IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 14TH DAY OF JULY 2022
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8 MAITAMA – ABUJA

SUIT NO: FCT/HC/CV/1040/2019

BETWEEN:

GLOBAL SCANSYSTEMS LIMITED … … … … … CLAIMANT

AND

1. NIGERIA CUSTOM SERVICE BOARD
   DEFENDANTS
2. HON. ATTORNEY GENERAL OF THE FEDERATION

JUDGMENT

The Claimant is a duly registered limited liability company. The summary of her case, according to facts gathered from processes filed to commence the instant action, is that sometime in July, 2014, she was awarded eleven (11) contracts by the 1st Defendant for the

supply and installation of and provision of corrective and preventive maintenance services to scanners; and Technical Operations on Scanners, *inter alia*, at her different Area Commands all over the federation of Nigeria, at agreed costs. The Claimant's case is further that in the course of servicing the contracts, and whilst refusing to pay for work she had already done, the 1st Defendant purported to terminate the contracts sometime in August, 2015, in breach of the obligations created thereunder. As a result, the Claimant claimed to have suffered loss and damages. Being aggrieved of the Defendant's purported breach of the said contracts, the Claimant instituted the present action, *vide* *Writ of Summons and Statement of Claim* filed in this Court on 08/02/2019, whereby she claimed against the Defendants, jointly and severally, the reliefs set out as follows:

1. ***A declaration that the unilateral termination of the contracts dated 17th July, 2014, by the 1st Defendant vide letters dated 4th August 2015 is wrongful and unlawful.***

2. ***The sum of ₦5,400,000,000.00 (Five Billion and Four Hundred Million Naira Only) being the outstanding debt owed by the 1st Defendant to the Claimant on the said contracts.***

3. ***The sum of ₦2,268,000,000.00 (Two Billion Two Hundred and Sixty Eight Million Naira Only) being simple interest calculated at the commercial rate of 14% per annum on the said outstanding debt from the 1st of October 2015 to 30th September 2018.***

4. ***The sum of ₦9,720,000,000.00 (Nine Billion, Seven Hundred and Twenty Million Naira Only) being special damages for loss of expected profits for the value of the contract of 4 years certain.***

5. ***10% interest rate on the entire judgment debt from the date of Judgment until final liquidation of the entire judgment debt.***

6. ***The Cost of this action.***

The Defendants contested the Claimant's case. Their operative *Amended Statement of Defence* was filed on 03/09/2020, to which they subjoined a *Counter-Claim* by which they claimed against the Claimant as follows:

1. ***A declaration that the Claimant did not provide any scanner services whatsoever at the Borno/Yobe Command between July 2014 and August, 2015.***

2. ***A declaration that by reason of the pleadings in paragraphs 1-46 of the Statement of Defence herein, the Claimant occasioned losses and damage to the 1st Defendant.***

3. ***An order for refund of the sum of ₦199,133,064.52 (One Hundred and Ninety Nine Million One Hundred and Thirty Three Thousand Sixty Four Naira Fifty Two Kobo) being cumulative sum paid to the Claimant for Technical Operation of scanner allegedly rendered in Borno/Yobe command, the particulars of which are as follows:***

- ***TOTAL SUM PAID TO CLAIMANT FOR ALLEGED TECHNICAL OPERATION AT FCT AND BORNO/YOBE COMMANDS …. ₦398,266,129.03***

- ***TOTAL SUM PAID TO CLAIMANT FOR ALLEGED TECHNICAL OPERATION SERVICES AT BORNO/YOBE COMMAND ……₦398,266,129.03/2***

= ₦199,133,064.52

4. ***An order for refund of the sum of ₦46,854,840.96 (Forty Six Million Eight Hundred and Fifty Four Thousand Eight Hundred and Forty Naira Ninety Six Kobo) being cumulative sum paid to the Claimant for alleged Supply and Installation of Corrective and Preventive Maintenance Service to scanners rendered in Borno/Yobe command, the particulars of which are as follows:***

   - ***TOTAL SUM PAID TO CLAIMANT FOR ALLEGED SUPPLY AND INSTALLATION OF CORRECTIVE AND PREVENTIVE MAINTENANCE SERVICES TO SCANNERS AT FCT, KANO, KATSINA AND BORNO/YOBE COMMANDS ……₦187,419,363.84***

   - ***TOTAL SUM PAID TO CLAIMANT FOR ALLEGED SUPPLY AND INSTALLATION OF CORRECTIVE AND PREVENTIVE***

MAINTENANCE SERVICES TO SCANNERS AT BORNO/YOBE COMMAND .....₦187,419,363.84/4

= ₦46,854,840.96

5. ***21% interest annually from 2015 till payment of the sum of ₦245,987,905.48 being total refund by the Claimant; amounting to ₦51,657,460.15 per annum.***
6. ***General Damages in the sum of FIVE BILLION NAIRA against the Claimant in favour of the 1st Defendant.***

The Claimant filed a Reply to the Defendants' Joint Statement of Defence on 01/04/2019.

At the plenary trial, the Claimant fielded a sole witness by name **SijuadeKayode,** Chief Legal Officer of the Claimant company. He adopted the two Statements on Oath he deposed to as his evidence in chief. He tendered a gamut of documents in evidence as exhibits.

