IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE:- 24TH October, 2022

FCT/HC/ CV/2326/2017

BETWEEN

1. **FLOURTECH ENGINEERS PVT (NIGERIA) LIMITED**
2. **FLOURTECH ENGINEERS PVT LIMITED, INDIA** } **PLAINTIFFS**

AND

1. **FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT.**
2. **HONOURABLE MINISTER, FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT.**
3. **ATTORNEY GENERAL OF THE FEDERATION.**

} **DEFENDANTS**

JUDGMENT

This suit was filed by the Plaintiffs five years ago, precisely on 3rd day of July, 2017 vide a writ of summons. The following reliefs were sought by the Plaintiff:-

1. **A DECLARATION** that the contract dated 26th February 2015 for the procurement and construction of **10 (Ten) Nos. (360,000 Tonnes/annum)** of integrated large scale rice processing plants in Nigeria is valid, subsisting, proper and duly executed between the Plaintiffs and the Defendants and therefore binding on parties described therein.

2. **A DECLARATION**that the Defendants are duty bound and obligated to comply with the relevant clauses of the contract dated 26th February 2015 particularly clause 8 and 9 in regard to opening of letters of Credit in favour of the Plaintiffs for the procurement of all machineries, plants and equipment for the construction of 10 (Ten) **Nos (36,000 Tonnes/annum)** integrated large scales rice processing plants.
3. **AN ORDER**for specific performance of the contract dated 26th February 2015 directing the defendants to forthwith comply with clause 9.3(a) of the said contract mandating the Defendants to establish a letter of credit (LC) in favour of the Plaintiffs from the Plaintiffs' bank on the total sum of **USD 38,007, 568.20** for the procurement of machineries and equipment's as well as release of the sum of **USD 10, 916,604.30** for the civil aspect of the work locally (in line with clause 8.3(ii)) and also handover sites in various states to the plaintiffs for the construction of the Ten (10) Nos (36,000 tonnes per annum) large scale rice processing mills/plants in Nigeria.
4. **AN ORDER**of perpetual injunction restraining the Defendants, their agents, privies, assigns or any one howsoever described from terminating, interfering, frustrating, splitting, disrupting and/or cancelling the due performance or execution of the contract dated 26th February 2015 between Plaintiffs and Defendants.

From the statement of claim, the Plaintiffs case is that in the normal course of their business, the Defendants advertised an invitation for bids in the National Newspaper and their website for the design, engineering, procurement, construction and commission of ten (10) Nos. (36,000 metric tonnes per annum) of

integrated Rice processing Mills in Nigeria and the Defendants after scrutinizing and evaluating the plaintiffs expression of interest by a committee set up for that purpose, awarded the contract to the Plaintiffs at a contract sum of USD 58, 553, 117.00 (Fifty Eight Million, Five Hundred and Fifty Three Thousand, One Hundred and Seventeen Dollars).

It was further agreed between parties that the Defendants shall establish a letter of credit in favour of the Plaintiff, from Plaintiff's acceptable bank as well as pay the Plaintiffs the total sum agreed upon for the cost of charges, clearing, transportation to site of all machineries and equipment monitoring and evaluation as well as training, upon submission of a first set of Bill of lading to the 1st Defendant's banker and the Plaintiff's presentation of an unconditional bank payment guarantee covering the total sum from a commercial bank acceptable to the 1st Defendant.

The Plaintiffs in compliance with its agreement with the Defendant procured an advanced payment guarantee and performance bond from their bankers and took steps in furtherance of their agreement with the Defendants as contained in the contract executed by parties which cost the plaintiffs a whopping sum of N80,000,000.00 (Eighty Million Naira) after which the Plaintiff by their letters of 14th March, 2015 requested for the agreed advance payment of the 15% on the civil aspect of the contract award. The plaintiff also requested for the Defendants to take steps and handover the various site in the affected states as stipulated in the contract to enable the Plaintiffs commence mobilization of resources to the sites. The Defendants however refused to comply with their own side of the obligation for the commencement of the construction of the rice mill as agreed between parties, but rather directed the Plaintiffs

sometimes in November, 2016 to renew the advance payment guarantee and performance bond, which they did. Despite all, the Defendants still failed to take up their responsibility under the contract but rather informed the Plaintiffs of its intention to split the contract with some other Nigerian companies.

