

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON TUESDAY, THE 15<sup>th</sup> DAY OF NOVEMBER, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE A. H. MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/2071/2022**

**BETWEEN**

**1. ABUJA MUNICIPAL AREA COUNCIL  
2. ODOA NIGERIA LIMITED**

**CLAIMANTS**

**AND**

**KIN WORLDWIDE NIGERIA LIMITED**

**DEFENDANTS**

**JUDGMENT**

By way of an Originating Summons dated and filed 17<sup>th</sup> of June 2022, the Claimants instituted this action seeking the determination of the following questions:-

1. Whether upon the community construction of section 7(5) and (6), 303, 318 of the Constitution of the Federal Republic of Nigeria 1999 as amended and section 13 of the Federal Capital Territory Act 2006, the 1<sup>st</sup> Claimant is a separate tier or level of government and has legal capacity to appoint its own contractors or agents in the smooth administration of its area council affairs?
2. If the answer to question No.1 above is in the affirmative, whether having regard to section 11(1)(b) and c) of the Interpretation Act CAP 123, Laws of the Federation of Nigeria, 2004 and the removal

or termination of appointment/contract of the Defendant by the 1<sup>st</sup> Claimant *vide* Exhibits C, D and E, it is lawful for the Defendant to continue to carry out the said contract after termination of same and parade itself as the agents of the 1<sup>st</sup> Claimant to the Claimants' detriment and prejudice?

If the answer to the questions above are in favor of and support the case of the 1<sup>st</sup> Claimant, the Claimants seek the following reliefs:

- a) A Declaration that the 1<sup>st</sup> Claimant is a separate tier or level of government and entitled to appoint its own contractors or agents in the smooth administration of its council affairs.
- b) A Declaration that having regard to section 11(1)(b) &(c) of the Interpretation Act CAP 123 Laws of the Federation of Nigeria 2004 and the removal or termination of appointment/contract of the Defendant to continue to carry out the said contract after termination of same and parade itself as the agent of the 1<sup>st</sup> Claimant to the Claimants' detriment and prejudice.
- c) An Order of perpetual injunction restraining the Defendant either by itself or through its agents, staff, cronies, privies or by whatsoever name called, from continuing to carry out the said contract after termination of same or parade itself as agents of the 1<sup>st</sup> Claimant to the Claimants' detriment and prejudice.
- d) An Order of mandatory injunction directing the Defendant to cease its unlawful acts, interference or discharge of any such purported contract forthwith and render a detailed account of whatever money it has so far collected from the 29<sup>th</sup> December, 2021 till the date of judgement in the case or compliance with the judgement.

e) And any other Order(s) as the Honorable Court may deem fit to make in the circumstances of this case.

The Originating Summons was supported by 17-paragraph affidavit with 7 exhibits marked and attached, and a written address in support of the application.

Briefly, the case of the Claimants as disclosed in the facts deposed to in the affidavit was that, sometime on the 4<sup>th</sup> of March 2021, the 1<sup>st</sup> Claimant engaged the 2<sup>nd</sup> Claimant as its technical partner to aid it and provide expert and logistical assistance and advice on best practice and on plugging leakages in revenue generation of the 1<sup>st</sup> Claimant with respect to annual registration and operation of courier (logistical) motorcycles in Abuja Municipal Area Council. The letter is attached and marked as **Exhibit AMAC 1**. The 2<sup>nd</sup> Claimant accepted the offer to partner with the 1<sup>st</sup> Claimant and to help it tighten revenue leakages and also advice the 1<sup>st</sup> Claimant on best practice revenue generation. The letter of acceptance of this offer dated 10<sup>th</sup> of March 2021 is attached and marked as **Exhibit AMAC 2**.