He was subjected to cross-examination by the Defendants' learned counsel.

The Defendants in turn also fielded a sole witness, by name, **Paul EtiubonEkpenyong**. He claimed to be a Deputy Comptroller of Customs in charge of non-intrusive I-inspection Technology Unit, in the ICT Department of the Nigeria Customs Service, the 1st Defendant. He adopted his *Statement on Oath* deposed to on 07/04/2022, as his evidence in chief. The witness was equally cross-examined by the Claimant's learned counsel.

At the conclusion of plenary trial, parties filed and exchanged their written final addresses.

In his final address filed on 17/05/2022, the Defendants' learned counsel, **Musa Onimisi Yusuf, Esq.,** formulated four (4) issues as having arisen for determination in this suit, namely:

1. ***Whether the parties are bound by their agreement and the contract was terminated in line with the Agreement.***
2. ***Whether the Claimant has proved its case to warrant the judgment of this Hon. Court delivered in its favour.***
3. ***Whether there is valid Contract Agreement between the parties.***
4. ***Whether the 1st Defendant has proved its Counter-Claim and is entitled to the refund of the sum paid on Borno/Yobe Contract for Technical Operation of Scanner and Installation of corrective and preventive Maintenance Service Scanner.***

In turn, the Claimant's learned counsel, **OlatunjiSalawu, Esq.**, filed his final address on 23/05/2022, whereby he identified two issues as having arisen for determination in this case, namely:

1. ***Whether the 1st Defendant is in breach of the contracts with the Claimant in respect of:***
   (a) ***Non-payment of submitted invoices (Article 5.1, 5.2 and 5. 3).***
   (b) ***Non-payment of invoices, as and when due (Article 5.3); and***
   (c) ***Wrongful termination of a fixed term contract. (Article 6 and Article 8).***

2. ***Whether in the circumstance, the Claimant is entitled to all the claims sought.***

The Defendant's learned counsel filed a Reply on points of law on 30/05/2022.

Upon a calm appraisal of the state of the pleadings of the parties and the totality of admissible evidence led on record, it seems to me that the field of dispute between them could be succinctly encapsulated in the issues set out as follows, without prejudice to the issues formulated by their respective learned counsel:

1. ***Whether or not the Claimant established a case of breach of contract against the 1st Defendant in the totality of the circumstances of this case; and if so, whether or not she is entitled to the ancillary reliefs claimed.***
2. ***Whether or not the 1st Defendant established breach of contract against the Claimant and if so, whether or not she is entitled to the reliefs claimed by the Counter-Claim.***

I should state that I had carefully considered and taken due benefits of the arguments espoused by learned counsel in their respective written submissions, to which I shall make reference as I deem needful in the course of this judgment.

DETERMINATION OF ISSUES

ISSUE ONE:

UNDISPUTED FACTS:

The Claimant's action is predominantly document-based. As such, I consider that the starting point is to outline, upon proper appraisal of the pleadings of parties and the documentary and oral evidence led on the record by both parties, such facts upon which there seem to be no dispute between the parties. These facts are set out as follows:

1. That by letters of award all dated 3rd July, 2014 (**Exhibit C1, C1A – C1J**respectively), the 1stDefendant awarded eleven (11) contracts to the Claimantfor technical operations on scanner machines at different designated Commands of the 1st Defendant all over the federation of Nigeria, at variouscontract sums.

2. That pursuant to the letters of award, the Defendant, on 7th July, 2014, executed formal agreements with the Claimant with respect to each of the said eleven (11) contracts. The

agreements were admitted in evidence as **Exhibits C2, C2A – C2J** respectively. See *paragraph 4* of the *Statement of Claim* and *paragraphs 3 and 4* of the *Amended Statement of Defence*.

3. That the duration of each of the Agreements, as provided for in **Article 6.1** of each of the agreements, is five years certain and shall be automatically rolled over every year of those five years on the same terms and covenants, except for the fees which shall be renegotiated upon renewal.

4. That according to the provision of **Article 5.1** of each of the agreements, the 1st Defendant was under obligation to pay to the Claimant the amount as stated in each of the Agreements annually in equal monthly installments effective

from the date of the execution of the agreement.

5. That the 1st Defendant paid to the Claimant amounts due on the contracts for services rendered for the period, July to December, 2014. See *paragraph 6*of the *Statement of Claim* and *paragraph 8* of the *Amended Statement of Defence*. It is to be noted however that whilst the Claimant stated the amount she was paid for the period to be the sum of **₦3,626,491,944.00 (Three Billion, Six Hundred and Twenty-Six Million, Four Hundred and Ninety One Thousand, Nine Hundred and Forty-Four Naira) only;** the 1st Defendant, on the other hand, stated the amount paid to the Claimant for the same period to be the sum of **₦3,795,241,936.65 (Three Billion, Seven Hundred and Ninety Five**

Million, Two Hundred and Forty-One Thousand, Nine Hundred and Thirty-Six Naira and Sixty-Five Kobo) only inclusive of VAT and withholding tax.