The Defendants did not file their statements of defence timeously, and as a result, where foreclosed accordingly.

Hearing commenced on the 10th March, 2022. The matter was fixed for definite hearing on that date. Unfortunately, the Defendants were not in court even after being served with hearing notice, and despite the fact that the 1st and 2nd Defendants Counsel were present in court on the previous date. The court granted leave to the Plaintiffs to proceed with hearing.

On that date, the Plaintiffs through their witness, one Anachuna Henry, tendered the following documents;

a. Plaintiff Expression of Interest dated 27th February, 2014 (Exh.1)
b. Notification of Contract Award letter dated 4th February, 2015, issued by te Defendants to the Plaintiffs' (Ex. 2)
c. Plaintiffs' acceptance of notification of contract award dated the 17th day of January, 2015 and received by the Defendants on the 17th day of February, 2015 (Exh. 3)
d. Contract Agreement dated 26th February 2015 (Exh. 4)
e. Proposed construction plan (Exh. 5)
f. Offer of Advance Payment Guarantee and Performance Bond dated 23rdFebrauary, 2015 (Exh.6)
g. Advance payment guarantee dated 23rd February, 2015 (Exh.7)

h. Request for Advance payment of 15% on the civil aspect of the Contract Award dated 4th March, 2015 (Exh.8).
i. Request for Advance payment dated 4th March, 2015 (Exh.9)
j. Request of Establishment of 100% Letters of Credit dated 4th day of March, 2015 (Exh. 10)
k. Renewal of Advance Payment Guarantee and Bond dated 7th day of November, 2016 (Exh.11)

The documents were admitted in evidence in the absence of objection by the Defendants who failed to appear in court on that date. Hearing was subsequently adjourned thrice, and on each of those occasions, the Defendants where served with hearing notices. Ample opportunity was afforded the Defendants to come to court to cross examine the Plaintiffs sole witness, but they failed to do so. Consequently on 31st day of May, 2022, the defendants were foreclosed from cross examining PW1 in accordance with the provision of Order 32 Rules 3 and 12 of the Rules of this Honourable Court.

The Plaintiffs' Counsel filed their final written address on 15th July,2022, while the 1st and 2nd, as well as the 3rd Defendants filed their final written addresses on 5th September,2022. In response to the Defendants final written addresses, the Plaintiffs through their Counsel filed a reply on points of law to 1st and 2nd Defendants and the 3rd Defendants final written addresses on 13th September,2022.

Parties adopted their final written addresses on the 22nd day of September, 2022.

In their final written address, learned Counsel to the Plaintiffs raised a sole issue for the courts determination:

"Whether from the preponderance of evidence adduced, the Plaintiffs are entitled to judgment in this suit"

Counsel maintained that the Plaintiff in this case have discharged the legal and evidential burden of proof in line with section 133(1) of the Evidence Act, by establishing before this court that the Plaintiffs had a binding contract with the Defendants, but that the Defendants failed to disprove the Plaintiff's evidences by failing to cross examine the Plaintiff's witness, despite being given opportunity to so do. Counsel relying on the decision of the court in ***UNION BANK PLC V. DR. MOSES ABAYOMIOBAJINMI (2022) LPELR*** and other cited cases, argued that failure of the Defendants to file a statement of defence or cross examine the Plaintiff's witness implies the admittance of the Plaintiffs claims and truth of the evidence of the witness, hence, the court is bound to grant judgment in favour of the Plaintiff.