The deponent further deposed that in the course of carrying out the obligations contained in the offer, the 2<sup>nd</sup> Claimant stumbled on the Defendant and discovered that the Defendant was carrying out acts and activities interfering with the offer earlier given to the 2<sup>nd</sup> Claimant by the 1<sup>st</sup> Claimant. The 2<sup>nd</sup> Claimant accosted the Defendant on its source of authority and the 2<sup>nd</sup> Claimant was given a copy of the letter of authority/engagement dated 4<sup>th</sup> June 2021, issued to the Defendant by the 1<sup>st</sup> Claimant. The said copy of authority/engagement letter is attached as **Exhibit AMAC 3**. It was further deposed that the 2<sup>nd</sup> Claimant reported the matter to the 1<sup>st</sup> Claimant and the 1<sup>st</sup> Claimant

looked into the issue and discovered that the second offer issued on the 4<sup>th</sup> June 2020 ought not to have been given. It therefore promised to rectify the problem.

Furthermore, the deponent averred, on or about the 31<sup>st</sup> of December 2021, the 2<sup>nd</sup> Claimant was informed by the Honorable Chairman that the issue had been resolved and the Defendant had been ordered to stop. It was the averment of the 2<sup>nd</sup> Claimant that the issue would have led to multiplicity, crisis and legal embarrassment, adding that the letter of authority/engagement given to the Defendant was wrong. The deponent further averred that the 1<sup>st</sup> Claimant took steps to rectify the legal anomaly and had equally written a letter terminating the said offer to the Defendant *via* a letter dated 29<sup>th</sup> December 2021. The said letter of termination is hereby marked and attached as **Exhibit AMAC 4**.

He added that the second offer to the Defendant raised a lot of dust in the office of the 1<sup>st</sup> Claimant, which cleared the air with respect to it. He also pointed out that the 1<sup>st</sup> Claimant had responded and notified the general public that the Defendant had formally been terminated upon discovery of same. This information, the deponent swore, was published at page 11 of the Leadership Weekend Newspaper which was shown to the 2<sup>nd</sup> Claimant. The publication is attached to the affidavit as **Exhibit AMAC 5**. It was further deposed that it is wrong and embarrassing that despite terminating the Defendant's offer, the Defendant has continued to work and collect revenue from Abuja residents and motorcycle operators and dispatch riders in the name of the 1<sup>st</sup> Claimant, AMAC, but without any authorization.

The Defendant had resorted to printing fake and unauthorized demand notices in the name of the 1<sup>st</sup> Claimant, AMAC, while superimposing its

own company office address located at Suite A20 ESEM Plaza No 34 Shettima Ali Mongunu Crescent, Utako Abuja with phone number 08039667699, 08035735258, purporting same to have come from the 1<sup>st</sup> Claimant and using it to demand and collect revenue unauthorizedly in the sum of ₦15,000.00 (Fifteen Thousand Naira) and such like amounts for the year 2022. Again, some deployed task force officials and agents had been issuing those fake and unauthorized demand notices. Copies of the demand notices bearing the Defendant's address are attached and marked as **Exhibits AMAC 6A & B**.

That in the same vein, the task force officials and agents of the 1<sup>st</sup> Claimant also retrieved and seized some certificates/permits and receipts being issued by the Defendant to payers of various sums of money in the name of the 1<sup>st</sup> Claimant, AMAC, which bear the Defendant's company office address. The copies of the certificate/permits and receipts are marked and attached as **Exhibits AMAC 7A, B, C, D, E & F**. The deponent further averred that the 1<sup>st</sup> Claimant condemned this act of the Defendant and hence this joint action through the Court process. It is the case of the Claimants that despite the 1<sup>st</sup> Claimant's termination of the Defendant's offer since the 29<sup>th</sup> December 2021, the Defendant is still undermining the 1<sup>st</sup> Claimant and demanding and collecting revenue from the unsuspecting public and innocent people and causing leakages in the revenue line.

In the written address in support of the Originating Summons, learned Counsel formulated two issues for this honorable Court for this Court to determine.

Arguing the first Issue, which is, **“Whether upon a community construction of the Federal Republic of Nigeria 1999 (as amended)**

**and section 13 of the Federal Capital Territory Act 2006, the 1<sup>st</sup> Claimant is a separate tier or level of government and has a legal capacity to appoint its own contractors or agents in the smooth administration of its area council affairs”**, learned Counsel submitted that the law is that local government areas are creations of the Constitution. Counsel relied on section 7(1) of the Constitution of the Federal Republic of Nigeria. It was further contended by Counsel that the Constitution by the foregoing provisions has created local government area as a separate system or tier of government in Nigeria and has even gone ahead to mandate the government of every state to make law to establish headquarters called “Councils” for these local government areas, provide for their structure, composition, finance and functions in furtherance to what the Constitution has already created and laid down.