6. That by letters dated 4th August, 2015, the 1stDefendant wrote to the Claimant to terminate all the contracts. See *paragraph 9* of the *Statement of Claim* and *paragraph 18* of the *Amended Statement of Defence*. See also **Exhibits C4**and**C4A**, with respect to termination of the contracts for the Seme-Badagry, PTML and Idiroko Commands of the 1st Defendant.

Having found that parties are *ad idem* with respect to the facts set out in the foregoing, I waste no time in holding that these facts are firmly established as between them.

AREAS OF DISPUTE:

Now, the crux of the Claimant's case is that she continued to execute the contracts by providing technical operation and maintenance of the scanners at the 1stDefendant's Commands specified in each of the Agreements, between the months of January, 2015 to August, 2015, for which she raised monthly invoices for a total sum of **₦5,400,000,000.00 (Five Billion, Four Hundred Million Naira)** only and for which the 1st Defendant refused to pay her. The Claimant tendered in evidence as **Exhibits C3, C3A – C3E**respectively, Operations/Maintenance Report on All the Scanners at the Various Customs Area Commands in Nigeria, from July, 2014 – September, 2015 respectively. The witness further tendered in evidence as a bundle as **Exhibit C6**, all the invoices submitted to the 1stDefendant from the commencement of the execution of the Agreements on 21st July, 2014, up to 31st August, 2015.

According to the **CW1**, the 1st Defendant, rather than settle the payments in the said invoices, wrote letters dated 4th August, 2015, purporting to terminate all the contracts and sometime in September, 2015, her agents physically prevented the Claimant's staff from carrying out any further services at the sites. The **CW1** tendered in evidence two of such letters of termination as **Exhibits C4**and**C4A**respectively.

The **DW1**, who testified in line with the Defendants' *Amended Statement of Defence*, on the other hand, catalogued in *paragraphs 9 – 15*of his *Statement on Oath* the reasons that led the 1stDefendant to terminate the contracts, ranging from abandonment of project sites from January, 2015 to unsatisfactory delivery of services in accordance to sound industry standards and practices, leading to breakdown of the scanners nationwide; that several letters of invitation were written to the Claimant for a meeting to address the lingering

issues of unsatisfactory performance of her services which she failed and refused to honour and that it was as a result that the 1st Defendant terminate the contracts.

The **DW1**, in denying the Claimant's claim to entitlement of outstanding payments, stated that even though the invoices were received in the Defendant's office, but that the invoices were not verified or authenticated for payment because the Claimant did not provide the agreed services in accordance with the terms of the agreements.

The witness further stated that the Claimant did not provide any services whatsoever in the Borno/Yobe Customs Command for from July 2014 till the contracts were terminated in August, 2015, for the reason that the Scanner site in that Command was burnt down by insurgents in January, 2014, that led to the abandonment of all operations at the Command; yet the Claimant included invoices for services purportedly

rendered at the Borno/Yobe Customs Command for 2015.

The **DW1** further testified that the 1st Defendant conducted investigations to unravel how contract was awarded to the Claimant and payments made for the Borno/Yobe Command when indeed operations at the Command had been suspended since January, 2014, when insurgents burned down scanners at that Command.

The witness further testified that the 1stDefendant refused to issue the Claimant with any Certificate of Satisfactory Completion of the projects from January, 2015 till the contracts were terminated because the Claimant provided no services at the Commands for that period; and that as a result of the Claimant's breach of her contractual obligations under the contracts, the Economic and Financial Crimes Commission (EFCC) was investigating the Claimant for fraud.

In further response to the defence of the Defendants, the **CW1** further testified that the 1stDefendant accepted and paid all the invoices the Claimant submitted from July to December, 2014, including invoices relating to the Borno/Yobe Command without any complaint; that the issue about verification of invoices was an internal procedure of the 1stDefendant; and that the Claimant performed all her obligations under the contracts for the periods for which she submitted invoices for payments to the 1stDefendant.

The witness further testified that in order to establish that the Claimant was providing services at the various Commands in accordance to the agreements for the period between January and August, 2015, the 1stDefendant wrote letters to her at various times during the period to point her attention to areas where proper maintenance work needed to be provided. He tendered in evidence as **Exhibits C7**, **C7A**and**C7B** respectively,

letters written by the 1st Defendant to the Claimant on 18 February, 2015; 7 April, 2015 and 29 April, 2015 respectively in that regard.

RESOLUTION:

Now, in assessing the state of the evidence on record, it is pertinent to note, at first, that whilst the Claimant tendered documents in aid of the oral evidence adduced at trial; the Defendants, on the other hand, even though attached a gamut of documents to their *Amended Statement of Defence* which they proposed to use to substantiate their defence; however at the trial the **DW1** failed to tender any of the documents. The implication will be addressed anon (imminently).

ON VALIDITY OF CONTRACTS:

Now, the issue as to whether the eleven (11) contracts entered into between the 1st Defendant and the Claimant were valid and enforceable at all material

times is not in dispute, on the basis of the evidence on record. The contracts, as shown on their faces, had all the attributes of a valid contract.

I had noted the somewhat mischievous arguments of the Defendants' learned counsel to the extent that the contracts were devoid of all the elements of a valid contract in that parties did not renegotiate the costs of the contract upon renewal, as prescribed by the provision of **Article 6.1** thereof.

