

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 23

CASE NUMBER: SUIT NO. FCT/HC/CV/2298/2017

DATE: 26TH FEBRUARY, 2024

BETWEEN:

- 1. ULTIMATE GAS LIMITED**
- 2. GAS PROJECT LIMITED**



CLAIMANTS

AND

MEDALIST OIL & GAS LIMITED..... DEFENDANT

APPEARANCE:

Adebayo OlogeEsq with OreoluwaAdelakunEsqfor the Claimant.
B. G. HarunaEsq for the Defendant.

JUDGMENT

This matter was institutedvia Writ Summons with Suit No. FCT/HC/CV/2298/2017, dated 2nd June, 2017 and filed on 28th June 2017, wherein Claimants prayed the Court for the following reliefs:-

- a) A DECLARATION that notwithstanding the Assignment of Contract dated 16th September, 2015 between the Defendant and the 1st Claimant, the 2nd FOB sale Contract between the 1st Claimant and Petredec and all other Assignment contracts/documents in like, manner, by virtue of the Memorandum of Agreement between the

Defendant and the 1st Claimant, the Defendant remains the true contracting party/beneficiary of the NNPC Contract as well as the sale Contract with Petredec.

- b) A DECLARATION that since the Defendant merely nominated the 1st Claimant to Pedredec as its (Defendant's) replacement for the purpose of using the 1st Claimant's credit line for the NNPC Contract, and the Defendant having taken the substantial benefit/profit of the NNPC Contract whereupon the 1st Claimant was paid only a commission for releasing its credit line; the Defendant cannot avoid liabilities under the same Contract including settlement of demurrage Claims made by Petredec.
- c) A DECLARATION that it is unconscionable, inequitable, unjust, and most unfair for the Defendant to have derived benefit/profit from the NNPC Contract and from its Contract/business relationship with Petredec and the 1st Claimant and then turn around to seek to avoid liabilities resulting from the same Contract/business relationships.
- d) A DECLARATION that the Defendant's wilful and deliberate disregard of the English suit and/or Petredec's demurrage Claims, is a breach of the Contract between the Defendant and the 1st Claimant.
- e) AN ORDER of this Honourable Court directing the Defendant to pay/refund to the 1st Claimant forthwith.
 - i. The Sum of £11,500 (Eleven Thousand, Five Hundred Pounds) being the Cost of instructing the English Solicitor to enter appearance and file an objection on behalf of the 1st Claimant in the English Suit; and
 - ii. The sum of \$250,000 (Two Hundred and Fifty Thousand Dollars) being the settlement sum paid by the 1st Claimant to Pedredec pursuant to the settlement Agreement in the English Suit.
- f) Interest on the above stated sums at the rate of 10% per annum from the date Judgment is delivered in this suit until the total sum is fully paid by the Defendant to the 1st Claimant.
- g) GENERAL DAMAGES in the sum ₦10,000,000 (Ten Million Naira) for the Defendant's breach of good faith obligations under its Contract with the 1st Claimant.
- h) COSTS in the sum of ₦10,000,000 (Ten Million Naira) for instituting and maintaining this suit.

Also filed in support is a 37 paragraph witness statement on Oath deposed to by one Alhaji Auwalu Ilu, the Chief Executive Officer of the 1st Claimant dated 28th June, 2017 as well as a list of witnesses to be called upon during trial.

On the 21st of January, 2021 examination in-chief of CW1 was conducted and the following documents were admitted in evidence and marked as follows:-

- (1) An Assignment of Contract made on the 16th day of September 2015, was admitted and marked Exhibit "A'.
- (2) A Claim form issued in the High Court of Justice Queens Bench Division Commercial Court, Royal Court of Justice dated 12 September, 2016 was admitted and marked Exhibit "B'.
- (3) Particulars of Claim issued in the High Court of Justice, Queen's Bench Division, Commercial Court was admitted and marked Exhibit 'C'.
- (4) A letter addressed to the managing Director of Medalist Oil and Gas Limited, signed by Adeola Owoade for Sefton Fross was Admitted and marked Exhibit 'D'.
- (5) Photocopy of a letter issued by the Nigerian National Petroleum Corporation on Offer of OSO Natural Gas Liquids (NGL) for export contract, addressed to the Managing Director of Medalist Oil and Gas Ltd dated 27th January, 2015 was admitted and marked Exhibit 'E'.
- (6) Photocopy of a Memorandum of Agreement between Medalist Oil and Gas Ltd and Ultimate Gas Limited made on the 15th of September, 2015 was admitted and marked Exhibit 'E1'
- (7) A photocopy of an irrevocable payment instruction written by Auwalu A. Ilu Chairman/CEO Ultimate Gas Limited addressed to the Managing Director United Bank for Africa Plc dated September, 16th 2015 was admitted and Marked Exhibit 'E2'.
- (8) A photocopy of an irrevocable payment instruction addressed to the Managing Director United Bank for Africa dated 16th September,

- 2015 signed by one Chukwudi Egboh- Managing Director Medalist Oil and Gas was admitted and marked Exhibit 'E3'.
- (9) A photocopy of a letter dated 17th September, 2015, addressed to the Petredec Limited written and signed by Chukwudi Egboh CEO Medalist Oil & Gas was admitted and marked Exhibit 'E4'
 - (10) A photocopy of an Assignment of Contract proceeds made on 10th of September, 2015 between Ultimate Gas Ltd and United Bank for Africa Plc was admitted and marked Exhibit 'E5'.
 - (11) A Photocopy of a Memorandum accompanying goods pledged was admitted and marked Exhibit 'E6'
 - (12) A series of Emails dated 18th September, 2015 was admitted and marked Exhibit 'F'
 - (13) A series of Emails dated 22nd September, 2015 was admitted and marked Exhibit 'F1'.
 - (14) A series of Emails dated 23rd September, 2015 was admitted and marked Exhibit 'F2'.
 - (15) A series of Emails dated 17th November, 2015 was admitted and marked Exhibit 'F3'.
 - (16) A Certificate of compliance pursuant to Section 84 (4) of the evidence Act was admitted and marked Exhibit 'F4'.
 - (17) An invoice issued by Sefton Fross dated 22nd May, 2017 was admitted and marked Exhibit 'F5'.
 - (18) A High Court of Justice Queen's Bench Order dated 13th June, 2017 was admitted and marked Exhibit 'G'.
 - (19) A copy of a Tomlin Order of High Court of Justice Queen's Bench Division, dated 12th November, 2019 was admitted and marked Exhibit 'G1'.
 - (20) A copy of a consent order of High Court of Justice Commercial Court Queens Bench Division, dated 29th of November, 2019 was admitted and marked Exhibit 'G2'.

(21) A copy of a settlement agreement made on the 9th day of November, 2019 between PetredecPte limited and Ultimate Gas Ltd was admitted and marked Exhibit 'G3'.

On the 18th of January 2022 trial continued with the Cross-Examination of CW1 and the following Exhibits were admitted in evidence and marked as follows:-

- (1) A letter addressed to the Registrar of this Court by Ultimate Gas Ltd in respect of Notice to produce a document at hearing was admitted and marked Exhibit 'H'.
- (2) A photocopy of a Board Resolution of Ultimate Gas was admitted and marked Exhibit 'H1'. Respectively.

Upon a new turn of events during the pendency of this suit, the Claimants filed an amended statement of Claim dated and filed on the 24th of October, 2022 which reflected the new facts in the case.

The Defendants had equally filed their statement of defence dated 23rd April, 2018 which was supported by a 10 paragraph witness statement on Oath deposed to by one ChukwudiEgboh, the Managing Director of Medalist Oil and Gas limited and a list of witnesses to be called.

Final written addresses of both the Claimants and the Defendant were adopted on the 4th of December, 2023.

In the Defendant's final written address dated 26th January, 2023 and filed on the 27th of January 2023, Counsel to the Defendant formulated two issue for determination thus:-

- "(1) Whether by reason of Section 83(3) of the Evidence Act 2011, Exhibits G1 and G2 is not liable to be expunged or discountenanced in determining this suit.***
- (2) Whether the Claimants have sufficiently made out their case in this suit and in line with the law as to be entitled to the reliefs sought."***

In arguing the first issue, Counsel began by submitting that Exhibits G1 and G2 having been made by the 1st Claimant during the pendency of this suit is caught by Section 83 (3) of the Evidence Act 2011 and therefore is,

inadmissible in evidence. Counsel submitted that even though same has been admitted in evidence, this Honourable Court has the power to expunge or discountenance same in consideration of this Suit. Reliance was placed on the case of **NWAOGU V AFUMA (2013)17 NWLR (PT. 1364) 117.**

Counsel then prayed this Honourable Court to resolve the first issue in their favour.

In arguing the Second issue, Counsel began by stating that the Claimants have not sufficiently proven their case as to be entitled to any of the reliefs sought.

