

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

ON WEDNESDAY, 27TH DAY OF APRIL, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/0834/2018

BETWEEN

**MARTIN OJONIMI ATOJOKO, ESQ.
[Carrying on business under the name and
style of MARTIN ATOJOKO & CO.]**



CLAIMANT

AND

- 1. STELLA MARIS SCHOOL LIMITED**
- 2. ALEX ONYEKURU, ESQ.**



DEFENDANTS

JUDGMENT

The claimant [plaintiff], a legal practitioner, instituted this suit on 6/2/2018 against: [i] *Afoma Anyaene-Onyeanus* as the 1st defendant; [ii] *Chukwuemeka Anyaene* as the 2nd defendant; [iii] *Patrick Oguejiofor Anyaene [Jnr.]* as the 3rd defendant; [iv] *Chineze Anyaene* as the 4th defendant; [v] *Stella Maris School Ltd.* as the 5th defendant; [vi] *Chukwunonso Udegbonam Esq.* as the 6th defendant; and [vii] *Alex Onyekuru* as the 7th defendant. The Hon. Chief Judge re-assigned the suit to me on 9/10/2018 by a Transfer Order. Before that date, the name of

the 6th defendant [*ChukwunonsoUdegbumamEsq.*] had been struck out of the suit.

Trial in the suit started on 27/5/2019 with the evidence of the claimant as PW1. The claimant closed his case on 15/10/2019 and the case was adjourned for defence.

On 13/1/2020, the 2nd, 3rd& 4th defendants filed *Motion No. M/4104/2020* for an order to strike out their names from the suit. The Court granted the application on 14/1/2020 as same was not opposed. The names of 2nd, 3rd& 4th defendants were struck out. Also, on 16/7/2020, the Court, in a considered Ruling, granted *Motion No. M/6278/2020* filed on 11/3/2020 by the 1st defendant [*Afoma Anyaene-Onyeanusi*] for an order dismissing/striking out this suit against him. His name was struck out of the suit leaving *Stella Maris School Ltd.* and *Alex Onyekuruas* the defendants. The Court directed the parties to amend their processes.

The pleadings in this case are: [i] the claimant's amended statement of claim filed on 27/7/2020; [ii] the 1st defendant's amended statement of defence and counter claim filed on 3/8/2020; and [iii] the claimant's amended reply in response to the 1st defendant's statement of defence filed on 26/11/2020.

In paragraph 32 of the amended statement of claim filed on 27/7/2020, the claimant claims the following reliefs against the defendants:

- a) A declaration that the conduct of the 1st defendant in developing and erecting structures on Plot No. 408 with File No. 89243 located at Durumi Cadastral Zone B02, Abuja and Plot No. 76 with File No. MISC 102482 located within Wumba District, Abuja instead of selling the properties and paying 5% of the proceeds of sale thereof to the team of Lawyers as agreed by the parties amounts to a breach of the terms of payment of the professional fees of the plaintiff.
- b) An order of specific performance compelling the 1st defendant to sell Plot No. 408 with File No. 89243 located at Durumi Cadastral Zone B02, Abuja and Plot No. 76 with File No. MISC 102482 located within Wumba District, Abuja for purposes of satisfying the professional fees of the plaintiff as conveyed in the plaintiff's Bill of Charges dated 13/7/2017.

OR IN THE ALTERNATIVE TO RELIEF 32[b]:

- c) An order of Court compelling the 1st defendant to forthwith pay the sum of N18,907,664.405 as professional fees to the plaintiff in respect of the legal services rendered to the 1st defendant.

In paragraph 37 of its counter claim, the 1st defendant claims these reliefs against the claimant:

1. The sum of N6,666,666.67 being the sum received by the plaintiff for legal services for which the 1st defendant had already paid for.

2. Cost of this suit at the sum of N1,000,000.00.

At the trial, the claimant gave evidence as PW1. He adopted his statement on oath filed on 18/4/2018 and the statement on oath filed on 12/6/2018. The claimant tendered Exhibits 1, 2, 3, 4, 5, 6, 7 & 8.

Jacob Musa Jai, a legal practitioner and company secretary of the 1st defendant, testified as DW1. He adopted his statement on oath filed on 3/8/2020. He tendered Exhibit 9. During cross examination of DW1 by learned counsel for the claimant [Eloka J. Okoye Esq.] on 1/12/2020, the 1st defendant's letter to Martin Atokojo & Co. dated 15/9/2016 was tendered as Exhibit 10. I note that the letter [Exhibit 10] is same as Exhibit 6.

Evidence of PW1 - Martin Ojonimi Atojoko Esq. [the Claimant]:

The evidence of the claimant in his 34-paragraph statement on oath filed on 18/4/2018 is that Afoma Anyaene-Onyeanusu [hereafter referred to as "Afoma"], Chukwuemeka Anyaene, Patrick Oguejiofor Anyaene [Jnr.] and Chineze Anyaene are children of late Mrs. Uchenna Anyaene, the owner of Stella Maris Schools in Nigeria; they are also directors and shareholders of Stella Maris Schools Ltd. Chukwunonso Udegbon Esq. and the 2nd defendant [Alex Onyekuru Esq.] are legal practitioners. Following the demise of Mrs. Uchenna Anyaene, her said children became embroiled in a bitter and acrimonious battle over the ownership, control, management and

administration of their mother's estate and other properties acquired in the name of the 1st defendant.

Due to their inability to amicably resolve their differences and agree on mutually beneficial modalities for distributing the properties of their late mother, they were constrained to enlist the services of legal practitioners to protect their interests. Afoma engaged his legal services vide a Power of Attorney dated 23/6/2014 authorizing him to represent her and manage all her interest in the 1st defendant and in the estate of late Mrs. Uchenna Anyaene. He was authorized by Afoma to apply for and collect all title/land documents pertaining to her share in the said estate and to represent her in company and board meetings, amongst others. The other 3 children of the deceased also engaged the services of Chukwunonso Udegbonam Esq. and the 2nd defendant respectively to render services with respect to their interests in the said estate.

The PW1 further testified that Afoma and her three siblings urged him and the 2 other lawyers to work as a team for purpose of realizing the following objectives:

- i. To trace and identify all landed properties belonging to late Mrs. Uchenna Anyaene whether held in her name, in the 1st defendant's name or otherwise.
- ii. To conduct all requisite legal and physical searches at land registries in order to ascertain the state of the legal title to the properties.

- iii. To identify the properties with good title and recommend appropriate steps to be taken to rectify the properties with defective titles.
- iv. To recommend estate valuers to be appointed by the said 4 children and the 1st defendant for purpose of valuing the properties.
- v. To recommend appropriate and equitable sharing formula for the properties and how they can be evenly distributed or shared amongst them [i.e. Afoma and her siblings].
- vi. To carry out all other actions that may be necessary for the realization of the above objectives.