Counsel further argued that all the evidence tendered by the plaintiff clearly established that there was indeed a contract executed by parties, and that the Defendants are in breach of that contract. He referred to the decision of the Court in the case of ***Mascot O. Okoronkwo v. Chima Orji(2019) LPELR - 46515(CA)*** on the effect of a contract agreement, and submitted that the Defendants are bound and cannot be allowed to rescind from a contract which they voluntarily entered. Counsel asked that the Defendants be compelled to specifically perform their own obligations under the contract by paying the agreed required initial funds.

On the part of the 1st and 2nd Defendants, their Counsel raised two issues;

i. *Whether there is an existing contract commenced between the parties in view of Article 24.1 at Exhibit 4 (Agreement dated 26th February, 2015)*
ii. *In the unlikely event that the Court holds that there is a contract commenced between the parties, whether in view of the evidence before the court (Article 13.1 at Exhibit 4), the Plaintiffs are entitled to the relief of specific performance as claimed.*

On issue one, learned Counsel argued that Article 24.1 of the Contract agreement states that the contract shall take effect from the date when a letter of Credit is established in favour of the contractor on the total sum as provided in article 8.3(ii); that the contract between the Plaintiffs and the 1st and 2nd Defendants has not commenced in the absence of any evidence establishing that a letter of Credit has been issued by the 1st and 2nd defendants in favour of the Plaintiffs. Counsel, relying on the decision of the Supreme Court in ***APC V. INEC (2015) 8 NWLR (PT. 1462) 531 AT 567,*** submitted that there is no binding contract between the parties because Exhibit 4 is yet to commence as required by Article 24.1 of the said Exhibit 4.

Counsel further argued that the Plaintiffs cannot rely on the provision of Article 9.3(a) which requires the 1st and 2nd Defendants to issue a Letter of Credit to the Plaintiffs, because Article 24.1 of the contract agreement which provides for the commencement date of the contract agreement supersedes every other provision because it is the provision that gives life to the contract. Counsel urged the court to read Exhibit 4 in whole and not in isolation. ***EFE RESORTS AND SPA LIMITED V. UNITED BANK FOR AFRICA PLC (2018) LPELR – 45310 (CA).***

On issue two, Counsel argued on behalf of the 1st and 2nd Defendants that the Plaintiffs are not entitled to the reliefs sought because by the provisions of Article 13(1) of Exhibit 4, the relief of specific performance cannot be granted. Counsel maintained that by the provision of the said article, the 1st and 2nd Defendants reserves the right to, at any time, terminate the contract between the parties, for any reason whatsoever, and that the only remedy available to the Plaintiffs in line with the said clause is a reasonable amount incurred by the Plaintiff, in which case, the Plaintiff s are not entitled to, as they did not pray for monetary reliefs for expenses reasonably incurred by them.

Counsel argued that the Plaintiffs were served with adequate notice, when the 1st and 2nd Defendants informed them of their intention to split the contract and share between the Plaintiffs and some Nigerian companies.

In their Reply on Points of Law to the 1st and 2nd Respondent's Final Written Address, Counsel to the Plaintiffs insisted that there is a binding contract between the Plaintiffs and the 1st and 2nd Respondent. Counsel referred to Paragraph 3 of Exhibit 2 (offer letter) which stated that upon acceptance of exhibit 2 by the Plaintiffs, same shall constitute the formation of a contract and that the formal contract shall be binding upon executing it.

Counsel further argued that what determines a binding contract, is the existence of all the essential elements of a contract as listed by the Court in the case of ***HON. A.G OF GOMBE STATE V. CHIEF JOE KYARIGADZAMA (2014) LPELR- 23423(CA)***, which are; offer, acceptance, consideration, intention to create legal relationship, and capacity to enter into contract, which he maintained, are present in the instant case.

Counsel submitted that the Plaintiff discharged their obligations under the contract by obtaining aBank guarantee and by issuing performance bonds to the defendants, which were pre-conditions to the 1st and 2nd Defendants issuance of letters of credit in favour of the Plaintiffs. That upon discharging their own obligation, the 1st and 2nd Defendants however failed to discharge their own obligations therein by refusing to issue the letters of credit.