Counsel contended that where Exhibits G1 and G2 which founded the grounds for the entire reliefs sought by the Claimant, particularly reliefs E

F, G and H will be academic to consider the case on the merits. He stated that in light of Exhibits A, F, F1, F2, F3 and F4, there is no disputing the fact that it was the 1st Claimant's FOB Contract sale with Pedtredec Limited that the action in the English Suit was founded upon. He also stated that by the contents, intent and purpose of the said Exhibits A, F, F1, F2, F3 and F4, the Defendant is not a party to 2nd FOB contract sale between the 1st Claimant and Pedtredec Limited and referred to paragraph 24 of the Amended Statement of Claim in support of his position wherein the Claimants admitted that the 2nd FOB sale contract led to demurrage. Counsel then placed reliance on the case of **AKINOLA V. LAFARGE AFRICA PLC (2022) 12 NWLR (PT. 1844) 3 79 at 400 PARAS D – E.**

Counsel stated that the agreements of the parties with respect to the subject matter of this suit was in writing and urged this Honourable Court to restrict itself to the written documents and correspondence before it. He contended that the averments of the Claimants that the 1st Claimant acted for the Defendant in the 2nd FOB contract sale with Petredec Limited particularly at paragraph 13 of the statement of Claim is not supported by evidence or particulars of such assumption in view of documentary evidence to the contrary. On this, reliance was placed on Section 128(1) (a) of the Evidence Act 2011 and the case of **ACCESS BANK PLC V. N. S. I. T. F. (2022) 16 NWLR (PT. 1855) 143 at 173 PARAS A – B.**

In another submission, Counsel stated that the law is that where a party seeks declarative reliefs like in the instant case, he must succeed on the strength of his case and not on the weakness of the defence or no defence at all. He then placed reliance on the case of **TOURIST CO. (NIG) LTD V. NEO-VISTA PROP. LTD (2022) 317 at 376 PARAS B – C.**

Counsel further stated that the Claimants having failed to establish their case are not entitled to any reliefs sought. He stated that the Claimants have by Exhibits H and H1 buried any thought of bringing the Defendant, to a Contract it is not party to. Counsel submitted that the Claimants having admitted in paragraph 31 of the amended statement of Claim to have benefitted from the contract that founded this suit thus cannot pass the liability to the Defendant without an express agreement of the parties to that effect, which is not the case in this suit, as he who asserts must prove. Reference was made to Sections 131, 132 and 133 of the evidence Act, 2011.

Counsel then urged the Honourable Court to resolve the second issue in his favour and dismiss this suit with substantial cost.

In the Claimants' written address dated 12th July 2023 and filed on the 13 of July, 2023 Counsel to the Claimant adopted issue 2 of the Defendant's as final written address as his sole issue for determination thus:-

"Whether the Claimant's have sufficiently made out their case in this suit and in line with the law as to be entitled to the reliefs sought."

However before arguing the issue, Counsel made a preliminary issue to respond to the argument of the Defendant in issue 1 of his final written address which states:-

"Whether by reason of Section 83(3) of the Evidence Act 2011, Exhibits G1 and G2 is not liable to be expunged or discountenance in determining this suit."

In response to the Defendant's argument in the above issue Counsel to the Claimant quoted Section 83(3) of the Evidence Act 2011 and stated that the argument of Counsel for the Defendant on the Exhibits G1 and G2

being inadmissible under Section 83(3) of Evidence Act 2011 is grossly misconceived. He stated that it is not open to debate that the key considerations in the above quoted provision of the evidence Act are with respect to an interested person and when proceedings were pending or anticipated. He stated that this means, for a statement or document to be caught by the above quoted provision of the evidence Act 2011 and rendered inadmissible in evidence, such statement or document must have been made by a party to a litigation or person otherwise interested in that litigation, and at a time when proceedings were pending or anticipated.

Counsel further stated that the meaning of a person interested within the context of Section 83(3) of the Evidence Act 2011 is one who must have a pecuniary or other material interest and is affected by the result of the proceedings and therefore would have a temptation to pervert the truth to serve his personal or private ends. He stated that the interest referred does not mean an interest in the sense of intellectual observation or an interest purely due to sympathy but an interest in the legal sense which imports something to be gained or lost. Reliance was placed on the case of **LADOJA V. AJIMOBİ (2016) 10 NWLR (PT. 1519) 87 at 140 PARAS A – E PER OGUNBIYI J.S.C.**

Moreso, Counsel stated that the interest that is envisaged is a personal interest not merely interest in an official capacity. He stated that where the interest of the maker is purely official or is a servant or employee without a direct interest of a personal nature, the document is not excluded. Reliance was placed on the case of **UTC (NIG) PLC V. LAWAL (2014) 5 NWLR (PT. 1400) 221 at 241 – 242 ARIWOLA J.S.C.**

Consequently, Counsel stated that in the instant suit, although two documents i.e Exhibits G1 and G2 are dated 12th November, 2019 and 29th November, 2019 respectively, it is clear beyond peradventure that the documents are orders made by the High Court of Justice, Queen's Bench Division, Commercial Court in England in respect of the English suit filed by Petredec against the 1st Claimant to recover demurrage Claim. He stated that the existence of the said English suit was disclosed in the initial pleadings filed by the Claimant in this suit. Counsel then made reference to

paragraph 26 of the Claimant's initial statement of Claim dated 22nd June, 2017.

Counsel stated further that although Counsel for the Defendant stated wrongly in paragraph 4:2 page 3 of his final written address that Exhibits G1 and G2 were made by the Claimants it is clear that the documents are orders of the High Court of Justice, Commercial Court, England and are self explanatory. He stated that the Law is that there must be a real likelihood of bias before the person making a statement/document can be said to be a person interested. Reliance was placed on the case of the **UTC (NIG) PLC V. LAWAL (2014) 5 NWLR(P.T. 1400) 221 at 245 PARAGRAPH E – F PER KEKERE – EKUN J. S.C.**

Consequently Counsel stated that there cannot be said to be a real likelihood of bias in relation to how Exhibits G1 and G2 were made. He stated that being a Court of law, the High Court of Justice, Commercial Court in England cannot be said to have a pecuniary or other material interest or in anyway affected by the result of the instant suit. Counsel further stated that it cannot be argued that the High Court of Justice, Commercial Court, England would have a temptation to pervert the truth to serve any personal or private ends or have something to gain or lose in respect of the this suit in relation to Exhibits G1 and G2. He stated that Exhibit G1 and G2 being orders of the High Court of Justice, Commercial Court in England, the documents cannot be said to have been made by a person interest such that would be caught by the provision of Section 83(3) of the Evidence Act, 2011.

Counsel concluded by stating that the two documents were rightly admitted by this Court during trial and that the case of **NWAOGU V. AFUMA (SUPRA)** Cited and relied upon by Counsel to the Defendant is inapplicable and ought be discountenanced by this Honourable Court, and urged this Honourable Court to resolve the Defendant's issue 1 against him.

In arguing the sole issue formulated for determination by the Claimant as adopted from issue 2 of the Defendants final written address, Counsel began by stating the position of the law on standard of proof in civil cases in both statutory and judicial authorities as the preponderance of evidence

and balance of probability. Reliance was placed on the case **INTERDRILL (NIG) LTD & ANOR V. UBA PLC (2017) LPELR – 41907 (SC)**. He stated that for a party to succeed in a Civil Suit such as the instant case, such a party must have placed more evidence than the other before the Court, enough to tilt the imaginary scale of justice in its favour. He also stated that for a Claimant to succeed in a civil action he/she need not convince the Court about the existence of a thing but it suffices where he/she places enough materials before the Court as to render the existence of that thing more probable than its nonexistence. Counsel then placed reliance on the case of **TORTI V UKPABI & ORS (1984) LPELR – 3259 (SC) PER ANIAGOLUJ.S.C.**

On the issue of the Claimant succeeding on the strength of his own case, Counsel to the Claimant stated that the law is now common place that in civil cases, a Claimant must succeed on the strength of his own case and not on the weakness of the case of the Defendant. Counsel placed reliance on the cases of **NNAMDI AZIKIWE UNIVERSTY V. NWAFOR (1999) 1 NWLR (PT. 585) at 140 – 141 PER SALAMI, J.C.A; OYEWOLE V OYEKOLA (1999) 7 NWLR (PT. 612) 560 at 564 PER OLAGUNJU, J.C.A; ABBA V. JUMARE (1999) 5 NWLR (PT. 602) 270 At 278 per Muhammed, J.C.A;** and state the elementary principle, of law is that he who asserts a thing must prove it as the burden of proof in a civil action lies on the Claimant to establish his case in the balance of probability. Further reliance was placed on the case of **AGU V. NNADI (1999) 2 NWLR 12 (PT. 589) 131 at 142.**

In addition, Counsel stated that the burden of proving a particular fact is on the party who seeks to rely on it and who will fail where such evidence is not adduced and that such a party must discharge the onus by proving through evidence which will convince the Court of the probability of his case on the point in issue. Reliance was also placed on the cases of **JALLCO LTD V. OWONIBOYS TECHNICAL SERVICES LTD (1995) 4 NWLR (PT. 391) 534 At 545 – 546 per Muhammed J.S.C and ODIETE V. OKOTIE (1972) 6 SC 83.**

On the issue of sanctity of terms of Contract, Counsel stated that it is well settled that parties in a contract are bound by the terms of their contract

and the Court has a duty to respect the sanctity of the terms of such contract. Reliance was placed on the case of **AMINU ISHOLA INVESTMENT LTD V. AFRI BANK NIG. PLC (2013)LPELR – 20624 (SC)**. He stated that the rationale behind this principle of law is simply that the intention of the parties in a written contract is always to be gathered from the document itself and that the terms of the contract are to be determined by the parties and not by the Court as the Court only construes the words used by parties in the agreement.