By dint of hard work, experience, diligence and competence, the team of lawyers were able to identify the 18 properties belonging to late Mrs. Uchenna Anyaene and the 1st defendant, which are listed in paragraph 14[a]-[r] of his statement on oath. The team of lawyers were able to identify the properties having defective titles and recommended appropriate steps that may be taken to rectify or perfect the titles. Based on the recommendation of the team of lawyers, Afoma and her siblings appointed Oyabomeh Consulting, Estate Valuers and Surveyors to value the properties. The firm carried out the valuation and put the value of the said properties traced/identified at over N2 billion Naira. The lawyers prepared a 77-page legal report stating particulars of the properties identified, their locations,

search reports, title documents, nature of the allocations, defective titles and recommendations.

In the report, the team of lawyers devised an equitable formula for the sharing of the properties amongst the 4 of them. They also recommended in the report that Plot 408 located at Durumi, Abuja and Plot 76 located within Wumba District, Abuja [i.e. Nos. [e] & [k] in the list of properties], which could not be shared amongst the 4 of them be sold and the proceeds shared amongst them. A meeting was fixed and held on 28/10/2014 between the team of lawyers and the children of the deceased for the presentation of the report. Jacob M. Jai, Esq., the 1st defendant's secretary, wrote the minute of the meeting. At the said meeting, he [PW1] explained the contents of the legal report and a proposal was made for the payment of the professional fees of his team for the services rendered.

The children of the deceased and the 1st defendant expressed satisfaction with the work of his team as the sharing formula recommended was satisfactory and was able to resolve all differences and acrimony within the family. It was agreed at the meeting that his team's professional fees for the services rendered shall be paid in 2 tranches. The first tranche is an initial sum of N20,000,000 to be paid to the lawyers out of which a cheque of N5,000,000 each will be issued to the 3 lawyers while the balance of N5,000,000 will be paid in due course. The second tranche of payment is that Plot 408 located at Durumi, Abuja valued at N630,437,966 and Plot 76 located within Wumba

District, Abuja valued at N450,000,000 will be sold and 5% of the proceeds of sale will be paid to the lawyers. The children of the deceased and the 1st defendant paid the first tranche of the professional fees but have failed to pay the second tranche.

The further evidence of Barrister Martin OjonimiAtojokoEsq. is that instead of selling Plot 408 located at Durumi, Abuja and Plot 76 located within Wumba District, Abuja and paying 5% of the proceeds thereof to the team of lawyers as agreed by the parties, the children of the deceased and the 1st defendant started developing the 2 plots in their bid to expand Stella Maris School. Upon noticing that they were developing the plots, his team wrote letters dated 22/7/2016 and 12/10/2016 to them and demanded for payment of 5% of the value of the properties. In response to the letters, the children of the deceased and 1st defendant by a letter dated 15/9/2016 acknowledged that the agreement of the parties on 28/10/2014 was that 5% of the proceeds of the said properties upon sale will be paid to the team of lawyers but since the properties were not purchased within 2 years that the properties were in the market, they decided to develop them to expand their school.

The 5% of the value of both properties as aforesaid including value added tax is N56,722,993.02, which represents the sum due to his team of lawyers. If the sum of N56,722,993.02 is divided equally amongst the 3 lawyers, he would be entitled to N18,907,664.405. Following the unwillingness of ChukwunonsoUdegbumamEsq. and the 2nd defendant to commence civil suit

for breach of contract and recovery of the professional fees due to family ties with the children of the deceased, he was constrained to issue and serve a bill of charges dated 13/7/2017 on them for payment of his own share of 5% of the value of the properties. The children of the deceased and the 1st defendant will not pay his professional fees except by an order of this Court.

In his 8-paragraph statement on oath filed on 12/6/2018, PW1 stated that he had carried out several legal services not related to the subject matter of this suit on the instruction of Afomafor which he was paid. Afoma did not settle or pay his professional fees for the legal services leading to this suit. The sum of N6,666,666.67, which he allegedly received as part of his fees for services rendered by the team of lawyers does not amount to double payment but legitimately earned having carried out his duties in line with the instructions of the children of the deceased and the 1st defendant. He is not liable to refund the sum of N6,666,666.67 or any sum of money to the 1st defendant.

The claimant tendered the following documents:

- a) Revocable Power of Attorney donated by Afoma to the claimant dated 23/6/2014: Exhibit 1.
- b) Legal Report on the Estate of Mrs. Uche R. Anyaene/Stella Maris Schools Ltd.: Exhibit 2.
- c) Claimant's letters dated 22/7/2016, 12/10/2016 and 13/7/2017: Exhibits 3, 4 & 5 respectively.

- d) The letter from Stella Maris Schools [the 1st defendant] to the claimant dated 15/9/2016: Exhibit 6.
- e) Document titled: Proposed Minutes of Meeting of Board of Directors of Stella Maris Schools Ltd. held on 28/10/2014 at the School Office, Area 1, Durumi, Abuja: Exhibit 7.
- f) Letter dated 17/7/2017 by J. M. Jai & Co. addressed to Martin Atojoko & Co.: Exhibit 8.

During cross examination of PW1 by A. A. Ejembi Esq., learned counsel for Afoma [1st defendant at that time], he stated that Afoma paid him the sum of N1 million [not N3 million] on the transactions covered by the Power of Attorney [i.e. Exhibit 1]. They [i.e. the lawyers] had an oral instruction from the members of the Board of the 1st defendant and a letter of instruction was supposed to be issued but was withheld by the company secretary of the 1st defendant.

When PW1 was cross examined by J. M. Jai Esq., learned counsel for the 2nd-5th defendants at that time, he maintained that the team of 3 lawyers were jointly briefed by the Board of Directors of the 1st defendant specifically on the issue before the Court. He does not have a letter of instruction from the 1st defendant; he has an oral instruction. He acted for the Board of the 1st defendant in respect of the claim before the Court; not Afoma. He was not given opportunity to source for buyers for the said Plots 408 and 76. He

disagreed that Plot 76 could be sold at a price less than what it was valued by the Estate Valuer.

Evidence of DW1 – Jacob Musa Jai:

The evidence of DW1 in his 34-paragraph statement on oath is that Afoma and her siblings [all directors in the 1st defendant] were never embroiled in a bitter and acrimonious battle over the ownership, control, management and administration of their deceased mother's estate and other properties acquired in the name of the 1st defendant. The ownership, control, management and administration of the estate was never in contention amongst them. Afoma and her siblings enlisted the services of their individual lawyers in their personal capacities mainly for the purpose of ensuring equal distribution of their late mother's properties largely subsumed in 1st defendant amongst themselves.