Counsel further submitted that section 7(5) of the 1999 Constitution of the Federal Republic of Nigeria, has charged the local government with functions and power as a separate entity. Counsel further relied on and cited section 7(6)(a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria. Counsel further argued that, sections 6 and 13 of the Federal Capital Territory Act 2006 provide for the establishment and functions of area councils in the Federal Capital Territory and that in the same vein and in furtherance of the Constitution, section 55 of the FCT Act of 2006 adopts the provisions of the Niger State local Government Law 1976 which further broadens the functions of local government council to include collection of revenue, rates and levies within its area of jurisdiction or competence. He went on to further submit that by virtue of the provisions of section 318 of the Constitution of the Federal Republic of Nigeria provided that “functions” include power and duty. He added

that the same section of the Constitution defines “government” to include the government of the Federation or of any State or of any Local Government Area Council and has, in furtherance to this, listed or defined their areas of jurisdiction, competence or powers as can be seen in Part 1 of the Second Schedule.

Counsel further argued that it is not in contention that the 1<sup>st</sup> Claimant is one of the six area councils in the Federal Capital Territory (FCT). He nsubmitted that it is unarguable that a local government area or an area council is a separate tier or level of government and has legal capacity or power to carry out the functions conferred upon it by the Constitution and can sue and be sued. Learned Counsel relied on the case of ***Access Bank Plc v Agege Local Government & Anor (2016) LPELR-40491 (CA)***. Finally, learned Counsel submitted that the 1<sup>st</sup> Claimant, being a legal entity and a separate tier of government has legal capacity of power to discharge its constitutional duties or functions and to enter into a legal relation which include entering into a contract or awarding a contract and binding itself thereby.

On learned Counsel’s second issue which is: **“If the answer to question one is in the affirmative, whether having regard to section 11(1)(b)&(c) of the Interpretation Act CAP 123, Laws of the Federation of Nigeria 2004 and the removal or termination of appointment/contract of the Defendant by the 1<sup>st</sup> Claimant vide Exhibit C, D and E, it is lawful for the Defendant to continue to carry out the said contract after termination of same and parade itself as the agent of the 1<sup>st</sup> Claimant to the Claimants’ detriment and prejudice.”** learned Counsel referred this Court to all the authorities he cited in support of his argument on Issue One and went on to submit that the 1<sup>st</sup> Claimant has the requisite right as a juristic personality to enter

into or terminate any contract he entered into. He commended **Oke's case** in this regard.

Finally, learned Counsel further referred this Court to paragraphs 10-13(a) – (f) of the affidavit in support of the Originating Summons and contended that the 1<sup>st</sup> Claimant has the capacity to terminate the contract it purportedly entered into with then Defendant. He therefore urged the Court to uphold the termination of the contract and restrain the Defendant from collecting any monies.

The above is an extensive summary of the 2<sup>nd</sup> Claimant's case before me. The Defendant however, did not appear in Court or file any defense, despite being given several opportunities. It seems like these opportunities were ignored by the Defendant. It must also be noted that, while it is the duty of litigants and their Counsel to ensure that processes of Court are served on their adversaries, and the duty of the Court to ensure that this duty is dutifully carried out to the letter, it is not the responsibility of the Court to compel an unwilling litigant to appear in Court or to respond to the claim against them. See the cases of:

***Mekwunye v. Imoukhuede (2019) 13 NWLR (Pt. 1690) 439 SC at 496, paras D-F per Abba Aji, JSC; Ukwuyok v. Ogbula (2019) 15 NWLR (Pt. 1695) 308 SC at 324 – 326, paras H-A, 326, paras C-D, 327, paras B-C SC per Okoro, JSC; Segun Akinsuwa v. The State (2019) 13 NWLR (Pt. 1688) 161 at 195-196, paras H-D.***