On the issue of doctrine of incorporation by reference in construction of documents where from the documents produced by the parties, some other evidence must have been in contemplation of the parties. He stated that in such a case, the documents put forward compel the Court to look beyond and precisely ascertain the other evidence which by necessary implication the parties must have had in their minds at the time of the contract. Reliance was placed on the case of **GOLDEN CONST. CO. LTD V. STATECO (NIG) LTD (2014) 8 NWLR (PT. 1408 171 AND IWUOHA V. N. R. C. (1997) 4 NWLR (PT. 500)419**.

On the issue of contract documents not to be read in isolation, Counsel stated that where a contract consists of a series of documents, the Court has a duty to scrutinize and examine closely all contractual documents admitted as Exhibits to determine whether there exists a contract between the parties and the issue(s) in controversy between them and that the documents must be read together, reliance was placed On the case of **MEKWUNYE V. WAEC (2020) 6 NWLR (PT. 1719) 1 at 38, PARAS D- E PER OKORO J.S.C**.

Moreso, Counsel stated that where documents form part of a long-drawn out transaction, they should be read and interpreted together and not in isolation. Counsel then referred to the case of **FGN V. ZEBRA ENERGY LTD (2002) 3 NWLR (PT. 754) 471 at 492 – 493**.

On the issue of conduct of parties and their true intention in a contract, counsel argued that the conduct of parties to a contract is a guide towards deducing whatever their actual intention is. Counsel then placed reliance on the case of **LANNITEC INTERNATIONAL COMPANY LTD V. SOLEL BONEH NIG. LTD (2017) 10 NWLR (PT. 1572) 66 at 80**.

Counsel further stated that the Court is to expected to construe the surrounding circumstances, including written and oral statements and conduct of the parties so as to effect the true, intention of the parties in a contract. He stated that Courts will seek to uphold bargains made Commercially, wherever possible recognizing that they often record the most important agreement in a crude and summary manner and will seek to construe all documents fairly and broadly without being too astute or subtle in finding defects. Reliance was placed on the case of **OMEGA BANK PLC V. O. B. C (2005) 8 NWLR (PT. 928) 547 SC at 574 TO 575, PARAS H – A; 576 PARAS B – D.**

On the issue of a party who has taken benefit in a contract and should not seek to avoid obligations under the same contract, Counsel stated that the law is now well settled that a party, having taken the benefit in a contract cannot under any guise, seek to avoid its obligations under the same contract voluntarily entered into by it. He stated that such conduct is against public policy. Reliance was placed on the case of **B. B. APUGO & SONS LTD V. ORTHOPAEDIC HOSPITALS MANAGEMENT BOARD (OHMB) (2016) 13 NWLR (PT. 1529) 206 at 239 – 240 PARAS A – F PER KEKERE EKUN J.S.C.**

In addition, Counsel stated that the Court should not allow itself to be used as an instrument of fraud and relied on the case of **ENEKWE V. I.M.B (NIG) LTD (2007) ALL FWLR (PT. 349) 1053 at 1081, PARAS C – D PER OGBUAGU J.S.C.**

On the issue of breach of contract, Counsel stated that it is the law that every contract mutually entered into by parties establishes rights as well as obligations between the parties and that where any of such parties fails, refuses and/or neglects to hold on to its own end of the bargain by discharging its obligation, such a defaulting party will be in breach of contract. Reliance was placed on the case of **AIRLINES V. OTUTUIZU (2011) LPELR – 827 (SC).**

On the issue of Application of the law to the facts of this case, Counsel began by first pointing out the undisputed facts in the matter. Counsel stated that as contained in the Claimant's Amended statement of Claim, it is not in dispute, that the Defendant was awarded the NNPC Contract vide

the offer letters of 27th January, 2015 (Exhibit E) and that the said Exhibit E was the only contract document issued by the NNPC in respect of the Transaction being the subject of this suit and no other contract document was issued to any other party by the NNPC in relation to this transaction. He stated that the Defendant's sole witness DW1 confirmed this under Cross-Examination on 24th February, 2022 and 4th July 2022.

Counsel further stated that it is also not in dispute that upon being awarded the NNPC Contract as in Exhibit E, the Defendant entered into the 1st FOB sale Contract with Petredec. He stated that the Defendant had no sufficient credit line with its Bankers to raise the relevant letter of credit to execute the NNPC Contract and consummate the 1st FOB sale contract with Petredec. Counsel stated that it was at this point that the 2nd Claimant introduced the 1st Claimant's active credit line with UBA Plc would be used to raise a letter of credit to facilitate the execution of the NNPC Contract. He stated that all the of these were confirmed by DW1 during Cross-Examination and further confirmed by DW1 is the fact that this new arrangement was not immediately accepted by Petredec and U.B.A PLC, which therefore led to the cancellation of 1st FOB sale Contract between the Defendant and Petredec. The execution of the various transactions tendered marked Exhibits A, E1, E2, E3, E4, E5, E6 F, F1, F2 and F3, and the proceed of sale of the products involved was distributed among the parties (i.e NNPC, UBA PLC, the Defendant and the 1st Claimant).

Furthermore, Counsel stated that it is equally not in dispute as DW1 under Cross-Examination on 24th February, 2022 and 4th July, 2022 was controverted with Exhibit J and admitted the following:-

- a) That the Total contract sum for the NNPC Contract was \$13,845,180.
- b) That the NNPC was paid \$12,658,368.08 out of the total contract sum.
- c) That UBA PLC deducted its charges from the same total contract sum.
- d) That the Defendant (Medalist) received payment/profit of \$997,386.10 out of the same total contract sum.

e) That the 1st Claimant (Ultimate Gas) received payment/commission of \$4 Per metric ton which came to \$175,920 out of the same total contract sum.

Counsel then stated that as shown in DW1's letter to the NNPC dated 10th October, 2016 (Exhibit J) it is not in dispute that the Defendant was also aware of the Contract between Petredec and the 1st Claimant.

Counsel then went further to point out the disputed facts in this matter. He stated that the point of divergence between the Claimants and the Defendant is as to who between the parties should bear the contractual liabilities accruing from the NNPC contract (including the demurrage Claim by Petredec).

Counsel stated that the Defendant Claims that having already assigned its rights, duties and liabilities under the NNPC contract to the 1st Claimant in an Assignment of Contract (Exhibit A), the Defendant cannot in the circumstances be held responsible for the said demurrage Claim.

Counsel then stated on the contrary, the Claimant argues that despite the execution of the Assignment of contract (Exhibit A) between the Defendant and the 1st Claimant, the Defendant remained the true contracting party and beneficiary of the NNPC Contract who in fact took the substantial benefit/profit in the sum of \$ 997,386.10 liabilities from the contract (including the demurrage Claim).

On the inapplicability of the extrinsic evidence Rule in this case, counsel stated that the Defendant made heavy weather on the Assignment of contract having assigned all the defendant's Rights, duties and liabilities under the NNPC contract to the 1st Claimant pursuant to Exhibit A, cannot in the circumstances be held responsible for the liabilities arising from the same contract including the demurrage claim by Peteredec. He stated that the Defendant having relied on the provisions of Section 128 of the evidence Act 2011 and the cases of **AKINLOLA V. LAFARGE AFRICA PLC and ACCESS BANK PLC V. NSITF** to the effect that where parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary subtract from, or contradict the terms of the written instrument.

Counsel responded to the above argument of the Defendant by stating that the Claimants concede to the correct restatement of the above legal principle regarding extrinsic evidence, they however part ways with the Defendant on the Application of the legal principle to the fact of the instant case.