The claimant along with the other lawyers worked as a team for the purpose of achieving the mandate for which Afoma and her siblings individually engaged them. The properties belonging to late Mrs. Uche Anyaene and the 1st defendant purportedly identified by the team of lawyers were all along known to Afoma and her siblings. Following the demise of Mrs. Uche Anyaene on 2/6/2013, Chukwuemeka Anyaene being the eldest son of the deceased, took custody of all the vital documents belonging to the deceased including the original title documents over the properties listed by the claimant. Upon the engagement of the claimant and the other lawyers by

Afoma and her siblings, Afoma handed overcopies of the title documents with respect to the properties to the team of lawyers to enable them effectively carryout their mandate of equal distribution of the properties

DW1 further stated that the claimant and the other lawyers merely presented the legal report to Afoma and her siblings at the Board Meeting of the 1st defendant held on 28/10/2014. No proposal was made to the 1st defendant for the payment of the professional fees of the team of lawyers as they were not engaged by the 1st defendant but were individually engaged by Afoma and her siblings to represent their personal interests. At that Board meeting, the 1st defendant approved the total sum of N20,000,000 to Afoma and her siblings for the purpose of settling the professional fees of their respective lawyers. Thus, the professional fees of the team of lawyers were fully paid by Afoma and her siblings who personally engaged them.

The payment of 5% of the proceed of sale of Plot 408 located at Durumi, Abuja and Plot 76 located within Wumba District, Abuja was never an integral part of the professional fees due to the team of lawyers. It was *“only out of show of magnanimity to the team of lawyers including the plaintiff that the directors offered to them 5% of the proceeds from the sale of the said Plots 408 and 76 respectively but this however was depended upon the actual sale of the said plots.”* The said plots *“were never sold upon which the plaintiff or any other legal practitioner in the team of lawyers could lay claim to 5% of the proceed.”* The said

Plots 408 and 76 were put in the market for sale and it remained in the market for well over 2 years without any offer from prospective buyers.

As there were no prospective buyers, the directors approved for 1st defendant to develop Plot 76 for expansion of its school. This was communicated to the claimant and the other 2 lawyers. The 1st defendant never paid or agreed to pay any professional fees to the team of lawyers as it never engaged them to render any legal service to it. The 1st defendant was under no obligation to sell Plots 408 and 76 for the purpose of paying 5% of proceeds thereof to the claimant and the other lawyers. The offer made to the team of lawyers by the directors of the 1st defendant was 5% of the proceeds to be realized on account of the sale of the properties and not 5% of the value of the properties. Since the properties were not sold, the claimant is not entitled to the 5% claimed. A purported bill of charges was addressed to the 1st defendant. The 1st defendant refuted any indebtedness to the claimant in its letter of 17/7/2017 [Exhibit 9].

The further evidence of Jacob Musa Jai in paragraphs 26-32 of his statement on oath in support of the counter claim is that the claimant was engaged by Afoma in her personal capacity to represent her interest in the estate of late Mrs. Uchenna Anyaene. Afoma and the claimant agreed on his professional fee, which she duly paid. The sum of N20,000,000 which was approved by the 1st defendant to the claimant and the other lawyers was for the legal services rendered to Afoma which she had already paid for. The claimant received

N6,666,666.67 from the said sum of N20,000,000. The 1st defendant is entitled to a refund of the sum of N6,666,666.67 from the claimant since he had already been paid for the same legal services by Afoma.

During cross examination of DW1 by Eloka J. Okoye Esq., learned counsel for the claimant, he confirmed that at the meeting of 28/10/2014, the claimant and his team presented their bill of professional fees for consideration. He added that: *“However, the directors raised issues on the bill which was that 1st defendant did not engage the team of lawyers to act on its behalf but rather, they were engaged individually by the directors to act for them in their personal capacities. It was on that note that the Board took a decision approving N20,000,000 to the directors for the purpose of settling the legal fees of the lawyers appointed by them.”*

DW1 confirmed that at the meeting held on 28/10/2014, the Board, in response to the claimant’s recommendation, earmarked 2 properties for sale. He confirmed that from paragraph 5 of the recommendations in the legal report, the claimant and his team recommended that 10% of the proceeds of sale of the 2 properties be paid to them. When DW1 was asked how long the Board prescribed for the sale of the properties after which the properties will no longer be available for sale, he stated that: *“There was no time prescribed but it cannot be there until eternity.”*

Issues for determination:

At the conclusion of trial, Jacob M. Jai Esq. filed the 1st defendant' final address on 9/7/2021. Eloka J. Okoye Esq. filed the claimant's final address on 7/9/2021. Jacob M. Jai Esq. filed the 1stdefendant's reply on points of law on 22/11/2021. The final addresses were adopted on 1/2/2022.

Learned counsel for 1st defendant distilled 4 issues for determination, which were adopted by learned counsel for the claimant. These are:

1. Whether or not the 1stdefendant engaged the plaintiff to render any legal services to the 1stdefendant.
2. Whether or not the 1stdefendant has breached any terms for payment of professional fees involving the plaintiff.
3. Whether or not the plaintiff has proved his case to entitle him to the reliefs sought as per his Writ.
4. Whether the 1stdefendant has proved its case to entitle it to refund of N6,666,666.67 from the plaintiff as per the Counter-Claim.

It seems to me that the minutes of meeting of Board of Directors of the 1st defendant held on 28/10/2014 - which was tendered by the claimant as Exhibit 7 - is material and central to the determination of the issues in this case. Let me first set out the said Exhibit 7 signed by DW1 as the 1st defendant's Secretary/LegalAdviser. It reads:

IN ATTENDANCE:

- | | |
|-------------------------------------|----------------------|
| 1) ONYEANUSI AFOMA | [Board Chairman] |
| 2) ANYAENE CHUKWUEMEKA | [Managing Director] |
| 3) ANYAENE CHINEZE | [Executive Director] |
| 4) ANYAENE PATRICK OGUEJIOFOR (JNR) | [Executive Director] |
| 5) BARR. MARTIN ATOJOKO | [Observer] |
| 6) BARR CHUKWUNONSO UDEGBUNAM | [Observer] |
| 7) BARR. JACOB M. JAI | [Company Secretary] |

The meeting commenced at about 2.40 pm [Nigerian Time] with Barr. Martin Atojoko explaining the details of the Legal Report on the Estate of Mrs. Uche R. Anyaene/Stella Maris Schools Limited that the team of lawyers had earlier submitted to the Board.

Thereafter, consideration was given to the Professional Fees forwarded by the team of Lawyers to the Board for payment. In the course of the deliberation on this issue, Miss AnyaeneChineze drew the attention of the Board that Barr. Alex no longer acts for her and as such whatever decision the company would take with respect to the fees of the lawyers, the portion that would be accruable to her lawyer be given to her in order for her to deal with any lawyer she deems fit as Barr. Alex no longer has her mandate.