Once a party to an action in Court has been served with the Court processes and is aware of the days the matter has been fixed but chooses not to file any process in response or to appear in Court to tell their own side of the story, the action of the Claimant and the evidence



relating thereto will be treated as unchallenged and uncontroverted. It is a settled principle of law that averments in an affidavit that are neither controverted or unchallenged are deemed admitted. The Court must, therefore, act on same as long as it is reasonable, credible, cogent and compelling. That is to say, as far as the affidavit evidence does not appear to be notoriously and patently wrong, the Court is duty-bound to accept same. See the case of, ***Mr Sylvester Chuks Ujoma V Mr Francis Sonola Olafimihan & 1ors (2021) 10 NWLR (pt 1784) CA***, where the Court of Appeal held that;

***“The law requires the court to treat unchallenged and uncontroverted dispositions of facts in an affidavit as duty established and proved where proof, as a matter of law, is required. Where a respondent does not file a counter affidavit to challenge and controvert the depositions in an applicant’s affidavit, he is expressly and by presumption of the law deemed to have admitted to be true and correct all the contends of the depositions of fact contained in the applicant’s affidavit in support of the motion.”***

See also the case of ***Dike v. State (2018) 13 NWLR (Pt 1635) 35***, where it held by the Court that:

***“Where an affidavit filed in support of an application was not denied or countered by way of counter-affidavit, the averments deposed to in such affidavit are deemed admitted and the court is duty-bound to act on them once the facts deposed therein were put before the court...”***

See also, ***NB Plc v. Akperashi, (2019) LPELR-47267 (CA)***, where the Court of Appeal at pages **33 – 35 paras A – F** per Otisi, JCA held that,

***“It is trite law that any fact in an affidavit which is neither challenged nor contradicted is undisputed and is deemed admitted by the adversary and the Court will so hold and act thereon... See also Jim Jaja v. Cop Rivers State & Ors (supra), (2012) LPELR-20621(SC).***

In the case of ***The Honda Place Limited v. Globe Motor Holdings Nigeria Limited (2005) LPELR-3180 (SC)***, Edozie, JSC succinctly stated, at page 33 of the E-Report that:

***“The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may be regarded as duly established.”***

Flowing from the above authorities, this judgement is therefore based on the unchallenged affidavit evidence of the 2<sup>nd</sup> Claimant and the supporting annexures.

Now back to the matter at hand, I return to the Originating Summons of the 2<sup>nd</sup> Claimant along with its supporting processes and exhibits. Therefore, in order to answer the questions raised in the Originating Summons, the Court will adopt with, necessary modifications, the two issues formulated by the 2<sup>nd</sup> Claimant in the determination of this suit. These issues are:

**“(1) whether upon a joint reading of section 7(5) & (6), sections 303 and 318 of the 1999 Constitution of the Federal Republic of Nigeria**

**1999, the 1<sup>st</sup> Claimant is not a juristic personality that has the legal capacity to appoint its agents to run its affairs?**

**(2) Whether by virtue of section 11(1)(b) & (c) of the Interpretation Act CAP 123 and the 1<sup>st</sup> Claimants termination of its appointment of the defendant's contract, the defendant cannot lawfully continue to perform the terms of the terminated appointment?"**

In resolving Issue One, the Court must highlight the facts and evidence placed before it. It is not in dispute that the Constitution of the Federal Republic of Nigeria 1999, has created the local government areas of each state of the Federation and area councils in the Federal Capital territory. Section 7(1) of the constitution states that, and I quote:

**“The system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the government of every state shall subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and function of such council.”**

Section 7(5) and (6) of the Constitution provides as follows and I quote:

**“(5) the functions to be conferred by law upon local government councils shall include those set out in the fourth schedule to this constitution.**

**(6) subject to the provisions of the constitution-**

**(a) the national assembly shall make provisions for the statutory allocation of public revenue to local government councils in the federation; and**

**(b) the house of assembly of a state shall make provisions for statutory allocation of public revenue to local government councils within the state.”**