He stated that firstly, the rule of extrinsic evidence is not applicable in the instant case because the parties (the Claimants and the Defendant) made and executed several contractual transaction documents in respect of the NNPC Contract, the subject matter of this suit. He stated that the Defendant has given the impression that the NNPC contract and the transaction between the Claimants and the Defendant revolve around only the assignment of the contract (Exhibit A).

Furthermore, Counsel stated that contrary to such impression and as demonstrated in paragraphs 7.16 and 7.17 above, it is not in dispute that soon after the Defendant discovered it had no sufficient credit line with its bankers to raise the relevant letter of credit to execute the NNPC Contract and consummate the 1st FOB sale Contract with Petredec, the 1st Claimant was invited to use its credit line with UBA PLC to facilitate the execution of the contract and that this development brought about the cancellation of the 1st FOB sale contract and the eventual making execution of some other transaction documents which include, Exhibits A, E1, E2, E3, E4, E5, E6, F, F1, F2, AND F3.

Moreso, Counsel stated that when PW1 was asked whether the agreement of Assignment he entered with Medalist was to take over the entirety of the contract, liabilities duties and rights, he answered in the negative. Counsel further stated that when PW1 was asked questions regarding the content of the Board resolution of 14th September, 2015 (Exhibit H1) he stated that the Memorandum of Agreement he signed with Medalist made him to issue the Board resolution.

Therefore, Counsel stated that it is manifestly wrong to assume or argue that the entirety of the transaction between the Claimants and the Defendant especially regarding the NNPC Contract revolves around only the Assignment of contract (Exhibit A) as several other transaction documents including those listed in paragraph 7.17 above by the parties in relation to

the same NNPC contract. He further stated that it would be wrong to restrict the resolution of the dispute in this suit to only one document under the guise of the extrinsic rule of evidence and that documents in a contract are not to be read in isolation as where a contract consists of a series of documents, the Court has a duty to scrutinise and examine closely, all contractual documents admitted as Exhibits to determine whether there exists a contract between the parties and the issues in controversy between them, the documents must indeed be read together. Reference was made to the case of **MEKWUNYE V. WAEC (Supra)**

In another submission, Counsel stated that assuming without conceding that the entire transaction between the Claimants and the Defendant revolves around only the Assignment of contract (Exhibit A), the extrinsic evidence rule is still not applicable in the instant case as this case comes under one of the exceptions to the rule as envisaged under the including part of the paragraph (a) of Section 128 (1) of the Evidence Act 2011 where extrinsic oral evidence would be admissible to vary or contradict a written document. He stated that having established that the parties indeed made and executed several contractual documents in respect of the NNPC contract, the rule of extrinsic evidence is inadmissible in the instant case and for this reason, urged this Honourable Court to discountenance the argument of the Defendant including the reference to Section 128 of the evidence Act 2011 and the cases of **AKINOLA V. LAFARGE AFRICA PLC AND ACCESS BANK PLC V. NSITF.**

On the issue of whether the Defendant truly assigned the NNPC contract to the 1st Claimant, Counsel to the Claimant argued that assignment of contract is defined as the release of an existing contract's obligation and/or benefits to another party. Reference was made to the Black's Law Dictionary 6th Edition, pg 119 and the Oxford Advanced Learner's Dictionary (of current English) 5th Edition by A.S Hornby at page 61 and the case of **FCMB V. ESSIEN (2022) LPELR – 58699 (CA) PER MUHAMMED LAWAL SHUAIBU, J.C.A (PP 6 -6, PARAS D – E) At Julius Berger (NIG) PLC & ANOTHER V. TOKI RAINBOW COMMUNITY BANK LTD (2009) LPELR – 4381 (CA) Per Mohammed Lawal Garba, JCA (PP 24 – 25).**

Counsel argued that to constitute an assignment in contract, the party that receives contract receives the benefits and the rights and that this is because the goal of the assignor is for the assignee to take over the rights, obligations and/or benefits of the contract. He stated that in other words, there must be a transfer of interest, rights and benefits for there to be an assignment in law, the effect of a legal assignment is to put the assignee in the same position as the assignor in respect of the benefits arising from the original transaction with the vendor. Reliance was placed on the case of **A. T. S & SONS V. BEN ELECTRONIC CO. NIG. LTD (2018) 17 NWLR (PT. 1647); GRACELAND SERVICES & LOGISTICS LTD V. AMCON (2022) LPELR – 58114 (CA).**

Counsel further stated that Exhibit A was just to create such an impression but there was truly no assignment of the NNPC Contract from the Defendant to the 1st Claimant. He stated that in applying the above legal principle of assignment as the instant case, there was truly no assignment of the NNPC contract by the Defendant to the 1st Claimant despite the execution of Exhibit A as the 1st Claimant was never put in the same position as the Defendant in respect of the Contract with NNPC. He also stated that notwithstanding the execution of the Assignment of contract (Exhibit A) between the Defendant and the 1st Claimant, the Defendant remained that true contracting party/beneficiary of the NNPC contract who indeed took the substantial benefit/profit in the sum of \$997, 386.10 and as such ought to bear the contractual liabilities accruing from the Contract which includes Petredec demurrage Claims. Reference was then made to some clauses in Exhibit E1, E3, E4, J and the Cross-Examination of DW1.

Consequently, Counsel submitted that from the oral and documentary evidence referred above, it is clear that the assignment of contract (Exhibit A) was indeed made by the parties to satisfy the requirements of UBA PLC in order to execute the NNPC Contract and nothing more, and that there was really no assignment of the Contract in the true sense.

Moreso, Counsel stated that from the contents of the various Exhibits before this Honourable Court, the Defendant cannot turn around and claim that it has assigned its rights, duties and liabilities under the NNPC Contract to the first Claimant pursuant to Exhibit A and therefore cannot

claim not to be responsible for the liabilities arising from the same contract including the demurrage claim by Petredec. He stated that although parties made and executed Exhibit A to create an impression of an assignment of the NNPC Contract, it is clear from the Evidence before the Court that the title, interest and the benefits of the same contract were never transferred from the Defendant to the 1st Claimant as the Defendant retained its interest and benefit in the contract, hence it received payment/profit in the sum of \$997,386.10 from the total contract proceed, while the 1st Claimant received payment/commission of \$4 per metric ton amounting to a total of \$175,920. Counsel then submitted that to allow the Defendant to maintain his position will encourage the use of legal/court process as an instrument of fraud. Reliance was placed on the case of ENEKWE V. IMB (NIG) LTD (Supra). He stated that the Defendant having taken benefit of the NNPC Contract cannot seek to avoid obligations under the same contract. He further stated that the law is that a party having taken the benefit of a contract, cannot under any guise, seek to avoid its obligations under the same contract as doing such is against public policy and placed reliance on the case of **B.B. APUGO & SONS LTD V. ORTHOPAEDIC HOSPITAL MANAGEMENT BOARD (OHMB) (Supra). ENEKWE V. IMB (NIG) LTD (Supra)**

Consequently, counsel stated that in the instant case, having been admitted during Cross-Examination that the Defendant received payment/profit in the sum of \$997,386.10 from the total contract proceed while the 1st Claimant received payment/commission of \$4 per metric ton amounting to \$175,920 out of the same total contract proceed, Counsel stated that it is inconceivable to still have the same Defendant argue that it is the responsibility of the 1st Claimant who merely earned a commission of \$175,920 for releasing its line of credit to be used for the contract to settle Petredec's demurrage Claim of \$499,509.10 plus interest. Counsel stated that if this is allowed, the 1st Claimant would end up suffering a deficit of over \$323,589.10 while the Defendant smiles away with \$997,386.10 and that asides being against public policy, this will encourage the use of the Court process as an instrument of fraud.

In another submission, Counsel to the Claimants stated that the Claimants are entitled to all the reliefs sought in their amended pleadings. He submitted that it has been shown that:-

- a) " Notwithstanding whatever transaction documents parties signed to create a contrary impression, by virtue of Memorandum of Agreement (Exhibit E1), the Defendant remaining the true contracting party/beneficiary of the NNPC Contract as well as the sale Contract with Petredec.***
- b) Since the Defendant merely nominated the 1st Claimant to Petredec as its replacement for the purpose of using the 1st Claimant's credit line for the NNPC contract, and the Defendant having taken the substantial benefit/profit of the NNPC Contract whereupon the 1st Claimant was paid only a commission for releasing its credit line; the Defendant cannot avoid liabilities under the same contract including settlement of demurrage claims made by Petredec.***
- c) It is unconscionable, inequitable, unjust and most unfair for the Defendant to have derived benefit/profit from the NNPC Contract and from its contract/business relationship with Petredec and the 1st Claimant and then turn around to seek to avoid liabilities resulting from the same contract/business relationships.***
- d) The Defendant's wilful and deliberate disregard of the English suit and/or Petredec's demurrage claims, is a breach of the Contract between the Defendant and the 1st Claimant."***

Counsel further submitted that Claimants are therefore entitled to an Order of this Honourable Court directing the Defendants to pay/refund the sum of £11,500 being the cost of the English suit and the sum of \$250,000 being the settlement sum paid by the 1st Claimant to Petredec pursuant to Exhibit G3 (the settle Agreement in the English suit), to the 1st Claimant.