After deliberating on this issue, the Board resolved that since it did not formally engage the Lawyers to act on its behalf it could not approve any payment directly to the Lawyers. The Board however approved the sum of N20,000,000.00 [Twenty Million Naira] to the Directors from which they were meant to settle the fees of

their individual Lawyers. The Board also recommended that 5% [Five Percent] of the proceeds of the sale of the two properties that had been recommended to be jointly sold be given to the Lawyers.

The Board immediately issued Cheques in the sum of N5,000,000.00 [Five Million Naira] each to Barr. Martin [representing Onyeanusia Afoma] and Barr. Chukwunonso [representing Anyaene Chukwuemeka] while the Cheque of N5,000,000.00 [Five Million Naira] was given to Miss Chineze Anyaene being the portion of the fees meant for her lawyer. It was agreed that the outstanding balance of the sum of N5,000,000.00 [Five Million Naira] from the N20,000,000.00 [Twenty Million Naira] for the lawyers shall be paid to them in due course.

The originals of the title documents as recommended in the report submitted by the team of lawyers were then handed over to the respective beneficiaries by Mr. Emeka Anyaene. After which the meeting was adjourned to the 29th day of October, 2014 to consider the other items on the agenda.

The meeting eventually came to a close at about 6.00pm.

From the evidence of the parties and the submissions of both learned counsel, I am of the view that there are 4 issues for determination in this action, to wit:

1. Whether the claimant proved that he and the other two lawyers [i.e. Chukwunonso Udegbumam Esq. and the 2nd defendant] were engaged by the 1st defendant to render legal services to it.

2. Whether the recommendation in the minutes of meeting of the 1st defendant held on 28/10/2014 [Exhibit 7] “that 5% [Five Percent] of the proceeds of the sale of the two properties that had been recommended to be jointly sold be given to the Lawyers” constituted an enforceable contract between the 1st defendant and the team of lawyers; and if yes, whether the 1st defendant breached the contract.
3. Is the claimant entitled to his reliefs against the 1st defendant?
4. Is the 1st defendant entitled to its counter claim against the claimant?

ISSUE 1

Whether the claimant proved that he and the other two lawyers [i.e.ChukwunonsoUdegbumam Esq. and the 2nd defendant] were engaged by the 1st defendant to render legal services to it.

Submissions of Learned Counsel for the 1st Defendant:

Jacob M. Jai Esq.stated that all through the claimant’s pleadings and evidence, he was unable to prove when, where, how and the circumstances under which he was engaged by the 1stdefendant to render the serviceshe claimed to have rendered to it. When the claimant was asked during cross-examinationif he had any document to show that he was engaged by the 1stdefendant, he replied that they [i.e.team of lawyers] had an oral instruction from the members of the Board and that the letter of instruction was

subsequently withdrawn. It was submitted that this very important fact was neither pleaded nor proved by the claimant. The claimant at all times had acted for and represented the interest of his client [Afoma] by virtue of the Power of Attorney [Exhibit 1] in respect of her interest in the estate of her late mother.

Learned counsel for the 1st defendant further argued that it could be concluded from the claimant's evidence in paragraphs 6 & 7 of his statement on oath that the basis for engaging his service [and the services of the other lawyers] was to "*protect and render services with respect to their interest in the deceased estate*" and as such, they were "*urged*" to work together. For there to be proper protection of the interests of their various clients and based on the mandate for which the lawyers were engaged, the services they would have to render included: [i] to trace and identify all landed properties belonging to Mrs. Uchenna Anyaene, whether held in her name or in the name of the 1st defendant; and [ii] to conduct all requisite legal and physical searches at the land registries in order to ascertain the state of the legal titles of the properties.

Mr. Jacob M. Jai also argued that in paragraph 8 of his amended statement of claim, the claimant admitted that the 1st defendant urged him and the other 2 lawyers to work as a team having been engaged by the individual directors of the company. Counsel stated that the use of the word "*urged*", which means to

“encourage” or “persuade”, cannot be interpreted to mean that the 1st defendant actually engaged the claimant and the other lawyers to act for it.

The 1st defendant’s counsel referred to the part of Exhibit 7 where it was stated that *“...the Board resolved that since it did not formally engage the lawyers to act on its behalf, it could not approve any payment directly to the lawyers. The Board however approved the sum of N20,000,000.00 [Twenty Million Naira] to the Directors from which they were meant to settle the fees of their individual lawyers”*. He submitted that Exhibit 7 corroborates the evidence of the claimant that he and the other lawyers were engaged by the individual directors to represent their individual interests. He concluded that the claimant failed to prove that he and the other lawyers were engaged by the 1st defendant to render services to it.

Submissions of Learned Counsel for the Claimant:

Eloka J. Okoye Esq. stated that the claimant’s case is that the 1st defendant engaged him, Chukwunonso Udegbonam and the 2nd defendant to work as a team for the purpose of realizing the objectives pleaded in paragraph 8[a]-[f] of the amended statement of claim [which I had set out at pages 5-6 of this Judgment]. The team of lawyers carried out the assignment and submitted the Legal Report [Exhibit 2] to the Board of Directors of the 1st defendant. The claimant’s counsel relied on the averments in paragraphs 6, 7 & 8 of the amended statement of claim to support his submission that the claimant and the other two lawyers were engaged by the 1st defendant to render services to

it.He pointed out that the 1st defendant admitted paragraphs 6, 7 & 8 in paragraph 5 of its amended statement of defence.

Learned counsel for the claimant further submitted that the objectives pleaded in paragraph 8[a]-[f] of the amended statement of claim are different from the mandate given to the claimant by Afoma vide the Power of Attorney [Exhibit 1], which were:

1. To manage all the Donor's interest in her Estate/properties, apply and collect all title/landed documents.
2. To represent the Donor as her proxy in company meetings, deliberations and voting on her behalf with respect to all issues related and/or connected to her shareholding and interest in Stella Maris Schools.
3. The Donee is to perform all lawful acts in the interest of the Donor on her behalf with respect to all issues related and/or connected to the Estate of Late Mrs. UchennaAnyae.
4. The Donor undertakes to ratify all that the Attorney shall lawfully do on her behalf.
5. To institute or sue in any court of competent jurisdiction on behalf of the Donor with respect to all issues related and/or connected to the Estate of Late Mrs. UchennaAnyae.

Mr. Eloka J. Okoye also referred to page 1 of the Legal Report [Exhibit 2] to support the contention that the 1st defendant instructed/engaged the claimant and the other lawyers to carry out the work which they carried out. The part of the Report relied on reads: *“Kindly refer to the minutes of the Company’s previous board meetings held on 2nd April, 2014 and 24th and 25th June, 2014 at Ibeto Hotel, Abuja instructing us on the following objectives and task inter alia”*. The objectives were listed. Learned counsel for the claimant concluded that it is not correct that the claimant did not plead how he and his team were engaged by the 1st defendant, noting that the claimant stated during cross examination that they had an oral instruction from the 1st defendant’s Board.