Counsel argued that contrary to the 1st and 2nd Defendants position that they are entitled under Article 13.1 of Exhibit 4, to terminate the contract at any stage, they are not disputing the 1st and 2nd Defendants right to terminate, but are however contesting the right of the Defendants to split the contract between the Plaintiffs and other Contractors, which is against the terms of the contract. In support of their position, Counsel cited the decision of the court in ***KASHAMU V. UBN (2020)15 NWLR PT. 1746,*** where the court held that the law does not allow either the parties or the court to add to or subtract from terms of the contract reached by way of consensus ad idem.

The 3rd Defendant on their part raised a sole issue as to whether or not the Plaintiff has proved his case in this suit against the 3rd Defendant to be entitled to be entitled to the grant of any of the reliefs being sought against the 3rd Defendant.

Counsel argued on behalf of the 3rd Defendant that the declaratory relieves sought against the 3rd Defendant has not been proved as envisaged by sections 131 and 132 of the Evidence Act, 2011. Counsel maintained that the 3rd Defendant has representatives in all ministries, department and agencies, as legal advisers, and that it is just a nominal party in this suit.

It was the submission of Counsel that the Plaintiffs has not said anything to indict or apportion any blame to the 3rd Defendant, hence, the 3rd Defendants decision to rest their case on that of the Plaintiff. Counsel mentioned that the 3rd Defendant is not privy or aware of the said Contract Agreement between the Plaintiffs and the 1st and 2nd Defendants, and therefore the Plaintiffs do not have any cause of action against the 3rd Defendant.

In response, the Plaintiffs in their reply on points of law to the final written address of the 3rd Defendant, maintained that the 3rd Defendant is a proper and necessary party in this suit, as he is bound by the Constitution to defend the federal government or any of its agencies in civil and criminal proceedings. Counsel relied on section 150 of the 1999 Constitution of the Federal Republic of Nigeria and several decided authorities, including the case of *A.G ANAMBRA STATE V. A.G FEDERATION (2007)12 NWLR (PT.1047) @ 4 SC*, where the court held that the Attorney General can be sued as a Defendant in all civil matters in which a claim can properly be made against the Federal Government or any of its authorized agencies. Counsel submitted that the 3rd Defendant ought to be joined in matters, even when he is not directly or remotely involved, as long as the said matter involves the actions and inactions of government or any of its agencies.

Counsel further argued that by failing to file a statement of defence, the 3rd Defendant is deemed to have admitted the facts as contained in the Plaintiffs claim.

Having critically considered the facts, evidences and legal arguments of all the parties in this suit, I believe that two issues can properly aid the court in the final determination of this suit:-

1. *Whether from the totality of evidences tendered by the Plaintiffs, there exists a valid, binding and enforceable contract between the Plaintiffs and the Defendants; and if there is, whether the Plaintiffs are entitled to the reliefs sought.*
2. *Whether the 3rd Defendant is a proper party to this suit.*

In answering issue number 1, I must avert my mind to Exhibit 4, which the 1st and 2nd Defendants relied on in arguing that there exists no binding contract between the Plaintiffs and them. They made several reference to article 24.1 of the said exhibit, and invited the court to read exhibit 4 as a whole. To arrive at a just decision, I have taken the pains to dispassionately read the whole of exhibit 4, with the intention ofnot just identifyingat what point the contract between the parties commenced, but to also understand the spirit and intention of the parties to the contract agreement.