With respect to the 10% interest on the judgment sum sought, counsel relied on the case of **A. I. B LTD V. IDS LTD (2012) 17 NWLR (PT. 1328) 1 AT 50 PARAS A – C** and urged the Court to grant same.

Furthermore, Counsel stated that the Defendant being the true contracting party in the NNPC Contract and having failed to honour its side of the bargain, has committed a breach of Contract and the Claimants are entitled to damages as contained in paragraph 45 (g) of their statement of Claim. Reliance was placed on the case of **TSOKWA OIL MARKETING COMPANY V. B. O. N LTD (2002) 11 NWLR (PT. 777) 163 AT 200**.

Counsel further claimed for cost of instituting this matter as shown in (Exhibit F5) the Claimant's Solicitor's invoice in the sum of ₦10,000,000 (Ten Million Naira).

In his final submission, counsel stated that the Claimants have sufficiently proved their case and are therefore entitled to all the reliefs sought, and urged this Honourable Court to grant same.

Consequently upon the above, Counsel to the Defendant filed a reply on points of law dated 1st December, 2023 and filed on the same day. Two issues for determination were formulated thus:-

"(1) Whether by the combined reading of paragraphs 28, 34, 37, 38, 39 and 40 of the Claimant's amended statement of Claim, Exhibits G1 and G2 are not documents made by an interested party within the pendency of this suit as to be caught up by Section 83 (3) of the Evidence Act, 2011 as amended (arose from paragraph 5.5 – 5.11 of the Claimants final address).

(2) Whether in the light of the Exhibit F2 and averment in paragraph 40 of the amended statement of Claim, Exhibits A, E1, G1 and G2 are still relevant to this suit (arose from paragraphs 7:33 and 7: 40 of the Claimants final address."

In arguing the first issue, Counsel to the Defendant made reference to the decision of the Supreme Court in **ABDULLAHI V. ADETUTU (2020) 3**

NWLR(PT. 1711) 338 at 364 PARA E – G and stated that the admissibility of Exhibits G1, G2 and G3 depends on the purpose for which they are pleaded and admitted. He stated that the purpose for pleading Exhibits G1 and G2 is to establish that certain sum was paid by the 1st Claimant to Petredec pursuant to the settlement agreement made within the pendency of this suit. He stated that this makes the referenced Exhibit to be caught by Section 83(3) of the Evidence Act 2011 (as amended) making same inadmissible. He stated that the settlement agreement is what gives birth to the supposed consent order and if the settlement agreement is inadmissible, the consent order afortiori is inadmissible as the two Exhibits cannot be separated, the settlement agreement being the foundation in admitting the consent order.

Moreso, counsel argued that Exhibit G1 and G2 are copies of a Public document, contrary to Sections 88, 89 and 90 (1) (C) of the Evidence Act (2011) making them inadmissible and urged this Honourable Court to resolve the first issue in favour of the Defendants against the Claimants.

In arguing the second issue, Counsel stated that the law is that relevancy determines admissibility and evidence which is not relevant is inadmissible and relied on the case of **ODOGWU V STATE (2013) 14 NWLR (PT. 1373) 74 at 108 PARA F.**

He stated that in the instant case, Exhibit F2 (Email of 23rd September, 2015 introducing the 2nd FOB sale contract between Petredec and 1st Claimant) has displaced Exhibit A (Assignment of contract made on 16th September, 2015 between the Defendant and the 1st Claimant) and Exhibit E1 (Memorandum of Agreement made on the 15th September, 2015 between the Defendant and the Claimant) as to make Exhibits A and E1 irrelevant for the determination of this suit. Counsel also stated that the English suit which is the main basis upon which this suit is anchored on has been set aside going by the averments in paragraph 40 of the amended statement of Claim.

Reliance was placed on the case of **ABUBAKAR V. YAR'ADUA (2008) 19 NWLR (PT. 1120) 1 at 154, PARA A – B.**

Consequently, Counsel stated that the Claimant's case is opposed to each other in that one is confused as to whether the Claimant's case is hinged on the English Suit Which has been set aside or settlement agreement between Petredec and 1st Claimant. He stated that the law does not allow the Claimant to approbate and reprobate, and further reliance was placed on the case of **EGBO V. CANDID (2023) 16 NWLR (PT. 1911) 417 at 433 PARAS D – E.**

He further stated that what is before this Court i.e Exhibit G1 and G2, are copies of public documents which make them inadmissible by virtue of Sections 88, 89 and 90 of the evidence Act 2011 is amended.

Counsel then urged this Honourable Court to resolve the second issue in favour of the Defendants and against the Claimants.

I have perused the final written address of the Defendant

I have as well as perused the final written address of the Claimant

I have equally considered the reply on point of law of the Defendant.

Therefore, it is my humble view that the issues for determination in this matter are:-

"(1) Whether an agency relationship existed between the 1st Claimant and the Defendant during the Execution of the 2nd FOB contract of the sale between the 1st Claimant and Petredec limited and the extent of the liabilities of the 1st Claimant and the Defendant in that respect.

(2) Whether the Claimant have established their case to be entitled to the reliefs sought."

Let me begin by stating that it is the case of the Claimant that the Defendant was awarded a term contract by the Nigerian National Petroleum Commission (NNPC) for an allocation of 33,000 MT of propane and 11,000 MT of Butane from the NNPC on a free on board (FOB) basis by a letter dated 27th January, 2015. That subsequently, the Defendant entered into an FOB sale contract with one Petredec limited on the 9th of September, 2015 but unfortunately, had no sufficient credit line to raise the relevant letter of credit to execute the transaction. That in order not to

miss the NNPC Laycan (laydays cancelling), the Defendant approached the 2nd Claimant to help them secure a Credit line to execute their Contract with Petredec, hence, the 2nd Claimant connected them with the 1st Claimant who through its alter ego Mr. Ayodele Babalola agreed to the arrangement.

However, that Petredec rejected the Defendant's proposal based on the structure of the arrangement, and that the Defendant then approached the Claimant to restructure the contractual arrangement whereby the 1st Claimant would serve as the contracting party with Petredec instead (on behalf of the Defendants). That this was agreed upon by the 1st Claimant, thereby addressing the concerns of Petredec with regards to the contract.

That consequently, a Memorandum of Agreement dated 15th September, 2015 was executed between the Defendant and the 1st Claimant wherein it was agreed that the 1st claimant will authorise its Bank United Bank for Africa (UBA) Plc to release its credit line for the use of the Defendant in executing the said contract.

That the 1st Claimant's Bank thus insisted that it will not release the 1st Claimant's credit line for this purpose unless a Contract of Assignment was duly executed between the 1st Claimant and the Defendant and that an irrevocable payment instruction must be issued to UBA PLC by the 1st Claimant authorizing it to raise a letter of credit to NNPC in the name of the Defendant in respect of the Cargo in the said NNPC Contract. That the 1st Claimant and the Defendant signed the Assignment of Contract dated 16th September, 2015 for a smooth execution of the NNPC contract.

Furthermore, that an Assignment of Contract proceeds agreement dated 10th September, 2015 was also signed by the 1st Claimant and the Defendant.

That having put up this new structure for the Defendant's transaction, the Defendant informed Petredec to enter a new contract with the 1st Claimant on the same terms as the Defendant Petredec 1st FOB sale contract which they did, dated 22nd September, 2015.

That sometime in November, 2015, Petredec informed Clarksons the brokering agent between Petredec & the Defendant of the High amount of

demurrage on the shipment under the 2nd FOB Sale contract amounting to the sum \$444,649.31 together with laytime calculation and supporting documents. "That the Defendant, being aware of the demurrage on the shipment, wrote a series of documents to the NNPC with regards to the said demurrage.

That as a result of the failure and/or delay by the Defendant in settling the demurrage Claims, Petredec instituted a suit at the High Court of Justice, Queen's Bench Division in Claim No. CL – 2016 – 000515 between Petredec as the Claimant and the 1st claimant in this suit as the Defendant.

That the Claimants immediately approached the Defendant to take over the defence of the English suit since the Defendant is indeed the true contracting party in the NNPC Contract as the 1st Claimant's involvement was merely to use its credit line with UBA Plc for and on behalf of the Defendant for the execution of the contract and that by Memorandum of Agreement of 15th September, 2015 between the Defendant and the 1st Claimant, title in the products will remain in the Defendant.

That by reason of the above understanding, the Defendant ought to bear the liability accruing from the said contract.