Decision of the Court:

It is trite law that averments in pleadings form the foundation of the case of parties in a civil action. That is why parties are bound by their pleadings and are not allowed to adduce or rely on any evidence on a fact not pleaded. If any party adduces any evidence on a fact not pleaded, that evidence goes to no issue. See **Onwuchekwa v. Ezeogu [2002] 18 NWIR [Pt. 799] 333** and **Mobar v. Ali [2002] 1 NWLR [Pt. 747] 95**. Let me refer to the pleadings of the parties in order to resolve the issue whether the claimant pleaded and proved that the 1st defendant engaged him and the other lawyers to render services to it.

In paragraphs 6, 7 & 8 of the amended statement of claim filed on 27/7/2020, the claimant averred:

6. *The plaintiff avers that AfomaAnyae-Onyeansi, a director of the 1st defendant, engaged his legal services vide a Power of Attorney dated 23/6/2014 authorizing him to represent and manage all her interest in the 1st defendant company and in the Estate of late UchennaAnyae. The plaintiff also avers that he was authorized by AfomaAnyae-Onyeansi to apply and collect all title/landed documents pertaining to her share in the said Estate and to represent her in company meetings amongst others. The said Power of Attorney is hereby pleaded.*
7. *The plaintiff avers that other directors of the 1st defendant, Chukwuemeka Anyae and ChinezeAnyae equally engaged the services of ChukwunonsoUdegbonam Esq. and the 2nd defendant respectively to also protect and render services with respect to their interests in the deceased estate.*
8. *The plaintiff avers that having engaged the services of the plaintiff as well as ChukwunonsoUdegbonam Esq. and the 2nd defendant, the 1st defendant through her directors, AfomaAnyaeOnyeansi, Chukwuemeka Anyae, Patrick OguejioforAnyae [JNR] and ChinezeAnyae urged the plaintiff, ChukwunonsoUdegbonam Esq. and the 2nd defendant to work together as a team of Lawyers for purposes of realizing the following objectives:**[Note that the objectives have earlier been reproduced at pages 5-6 of this Judgment].***

In paragraphs 5 & 6 of the amended statement of defence filed on 3/8/2020, the 1st defendant averred:

5. *The 1st defendant admits the averments in paragraphs 6, 7 and 8 of the statement of claim.*
6. *The 1st defendant further avers that the plaintiff along with the other legal practitioners worked together as a team of lawyers for the purpose of realizing and achieving the mandate for which AfomaAnyane-Onyeanusi and her siblings individually engaged them to do.*

It is noteworthy that the amended statement of claim filed on 27/7/2020 was filed after the claimant had testified and closed his case. In the claimant's statement on oath filed on 18/4/2018 - which he adopted on 27/5/2019 - his evidence in paragraph 12 is:

That having engaged my services as well as the services of Chukwunonso Udegbonam Esq. and the 6th defendant, the 1st-4th defendants urged us to work together as a team of Lawyers for the purposes of realizing the following objectives [Note: the objectives have already been reproduced].

For clarity, 1st-4th defendants in the claimant's evidence above are Afoma and her 3 siblings [who were later struck out of the suit] while the 6th defendant then [Alex Onyekuru Esq.] is now the 2nd defendant. The above evidence is in line with the averment in paragraph 10 of the amended statement of claim filed on 18/4/2018.

It is necessary to point out that in the amended statement of claim filed on 18/4/2018, the claimant's case was that *"having engaged my services as well as the services of Chukwunonso Udegbunam Esq. and the 6th defendant, the 1st-4th defendants urged us to work together as a team of Lawyers ..."* In the amended statement of claim filed on 27/7/2020, the claimant amended or changed his case to: *"having engaged the services of the plaintiff as well as Chukwunonso Udegbunam Esq. and the 2nd defendant, the 1st defendant through her directors, ... urged the plaintiff, Chukwunonso Udegbunam Esq. and the 2nd defendant to work together as a team of Lawyers ..."*

In paragraphs 6.1.20 & 6.1.21 of the 1st defendant's final address, Jacob M. Jai Esq. referred to the above amendment and argued that claimant *"in a desperate bid to repair his case and pin the 1st Defendant to any semblance of engagement had smuggled in an illegal averment in his paragraph 8 ... whereas the original averment is as contained in paragraph 10 of the original statement of claim..."* The 1st defendant's counsel submitted that *"this illegal smuggling of an amendment into the Amended Statement of Claim without the consent, authority and order of the Court to that effect is terribly calculated at outwitting, frustrating and ambushing the 1st Defendant."* In paragraph 2.3 of the 1st defendant's reply on points of law, Mr. Jai referred to the amendment as *"an evil and illegal manipulation to hand-twist and overreach the 1st Defendant, the Plaintiff having seen the lacuna in his case ..."*.

The 1st defendant's counsel is correct that the said amendment to the claimant's pleadings was not made with the leave of the Court. The amendment ought to be with the leave of the Court. In any event, the amendment of the pleadings to the effect that the 1st defendant, through its directors, "*urged*" the claimant and the other lawyers to work together is not supported by any evidence. It is trite law that pleadings do not constitute evidence. I hold that the evidence of the claimant which he adopted remains that Afoma and her siblings "*urged*" him and the other lawyers to work as a team.

Even if the Court relies on the claimant's averment in paragraph 8 of his amended statement of claim filed on 27/7/2020 that the 1st defendant through its directors "*urged*" him and the other lawyers to work together, that, in my humble view, will still not be proof that the 1st defendant engaged him and the other lawyers to render services to it. As the 1st defendant's counsel correctly stated, the word "*urged*" means "*persuaded*" or "*encouraged*".

In paragraph 3.6 of the claimant's final address, Eloka J. Okoye Esq. relied on the claimant's evidence during cross examination that he and the other lawyers were engaged by the 1st defendant by oral instruction from the members of its Board. He argued that this piece of evidence shows that the claimant pleaded and proved that he and the other lawyers were engaged by the 1st defendant to render services to it. In paragraph 2.5 of the 1st defendant's reply on points of law, Jacob M. Jai Esq. did submit that the

claimant cannot rely on this piece of evidence elicited during cross examination because that fact was not pleaded. He relied on the case of **Alhaji Isiyaku Yakubu Ent. Ltd. v. Teru& Anor. [2020] LPELR-49925 [CA]** to support the principle that parties are bound by their pleadings and evidence elicited during cross examination on a fact not pleaded goes to no issue.