It is not the function of the court to make contracts between the parties. The court's duty is to construe the surrounding circumstances including written or oral statements so as to attest the intention of the parties. ***NWAOLISAH v. NWABUFOH (2011) LPELR-2115(SC)***

Before delving into the contents of the contract agreement, it is important to look at the offer letter, as that is a preliminary stage in a contract formation. For a contract or an agreement to exist, there has to be an offer by one party to another and an acceptance by the person to whom the offer is addressed. An offer, therefore, may be defined as a definite undertaking or promise made by one party with the intention that it shall become binding on the party making it as soon as it is accepted by the

party to whom it is addressed. ***MIKANO INTL LTD V. EHUMADU (2013) LPELR-20282(CA)***

The contract award letter (exhibit 2), is quite revealing as regards the intention of the offeror(i.e., the 1st Defendant), on when a binding contract shall commence between the parties. Paragraph 3 of the said exhibit 2, reads:-

"*You are requested to proceed with the contract on the basis that this notification of award shall constitute the formation of a contract, which shall become binding upon you executing a formal contract agreement with the ministry"*

From the offer letter, it is clear that the 1st and 2nd Defendant intended to be bound by the contractual terms upon execution of the contract by the parties.

While perusing the contract agreement, I found the following clauses instructive and helpful in ascertaining the intention of parties.

Article 9. 2.1 of the Contract agreement states:

"The Employer shall make an advance payment of 15% on the civil aspect of the contract as mobilization fee on the application by the contractor and on the submission of:

a. An unconditional advance payment bank guarantee of 15% from any commercial bank acceptable to the employer; and
b. 10% acceptable Bank Bond Guaranteeing performance of the plants by the contractor."

Article 9.3 further states:

"The Employer shall:

a. Establish a letter of Credit (LC) in favour of the contractor from the contractor's acceptable Bank on the total sum as provided in article 8.3(ii) for the procurement of all machineries, plant and equipment's to be imported for the plants.
b. Pay to the contractor the total sum as provided in article 8.3(iii) for local component and project administration which comprises the cost of charges, clearing, transportation to site of all machineries and equipment monitoring and evaluation as well as training upon fulfillment of the following condition:-

i. Submission of the first set of bill of lading to the Employer's Banker; and
ii. Presentation to the Employer, an unconditional Bank payment Guarantee covering that total sum from a commercial Bank acceptable to the Employer"

The aforementioned clauses are what the Plaintiffs seeks to enforce. Those clauses on the face of it, clearly defines the obligations of both parties. It reveals beyond every iota of doubt, what the parties agreed as conditions for the fulfilment of each other's obligation.

The Plaintiffs were required under the contract agreement, to submit an unconditional Bank Payment Guarantee and first set of bill of lading to the Employer's Banker; upon doing so, the Employer (i.e., the Defendants),"**Shall"** establish a Letter of Credit (LC) in favour of the contractor (The Plaintiffs)

What are the effects of these conditions?

Once there is a condition that needs to be satisfied before an agreement will come into force, the general position of the law is

that such a condition becomes condition precedent. The non-existence of the condition will be an obstacle to the enforcement of the agreement and will prevent anyone from getting any benefit from the agreement. Condition precedent has been defined as one which delays the vesting of a right until the happening of an event. **See *NIGERCARE DEVELOPMENT CO., LTD VS ADAMAWA STATE WATER BOARD &ORS (2008) 2-3 S.C (PT. II) 202.***

The implication of a condition precedent is that none of the parties can benefit from the agreement or claim any right therein without the fulfillment of the condition precedent. In this regard, the Supreme Court case of ***TSOKWA OIL MARKETING CO (NIG.) LTD VS BANK OF THE NORTH LTD (2002) 11 NWLR LTD (PT. 777) 163*** is instructive. The apex Court held thus: **"It is trite law that once a condition precedent is incorporated into an agreement, that condition precedent must be fulfilled before the effect can flow."**

The question that begs for answer at this stage is: Have they Plaintiffs sufficiently proved that they fulfilled the conditions stipulated in clause 9.2.1 and 9.3 of the Contract Agreement?

The Plaintiff's through their statement of claim and documentary evidence, particularly exhibit 1, (which contained the bill of quantity), exhibits 6 and exhibit 7, established that they fulfilled the conditions for obtaining a letter of credit from the 1st and 2nd Defendants in line with Article 9.2.1 and 9.3 of the Contract Agreement.