Article 6.1 captioned "**DURATION,**" provides as follows:

> ***"6.1 This Agreement shall subsist, be valid and binding upon the parties for a period of five years certain and shall be automatically rolled over every year on the same terms and covenants appearing herein excepting the fees payable which shall be negotiated by parties upon renewal."***

My understanding of this provision is that the agreement shall run for a period of five (5) years at a stretch upon the same terms and conditions; but that parties shall be at liberty to renegotiate the fees at the expiration of each year within the five (5) year period.

In the instant case, the eleven (11) agreements in contention were all executed between the 1stDefendant and the Claimant on 7th July, 2014. As such, the agreements became automatically renewed on 7th July, 2015. There is no evidence that either of the parties brought up the issue of renegotiating the cost of the contracts as fixed at commencement. The Claimant, who ordinarily should have been inclined to request for renegotiation opted not to take advantage of that window to make the request. On the other hand, the 1stDefendant did not also bring up the issue of renegotiating the cost of the contracts. The very simple implication of this state of affairs, as at 7th July, 2015, is

that both parties were comfortable for the contracts to continue at the original cost fixed at commencement. I so hold.

I further hold, contrary to the contentions of the Defendants' learned counsel, that non-renegotiation of the cost of the contracts at the expiration of the first year by both parties cannot thereby render the contracts in that instant invalid or unenforceable; since the agreement is that the contracts shall continue automatically upon the same terms, up until the expiration of the fifth year.In other words, non-renegotiation of the contracts costs at the expiration of the first year, as in the instant case, is not and cannot be an invalidating factor to render the contracts void, insofar as parties continue to perform their obligations under the contracts. I so hold.

I have also noted the testimony of the **DW1** to the extent that as at the time the 1st Defendant executed the

contracts with the Claimant with respect to technical operations on scanner machines at the FCT and Borno/Yobe Commands, in August, 2014, as shown in **Exhibits C1** and **C2,** respectively, the scanner site in Borno/Yobe Command had been burnt down by insurgents since January, 2014.

The position of the law is clear. Oral evidence cannot be adduced to contradict a written contract. The provision of **s. 128(1)**of the **Evidence Act** is crystal clear on this point. The letter of award for FCT and Borno/Yobe as well as the Agreement duly executed by both parties in respect thereof were not challenged or contradicted at the trial by the Defendants. The Court cannot therefore accept the oral testimony of the **DW1** that insurgents had burned down the scanner site at the Borno/Yobe Command prior to the time the contract for that Command was executed between the parties. The oral

testimony of the **DW1** on that point, without concrete proof, is at best an afterthought.

I therefore hold that the contract for the FCT,Borno/Yobe Command, as shown in **Exhibits C1** and **C2**, remain valid and enforceable.

ON PART-PERFORMANCE OF THE CONTRACTS:

The Claimant has contended that she part-performed the contracts to the satisfaction of the 1st Defendant and as such the 1st Defendant paid her for the services she rendered under the eleven (11) contracts from July to December, 2014; but failed to pay her for the services she rendered from January to August, 2015.

In order to establish these facts, the Claimant tendered in evidence as **Exhibits C3, C3A**to**C3E**, copies of bundles of Operation/Maintenance Reports on all the scanners at all the designated Commandscovered by the contracts, which she claimed to have submitted to the

1st Defendant at the material times. Each of the bundles of the Reports contained details of work undertaken and services rendered by the Claimant at all the Commands covered by the contract agreements.

The evidence on record is further that as contained in the bundle of documents, **Exhibit C6**, the Claimant submitted invoices to the 1stDefendant for the work done and services rendered for this period.

The Claimant further testified that she was paid a total the sum of **₦3,626,491,944.00** for the period between July to December, 2014.

The 1st Defendant did not deny that the Claimant submitted the Reports of work done, as contained in **Exhibits C3** series to her within the period, July 2014 to August, 2015. The 1st Defendant did not also lead any evidence to establish that she contested or formally disputed the Reports submitted to her by the Claimant, which contains critical documentary evidence of services

rendered for the period in question. As such, the Reports must be and are hereby given their full evidential effects and value.

I have noted the contention of the Defendants in their pleadings (**paragraphs 29** and **30** thereof), thatthe 1st Defendant realized that the Claimant was paid the cumulative sum of **₦398,266,129.03** for technical operations of scanners at the FCT and Borno/Yobe Commands, even when, according to the 1st Defendant, the scanners at the Borno/Yobe Commands have been burnt since January, 2014, by insurgents; and that investigations were being undertaken as to how such payments were made to the Claimant.

At the trial, the Defendants led no evidence whatsoever to substantiate the bare assertion that the Borno/Yobe scanners have been burnt by insurgents and no evidence of the so-called investigation to unravel the circumstances under which the contract for the

Borno/Yobe Command was awarded and payments made thereon to the Claimant.

The 1st Defendant did not also provide any evidence that upon discovery of making payments to the Claimant for work allegedly not done between July and December, 2014, she demanded for a refund of the amount involved from the Claimant. As it were, the Claimant became aware of the 1st Defendant's claim with respect to the Borno/Yobe Command for the first time from the Defendants' *Statement of Defence and Counter-Claim*.

With due respect, I must say that no serious organization would handle its activities with such levity and indifference as the 1st Defendant exposed herself to have done in the circumstances of the present case.