The Court has already found that there is no pleading that the 1st defendant engaged the claimant, ChukwunonsoUdegbumam Esq. and Alex Onyekuru [the 2nd defendant]to render services to it. Thus, in the absence of any pleading to that effect, the position of the law is that the evidence that the claimant and the other lawyers were engaged vide an oral instruction by the Board of the 1st defendant goes to no issue.

From the evaluation of the pleadings and evidence of the claimant on the issue under focus, it is clear that the claimant's case is not that he was engaged or instructed by the 1st defendant to render services to it. His case is that he and the other lawyers were "*urged*"by Afoma and her siblings to work as a team to achieve the objectives in paragraph 8[a]-[f],*supra*, having been separately engaged by Afoma and her siblings to protect their respective interests in the estate of their late mother.

The Court accepts the evidence of DW1 in paragraph 6 of his statement on oath [which is in line with paragraph 6 of the 1st defendant's amended statement of defence] that the claimant and the other 2 lawyers worked as a team for the purpose of realizing or achieving the mandate which Afoma and

her siblings individually engaged them to achieve. This is because a careful examination of the mandate of the claimant in the Power of Attorney [Exhibit 1], which I have earlier set out, on the one hand and the objectives which the 3 lawyers working as a team were to achieve on the other, will clearly show that the objectives were in furtherance of the claimant's mandate in the Power of Attorney.

It is my respectful opinion that the realization of the claimant's mandate or instructions in the Power of Attorney [Exhibit 1] on behalf of Afoma can only be achieved by the realization of the said objectives by the team of lawyers. The point I am trying to make is that Afoma and her siblings "urged" the lawyers to work as a team to achieve the objectives in paragraph 8[a]-[f] of the amended statement of claim [*supra*] for the purpose of realizing/achieving the respective mandates given to the lawyers when they were engaged separately. Therefore, the fact that the claimant and the other lawyers were urged to work as a team by Afoma and her siblings was not a fresh or separate instruction and cannot be proof that they were engaged by the 1st defendant.

I now go to Exhibit 7, i.e. the minutes of the meeting of the Board of Directors of the 1st defendant held on 28/10/2014. From Exhibit 7, the claimant explained the details of the Legal Report [Exhibit 2]. Thereafter, the Board considered the professional fees forwarded by the team of lawyers to it for payment. The Board resolved and made it clear that "*it did not formally engage the Lawyers to act on its behalf and it could not approve any payment directly to the*

Lawyers ...” Consequently, the Board approved the sum of N20,000,000 “to the Directors from which they were meant to settle the fees of their individual Lawyers.”

The claimant and Barr. ChukwunonsoUdegbumam were at the meeting and said nothing about the resolution or decision of the Board that it did not engage the lawyers. Both of them respectively received the cheques for N5,000,000. The claimant accepted the cheque as representing Afoma and Barr. ChukwunonsoUdegbumam accepted the cheque as representing Chukwuemeka Anyaene. A cheque for N5,000,000 was given to Miss ChinezeAnyaene being the portion of fees meant for her lawyer. In my considered view, Exhibit 7 is clear and conclusive evidence that the 1st defendant did not engage the claimant and the other lawyers to render services to it.

From all that I have said, I resolve Issue 1 against the claimant. I hold that the claimant failed to prove that the 1st defendant engaged him, ChukwunonsoUdegbumam Esq. and Alex Onyekuru[2nd defendant] to render services to it.

ISSUE 2

Whether the recommendation in the minutes of meeting of the 1st defendant held on 28/10/2014 [Exhibit 7] “that 5% [Five Percent] of the proceeds of the sale of the two properties that had been recommended to be jointly sold be given to the Lawyers” constituted an enforceable

contract between the 1st defendant and the team of lawyers; and if yes, whether the 1st defendant breached the contract.

Submissions of Learned Counsel for the 1st Defendant:

Jacob M. Jai Esq. posited that for there to be a breach of term for payment of professional fees, there must have been a legally binding and enforceable agreement between the claimant and 1st defendant, consequent upon which he could make a demand for his professional fees. The claimant did not prove that the 1st defendant engaged his service or that there was a valid and enforceable contract between him and the 1st defendant. It is trite law that for there to be a valid contract or a legally binding agreement, there must be offer, acceptance, consideration and intention to create a legal relationship. He relied on **BPS Construction and Engineering Co. Ltd vs. FCDA [2017] LPELR - 42516 [SC]**.

The 1st defendant's counsel submitted that there was no evidence of offer, acceptance, consideration or intention to create any legal relationship. The claimant was unable to show a valid consideration tied to any agreement between him and the 1st defendant as there was no agreement between the parties *ab initio*. He noted that the recommendation in the Legal Report [Exhibit 2] that the team of lawyers will be entitled to 10% of the sales value of the estate recommended to be sold was not for payment of professional fees to the lawyers but an opinion that they be paid 10% of the proceeds of sale of

the 2 properties. Counsel reasoned that the inference to be drawn is that the recommendation *“is an advocacy for additional benefit to the lawyers upon sale of the property and not an agreement for payment of any professional fees for services rendered.”*

Mr. Jacob M. Jai further argued that the content of Exhibit 7 to the effect that the 1st defendant did not engage the services of the claimant shows that it did not intend to create a legal relationship with the claimant. Counsel emphasized that to show the gratuitous nature of the promise to pay 5% of the proceeds of sale of the 2 properties, there was no discussion on the consequence of failure, refusal or neglect to sell the properties. He posited that the claimant’s assertion that there was an agreement that the 2 properties be sold and 5% of the proceed of sale be paid to him as his professional fee *“is a feeble attempt at varying the content of a written document.”* He cited the case of **E.A. Ind. Ltd v. NERFUND [2009] 8 NWLR [Pt. 1144] 535** to support the principle that oral evidence cannot vary the content of a written document.

Finally, learned counsel for the 1st defendant argued that the condition for the giving of the 5% to the team of lawyers is when the properties have been sold. Since the 2 properties have not been sold, there is no basis to warrant the demand for payment of the 5%. He submitted that even where the Court finds that the claimant is entitled to 5% of the proceeds of sale of Plot 408 Durumi, Abuja and Plot 76 Wumba District, Abuja, such entitlement can only

be fulfilled upon the sale of the properties. Thus, since the properties have not been sold, the claimant is not entitled to 5% of the proceeds of sale.