That by a letter dated 11th May 2017, the Claimant's Solicitors (SEFTON FROSS) wrote to the Defendant demanding that the Defendant should immediately take over the defence of the English suit or discharge the 1st Claimant's alleged liabilities in the English suit, but the Defendants failed to do so.

That Judgment was entered against the 1st Claimant in the English suit in the sum of \$499,509.10 (Four Hundred and Ninety-Nine Thousand Five Hundred and Nine Dollars, tenths) plus interest at rate of 2% per annum, £22,500 (Twenty Two Thousand Five Hundred Pounds) and £25,000 (Twenty Five Thousand pounds) against the 1st Claimant.

That negotiations commenced between the 1st Claimant and Petredec and a settlement Agreement dated 9th November, 2019 was executed whereby the 1st Claimant paid the sum of \$250,000.00 (Two Hundred and Fifty Thousand Dollars) in full and final settlement of Petredec's Claim in the English suit.

That upon this, consent Order dated 29th November, 2019 was made by Justice Butcher based on the said settlement agreement and that due to this, the Claimant has suffered untold hardship, and embarrassment and huge financial loss. Hence this suit.

Now, Before delving into the issues for determination, I shall first be addressing the issue raised by the Defendant on the admissibility of Exhibits G1 (a copy of a Tomlin Order of High Court of Justice Queen's Bench Division dated 12th November 2019) and G2 (a copy of a consent Order of High Court of Justice, Commercial Court dated 29th November, 2019). The Defendant stated in para 4:2 of his final written address thus:-

"We submit that Exhibits G1 and G2 having been made by the 1st Claimant within the pendency of this suit is caught by Section 83 (3) of the Evidence Act, 2011 and is inadmissible in evidence. We submit that even though same has been admitted in evidence, this Honourable Court has the power to expunge same in evidence and or discountenance same in the consideration of this suit."

The above submission of Counsel was made pursuant to Section 83 (3) of the Evidence Act 2011 which provides thus:-

"(83(3) Nothing in this Section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."

A good understanding of the facts and exhibits in the instant case will clearly show that Exhibits G1 and G2 are a consequence of the demurrage Claim made by Petredec against the 1st Claimant which had accrued long before this matter was instituted. The said Exhibits G1 and G2 were the order of stay of execution and the consent order made in respect of the Judgment which had been entered against the 1st Claimant in the demurrage Claims by Petredec. The submission of the Defendant that the said Exhibits G1 and G2 were made within the pendency of this suit and

thus is inadmissible is wrong and baseless as it does not apply to this circumstance. However, I must agree with the defendant's argument on the said exhibits being copies of public documents as contained in paragraph 3.5 of their reply on points of law. The Evidence Act has in sections 88, 89(e), 90(c) and 102 provided that documents must be proved by primary evidence and public documents, whether documents forming public records of Nigeria or elsewhere can only be admissible in their secondary form if they are certified true copies. The said exhibits G1 and G2 are photocopies of public documents which have not been certified, and therefore on this note cannot be admissible. Hence, Exhibits G1 and G2 are hereby expunged. I so hold.

Now to the issues proper.

ISSUE ONE

"Whether an agency relationship existed between the 1st Claimant and the Defendant during the execution of the 2nd FOB contract of sale between the 1st Claimant and Petredec limited, and the extent of the liabilities of the 1st Claimant and the Defendant in that respect."

In order to determine if an agency relationship did indeed exist between the 1st Claimant and the Defendant for the execution of the 2nd FOB contract of sale with Petredec, we first need to understand what an agency relationship entails. In the Court of Appeal case of **I. G. N (NIG) LTD & ANOR V. PEDMAR (NIG) LTD & ANOR (2013) LPELR – 41064 (CA)** The Court explained the meaning and nature of agency relationship thus:-

"Agency is a relationship that exists between two persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf, and the other who consents to represent the former or so to act. The basic ideas behind the law of agency is that the law recognises that a person need not always do things that change his legal relations in person, and he may use the services of another person to change them or to do something during the course

of which they may be changed. So, the agent can affect the principles legal position by certain acts which though performed by the agent, are not really to be treated as the agent's own acts but as acts of the principal..."

In other words, agency connotes a relationship that exists where one has the authority or capacity to create legal relationship between a principal and a third party, and the reality of its existence depends on the true nature of the agreement or the circumstance of the relationship between the principal and alleged agent. The relationship of principal and agent may be constituted (a) By agreement, (b) By operation of law under the doctrine of agency of necessity and certain other cases, (c) retrospectively, by subsequent ratification by the principal of acts done on his behalf."

Similarly, held in the case of **CAPITAL OIL AND GAS LTD & ANOR V. ASO SAVINGS AND LOANS LTD & ANOR (2021) LPELR Per GAFAI, JCA** agency was defined thus:-

"At page 64 of Black's Law Dictionary, 7th Edition, an Agent is defined as "one who is authorised to act for or in place of another; a representative"... This is why it is settled that whether that relationship exists in any situation, depends, not in the precise terminology employed by the parties to described their relationship, but on the nature of the agreement, or the exact circumstances of the relationship between the alleged principal and agent..."

See also the cases of **VOLCAN GASES LTD V. G. F INDUSTRIES GAS VERWERTUNE A. G. (2001) 5 SC (PT. 1) 7** AND **NIGER PROGRESS LTD V. NEL CORP (1989) 3 NWLR (PT. 107) 68.**

On who an agent is, see the cases of **UKPANA V. AYAYA (2010) LPELR – 8590 (CA); WMA BANK V. AJAH (2019) LEPLR – 47848 (CA) .**

From the authorities cited above, an agency relationship need not be expressly called so. It depends on the nature of the agreement and

circumstances of the relationship between the alleged principal and agent. Applying these principles of agency to the instant case, it can be seen in the amended statement of Claim, it was stated that in paragraphs 13, 14 and 15 which I have reproduced hereunder:-

"(13) Consequently the Defendant approached the Claimant's to restructure the contractual arrangement. The Defendant proposed and the Claimants agreed to nominate the 1st Claimant as the contracting party with Petredec albeit on behalf of and for the benefit of the Defendant. It was understood by all the parties that under this new arrangement, ownership of the cargo, subject matter of the NNPC contract will still remain in the Defendant but the 1st Claimant will be named (in Lieu of the Defendant) in a new FOB sale contract with Petredec, as the 1st Claimant's credit line will be utilized for the transaction. This new transaction structure addressed the concerns of Petredec in the Defendant-Petredec 1st FOB sale contract."

(14) Consequently, a Memorandum of Agreement dated 15th September, 2015 ("Memorandum of Agreement") was executed between the Defendant and the 1st Claimant, wherein it was agreed that the 1st Claimant will authorise its Banker, United Bank for Africa Plc "UBA PLC" to release its credit line for the use of the Defendant in executing the NNPC Contract.

(15) pursuant to paragraph 13 above, the Defendant instructed Petredec to raise an inward letter of credit in the name of 1st Claimant and it was agreed between Pedredec and the Defendant that the 1st Claimant shall act for the Defendant in the new FOB sale contract between Petredec and the 1st Claimant even though the name of the 1st Claimant appears on the new FOB sale contract as the contracting party with Petredec."

From the above, it can be assumed that an agency relationship did exist between the 1st Claimant and the Defendant. However, the Defendant in his statement of defence denied the above Claims of the Claimant. In paragraph 4.9, 4.11 and 4.12 of the defendant's final written address, the Defendant stated that he was not a party to the 2nd FOB contract sale and should not be drawn into same. The said paragraphs are reproduced hereunder:-

Paragraph 4:9 reads thus:-

"We submit that by the contents, intents and purpose of the said exhibits A, F, F1, F2, F3 and F4 the Defendant is not a party to the 2nd FOB contract sale between the 1st Claimant and the Petredec Limited and should not be drawn into same.

Paragraph 4:11 reads thus:-

"In the instant suit, the agreement of the parties with respect to the subject matter of this suit, where worse wholly in writing and as such, this Court is urged to restrict itself to the written documents and correspondence before it."

Paragraph 4:12 reads thus:-

"We contend the averments of the Claimants that the 1st Claimant acted for the Defendant in the 2nd FOB contract sale with the Petredec limited particularly at paragraph 13 of the statement of Claim is not supported by evidence or particulars of such assumption in view of the documentary evidence to the contrary."

Looking carefully at the Exhibits before this Honourable Court, Exhibit 'A' (An Assignment of Contract made on the 16th of September, 2015) the Defendant assigned all rights, duties, obligations and liabilities in the NNPC term contract awarded to the Defendant, to the 1st Claimant in consideration of the sum of \$4 per Metric Tonne of the OSO NGL. The

implication of this document can only be inferred from an understanding of what an assignment means at law.