On the basis of the evidence on record therefore, I firmly hold that the Claimant has established, by uncontroverted evidence, that she part-performed the

contract for the period between July 2014 to August, 2015, for which she was only paid for the period July to December, 2014.

WHO BREACHEDTHE CONTRACT AGREEMENTS?

It is interesting to note that both the Claimant and the 1st Defendant had alleged breach of the contract agreements against each other. The case of the Claimant is that whilst she continued to render services in accordance with the contract Agreements, she received letters of termination of the contracts from the 1stDefendant. The **CW1** tendered in evidence as **Exhibits C4**and**C4A** respectively, two of the said letters of termination, both dated 4th August, 2015. Let me remark that even though the Claimant provided evidence of termination of the contracts with respect to the 1st Defendant's Seme-Badagry; PTML and Idiroko Commands, **Exhibits C4** and **C4A**, it is pertinent to state

that both parties were not in dispute that the 1st Defendant terminated all the eleven (11) contracts.

The substance of the letters of termination are the same. It states essentially as follows:

> ***"I am directed to inform you that <u>as a result of the breach of the terms of this Contract Agreement that resulted into unsatisfactory performance</u>, Nigeria Customs Service Board hereby terminates the contract at the expiration of 30 days forthwith in accordance with the terms of the Contract"***

(Underlined portion for emphasis)

From the letter of termination, the 1st Defendant hinged her decision to terminate the contracts on breach occasioned by unsatisfactory performance by the Claimant.

The case of the Claimant is that the 1st Defendant's reason for the termination is absolutely false. According to the **CW1**, the Claimant had, up till the date of

contractstermination, provided excellent services to the 1st Defendant and had also rendered detailed monthly reports; that at no time did the 1st Defendant complain of the quality of the services rendered; that the 1st Defendant never rejected any of the monthly reports nor any of the invoices submitted. See *paragraphs 10 and 11* of the **CW1's** *Statement on Oath.*

The question that therefore calls for resolution here is whether the 1st Defendant successfully discredited the Claimant's case as to the excellent manner she rendered services in accordance with the contract agreements as detailed in the monthly Operation/Maintenance Reports she generated and submitted to the 1st Defendant at the material times; or whether the 1st Defendant established, by credible evidence on record, the said unsatisfactory conduct mentioned in the letters of termination that informed the decision to unilaterally terminate the contract?

The 1st Defendant's allegations of the said unsatisfactory conduct seemed to have been laid in the averments in *paragraphs 9, 10, 11, 12, 13, 14, 15, 19 and 27* of the *Amended Statement of Defence*. It is however interesting to note, at first that the totality of the evidence in chief of the **DW1** as deposed in his *Statement on Oath* is a mere rehash of the facts pleaded in the *Amended Statement of Defence*. In other words, the facts pleaded in the paragraphs of the *Amended Statement of Defence* highlighted in the foregoing were repeated near verbatim in the same paragraphs of the *Statement on Oath* of the **DW1**.

Again,as I had noted earlier on, both in the *Amended Statement of Defence* and the *Statement on Oath* of the **DW1**, the Defendants proposed to rely on a long list of documents to substantiate their defence. I make reference to the documents referred to in *paragraphs 14, 16, 20, 23 and 36* of the *Amended Statement of*

Defence and repeated in the same paragraphs of the *Statement on Oath* of the **DW1.** None ofthese documents was tendered in evidence at the trial.

For instance, in other to substantiate the allegation of non-performance by the Claimant, the Defendants sought to rely on Reports from various scanner sites, dated 27th February, 2015; 2nd March, 2015; 10th March, 2015; 29th April, 2015; 5th May, 2015; 7th, 16th and 27th July, 2015 respectively, to show that it was the personnel of the 1stDefendant that manned the scanner sites in the absence of the Claimant's employees at those periods, but failed to produce the Reports at the trial.

Whereas, on the other hand, the Operation/Maintenance Reports on all the Scanners at the various Commands of the 1st Defendant tendered in evidence by the Claimant from January to August, 2015, **Exhibits C3A – C3E**, contained detailed rendition

of the maintenance work undertaken at the various Commands of the 1st Defendant for the period in question. None of these Reports were impugned by the Defendant under cross-examination at trial.

Under cross-examination by the Defendants' learned counsel with respect to services rendered by the Claimant to the 1st Defendant at the material time, the **CW1** had this to say:

> ***"The Claimant did not receive any complaints from the 1st Defendant with respect to the performance of her obligations under the contracts as far as I know. It is correct that the Claimant provided services in Borno/Yobe Command, etc and we submitted invoices to the 1st Defendant"***

I must therefore hold that the documentary evidence adduced by the Claimant to establish that she rendered services to the 1st Defendant in accordance with the contract agreements between the months of January to

August, 2015 clearly outweighed the 1st Defendant's unsubstantiated oral evidence of allegations made against the Claimant of unsatisfactory performance of the contracts, that led to the termination of the same on August 4, 2015.