Submissions of Learned Counsel for the Claimant:

Eloka J. Okoye Esq. argued that the agreement between the parties is deducible from the oral instructions given to the claimant and his team by 1st defendant to trace and identify lands belonging to it and the Estate of Uchenna Anyaene, perfect the land titles, fashion out a sharing formula and actually distribute same to the beneficiaries. It is inherent in that instruction that if the claimant and his team do the above, they would be paid. The team went into action and delivered on all the terms of reference. The law is trite that an agreement or contract can be made and given effect to whether in writing or verbally done or even by the conduct of the parties from which the agreement can be inferred. He cited the case of **U.T.C. [Nig.] Plc. v. Philips [2012] 6 NWLR (1295) 136.**

The claimant's counsel submitted that the lawyers, having given or supplied consideration to the 1st defendant's promise to pay them for the services, the 1st defendant paid the lawyers N20,000,000 as part payment for the services rendered and reserved the payment of the balance in the sum of 5% of the proceeds of the sale of the 2 properties earmarked for sale. He stressed that the payment of N20,000,000 is an admission that there was an agreement to pay the claimant and his team if they rendered the services they were asked

to render. Counsel relied on the case of Union Bank of Nigeria Plc. v. Alhaji GaniuOgunsiji [2013] 1 NWLR [Pt.1334] 1 to support the principle that a contract may be demonstrated by the conduct of the parties or by their words or deeds or by documents that have been passed between them.

In response to the submission of the 1st defendant 's counsel that the claimant was unable to show a valid consideration tied to any agreement between him and the 1st defendant, Mr. Eloka J. Okoye argued that the service rendered to the 1st defendant by the claimant and the other lawyers is the consideration tied to the 1st defendant's promise to pay them fees if they carry out the objectives as aforesaid. The claimant's counsel also relied on the 1st defendant's letter dated 15/9/2016 [Exhibit 6; also Exhibit 10], which was a reply to the claimant's letter dated 22/7/2016 [Exhibit 3] to support his view that there was an agreement for the 1st defendant to pay 5% of the proceeds of sale of the 2 properties to the lawyers. Paragraph 2 of the letter reads:

"You had rightly stated in your letter of 22nd July, 2016, that the Board of Directors at its meeting of 28th day of October, 2014 agreed that a sum of 5% [Five Percent] of the value of any of the identified property that shall be sold would accrue and become due to the Team of Solicitors. It should however be noted that the condition upon which the 5% [Five Percent] shall accrue to the Team of Lawyers is solely upon the sale of the property."

Learned counsel for the claimant further submitted that from the evidence before the Court, the parties had an agreement that Plot 408 Durumi, Abuja

and Plot 76 Wumba District, Abuja would be sold and 5% of the proceeds of sale paid to the claimant and his team. An agreement to pay 5% as an aspect of professional fees exists from the conduct of the parties. When the 1st defendant decided to develop the said properties for the expansion of its business instead of selling the properties and paying 5% of the proceeds to the team of lawyers as agreed, it breached the terms of the agreement. He urged that the argument that it is only when the properties are sold that the 1st defendant would be bound to pay the 5% should not sway the Court. This is because incapacitating itself from selling the properties in order to absolve itself from its obligation to pay 5% is a breach of the 1st defendant's agreement with claimant and his team.

Finally, Mr. Okoye submitted that *"it is unconscionable, wicked and smacks of the use of tricks, ruse and subterfuge to deprive the Plaintiff and his team of their entitlement and unjustly enrich the 1st Defendant at the expense of the Plaintiff"* because the 1st defendant decided not to sell the properties. He noted that DW1 admitted during cross examination that there was no time frame within which the properties were to be offered to be sold and payment made to the claimant. It is *"ridiculous when DW1 told the Court that the agreement of the 1st defendant to sell the two properties earmarked and pay 5% to the Plaintiff and his team was a mere gratis and act of magnanimity as if 1st Defendant is Santa Clause."*

Decision of the Court:

The submission of Mr. Okoye that there exists an enforceable contract between 1st defendant and the claimant is hinged on his views that: [i] the 1st defendant vide oral instruction engaged the claimant and the other lawyers to render services to it; [ii] the lawyers rendered services to the 1st defendant and thereby supplied or gave consideration to its promise to pay them for the services; [iii] the 1st defendant paid the claimant and his team the sum of N20,000,000 as part payment for the services they rendered; and [iv] the payment of N20,000,000 by the 1st defendant is an admission that there was an agreement to pay the claimant and his team if they rendered the services they were asked to render.

Under Issue 1, the Court held that the claimant failed to prove that the 1st defendant engaged him and the other lawyers to render services to it. The Court also held that by Exhibit 7, the 1st defendant did not pay the sum of N20,000,000 to the lawyers, rather, the Board of the 1st defendant approved the sum of N20,000,000 “to the Directors from which they were meant to settle the fees of their individual lawyers.” In the light of the decisions of the Court under Issue 1, I hold that the 1st defendant and the claimant did not have any enforceable contract. I also hold the humble view that the service rendered by the claimant was the consideration for the contract between him and Afoma for which he was paid professional fee of N6,666,666.67 by Afoma.

Since the claimant and the 1st defendant did not have any contract, it follows that the claimant did not give any consideration for the

recommendation made by the Board of Directors of the 1st defendant in Exhibit 7 that “5% [Five Percent] of the proceeds of the sale of the two properties that had been recommended to be jointly sold be given to the Lawyers.”

It is pertinent to point out that in the Legal Report [Exhibit 2], one of the recommendations was that “the solicitor’s involved in the realization of these estate that shall be jointly sold by the Board of Directors will be entitled to 10% of the sales value of the said estate.” I note that the above was not a demand by the lawyers for payment of professional fees by the 1st defendant but a recommendation. The Board in turn made the recommendation as aforesaid.

The critical question is whether the recommendation made by the Board of the 1st defendant constitutes an enforceable contract between the 1st defendant and the lawyers. I do not think so. The law is that words used in a document should be given their ordinary and plain meaning. See the case of **U.B.N. Ltd. & Anor.v. Nwaokolo [1995] LPELR-3385 [SC]**. I hold the respectful view that even if the Court substitutes the word “recommended” in Exhibit 7 with the word “resolved” or “promised” or “agreed”, there will still not be an enforceable contract between the claimant and the 1st defendant since, as I have said, the 1st defendant did not engage the lawyers to render services to it.

Before I conclude this Issue, let me remark that from the facts of this case, it seems to me that the claimant, Chukwunonso Udegbonam Esq. and Alex Onyekuru Esq. did not take appropriate steps to secure - or to enter into - an

agreement with Afoma and her siblings on their professional fees for the tasks or objectives which Afoma and her siblings asked them to achieve as a team of lawyers. One would have expected that at the time Afoma and her siblings [who retained the lawyers individually] “urged” them to work as a team, the claimant and his colleagues would have entered into an agreement on or with respect to their professional fees.

Even in the course of carrying out the tasks as a team in order to achieve the said objectives, the claimant and his colleagues would have entered into an agreement on their professional fees with the directors of the 1st defendant [i.e. Afoma and her siblings] either in their personal capacities or on behalf of the 1st defendant. It appears to me that claimant and his colleagues assumed, *albeit* wrongly, that having been “urged” by Afoma and her siblings, who are the directors of the 1st defendant, to work as a team, they were working for the 1st defendant and therefore would be paid by the 1st defendant.