That the provisions relating to local government areas in the Constitution also apply, *mutatis mutandis* to area council within the federal capital territory Abuja is not in doubt. This can be seen from section 318 of the Constitution, which defines local government area or local government council to include an area council. In the same section 318 of the constitution, area council is defined as **“area council means each of the administrative area within the Federal Capital Territory, Abuja.”**. Similarly, section 303 of the Constitution states that:

**“The federal capital territory, Abuja shall comprise of six area councils and the administrative and political structure thereof shall be as provided by an Act of the National Assembly.”**

It becomes immediately obvious from the above provisions of the constitution that every local government area is a creation of the Constitution, and, therefore, is vested with a legal personality. As such, it has the right to carry out activities that support the development of each of its community. As a constitutional creation, the 1<sup>st</sup> Claimant is a juristic personality that has the legal capacity to carry out all the functions listed in the 4<sup>th</sup> Schedule of the Constitution of the Federal Republic of Nigeria, 1999.

For the sake of immediacy, the main functions and duties of the local government area council include;

- a) The consideration and making of recommendations to a state commission on economic planning or any similar body on –**

- (i) The economic development of the state, particularly in so far as the areas of authority of the council and of the state are affected, and
  - (ii) Proposals made by the said commission or body.
- b) Collection of rates, radio and television licences,
- c) Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm,
- d) Licensing of bicycle, trucks, (other than mechanically propelled trucks) canoes, wheel barrows and carts,
- e) Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences,
- f) Construction and maintenance of roads, streets, streets lightening, drains and other public highways, parks, gardens, open spaces or such public facilities as maybe prescribed from time to time by the house of assembly of a state,
- g) Naming of roads and streets and numbering of houses,
- h) Provisions and maintenance of public conveniences, sewage and refuse disposal,
- i) Registrar of all births, deaths and marriages,
- j) Assessment of privately owned houses or tenement for the purpose of levying such rates as may be prescribed by the house of assembly of state, and
- k) Control and regulation of
  - i. Outdoor advertisement and hoarding,
  - ii. Movement and keeping of pets of all description,
  - iii. Shops and kiosks,
  - iv. Restaurants, bakeries and other places for sale of food to the public,

- v. **Laundries and**
- vi. **Licensing, regulation and control of the sale of liquor**

**The functions of a local government council shall include participation of such council in the Government of a state as respect the following matters;**

- a. **The provisions and maintenance of primary, adult and vocational education,**
- b. **The development of agriculture and natural resources other than the exploitation of minerals,**
- c. **The provision and maintenance of health services and,**
- d. **Such other functions as may be conferred on a local government council by the house of assembly of the state.**

As a juristic person the area council can perform these functions either by itself or through its duly appointed agents.

At this juncture, it is important we spare a moment to appreciate the concept of being a, or having, a juristic personality. A juristic person is a legal entity that has a distinct existence, independent from its members or shareholders. It possesses property in its own name, acquires right, assumes obligations and responsibilities, signs contracts and agreements and can be sued and institute legal proceedings exactly like a natural person. In the case of **The Leader Etim Ekpo Legislative Council v. Akpan & Anor (2021) LPELR-53172 (CA)** at p. 11, paras B-D. where Abiriyi JCA held that, and I quote:

**“a legal person or juristic personality is any subject matter other than a human being to which the law attributes personality. See Nigerian Nurses Association & Anor v. A.G. Federation & Ors (1981) LPELR-20275 (SC). A juristic**

**or legal personality can only be denoted by the enabling law. This can either be the constitution or a statute. See *Abubakar & Ors v. Yar’adua & ors (2008) LPELR-51SC.*”**

See also the case of, ***MTN Nigeria Communications Ltd v Aluko & Anor (2013) LPELR-20473(CA)*** at p 33-34 paras F-B, where the Court of Appeal per Oredola JCA held that and I quote:

**“This law is settled that a person who is made a party to an action either as a plaintiff or a defendant must have a legal personality or if not, it must be a body vested by law with power to sue or be sued. Admittedly, it is a legal fiction that exist only in the eyes of the law. This is due to the fact that a company has no brain, eyes or brain of its own. It acts through human beings/natural persons such as its directors or shareholders in whose actions are invariably binding on it. See *Ladejobi v Odutola Holding Ltd (2002) 3 NWLR (Pt 753) 121.*”**

See also, in this regard, the cases of ***Emco & Partners Ltd & Ors v Dorbeen Nig Ltd & Anor (2017) LPELR-43453 (CA)*** at pg 11-15 paras F-A. and ***Mothercat Nig. Ltd v Regd. Trustees of The Full Gospel Assembly Nig (2013) LPELR-22118(CA)*** at pg 23-24, paras D-B.

I hereby answer the first question posed by the 2<sup>nd</sup> Claimant in the affirmative. Accordingly Issue One is hereby resolved in favor of the 2<sup>nd</sup> Claimant.

Before I move to the second issue, let me comment briefly on this disturbing practice which is gradually becoming a trend among lawyers in their legal draftsmanship whether by virtue of excusable inadvertence or slavish adherence to precedence evinced by copycatism or sheer

indulgence. Legal practitioners cite wrong laws, mix up their parties and muddle up their tenses. In this case, learned Counsel has invited this Court to interpret section 6 and 13 of the federal Capital Territory Act 2006. For a lawyer that has a Master of Laws degree, Counsel to the 2<sup>nd</sup> Claimant ought to exercise a greater degree of meticulousness in his draftsmanship and reference to authority whether constitutional, statutory or judicial. One only wonders why learned Counsel will invite this Court to construe the provisions of sections 6 and 13 of the Federal Capital Territory Act 2006, whereas the said sections have no remoteness of even a tangential value in relation to Issue One formulated by Learned Counsel; not even to talk of enjoying an immediate and proximate relevance to the issue.

Section 6 of the Federal Capital Territory Act 2006 talks about compensation payable in respect of compulsory acquisition of land in the Federal Capital Territory while section 13 of the Act deals with the laws applicable to the Federal Capital Territory. How these two sections relate to the question of juristic personality of area councils remains a mystery to this Court. Though this Court has no business speculating on the particular section of the Act learned counsel had in mind, it would seem, that learned Counsel intended to rely on section 1 of the Federal Capital Territory Act 2006, and the First Schedule thereto, which provides for the establishment of the Federal Capital Territory and the areas which make up the Federal Capital Territory respectively. Counsel should always cite their laws with conscientious exactitude. I will stop here for now.

In resolving Issue Two formulated by this Court, may I observe that there are documents regulating the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Claimants, thereby making the whole issue less contentious. This is so because, as said earlier, the Defendant did not file any process to



challenge and controvert the depositions of the 2<sup>nd</sup> Claimant. The Court is, therefore, bound to act on the principle that there is nothing to be put on the other side of the balance unless the evidence is such of a quality that no reasonable Court or tribunal should have believed. So, when evidence goes one way, the onus of proof is discharged on a minimal proof. See the case of **Alhaji Abdullahi Baba v. Nigerian Civil Aviation Training Center, Zaria (1991) 7 SCNJ 1 Ratio 3.**

Therefore, I believe the evidence of the 2<sup>nd</sup> Claimant is credible and probable. In order to correctly unravel the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Claimant, I must ask the questions: what is a contract and what are its ingredients for it to be enforceable in law? In answering this question, let us go back to our law of contract which states that a contract is a legally binding agreement between two or more persons by which rights are acquired in return for acts or forbearances on the part of the other. It is a bi-lateral affair which requires the *ad idem* of both parties. For a contract to be valid in law, there shall be offer, acceptance, consideration, intention to create a legal relationship and parties must have the required capacity. See the cases of **Best (NIG) Ltd v. B.H (NIG) Ltd (2011) 5 NWLR (Pt 1239) page 95 at 127, Ashaka v. Nwachukwu (2013) LPELR-20272** and the case of **Oriental Bank (Nig) Plc v. Bilante Int'l Ltd (1997) 8 NWLR (Pt 515) page 37.**