Now, let me return to the provision of **Article 8** of the Agreements which state as follows:

> ***"Without prejudice to any other provisions in this Agreement Either of the parties may terminate this Agreement upon a major breach of obligation by giving to the other party 30 days prior notice in writing to that effect provided the party that gives notice shall pay any damage which may occur as a result of the termination."***

(Underlined portions for emphasis)

The simple interpretation of this clause is that notwithstanding that parties agreed that the contract agreements shall subsist and last for a period of five (5)

years certain; either of them shall be at liberty to walk away from the contracts after furnishing the other party 30 days' notice, but only on one ground – **where breach of a major obligation occurs**. By my understanding of the termination clause, it is implied that the nature of the major breach that would result in the termination cannot be assumed; the party that alleges the breach must, in the notice of termination,clearly furnish on the other party, particulars of such breach which must flow from or linked with a specific major or fundamental obligation under the contract. I so hold.

In the instant case, my finding is that the 1st Defendant failed to make reference to any specific major term of the contract that the Claimant allegedly breached; or furnished particulars of any such major or fundamental breach on her. Worse still, the 1stDefendant gave no credible evidence of any such major or fundamental breach.I so hold.

The Defendants have alleged that as a result of the purported breach of the contracts on the part of the Claimant, the EFCC forwarded letters to the 1st Defendant to the effect that it was investigating the Claimant for fraud relating to the contracts in question. However, the 1stDefendant neither adduced any iota of evidence of such investigation of the Claimant by the EFCC, as alleged nor tendered in evidence letters said to have been written in that respect to her by the EFCC.

It is therefore apparent, from the assessment and evaluation of evidence on the record, that the 1st Defendant is clearly legally unjustifiedto have terminated the contract agreements as she did in August, 2015, without establishing the commission of any fundamental or major breach by the Claimant, of any of her obligations under the contracts. Rather, the evidence on record is that up until the termination, the Claimant

had performed the contracts in accordance with the contract agreements. I so hold.

As such, I agree with the Claimant's learned counsel that the act of the Defendant, in terminating the eleven (11) contracts by issuing letters in that regard to the Claimant on 4th August, 2014, amounted to breach of contract.

In *Krest Investment Limited Vs. West African Portland Cement [2016] LPELR-42254(CA)*, the Court of Appeal described the nature of termination of contract when it held, *per***TijjaniAbubakar, JCA** (now **JSC**), as follows:

> ***"In Warner & Warner Int. Vs. F.H.A. (supra), the Supreme Court held that "Before there can be an effective termination of a contract, there must be strict compliance with the conditions laid down for the termination of the contract" Where it is found that there is a concluded binding contract between parties, there is liability if it is terminated without semblance of legal justification, because such invalid termination would amount to breach of contract. There is implied***

term in every valid contract that such contract must not be terminated without just cause. See: S.B.N. Vs. Opanubi [2004] 15 NWLR (Pt. 896) SC."

From the foregoing analysis therefore, I hold that the Claimant has established her entitlement to the declaration prayed for in relief one of the *Statement of Claim*.

WHAT REMEDIES ARE THE CLAIMANT ENTITLED TO IN THE CIRCUMSTANCES?

The Court having come a determination that the 1st Defendant is liable for unlawfully terminating the contract agreements she had with the Claimant; it follows that the remedies and damages to which the Claimant is entitled must be determined, on the basis of the totality of the circumstances of the case; as established by credible evidence; and as much as the law allows.

Now, a proviso is included in the termination **Article 8** which states that "**the party that gives notice shall pay any damage which may occur as a result of the termination.**"This implies that parties contemplated that damages may result from the termination of the contracts, especially where it is done without lawful justification.

The Claimant claims the sum **of ₦5,400,000,000.00 (Five Billion, Four Hundred Million Naira)** only being the outstanding debt owed her by the 1st Defendant with respect to services she had rendered from January to August, 2014, when the contracts were terminated.

By the provisions of **Article 5.1, 5.2** and **5.3** of the contract agreements, the 1st Defendant is under obligation to pay the contract sum as specified in each contract per annum in equal monthly installments; that the Claimant shall submit original invoices to the 1stDefendant by the 5th day of each month which

invoices the 1st Defendant shall, within 7 days thereafter verify, authenticate and pay accordingly.

The case of the Claimant is that she submitted invoices for payment of services she rendered with respect to each of the contracts to the 1st Defendant on a monthly basis, as prescribed by **Article 5.2** of the contract agreements, from January, 2015 up till August, 2015, when the contracts were terminated by the 1st Defendant. The **CW1** tendered in evidence in that regard as a bundle, **Exhibit C6**.

I have examined **Exhibit C6**. It contains a compilation of invoices for fees payable by the 1st Defendant to the Claimant, with respect to each of the contract agreements, from January up to August, 2015. It is instructive to note that each of the invoices contained dated acknowledgment endorsements by staff of the 1st Defendant. The 1st Defendant did not controvert, contest

or impugn **Exhibit C6** at the trial. The **CW1**, who tendered the same was not cross-examined on it.

As correctly noted by the Claimant's learned counsel, the issue of authentication and verification of the invoices were internal workings of the 1st Defendant, over which the Claimant had no control. The 1st Defendant failed to adduce any documentary evidence to explain the reasons she withheld authentication, verification and payment of the invoices. In the circumstance the Court is entitled to presume that she failed to perform her obligations under the contract, which amounted to breach of the contract agreements. I so hold.

