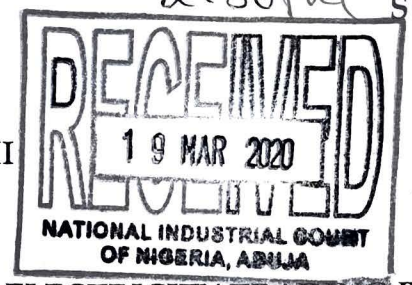
E/R

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

2:30pm

SUIT NO. NICN/ABJ/349/2018



BETWEEN:

SAMBO ABDULLAHI — CLAIMANT

AND

1. NIGERIAN BULK ELECTRICITY TRADING PLC (NBET)
2. DR. MARILYN AMOBI
3. HONOURABLE MINISTER, FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
4. FEDERAL MINISTRY OF POWER, WORKS AND HOUSING

} DEFENDANTS

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 64 RULE 8 OF THE NATIONAL INDUSTRIAL COURT (CIVIL PROCEDURE) RULES 2017; SECTION 36 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court shall be moved on the ..... day of ..... 2020 at the hour of 9 O'clock in the afternoon or so soon thereafter as Counsel may be heard on behalf of the 1st and 2nd Defendants/Applicants ("Applicants") praying this Honourable Court for the following:

1. AN ORDER of this Honourable Court, staying the execution and/or enforcement or further execution/enforcement of the judgment delivered by this Honourable Court on 11th March 2020 by attachment, garnishee or any other species of enforcement, pending the hearing and determination of the Applicants' appeal against the said judgment;

2. **AN ORDER** restraining the Claimant from commencing and/or continuing any enforcement proceedings or actions (*including but not limited to garnishee proceedings, attachment or contempt proceedings*) in respect of, pertaining to, or flowing from the judgment delivered by this Honourable Court on 11th March 2020 pending the hearing and determination of the Applicants' appeal against the said judgment;

AND FOR SUCH FURTHER OR OTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances.

TAKE FURTHER NOTICE that the grounds upon which this application is brought are that –

a. The Claimant commenced this suit against the Applicants and the 3rd and 4th Respondents vide a Complaint filed on 7th December 2018 seeking *inter alia* a declaration that the stoppage of the Claimant's salaries and emoluments by the Applicants was unlawful and an order directing the Applicants to pay the Claimant's salaries and emoluments from 22nd December 2017 till date of judgment.

b. After close of evidence and adoption of final written addresses, the Court delivered its judgment on 11th March 2020 wherein it granted the reliefs sought by the Claimant in part.

c. The Applicants being dissatisfied with the judgment of this Honourable Court consequently filed a Notice of Appeal on 19th March 2020 challenging same.

d. There is a need to preserve the Applicants' constitutional right of appeal and fair hearing as stipulated under the Constitution of the Federal Republic of Nigeria 1999 (as amended) and to suspend any method of execution of the *res* in dispute amongst the parties, in order to forestall a situation of *fait accompli* being foisted upon the Court of Appeal and consequently render the Applicants' appeal at the Court of Appeal nugatory and an exercise in futility.

e. The Applicants' Notice of Appeal discloses arguable grounds on issues of fair hearing and jurisdiction which constitute special and exceptional circumstances for the grant of an application for stay of execution.

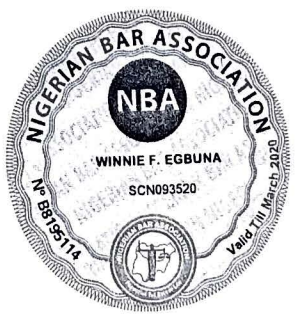
f. The Applicants cannot be returned to the status quo as the Applicants would have suffered grave and severe hardship in view of the fact that the Claimant's salaries and emoluments were suspended following the Claimant's refusal to accept redeployment and report to work.

g. The refusal of this Honourable Court to stay execution of its judgment is capable of emboldening other staff of the 1st Applicant to defy lawful orders and treat management of the 1st Applicant with contempt with the erroneous belief that they can always get away with acts of indiscipline through the instrumentality of the Courts.

h. The rules of this Honourable Court empower the Court to stay execution of any judgment delivered by the Court pending the determination of an Applicant's appeal against the said judgment.

i. It is in the interest of justice and rule of law to grant this application and none of the Respondents herein would be prejudiced by the grant of same.