They 1st and 2nd Defendants did not lead any evidence to contradict these claim, and they never denied that the Plaintiffs met the conditions required of them. Rather than disputing the

Plaintiffs claims by filing a defence, they sought to rely on Article 24.1 of the Agreement which states as follows:

"This Contract shall take effect from the date when a letter of credit (LC) is established in favour of the Contractor on the total sum as provided in article 8.3(ii)"

What exactly is the effect of this clause on the entire agreement? Does it affect the right of the Plaintiffs to ask for the performance of the 1st and 2nd Defendants obligations under Clause 9.2.1 and 9.3?

The law is settled that in order to identify the terms and real intention of the parties to a contract, all the documents relevant to the consummation of the contract must be read and construed together. See ***OBAIKE V BENUE CEMENT CO. PLC [1997] 10 NWLR (PT 525) 435 AT 447, PARAS C – D.***

Where document(s) form part of a transaction, such as in the instant case, they should not be interpreted in isolation but in the context of the totality of the transaction in order to fully appreciate their legal import and purport and impact. That is the only way to find out for the purpose of determining the real intention of the parties. A restrictive or narrow interpretation that does not take cognizance of the total package of the transaction in which the documents are integral cannot meet the justice of the case. See ***R.E.A.N. LTD. V. ASWANI TEXTILE IND. (1991) 2NWLR (PT. 176) 639@669 PARA D - E.; UNITED BANK FOR AFRICA PLC V. NEW TARZAN MOTORS LTD. (2016) LPELR - 41019 (CA)***

Having carefully considered the offer letter (exhibit 2), and having critically read through the contract agreement (exhibit 4), and other correspondences between the parties, it will be

unconscionable, abhorrent and inequitable to hold that Article 24.1 of the Contract agreement has rendered the clear terms of the contract unenforceable. I so hold!

Exhibit 4 (the contract agreement) is very clear on the rights and obligations of the parties under the contract agreement. The effect of this, is that where a party has performed his obligation in line with the contract agreement, he has a right to seek the performance of the other party's obligation, and nothing should constitute a clog on the exercise of this right, because **"Ubi Jus Ibi Remedium"**, where there is a right, there is a remedy.

In ***OMEGA BANK NIGERIA PLC V. O. B. C. LTD (2005) LPELR-2636(SC*)**, the Supreme Court held inter alia that the Courts will seek to construe any documents fairly and broadly without being too astute or subtle in finding defects, so that after due consideration of all the circumstances, and if satisfied that there was ascertainable and determinate intention to contract, the Courts will strive to give effect to the contract, looking at the intent and not the mere form.

Interpreting Article 24 in the light in which the 1st and 2nd Defendants wants the court to do, will contradict the discernible intention of the parties to the said contract.

The implication of Article 24 can be likened to a situation where a trader agrees to sell a product to a customer, if the customer pays for the product, while at the same time saying that there is no agreement between them, until he hands over the product to the customer. That sounds unreasonable, and does not make any sense, whatsoever. A contract comes into existence and becomes binding immediately there is an offer, and an acceptance; and also once there is a performance by either of the

parties. A contract cannot blow hot and cold at the same time! A contract cannot command the performance of an obligation by a party, without vesting a corollary right to enforce such performance on the other party.

I therefore hold that there exist a valid and enforceable contract between the Plaintiffs and the 1st and 2nd Defendants, which the 1st and 2nd are in clear breach of. The Plaintiff's having fulfilled the conditions stipulated in Articles 9.2.1 and Articles 9.3 of the contract agreement (exhibit 4), the 1st and 2nd Defendants are bound to perform their own obligation thereunder.