On the premises of the foregoing analysis, therefore, the Court hereby finds that the Claimant has satisfactorily established her entitlement to relief two of the Claim, in the sum of **₦5,400,000,000.00**, as outstanding indebtedness of the 1st Defendant with

respect to the contract agreements, from January, 2015 to August, 2015.

The Claimant has also claimed the sum of **₦2,268,000,000.00 (Two Billion, Two Hundred and Sixty Eight Million Naira)** only as simple interest calculated at the commercial rate of **14% per annum** on the outstanding debt already awarded by the Court from 1st October, 2015 to 30th September, 2018.

The Claimant tendered in evidence as **Exhibit C8**, the Central Bank of Nigeria (CBN) Guidelines on Lending Rates obtainable in all deposit money Banks applicable as at November 12, 2021, which for the period in question the lending rate is fixedat **14% per annum.**

The Claimant's entitlement to the amount claimed under this head of claim is predicated on the 1st Defendant's failure and or refusal to verify and authenticate the invoices submitted by the Claimant for payment for the period of January to August, 2015, which period the

Court had held in the foregoing, that the Claimant established that she satisfactorily performed her obligations under the contracts; until the 1st Defendant unlawfully terminated the same in August, 2015. The evidence on record is further that up to date, the 1st Defendant had continued to hold on the Claimant's legitimately earned contract fees of the sum of **₦5,400,000,000.00** without lawful justification.

The position of the law in a situation of this nature is sacrosanct. In *Crown Flour Mills Ltd Vs. Olokun [2008] 4 NWLR (Pt. 1077) 254 @ 291*, it was held as follows:

> ***"In a situation arising from commercial matters, a party holding on to the funds of another for so long without justification ought to pay him compensation for doing so. [AdeyemiVs. Lan and Baker (Nig.) Ltd. (2000) 7 NWLR (Pt. 663) 33.]... The interest to be paid is to compensate the party whose fund has been held without any justification by the other party."***

Again, in the English case of *Chatham and Dover Railway Co. Vs. South Eastern Railway Co. [1593]A.C. 429 at 437*it was held thus:

> ***"I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in possession of the other party who is entitled to its use. Therefore, if I could see my way to do so, I should certainly be disposed to give the Appellants or anybody in a similar position, interest upon the amount withheld from the time of action brought at all events."***

See also *Skymit Motors Ltd. Vs. UBA Plc. [2020] LPELR-52457(SC)*, cited by the Claimant's learned counsel.

It is also to be remembered that by agreement of parties in **Article 8** of the contract agreements, a party that unlawfully terminates the contracts shall be liable to pay damages to the other party as may occur as a result of the termination. In the circumstances, therefore, either on grounds of agreement or as a matter of mercantile practice, the 1st Defendant is liable to pay to the Claimant, interest for unjustifiably holding on to the fees she had earned on performance of the contracts in question for the period in question. The Claimant having also adduced evidence to guide the Court as to the applicable interest rate, *vide***Exhibit C8,** which evidence the Defendants did not controvert, the Court is bound to and I hereby grant relief three of the claim.

The Claimant also claimed the sum of **₦9,720,000,000.00(Nine Billion, Seven Hundred and Twenty Million Naira)** only as special damages for loss

of expected profits for value of the contracts for four (4) years.

The contract agreements between the 1st Defendant and the Claimant was for a fixed period of five years, as stipulated in the provision of **Article 6.1** thereof. The case of the Claimant is that in accordance with the commercial industry practice, the contract margin with respect to contracts for supply, installation, and maintenance of equipment is not less than **30%** of the contract sum; and that if the 1st Defendant had allowed the contracts to run their course for the five year period, she would have, from the total contract sum of **₦8,100,000,000.00**, *perannum*, made a total sum of **₦2,430,000,000.00**, as profits on all the agreements put together, per annum; and that for the remaining four years she was not allowed to service the contracts owing to wrongful termination of the same by the 1st

Defendant, she would have made a profit margin of **₦9,720,000,000.00**.

The position of the law with regard to assessment of damages was laid down as far back as 1854 in the case of *Hadley Vs. Baxendale [1854] 9 Ex. Ch. 431*, where @ Pg. 354 of the Report, **Alderson, B.** expressed the law as follows:

> ***"Now we think the proper rule in such a case as the present is this: where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."***

See also *Patama Ltd. & Anor Vs. UBN Plc. [2015] LPELR-24535(CA)*.

As such, it will not matter that there is classification of damages claimed as either general and/or special damages. There is no such dichotomy in breach of contract actions. The assessment of damages must conform with the principle laid down in the English authority cited in the foregoing.

Again, in *Acme Builders Ltd. Vs. Kaduna State Water Board [1999] LPELR-65(SC)*, the Supreme Court, per**Ogwuegbu, JSC**, held as follows:

> ***"It is the law that an aggrieved contractor is entitled to any balance of payment for work done and also for loss of profit on the work he has been prevented from doing."***

In the present case, it is established by evidence that the 1st Defendant unjustifiably terminated the fixed five-year contracts entered into with the Claimant, thereby

denying the Claimant the opportunity to earn the expected profit on the contracts for the periods in question. It cannot be faulted that the claim for loss of profit, in the present case, is an item that flowed directly from the 1st Defendant's breach and it is in contemplation by the parties, particularly by virtue of the provision of **Article 8** of the agreements.