DATED this 19th day of March 2020



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08038312434

FOR SERVICE ON:

1. **The Claimant**
   C/o. Counsel for the Claimant
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   Terseley Chambers
   Suites 112/113, Theodak Plaza
   1st Floor, Wing C, Constitution Avenue
   Opposite National Hospital Road
   Central Business District, Abuja

2. **The 3rd Defendant**
   Honourable Minister, Federal Ministry of Power, Works and Housing
   Mabushi District, Abuja

3. **The 4th Defendant**
   Federal Ministry of Power, Works and Housing
   Mabushi, Abuja

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO. NICN/ABJ/349/2018

BETWEEN:

SAMBO ABDULLAHI — CLAIMANT

AND

1. NIGERIAN BULK ELECTRICITY TRADING PLC (NBET)
2. DR. MARILYN AMOBI
3. HONOURABLE MINISTER, FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
4. FEDERAL MINISTRY OF POWER, WORKS AND HOUSING

} DEFENDANTS

AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

I, **Umar Faruq Hussain**, male, adult, Nigerian of No. 4, River Benue Street, Off Ibrahim Babangida Boulevard, Maitama, Abuja, do hereby state on oath that –

1. I am a legal practitioner in the law firm of Messrs. Babalakin & Co., counsel for the 1st and 2nd Defendants/Applicants *("Applicants")* in this suit and by virtue of my aforesaid employment, I am conversant with the facts deposed hereunder.

2. I have the consent and authority of my employer and the Applicants to depose to this affidavit and the facts to which I depose hereunder are within my personal knowledge pursuant to my involvement in the conduct of this suit or pursuant to information relayed to me by a 3rd Party which I verily believe to be true or from all the documents related to this suit that I have read.

3. The Claimant/Respondent *("Claimant")* commenced this suit against the Applicants and the 3rd and 4th Respondents vide a Complaint filed on 7th

December 2018 seeking *inter alia* a declaration that the stoppage of the Claimant's salaries and emoluments by the Applicants was unlawful and an order directing the Applicants to pay the Claimant's salaries and emoluments from 22nd December 2017 till date of judgment.

4. On 4th March 2019, the Applicants filed a Notice of Preliminary Objection to the competence of the suit and the 1st Respondent joined issues with the Applicants on same.

5. After close of evidence and adoption of final written addresses as well as the Applicants' preliminary objection, the Court delivered its judgment on 11th March 2020 wherein it granted the reliefs sought by the Claimant in part. Specifically, the Court held that the stoppage of the salaries and emoluments of the Claimant was unlawful and consequently directed that the Claimants be paid within 30 day from the date judgment was delivered, his accrued salaries and emoluments from 22nd December 2017. The Court also failed to consider the Applicants' preliminary objection in its judgment. Attached herewith and marked **Exhibit 1** is a certified true copy of the judgment delivered by this Honourable Court.

6. The Applicants being dissatisfied with the judgment of this Honourable Court consequently filed a Notice of Appeal on 19th March 2020 challenging same. Attached herewith and marked **Exhibit 2** is a copy of the Notice of Appeal filed by the Applicants.

7. I verily believe that the Applicants' Notice and Grounds of Appeal contain recondite, valid and arguable issues of law touching on jurisdiction and fundamental breaches of the Applicants' right to fair hearing by this Honourable Court.

8. I also verily believe that the issues raised in the Applicants' Notice of Appeal go to the root of the judgment delivered by this Honourable Court, have a good chance of success and that the Applicants will prosecute this appeal diligently and expediently.

9. I verily believe that there is a need to preserve the Applicants' constitutional right of appeal and fair hearing as stipulated under the Constitution of the Federal Republic of Nigeria 1999 (as amended) and to suspend any method of execution of the *res* in dispute amongst the parties, in order to forestall a situation of *fait accompli* being foisted upon the Court of Appeal and consequently render the Applicants' appeal at the Court of Appeal nugatory and an exercise in futility.

10. I know as fact that without an order of this Honourable Court directing a stay of execution of its decision, the Applicants may be compelled to pay the judgment sum to the Claimant without any guarantee or prospect of recovering the said sum in the likely event that the Applicants' appeal to the Court of Appeal is successful.

11. I verily believe that the refusal of this Honourable Court to stay execution of its judgment is capable of emboldening other staff of the 1st Applicant to defy lawful orders and treat management of the 1st Applicant with contempt with the erroneous belief that they can always get away with acts of indiscipline through the instrumentality of the Courts.