The Plaintiffs are entitled to seek for the relief of specific performance. To succeed in an action for specific performance, a Claimant isto plead and prove by credible evidence that he has performed all conditions precedent to the performance of the contract or that he is ready and willing to perform all the terms which he ought to have performed. See ***EZENWA V. OKO (2008) NWLR (PT.1075) 610*****.** It is my opinion, that the plaintiffs in this case have performed all the conditions expected of them and are therefore entitled to seek for specific performance of the obligations of the 1st and 2nd Defendant under Articles 9.2.1 and 9.3 of the Contract Agreement.

Now, the 1st and 2nd Defendants also argued that by virtue of Article 13.1 of the Contract Agreement, they reserved the right to, at any time, terminate the contract between the parties, for any reason whatsoever.

I agree with learned Counsel to the Plaintiffs that what is before the court is not a question of whether the 1st and 2nd Respondent has a right to terminate the contract. Rather, the issue before the court is whether they have a right under the contract agreement

to propose to further split the contract already awarded to the Plaintiffs to other contractors. Moreover, the 1st and 2nd Defendants did not terminate the contract.

It is settled law that a trial Court being a stranger to an agreement entered into by parties to it, should not add or import any provision into it. **See: *NIMANTEKS ASSOCIATES VS. MARCO CONSTRUCTION CO. LTD (1991) 2 NWLR (PT 174) 411; OYENEYIN VS. AKINKUGBE (2001) 7 NWLR (PT 693) 40 at 57.***

In the contract agreement between the plaintiffs and the 1st and 2nd Defendants, there is no provision expressly or impliedly vesting a right on the 1st and 2nd Defendants to split the contract already awarded to the Plaintiffs to other contractors, I so hold!

Any attempt to arbitrarily split the already awarded contract to other contractors, without the consent of the Plaintiffs, will amount to acting ultra vires the power of the 1st and 2nd Defendants under the contract agreement.

Now, moving to issue 2, the 3rd Defendant argued that he is not a necessary party to the case and no cause of action is disclosed against him.

It has been firmly decided in many decided cases that the Federal Attorney-General is the Chief Law Officer of the Federation. He is competent to be sued in any suit against the Federal Government or any of its agencies.

The Supreme Court Per KALGO, J.S.C held in ***A.G KANO V. A.G FEDERATION (2007) LPELR- 618 AT 28 (B-G)*** *T*hat: "It is not in dispute that the Attorney-General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be made against the Federal Government or any of its

authorized agencies, arising from any act or omission complained of."

The question that comes to my mind at this juncture are:-i. Is the 1st and 2nd Defendants not part of the Federal Government, by virtue of being its agency? or; ii. Can its interest be different from that of the Federal Government?

My answers to the above questions are that the 1st and 2nd Defendants are agencies of the Federal Government and as a result it is a part of the Federal Government. And its interest cannot be different from that of the Federal Government. There is also no interest which the 1st and 2nd Defendants can advocate in this matter which the Attorney General cannot argue and protect.

For the issues in this case to be effectively, effectually and completely determined and for the Attorney - General as the Chief Law Officer of the Federation to be bound by judgment of this Court, he is a necessary party to the suit. See ***UWAZURUIKE & ORS V. THE ATTORNEY - GENERAL OF THE FEDERATION (2013) LPELR - 20392 (SC) AT 24 (F-G).***

The 3rd Defendants argument becomes even more futile and untenable in view of a fundamental principle on non-joinder or misjoinder, which state "No proceeding shall be defeated by reason of misjoinder or non-joinder of parties, and a Judge may deal with the matter in controversy so far as regards the right and interest of the parties."

In view of the foregoing, it is my view that the Attorney General is a proper party to be proceeded against in an action against the Federal Government and all or any of its agencies. By implication, the Federal Government and its agencies have their interests

adequately represented by the Attorney General of the Federation being the Chief Law Officer of the Federation and Minister of Government of the Federation whose office was created by Section 150 of the Constitution of the Federal Republic of Nigeria 1999.