The fulcrum of the 2<sup>nd</sup> Claimant's claim from the totality of the evidence led before me is hinged on the fact that, on the 4<sup>th</sup> of March 2021, the 1<sup>st</sup> Claimant engaged the 2<sup>nd</sup> Claimant as its technical partner to aid it and provide expert and logistical assistance and advice on plugging leakages in revenue generation of the 1<sup>st</sup> Claimant with respect to annual registration and operation of courier (logistical) motorcycles in Abuja Municipal Area Council. The letter of such engagement was

attached as **Exhibit AMAC 1**. The 2<sup>nd</sup> Claimant accepted this offer to partner with the 1<sup>st</sup> Claimant, by a letter of acceptance dated 10<sup>th</sup> of March 2021 which is attached as **Exhibit AMAC 2**.

Somehow, the 2<sup>nd</sup> Claimant stumbled on the Defendant carrying out acts and activities contained in the offer which was earlier given to the 2<sup>nd</sup> Claimant by the 1<sup>st</sup> Claimant. The 1<sup>st</sup> Claimant on being informed by the 2<sup>nd</sup> Claimant of the activities of the Defendant, promised to rectify the issue and which it did by terminating an offer which was made to the Defendant, unknown to the 1<sup>st</sup> Claimant, on the 4<sup>th</sup> of June 2021 which is marked as **Exhibit AMAC 3**, months after the 1<sup>st</sup> Claimant had already engaged the services of the 2<sup>nd</sup> Claimant. The termination letter is hereby attached here as **Exhibit AMAC 4** dated the 29<sup>th</sup> of December 2021. Further to this, a newspaper publication was published by the 1<sup>st</sup> Claimant to disengage the Defendant, at page 11 of the Leadership Newspaper, which is marked as **Exhibit AMAC 5**. The Defendant has refused to stop carrying out the acts and activities of the offer made to, and accepted by the 2<sup>nd</sup> Claimant from the 1<sup>st</sup> Claimant, despite the 1<sup>st</sup> Claimant's termination of the Defendant's offer.

From the evidence before me and the annexures attached, which I have thoroughly studied and scrutinized, it is clear that the contract between the 1<sup>st</sup> Claimant and the 2<sup>nd</sup> Claimant came into existence first before the contract of the Defendant. The Defendant's purported contract sums up to be a void contract, as there was nothing to contract between the 1<sup>st</sup> Claimant and the Defendant. It is not legally enforceable starting from the time it was created. This contract cannot be ratified because it was never created, since the subject matter of the contract between the 1<sup>st</sup> Claimant and the Defendant was never in existence. See the case of **Knight, Frank & Rutley (Nig) & Anor v. A.G of Kano State (1990)**

**LPELR-14409 (CA) at pp 18-19 paras C-B**, where the Court of Appeal held that, and I quote;

**“In Halsburys Laws of England, Fourth Edition, volume 9, Paragraph 447, it was held by the learned author that in a case where the initial impossibility to a contract is not known to the parties the contract will as a general rule be void. See Sheikh Bros Ltd v. Ochsner (1957) A.C.”**

See also the case of **I.G.N. (Nig) Ltd & Anor v. Pedmar (Nig) Ltd & Anor (2013) LPELR-41064(CA) at pp 29-36, paras D-A.**

The 1<sup>st</sup> Claimant as a juristic person is desirously of discharging its constitutional mandate efficiently and effectively, which is, to exercise its power as a juristic person capable of entering into a contract by appointing the 2<sup>nd</sup> Claimant as its agent. Due to administrative inadvertence and poor record keeping by the 1<sup>st</sup> Claimant, the 1<sup>st</sup> Claimant subsequently appointed the Defendant as its agent while the appointment of the 2<sup>nd</sup> Claimant was still subsisting.