12. I verily believe that the balance of convenience tilts towards the grant of this application as the Applicants are responsible employers and a key player in the Nigeria Electricity Supply Industry and may suffer grave and irremediable damage if the judgment is executed and its appeal at the Court of Appeal succeeds.

13. The Claimant is not likely to have sufficient funds to pay back the judgment sum in the event that the said judgment sum is paid to them and the Applicants' appeal succeeds.

14. I verily believe that the Respondents would not be prejudiced by the grant of this application. On the contrary, a refusal of this application will be tantamount to the paralysis of the Applicants' constitutional right of appeal as provided under the Constitution of the Federal Republic of Nigeria 1999 (as amended).

15. I verily believe that it is in the interest of justice and the preservation of the appellate jurisdiction of the Court of Appeal that the execution of the judgment of this Honourable Court be stayed pending the determination of the Applicants appeal to the Court of Appeal.

16. I verily believe that this application is brought in good faith and not intended to deny the Claimant of the fruits of his judgment, but to serve the interest of justice and to preserve the appellate jurisdiction of the Court of Appeal as well as the Applicants' right of appeal.

17. I depose to this affidavit in good faith, believing the contents to be true and correct in accordance with the Oaths Act.

DEPONENT

NIGERIAN BAR ASSOCIATION NBA FARUQ HUSSAIN UMAR SCN118821 Valid Till March 2020 N° B8359435

SWORN at the Registry of the National Industrial Court, Abuja this 10th day of March 2020

BEFORE ME
REGISTRAR 1
SIGN DATE 19/3/2020
COMMISSIONER FOR OATHS

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO. NICN/ABJ/349/2018

BETWEEN:

SAMBO ABDULLAHI — CLAIMANT

AND

1. NIGERIAN BULK ELECTRICITY TRADING PLC (NBET)
2. DR. MARILYN AMOBI
3. HONOURABLE MINISTER, FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
4. FEDERAL MINISTRY OF POWER, WORKS AND HOUSING

} DEFENDANTS

WRITTEN ADDRESS IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

1.0. Introduction

1.1. This is a written address in support of the 1st and 2nd Defendants/Applicants ("*Applicants*") application praying the Court for the following orders:

a. **AN ORDER** of this Honourable Court, staying the execution and/or enforcement or further execution/enforcement of the judgment delivered by this Honourable Court on 11th March 2020 by attachment, garnishee or any other species of enforcement, pending the hearing and determination of the Applicants' appeal against the said judgment;

b. **AN ORDER** restraining the Claimant from commencing and/or continuing any enforcement proceedings or actions (*including but not*

limited to garnishee proceedings, attachment or contempt proceedings) in respect of, pertaining to, or flowing from the judgment delivered by this Honourable Court on 11th March 2020 pending the hearing and determination of the Applicants' appeal against the said judgment.

1.2. The application is brought pursuant to Order 64 Rule 8 of the National Industrial Court (Civil Procedure) Rules 2017 and under the inherent jurisdiction of this Honourable Court. In support of this application is a 16-paragraph affidavit with two (2) documentary exhibits attached.

1.3. This written address is filed in support of the affidavit and the Applicants adopt their arguments below and rely on all the averments in the affidavit in urging this Honourable Court to grant this application seeking to stay the execution of the judgment delivered by this Honourable Court on 11th March 2020 pending the determination of the appeal filed by the Applicants.

2.0. Brief Statement of Facts

2.1. The facts in support of this application are set out in the supporting affidavit and are adopted herein.

3.0. Sole Issue for Determination

3.1. In view of the above, the Applicants submit the following sole issue for the just and proper determination of this application, thus:

"Whether from the circumstances of this case, it is in the interest of justice to grant an order for stay of execution?"

4.0. Argument on the Sole Issue

4.1. It is settled law that an application of this nature calls for the discretionary favour of the court but the courts have also held that this discretion must be exercised judiciously and judicially based on the peculiar circumstances

of each case as no fetters or restrictions are placed on the arms of the court in matters of discretion other than what the dictates of each case demands. We refer Your Lordship to ***Leaders & Co v. Adetona (2003) 14 NWLR (Pt. 840) 431 AT 440-441, paras H-A.*** In ***Ogbonna v. Ukaegbu (2005) 17 NWLR (Pt. 954) 432 at 443*** the Court held thus:

> *"Whenever a judicial office is imbued with discretion on a matter before the court, such discretion should not only be exercised judicially, it should be judiciously exercised."*

Please see also ***United Spinners Ltd. v. Chartered Bank Ltd. (2001) 14 NWLR (Pt. 732) SC 195 at 216 para B*** where the Supreme Court held that:

> *"In the exercise of judicial discretion, the primary objective of the court must be to attain substantial justice. Acting judicially imports consideration of the interest of both parties and weighing them in order to arrive at a just and fair decision."*

4.2. Indeed, this undeniable discretion of Your Lordship is recognized under Order 64 Rule 8 of the rules of this Honourable Court.