Having resolved the two issues raised in favour of the Plaintiffs, judgement is entered for the Plaintiffs as follows:-

1. **IT IS HEREBY DECLARED**that the contract dated 26th February 2015 for the procurement and construction of **10 (Ten) Nos. (360,000 Tonnes/annum)** of integrated large scale rice processing plants in Nigeria is valid, subsisting, proper and duly executed between the Plaintiffs and the Defendants and therefore binding on parties described therein.
2. **IT IS HEREBY DECLARED** that the Defendants are duty bound and obligated to comply with the relevant clauses of the contract dated 26th February 2015 particularly clause 8 and 9 in regard to opening of letters of Credit in favour of the Plaintiffs for the procurement of all machineries, plants and equipment for the construction of 10 (Ten) **Nos (36,000 Tonnes/annum)** integrated large scales rice processing plants.
3. **AN ORDER** for specific performance is hereby made, directing the Defendants to forthwith comply with clause 9.3(a) of the contract dated 26th February 2015mandating the Defendants to establish a letter of credit (LC) in favour of the Plaintiffs from the Plaintiffs' bank on the total sum of **USD 38,007, 568.20** for the procurement of machineries and equipment's as well as release of the sum of **USD 10, 916,604.30** for the civil aspect of the work locally (in line with clause 8.3(ii)) and also handover sites in various states to the plaintiffs for the

construction of the Ten (10) Nos (36,000 tonnes per annum) large scale rice processing mills/plants in Nigeria.

4. **AN ORDER** of perpetual injunction is hereby made, restraining the Defendants, their agents, privies, assigns or any one howsoever described from interfering, frustrating, splitting, disrupting and/or cancelling the due performance or execution of the contract dated 26th February 2015 between Plaintiffs and Defendants, other than in accordance with the terms of the contract.

I must state what constitutes justice. Justice is much more than a game of hide and seek. It is an attempt on human imperfections not withstanding to discover the truth, justice will never decree anything in favour of a slippery party.

Thus, a party will not be allowed to take one stance in his pleadings, then turn summersault during the trial see ***BOYE VS ADEYEYE . Also cited in (2012) NWLR P. 357.*** I have in this judgment substantially considered the issue raised by the two Defendants in their respectful written address with special emphases to the Clause referred to by the same in their final written address. The Supreme Court in O.***O LAYEDE VS PANALPINE WORLD TRANSPORT NIG. LIMITED (1996) 6 NWLR (pt 456) 544*** held that where parties enter into a contract they are bound by the terms of the contract and that it will be unfair to read into such a contract the terms on which there was no agreement. It is inequitable and unconscionable for a Defendant to blow hot and cold in the circumstances of the entire agreement that binds both the Claimants and the Defendants in this case.

I have thoroughly and entirely gone through the final written address filed by the Claimants and the Defendant in this matter.

However the cardinal object of any trial is adherence to the principle of substantial justice in matter of adjudication that is properly brought before a Court of law like in the case.

The Defendant have failed to honour the agreement duly executed the attempt to spilt the contract was not at all part of the term of the contract. Although the Court has no power to draw the term of agreement for the parties. Similarly the Court has no power to vary altered or modified the term of any agreement entered by the parties in any given transaction. Nevertheless the Court has also the duty to interpret the content of the agreement so as to ensure that justice is done to all parties to the contract. Full opportunity should be given to parties in the interest of justice without due regards to technicalities.

Gone are the days when Courts of law were only concerned with doing technical and abstract justice based on arid legalism. These are the days when Courts of law do substantial justice in the light of the prevailing circumstances of a case. The days of the Courts doing technical justice should not surface again. See ***ABUBAKAR VS YAR ADUA (2008) 4 NWLRL (PT 1078) 455*** the above judicial authorities and other authorities cited above make me to enter judgment in favour of the Claimants against the Defendants as can be seen above.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

O.O. Kachiri Mrs:- For the Claimant.

Abdel :- Assistant Chief state Counsel appearing with wale Kambi (PSC) for the 1st and 2nd Defendant.

A.O Akinde:- For the 3rd Defendant