excuses are now been manufactured or contrived by 6th defendant through DW1 to provide avenue to reneged from clear commitments made vide **Exhibit P1** by 6th defendant.

The 6th defendant through DW1, **Amina Tijani Sani** who appears to have taken over operations of 6th defendant after the demise of **Prince Tijani Sani**, her father who engaged and dealt with claimant, cut the picture of one determined not live up to the commitments entered into by her late father. She has by words and actions as demonstrated in this case clearly and for inexplicable reasons evinced an intention not to perform but also expressly declared that she is unwilling to perform the commitments and obligations under **Exhibit P1** in material particulars.

By her demeanor and countenance all through the proceedings, she appeared to me as someone who has set her sail, as it were, on a course directed at not concluding

the agreement and commitments entered into by her late father, Prince Tijani sani, and does not want to be bound by the terms of Exhibit P1 or put another way, she is determined to do so only in a manner inconsistent with the obligations in **Exhibit P1**.

And the question I ask is this: where is the fairness in such a course of action? Any course of action lacking the intrinsic value of justice and fairness is a redundant position to take and bereft of legal or moral rightness and ultimately self defeating, whatever the gains made in the short or immediate term.

An agreement will be useless if parties refuse to fulfill the terms and or commitments embodied therein; especially here where the 6th defendant has enjoyed and is about to enjoy fully the benefits of the hard work and labour put in by claimant. The 6th defendant cannot rightly enjoy the benefits of this toil and at the same time seek to shirk from the obligations. It is not only a legal but moral imperative that the **6th defendant** now does the needful and live up to the mandate of Exhibit P1 by immediate payment to claimant of his professional fees representing 25% each on the remaining two remittances due to be paid to 6th defendant. I leave it at that.

On the whole, the case of claimant has considerable merit; for the avoidance of doubt, I hereby enter judgment for claimant against 6th defendant in the following terms:

1. **Reliefs (i), (iv), (v) and (vi) fail and are dismissed.**

2. **It is hereby Declared that the Claimant is entitled on the basis of Exhibit P1, to 25% payment on all the recoveries made on the outstanding judgment debt for an on behalf of 6th defendant.**

3. **It is hereby Ordered that the 6th Defendant shall forthwith pay the Claimant on receipt of same from 1st Defendant the sums representing 25% professional fees as agreed vide Exhibit P1 on the outstanding two remittances or tranches of N446, 416, 373, 39 each due to the 6th Defendant as Judgment Debt and payable by 1st Defendant.**

4. **I award cost assessed at N50, 000 payable by 6th Defendant to the Claimant.**

……..
Hon. Justice A.I. Kutigi

Appearances:

1. **Jude A. Rex-Ogbuku, Esq., Austin Emumejakpor, Esq., Maxwell Chukwujuma, Esq. and Oluwatoyin Falaiye for the Claimant.**

2. **Chinedu Obienu, Esq., with Busayo Ojewale, Esq. for the 6th defendant.**