When Afoma and her siblings [as directors of the 1st defendant] resolved and made it clear in Exhibit 7 that the lawyers were not engaged by 1st defendant but were engaged by the directors individually, the lawyers ought to have known or ought to have reasoned that the recommendation by the Board to give them 5% of proceeds of sale of 2 properties was/is not enforceable against the 1st defendant in the absence of any contract with it.

At that point, the claimant and his colleagues ought to have taken steps to enter into an agreement with the 1st defendant on the sale of the 2 properties and payment of 5% of the proceeds of sale to them. Such agreement would have imposed a contractual obligation on the 1st defendant to sell the 2 properties and to pay 5% of the proceeds of the sale to the lawyers. A breach of such contractual obligation by the 1st defendant would have given the claimant and his colleagues the right to seek redress for breach of contract as opposed to the mere recommendation in Exhibit 7, which, in my opinion, is not enforceable.

The claimant's counsel stated that "*it is unconscionable, wicked and smacks of the use of tricks, ruse and subterfuge*" for the 1st defendant to deprive the claimant and his team of their entitlement and unjustly enrich itself as it decided not to sell the properties. My humble view is that it may be unconscionable, unfair and morally wrong for the 1st defendant not to sell the properties and pay 5% of the proceeds of the sale to the lawyers as recommended by its Board in Exhibit 7, especially as the four members of the Board are also the shareholders of the 1st defendant.

In the 1st defendant's letter to the claimant dated 15/9/2016 [Exhibit 6], it stated that "*the Board did put the said property for sale and the property was in the market for well over a period of 2 [Two] years without an offer from any prospective buyer and since the Board cannot continue to wait in vain for a buyer, it decided to develop the property for the expansion of its school.*" To my mind, when the 1st defendant decided to develop the said properties, the morally just and fair

thing to do would have been to pay the lawyers some money in lieu of 5% of the proceeds of sale of the properties. Be that as it may, I hold that the Court cannot compel the 1st defendant to carry out the said recommendation of its Board in the absence of an enforceable contract with the claimant and the other lawyers.

From all that I have said, the decision of the Court on Issue 2 is that there was no enforceable contract between the 1st defendant and the claimant for it to sell Plot 408 located at Durumi, Abuja and Plot 76 located within Wumba District, Abuja] and to pay 5% of the proceeds of sale to the lawyers. Assuming there was an enforceable contract, the 5% to be given to the lawyers was from the proceeds of sale of the 2 properties. The Court agrees with Mr. Jai that the said 5% can only be given to the lawyers upon sale of the properties. Since there was no sale, the condition for giving the 5% did not occur. The Court also holds that the 1st defendant did not breach any contract with the claimant.

ISSUE 3

Is the claimant entitled to his reliefs against the 1st defendant?

In the light of the decisions of the Court under Issues 1 & 2, I hold that the claimant is not entitled to the declaratory order in relief [a], the order for specific performance in relief [b] and the alternative claim of N18,907,664.405 in relief [c]. Accordingly, the claimant's suit is dismissed.

ISSUE 4

Is the 1st defendant entitled to its counter claim against the claimant?

Submissions of Learned Counsel for the 1st Defendant:

Jacob M. Jai Esq. stated that none of the averments of the 1st defendant in the counter-claim was traversed nor denied by the claimant. All the averments in the counter-claim are deemed admitted by the claimant. When the claimant was cross-examined, he admitted against his interest that he had been paid by Afoma in respect of the services rendered in connection with the power of Attorney [Exhibit 1]. Despite being paid, he received the sum of N6,666,666.67 from the 1st defendant.

Learned counsel for the 1st defendant posited that it is trite law that admission against interest is the strongest form of evidence available to the adverse party. He relied on the case of **Jauro & Anor. v. Danmaraya [2016] LPELR-40328 [CA]**. He submitted that the action of the claimant in collecting money from both Afoma and the 1st defendant amounted to double payment and it is trite law that equity leans against double portion.

Submissions of Learned Counsel for the Claimant:

Eloka J. Okoye Esq. stated that the 1st defendant maintained throughout its pleadings that the claimant and his team acted for Afoma and that the sum of N20,000,000 it is now claiming was paid pursuant to Exhibit 1. By Exhibit 7,

Afoma, the Chairman of the Board of the 1st defendant, was present at the meeting of 28/10/2014 and approved the sum of N6,666,666.67 for the claimant for personal services rendered to him. He then submitted that based on the pleadings in the counterclaim, there is no privity of contract between the 1st defendant and the claimant for it to counter claim in the agreement between Afoma and the claimant. Learned counsel concluded that the 1st defendant cannot be entitled to the refund of money paid to the claimant by Afoma based on their personal contract.

Decision of the Court:

It is trite law that a counter claim is a separate action and the counter claimant has the duty to lead credible evidence to prove the counter claim. See the case of **Chief Fred Ejefor v. Jonathan Okeke & Ors. [2000] 7 NWLR [Pt. 665] 363.** In the instant case, the 1st defendant has the duty to lead evidence to prove that it is entitled to its counter claim of N6,666,666.67.

Under Issue 1, the Court held that from the pleadings and evidence before it, the 1st defendant did not engage the claimant and the other lawyers to render services to it. The Court also held that by Exhibit 7, the 1st defendant did not pay the sum of N20,000,000 to the lawyers. The Court therefore agrees with Mr. Elokaa J. Okoye that there is no privity of contract between the 1st defendant and the claimant to entitle it to sue the claimant for refund of money which it did not pay to him.

Also, as rightly stated by the claimant's counsel, Afoma - who donated the Power of Attorney [Exhibit 1] to the claimant and paid him N1,000,000 as stated by the claimant - was the Chairman of the Board meeting of the 1st defendant held on 28/10/2014. He presided over the meeting where the sum of N20,000,000 was approved for the directors to pay their individual lawyers. If Afoma had fully paid the claimant as argued by Jacob M. Jai Esq., he would not have allowed the claimant to collect the cheque for N5,000,000 issued to him on 28/10/2014 as reported in Exhibit 7.

Without much ado, I hold that the 1st defendant failed to lead any credible or cogent evidence to prove its counter claim. The counter claim is dismissed.

Conclusion:

The claimant's suit is dismissed. The 1st defendant's counter claim is dismissed. The parties shall bear their costs.

**HON. JUSTICE S. C. ORIJI
[JUDGE]**

Appearance of Counsel:

1. Eloka J. Oloye Esq. for the claimant; with Ifeoma C. Nnamdi-Okonkwo Esq.
2. O. J. Aju Esq. for the 1st defendant.