The legal implication of an assignment has been reiterated in a plethora of cases of which is the case of **JULIUS BERGER (NIG) PLC & ANOR V. TOKI RAINBOW COMMUNITY BANK LTD (2009) LPELR – 4381 (CA)** wherein the Court held thus:-

"Assignment means to give something to somebody for their use or benefit. It also may mean to transfer right, property or title from the persons legally entitled to them to somebody else for their benefit."

Basically, an assignment entails the transfer of ones interest or ownership in a thing, tangible or not to another. In the instant case, by virtue of the terms of Exhibit A, the Defendant had transferred all of its interest, title, liability and benefits in the term contract awarded to it by NNPC, to the 1st Claimant. A clear understanding of this indicates that the 1st Claimant will bear whatever liability that comes with the contract whose ownership has been transferred and vested in it. Therefore, the question of agency relationship and who would bear the liability for the demurrage on the shipment to Petredec in the contract, subject matter of the said assignment would not even arise in the first place.

However, it is trite law that when there are a series of documents/transactions made pursuant to the execution of a contract, then all those documents shall be considered in whole and not separately in order to fully digest and decipher the entire events of the said contract and the intention behind its execution.

In the case of **MEKWUNYE V. W.A.E.C (2020) 6 NWLR (PT. 1719) 1 SC.**, the Court held:-

"As much as the Court would not re-write the agreement of parties, where a Contract consist of series of documents, the Court has a duty to scrutinize and examine closely all contractual documents admitted as exhibits to determine whether these exists a contract between the parties and the

issue(s) in controversy between them. The documents must be read together."

Similarly in the case of **F.G.N V. ZEBRA ENERGY LTD (2002) 3 NWLR (PT. 754) 471 CA**, the Court held:-

"Where documents form part of a long drawn transaction, they should be read and interpreted together, not in isolation but in the context of the totality of the transaction in order to fully appreciate their legal support that is the only way to find out and determine the real intention of the parties."

Also, in the celebrated case of **ORIENT BANK (NIG) PLC V. BILANTE INTL' LTD (1997)8 NWLR (PT. 515) 37 CA**. the Court held thus:-

"Where documents form part of long drawn transaction, they should be interpreted not in isolation but in the context of the totality of the transaction in order to fully appreciate their legal purport and impact. That is the only way to find out and determine the real intention of the parties. A restrictive and restricted interpretation which does not take cognizance of the total package of the transaction in which the documents are an integral part cannot meet the justice of the case....ROYAL EXCHANGE ASSURANCE LTD V. ASWANI TEXTILES INDUSTRIES LTD (1991) 2 NWLR (PT. 176) 639, Per Tobi JCA.

"As I said in aswani, the documents must be an integral part of the total package of the transaction. In other words, there must be an integration of the documents in the transaction to the extent that they make part of the transaction to tell a flowing story. The documents must have nexus with the transaction and flow directly from it. Where the documents are remote from the transaction which make integration or unification impossible such documents will not assist the Court in the construction or interpretation process. A court which makes use of such documents and arrives at a conclusion as to the formation of a contract, merely

arrogates to itself a function which does not belong to it, and it is the function of writing a contract.”

In the instant case, a series of contractual documents were executed which together form the totality of the contract between the 1st Claimant and the Defendant. As can be understood from the case, the following are unchallenged and unequivocal facts agreed upon by both parties.

- (1) A memorandum of agreement was signed by both parties whereby it was stated in clear terms that the 1st Claimant shall enter into a contract with Petredec limited on behalf of the Defendant only for the purpose of utilizing the 1st Claimants credit line and an assignment of contract shall be signed to this effect in fulfilment of the requirements of the 1st Claimants Bank (UBA plc).
- (2) That an Assignment of Contract was indeed signed by both the 1st Claimant and Defendant whereby the Defendant assigned all its rights, interests, benefits and obligations to the 1st Claimant.
- (3) That an irrevocable payment instruction letter was issued by the 1st Claimant to its Bank authorizing the use of its LPG finance facility for the said contract with Petredec on the Defendants behalf subject to certain conditions as stipulated in the said letter.
- (4) That irrevocable payment instruction letter was issued by the Defendant to the 1st Claimants Bank accepting the conditions stipulated in the above letter issued to the said bank by the 1st Claimant.
- (5) That a letter was issued by the Defendant to Petredec informing them of the reassignment of their contract to the 1st Claimant for the purpose of using their credit line to open an outward LC to NNPC.
- (6) That an assignment of contract proceeds was also signed by the 1st Claimant respectively.
- (7) Exhibit E6 (a Memorandum accompanying the goods pledged was equally executed

It is worthy of note that in the course of executing the 2nd FOB contract sale between the 1st Claimant and Petredec, the first document that was signed, was exhibit E1 (Memorandum of Agreement). In the said Exhibit

E1, it is clearly stated that the 1st Claimant will act on behalf of the Defendant. Some of the terms of the agreement to this effect are reproduced hereunder:-

"(c) Medalist is desirous to execute this transaction with NNPC and is therefore in need of a valid and active credit line to raise a letter of credit for the purpose of consummating the transaction.

"(d) Medalist has approached Ultimate Gas to utilize Ultimate Gas credit line with United Bank for Africa Plc and Ultimate Gas has agreed to acquiesce and release its credit line aforesaid for this purpose upon agreed terms and conditions as set out in this memorandum of agreement."

"(6) Medalist has executed a transfer and letter of assignment of its interest in the cargo to Ultimate Gas and that letter of transfer of title is issued only for the purposes of satisfying UBA Plc requirement for the issuance of the letter of credit and does not operate to transfer the property in the said cargo to Ultimate Gas."

From the wordings of clause 6 above, the letter of assignment was issued only for the purpose of satisfying the UBA Plc requirements and not to transfer the Cargo in the true sense of an assignment. Since the said assignment was made based on this agreement (i.e the Memorandum of Agreement) I will be right to say that the true intention of the parties when the said assignment was executed was merely to fulfil the requirements of the 1st claimant's bank for the release of the 1st claimant's credit line.

Furthermore, Exhibit E2 (Irrevocable payment instruction signed by the CEO Ultimate Gas Ltd instruction signed by the CEO Ultimate Gas Ltd addressed to the MD UBA Plc dated September, 16th 2015 and exhibit E3 (Irrevocable payment instruction signed by MD Medalist Oil and Gas and addressed to the MD UBA Plc dated 16th September, 2015) were made pursuant to Exhibit E1, the Memorandum of Agreement between the 1st Claimant and the Defendant. Exhibit E4, a letter dated 17th September,

2015 addressed to Petredec limited by Medalist Oil and Gas also stated that the Defendant had reassigned its cargo (33,000 KTS propane (C3) & 11,000 KTS Butane (C4) to Ultimate Gas Ltd for the purpose of using their credit line to open an outward LC to NNPC.

Exhibit J (a letter for payment of demurrage) which was written and addressed to the NNPC on the 10th of October, 2016, long after Exhibit A was executed, shows that the Defendants were still acting as the true and legal owners of the term contract awarded to them by the NNPC.

The argument of the Defendant in the reply on points of law that Exhibit F2, being the 2nd FOB contract sale displaces Exhibit A and E1 is wrong. This is because the said Exhibit F2 is a consequence of the execution of Exhibit E1 and Exhibit A, and there is no express clause provided to the effect that Exhibit F2 shall displace Exhibits A and E1 respectively, neither was there any circumstance to imply such. Hence, it is my humble opinion that this argument canvassed by the Defendant in the reply on points of law is unfounded. I so hold.

From the foregoing, it is clear that the 1st Claimant acted on behalf of the Defendant in the 2nd FOB contract sale, hence the existence of an agency relationship between parties. A consideration of Exhibit A (the assignment of Contract) in isolation without considering all the other documents executed in the course of the same transaction will amount to manifest injustice and would not allow the Court to truly deduce the true intention of the contracting parties as well as the true intention behind the execution of the contract in the first instance. Hence having considered the totality of the Exhibits in the said transaction, I will be right to say that the 1st Claimant did indeed act on behalf of the Defendant. I so hold.

Having successfully established an agency relationship between the 1st Claimant and the Defendant, it is clear what the extent of liability of each party is. It is a well known position of the law that where a principal authorizes an agent to act on his behalf the general rule is that the acts of the agent binds the principal and hence makes the principal liable in the event of liability in the transaction executed by his agent on his behalf. In the case of **MBATA V. AMANZE (2018) 15 NWLR (PT. 1643) 570 CA.** it was held thus:-

"An agent of a disclosed principal incurs no liability. The law has fixed or assigned liability to such named principal on the footing of the legal maxim *quit facit per alium fecit per se* which means he who does an act through another is deemed in law to do so himself."