4.3. Furthermore, the Applicants concede that it is a judicial principle that the Court will not make a practice of depriving a successful litigant of the fruits of the judgment he has obtained from the Court, the Court will do so where there is in existence special and exceptional circumstances compelling the court to do so. The Applicants refer to your Lordship the cases of ***SPDC (Nig) Ltd v. Okei (2006) 17 NWLR (Pt. 1007) 1 at 20, para F; Ofordeme v. Onyegbuna (2006) 5 NWLR (Pt. 974) 549 at 561, para C-H; Ola v. Williams (2003) 5 NWLR (Pt. 812) 48 at 65, para G.***

4.4. My Lord, one of the primary considerations in the determination of an application for stay of execution is the existence of a valid and arguable appeal by the Applicant as held in the case of ***N.B.C. Plc v. Buraimoh (2006) 6 NWLR (Pt. 976) 387.*** In this regard, the Applicants respectfully

commend to this Honourable Court paragraph 6 of the Applicants supporting affidavit wherein the Applicants have exhibited a filed copy of a Notice of Appeal marked as *"Exhibit 2"*. The grouse of the Applicants as stated on the face of the Notice of Appeal sufficiently demonstrates that the Applicants have a valid and subsisting appeal against the decision of this Honourable Court and are thereby entitled to make the instant application.

4.5. It is clear from the said Notice of Appeal that the Applicants are aggrieved that the Court in its judgment delivered on 11th March 2020 failed to consider very vital issues including that of the jurisdiction of the Court and documentary exhibits submitted to the Court by the Applicants and which failure resulted in the Court entering judgment substantially against the Applicants. The Court blatantly breached the Applicants' right to fair hearing and which breach the Applicants verily believe renders the judgment of the Court liable to be set aside on appeal.

4.6. Furthermore, the Applicants are expected to place before the Court special and exceptional circumstances to warrant the grant of an order of stay of execution. What the Courts regard as special and exceptional circumstances are not exhaustive. However, it has been held that any of the following situations, which are present in the instant case, could constitute special and exceptional circumstances-

a. Where the subject matter of the dispute will be destroyed if the order of stay of execution is not granted.
b. Where a situation of hopelessness would be foisted on the court especially an appellate court.
c. Where the order of the court would be rendered nugatory, and
d. Where execution will prevent a return to status quo if the appeal succeeds.

4.7. The Supreme Court, per Muntaka-Coomassie JSC *(as he then was)* in ***S.P.D.C. Ltd v. Amadi & Ors (2011) 5 SC (pt. 1) 1 @ 50-51*** quoted, with approval, the dictum of Tobi JCA, in the case of ***Lijadu v. Lijadu (1991)1***

NWLR (pt. 169)627 @ 644-645 and explained the rationale for the above conditions as follows-

> *"In an application for stay of execution the court has a primary duty to protect the res from being destroyed, annihilated or demolished. The court has a duty to ensure that the res is intact, not necessarily for posterity, but for the immediate benefit and pleasure of the party who is finally in victory in the litigation process... If the res is destroyed, annihilated or demolished before the matter is heard on appeal, then this court will be reduced to a state of hopelessness and that will be bad, very bad indeed. This court like every other court cannot give an order in vain. The court will then be reduced to a situation where it can bark by the use of its judicial powers under section 6(6) of the 1979 Constitution but cannot bite."* (Emphasis supplied)

4.8. From the foregoing instructive reasoning of the apex Court, it would appear that the overriding consideration in the ascertainment of special and exceptional circumstances is the preservation of the *res*. In this regard, we refer Your Lordship to paragraphs 9-13 of the Applicants' supporting affidavit wherein the Applicants disclosed logical and convincing facts to indicate that the preservation of the *res* in this matter would be jeopardized if the instant application is refused and the Applicants are made to pay the judgment sum to the Claimant. The Applicants submit that the facts stated in the affidavit in support of this application fall under the special and exceptional circumstances stated above, hence justifying the grant of this application.