In opposition to this head of claim, the 1st Defendant merely contended that the amount of **₦9,720,000,000.00** claimed as special damages could not be justified in that the contracts specifically provided that fees shall be negotiated annually upon renewal of the contracts and that the contracts were not renewed.

The 1st Defendant clearly misconstrued the intendment of **Article 6.1** of the contract agreements. Each of the eleven (11) contract agreements contained fixed consideration for the five year period which shall be automatically rolled over annually upon the same terms

and covenants; except for the fees which would be negotiated upon renewal. Neither of the parties raised the issue of negotiation of fees; as such it will be presumed that the agreed fixed fees at the commencement of the contracts shall remain the basis for the calculation of the Claimant's loss of expected profits from the total value of the contracts as was done in the present case. I so hold.

In the circumstances, the Court is satisfied that the Claimant is entitled to the claim for loss of expected profits. However, for the fact that the Claimant did not quite adduce cogent evidence of the purported industry practice fixing expected profit with respect to the kinds of contracts in context in the instant case at**30%** of the contract costs; the Court shall be minded to grant **15%** of the sum of **₦8,100,000,000.00,** beingthe total value of the eleven (11) contracts *per annum*, for the remaining unexhausted four years as a fair assessment of the

Claimant's expected profit for the period she was denied of servicing the contracts as a result of the unlawfully terminated contracts. In other words, under this head of claim, the Claimant shall be entitled to half (or 50%) of the amount of the sum of **₦9,720,000,000.00** claimed in that regard.

Finally, the Claimant claimed interest on the total judgment-debt at the rate of **10%** per annum from the date of judgment until the same is finally liquidated. The provisions of **Order 39 Rule 7** of the **Rules** of this Court gives the Court the latitude to order interest to be paid on a liquidated judgment debt at a rate not higher than **10%** per annum, even where the party entitled thereto has not specifically asked for it. See *StabiliniVisioni Limited Vs. Metalum Limited [2008] 9 NWLR (Pt. 1092) 416; G. K. F. Investment Nigeria Limited Vs. NITEL Plc [2006] ALL FWLR (Pt. 299) 1402.*As such, I am equally satisfied that this is an appropriate case to grant the

Claimant's claim for post-judgment interest at a rate that shall be set out presently.

On the basis of the foregoing analysis therefore, I hereby resolve issue two, as set out, in favour of the Claimant.

In the final analysis the Claimant's claim hereby substantially succeeds and for avoidance of doubts and abundance of clarity, I hereby enter judgment in favour of the Claimant against the 1st Defendant upon terms set out as follows:

1. ***It is hereby declared that the unilateral termination of the eleven (11) contracts all dated 7th July, 2014, executed between the 1st Defendant and the Claimant by the 1st Defendant vide letters of termination all dated 4th August 2015 is wrongful and unlawful.***

2. *The 1st Defendant is hereby ordered to pay to the Claimant forthwith, the sum of ₦5,400,000,000.00 (Five Billion and Four Hundred Million Naira) only being the outstanding debt owed by the 1st Defendant to the Claimant on the said contracts for the period of execution, from January to August, 2015.*

3. *The 1st Defendant is hereby further ordered to pay to the Claimant the sum of ₦2,268,000,000.00 (Two Billion Two Hundred and Sixty Eight Million Naira) only being simple interest calculated at the commercial rate of 14% per annum on the said outstanding debt stated in (2) above from the 1st of October 2015 to 30th September 2018.*

4. *The 1st Defendant is hereby further ordered to pay to the Claimant the sum representing 15% of the total contract value for four (4) years, (being 50% of the sum of ₦9,720,000,000.00 (Nine Billion, Seven*

Hundred and Twenty Million Naira Only originally claimed)),for loss of expected profits on the value of all the eleven (11) contractsfor the unexhausted 4 years period.

5. ***The 1st Defendant shall pay to the Claimant interest on the liquidated judgment sums at the rate of 5% per annum from the date of this judgment until the same is finally liquidated.***

6. ***I award costs of the Claimant's action, in the sum of ₦2,000,000.00 (Two Million Naira) only, in favour of the Claimant against the 1st Defendant.***

ISSUE TWO:

Issue two is to determine the *Counter-Claim* of the Defendants by which the 1st Defendant alleged breach of contract against the Claimant. I hereby adopt the findings I had made with respect to the state of the evidence on record in the foregoing to hold that the

Defendants have failed to establish breach of any of the obligations of the contracts against the Claimant. What I found is that the Defendants more or less abandoned their defence by failing to tender any of the long list of documents they had proposed to rely on at trial, as attached to their Amended Statement of Defence. I must remark in this regard that the Defendants have put forward a very feeble and weak defence to the case made out by the Claimant in the totality of the circumstances of this case.

Accordingly, I find no merit in the *Counter-Claim* and the same shall be and is hereby dismissed.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
14/07/2022

***Legal representation*:**

OlatunjiSalawu, Esq. (with C. I. A. Ofoegbunam, Esq. &MojisolaAdeyekun, Esq.)– *for the Claimant*

Musa Onimisi Yusuf, Esq. – *for the Defendants*