Similarly it was also held in the case of **TECHNO (NIG) LTD V. Y. H. Q.S LTD (2015) NWLR (PT. 460) 1 CA**

"An agent acting on behalf of a known and disclosed principal incurs no personal liability."

Upon the above points stated, the Defendant (having been proven to have acted in the capacity of a principal with the 1st Claimant acting in the capacity of its agent) retains the rights, interest, benefits as well as the liabilities in the 2nd FOB contract of sale. Hence, the liabilities arising from the said contract lies with the Defendant. I so hold.

Issue one is hereby resolved in favour of the Claimants.

ISSUE TWO

"Whether the Claimants have established their case to be entitled to the reliefs sought."

It is trite law that the burden of proof in civil cases is on the balance of probabilities. See Section 131 of the Evidence Act 2011 and the case of **IROAGBARA V. UFOMADU (2009) LPELR – 1538 (SC)**.

It has earlier been established that the 1st Claimant acted on behalf of the Defendant, hence liability lies with the Defendant.

Liability had arisen in the said 2nd FOB sale contract in the form of demurrage claims. Paragraph 24 of the Claimant's amended statement of Claim states thus:-

"(24)The Claimant's avers that sometime in November, 2015, Petredec informed Clarkson's of the high amount of demurrage incurred on the shipment under the 2nd FOB sale contract between the 1st Claimant and Petredec. It also forwarded demurrage claims amounting to \$444,649. 31

together with lay time calculation and supporting documents."

Paragraph 28 states thus:-

"As a result of the failure and/or delay by the Defendant in settling the demurrage claims, Petredec instituted a Suit at the High Court of Justice, Queens Bench Division (English Court") in claim No. CL – 2016- 000515 between Petredec as the Claimant and the 1st Claimant herein as the Defendant (the "English suit"), pursuant to the terms of the 2nd FOB sale contract."

The above were evidenced by Exhibit B. (a Claim form issued in the High Court of Justice, Queens Bench Division Commercial court, Royal Court of Justice)

Furthermore, Claimant stated in paragraphs 28, 29 33, 37 and 39 of its amended statement of Claim thus:-

Paragraph 29 reads thus:-

"The Claimants immediately approached the Defendant to take over the defence of the English suit since the Defendant is indeed the true contracting party in the NNPC Contract notwithstanding that the 2nd FOB sale contract was between the 1st Claimant and Petredec."

Paragraph 33 reads thus:-

"(33) Despite repeated demands from the Claimant, the Defendants did not take any proactive steps to defend/settle the English suit or indemnify the 1st claimant against its actual and contingent liabilities in the English suit, which liabilities arose from use of the 1st Claimant's name in the Defendant's Contract with Petredec."

Paragraph 37 read thus:-

"(37) The English Suit proceeded in the English Court and by order of Mr. Justice Knowles CBE made on the 16th June, 2017,

the English Court entered Judgment in favour of Petredec and against the 1st Claimant in the sum of \$499,509.10 (Four Hundred and Ninety – Nine Thousand Five Hundred and Nine Dollars tencents) plus interest at the rate of 2% per annum (simple) from 12th September, 2016 until date of payment. The English Court also awarded costs of £22,500 (Twenty-Two Thousand, Five Hundred pound's) and £25,000 (Twenty-Five Thousand Pound's) respectively against the 1st Claimant.

Paragraph 39 reads thus:-

"(39) Upon discussions/negotiation by both parties Petredec and the 1st Claimant entered in to a settlement agreement dated and executed on 9th November, 2019 whereupon the 1st Claimant paid Petredec a total sum of \$250,000 (Two Hundred and Fifty Thousand Dollars) in full and final settlement of Petredec's claim in the English suit".

Note that the above claims was proven correct by the existence of Exhibit G3 being the settlement agreement between Petredec Ltd and the claimants respectively..

The defendant on the other hand stated in his statement of defence which I shall be reproducing hereunder thus:-

Paragraphs 4 reads thus:-

"(4)The Defendant admits paragraph 27 of the Claimant's statement of Claim only to the extent that the Claimants approached the Defendant to take over the Defence of the English suit to which the Defendant is not a party."

Paragraph 5 reads thus:-

"(5)The Defendant denies paragraph 28 of the Claimant's statement of Claim as the Defendant cannot take responsibilities for the Claimants' contractual liability in the suit in the United Kingdom."

Paragraph 6 reads thus:-

"(6) In reaction to paragraph 29 in particulars, the Defendant states that he is not in a position to determine the amount of Claims or damages and accruable interest charges whether for demurrage or cost of action against the 1st Claimant in the suit in the United Kingdom."

Paragraph 7 reads thus:-

"(7) The Defendant categorically denies being a principal to the 1st Claimant in the 1st Claimant's contract with Petredec over the subject matter of their suit in the United Kingdom and is therefore not in position to deny/admit paragraphs 30, 31, 32, 33, 34, 35, 36 and 37 but reiterates that the Defendant cannot take responsibility for the contractual obligation, liabilities and duties of the 1st Claimant towards Petredec in the suit in the United Kingdom."

Paragraph 8 reads thus:-

"(8) The Defendant admits paragraph 38 of the Claimants statement of Claim to the extent that he was served with a demand letter to take over the defence of the English suit but denies that he failed, refused and/or neglected the 1st Claimant's demand and therefore puts the 1st Claimant to the strictest proof of the purported and Claimed obligation of Defendant to take over the suit in the English suit in the English Court."

The foregoing is clear and unambiguous. The 1st Claimant had paid a negotiated sum of \$250,000 to Petredec in fulfilment of the Judgment sum for the demurrage claims, ordered against it by the English Court and tendered Exhibits to support this Claim. The Defendant on the other hand denied liability in the suit on the basis of not being a party to the said 2nd FOB sale contract and not being a principal to the 1st Claimant by virtue of Exhibit A which question has earlier been resolved in issue one above.

Therefore it is the humble opinion of this Honourable Court that the Claimant has adequately proven its case as to be entitled to the reliefs sought. I so hold.

With respect to the Claim of the Claimant to cost of litigation, I hereby refer to the case of **NAUDE & ORS V. SIMON (2013) LPLER – 20491 (CA)** where the court held thus:-

"The Principle of law is that a successful party is to be indemnified for cost of litigation which includes charges incurred by the parties in the prosecution of their case. It is akin to a claim for special damages. Once the Solicitors fee is pleaded and the amount is not unreasonable and it is provable usually by receipts, such claim can be maintainable in favour of the Claimant."

See also the case of **AJIBOLA V. ANISERE & ANOR (2019) LPELR – 48204 CA.**

In the instant case, the cost of litigation was pleaded by the Claimant in his pleadings and was further evidenced by "Exhibit F" being the receipt issued by the Claimant's Solicitors in this case. In view of this, the Claimant is entitled to the cost of this suit. I so hold.

Consequently and without further ado, I hereby resolve the second issue for determination in favour of the Claimants.

Claimants have proved their case on the preponderance of evidence as required by law.

Having considered the totality of the facts, circumstance and evidence before this Honourable Court, it is hereby ordered as follows:-

- 1) It is hereby declared that upon consideration of the totality of the documents leading to the execution of the 2nd FOB sale contract between the 1st Claimant and the Petredec Ltd, the Defendant remains the true contracting party/beneficiary of the NNPC contract as well as the 2nd FOB sales contract with Petredec.
- 2) It is hereby declared that the Defendants, being the true contracting party/beneficiary of the NNPC Contract and the sales contract with Petredec cannot avoid liabilities under same, including the settlement of demurrage claims made by Petredec.

- 3) It is hereby declared that the act of the Defendant to try and escape liability in the said 2nd FOB contract of sale between the 1st Claimant and Petredec after deriving benefit from its agreement with the 1st Claimant is unconscionable, inequitable, unjust and most unfair to the Claimants.
- 4) It is hereby declared that the Defendant's willful, deliberate disregard of the English suit and/or Petredec's demurrage Claims is a breach of contract between the Defendant and the 1st Claimant.
- 5) The Defendant is hereby ordered to pay/refund to the 1st Claimant:-
 - (i) The sum of £11,500 (Eleven Thousand Five Hundred Pounds) being the cost of instructing the English Solicitor to enter appearance and file an objection on behalf of the 1st Claimant in the English suit; and
 - (ii) The sum of \$250,000 (Two Hundred and Fifty Thousand Dollars) being the settlement sum paid by the 1st Claimant to Petredec pursuant to the settlement Agreement in the English suit.
- 6) No order as to interest on the above.
- 7) The Defendant is hereby ordered to pay to the 1st Claimant the sum of **₦10,000,000 (Ten Million Naira)** for the Defendant's breach of good faith and obligations under its agreement with the 1st Claimant.
- 8) The Defendant is hereby ordered to pay to the Claimants the sum of **₦10,000,00 (Ten Million Naira)** for instituting and maintaining this suit.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

26/02/2024