It is instructive to note the 1<sup>st</sup> Claimant in appointing the Defendant in relation to the same subject matter, which was the subject matter of its earlier appointment of the 2<sup>nd</sup> Claimant, without rescinding or otherwise revoking the earlier appointment of the 2<sup>nd</sup> Claimant renders the subsequent appointment of the Defendant invalid in law, since there was no subject matter in respect of which to contract. By necessary implication, the subsequent contract, purportedly entered into with the Defendant is void in the eye of the law. The Defendant’s willful, persistent, obstinate and continued collection of revenue from the logistic companies even after the 1<sup>st</sup> Claimant, by virtue of **Exhibit AMAC 4**, which is the termination letter to the Defendant, terminated the

purported appointment, further established that the parties were not in consensus *ad idem*. See the case ***Bilante Int'l Ltd v N.D.I.C. (2011) LPELR-781(SC) at pp 7-8 paras F-A***, where the Supreme Court per John Afolabi JSC, held that and I quote:

**"It should be reiterated that in order to establish that parties have formed a contract, there must be evidence of consensus ad idem between them. Then if there is a stipulated mode for acceptance of the offer, the offeree has a duty to comply with same."**

See also in this regard the cases of ***Esenowo v. Sam (2013) LPELR-21130 (CA) at pp 30-30 paras B-D. Usman v. Ibe (2017) LPELR-43303 (CA) at pp 30-31 paras B-D.***

In the case of ***Ogundalu v. Macjobs (2015) LPELR-24458(SC) at pp 44-44 paras C-D***, the Supreme Court held that and I quote;

**"It goes without saying and the law affirms that i.e., where parties to a contract or agreement are not agreeable for ad idem there can be no valid transmission of interest."**

To this end, therefore, I hereby answer the second question posed by the 2<sup>nd</sup> Claimant in the affirmative. Accordingly Issue Two is hereby resolved in favor of the 2<sup>nd</sup> Claimant.

Before I round off this judgement, I must say that I am disappointed in the record keeping process of the 1<sup>st</sup> Claimant. It is inconceivable that the 1<sup>st</sup> Claimant sitting right in the middle of a cosmopolitan capital like the Federal Capital Territory, Abuja could be shoddy with its records, so much so that it did not know that it had already appointed the 2<sup>nd</sup> Claimant as its agent in relation to collection of revenue from logistic

companies before it purported to appoint the Defendant to perform the same task. The confusion arising from this administrative nonchalance, and this present suit, could have been obviated altogether had the 1<sup>st</sup> Claimant being more circumspect and meticulous in its record keeping. Government officials should always have it at the back of their mind that governance and government are a continuum. They should not treat it as disparate and isolated assignment peculiar to each administration, or to the occupier of any particular office at any material time.

Now back to the matter at hand. Having resolved the Issues formulated herein in favour of the Claimants and against the Defendant, I have no hesitation in holding that the suit of the Claimants is meritorious. Accordingly, all the reliefs sought by the Claimant in this suit are hereby granted as follows:-

- 1. THAT the 1<sup>st</sup> Claimant is a juristic person that has juristic personality and is entitled to appoint its own contractors and agents in the smooth administration of its council.**
- 2. THAT it is unlawful for the Defendant to continue to carry out the said contract after termination of same and parade itself as the agent to the 1<sup>st</sup> Claimant to the 1<sup>st</sup> Claimant's detriment and prejudice.**
- 3. AN ORDER OF PERPETUAL INJUNCTION IS HEREBY MADE restraining the Defendant either by itself or through its agent, staff, cronies, privies or by whatsoever name called, from continuing to carry out the said contract after termination of same or parade itself as agents of the 1<sup>st</sup> Claimant to the 1<sup>st</sup> Claimant's detriment and prejudice.**
- 4. AN ORDER OF MANDATORY INJUNCTION IS HEREBY MADE directing the Defendant to cease its unlawful acts,**

**interference or discharge of any such purported contract forthwith and render a detailed account of whatever money it has so far collected from the 29<sup>th</sup> of December 2021 till date in compliance with the judgement.**

This is the Judgment of this Court delivered today, the 15<sup>th</sup> day of November, 2022.

**HON. JUSTICE A. H. MUSA  
JUDGE  
15/11/2022**

**APPEARANCES:**

**For the Claimants:**

**S. C. Uchendu, LL.M Esq.**

**For the Defendant:**

**No legal representation.**