4.9. In addition, the issue of jurisdiction which the Applicants canvassed in their Preliminary Objection but which the trial Court failed to consider and the concomitant breach of the Applicants' right to fair hearing, constitute special and exceptional circumstance why the Court should grant an order for stay of execution. In ***Alawiye v. Ogunsanya (2012) LPELR-19661(SC)***, the Supreme Court restated this time-honoured principle thus -

...it is settled that where a notice of appeal has disclosed substantial grounds of appeal to be argued in an appeal as the issue of jurisdiction in this matter, there is every likelihood, indeed justification for the court to exercise its discretion of granting a stay of execution.

4.10. The Applicants further submit that if the instant application is not granted, it will not be able to reap the benefit of the judgment on appeal and thereby a situation of helplessness will be foisted on the Court of Appeal and the Applicants' constitutional right of appeal will thereby be rendered meaningless. Please see further the case of ***Nwabueze v. Nwosu (1988) 4 NWLR (Pt. 88) 257; Obaro v. Dantata & Sawoe Construction (1997) 10 NWLR (Pt. 526) 676.***

4.11. Consequently, the Applicants respectfully submit that they have disclosed sufficient justification for the exercise of your Lordship's discretion towards the grant of this application. Indeed, the Claimant will not be prejudiced by the grant of this application as a grant of this application will only protect the *res* from depletion and will not lead to the extinction of the res.

5.0. Summary/Conclusion

5.1. In the light of the foregoing submissions, the Applicants respectfully urge this Honourable Court to exercise its discretion in their favour by granting the reliefs as contained on the motion paper and to hold that the Applicants have sufficiently adduced cogent and compelling reasons for the favourable exercise of your Lordship's discretion.

5.2. The Applicants are much obliged.

DATED this 19th day of March 2020

Oyetola Oshobi SAN
Olayinka I. Arasi Esq.
Winnie Egbuna (Mrs.)
Umar Faruq Hussain Esq.
Counsel for the Applicants
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FOR SERVICE ON:

1. **The Claimant**
   c/o His Counsel
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   Terseley Chambers
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   Honourable Minister, Federal Ministry of Power, Works and Housing
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3. **The 4th Defendant**
   Federal Ministry of Power, Works and Housing
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E/R

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

APPEAL NO.
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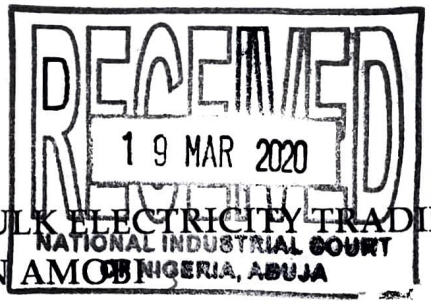

2:30pm

BETWEEN:

1. NIGERIAN BULK ELECTRICITY TRADING PLC (NBET)
2. DR. MARILYN AMOBI

} APPELLANTS

AND

1. SAMBO ABDULLAHI
2. HONOURABLE MINISTER, FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
3. FEDERAL MINISTRY OF POWER, WORKS AND HOUSING

} RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellants being dissatisfied with the judgment of the National Industrial Court, Abuja *coram* Oyewumi J. (*"trial Court"*), delivered on 11th March 2020 do hereby appeal to the Court of Appeal upon the grounds set out in **Paragraph 3** and will at the hearing of the appeal seek the reliefs set out in **Paragraph 4**.

AND the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in **Paragraph 5**.

2. PART OF THE DECISION COMPLAINED ABOUT

Part of the judgment where the Court granted the reliefs sought by the 1st Respondent against the Appellants.

3. GROUNDS OF APPEAL

Ground 1

The trial Court erred in law and breached the Appellants' right to fair hearing when it failed to consider the Appellants' Preliminary Objection filed on 4th March 2019.

Particulars of error:

a. The law is trite that a court of law is duty bound to ensure that parties are afforded ample opportunity to be heard before proceeding to make any orders which is capable of affecting the rights and obligations of the parties.

b. The Constitution of the Federal Republic of Nigeria equally guarantees a party's right to fair hearing in the determination of such party's rights and obligations.

c. The Appellants filed a Notice of Preliminary Objection to the competence of the suit before the trial Court on 4th March 2019 and the 1st Respondent joined issues with the Appellants on the said Preliminary Objection.

d. On 4th October 2019, the Appellants sought to move their Preliminary Objection but the learned trial Judge directed that it would hear the Preliminary Objection along with the substantive suit. Hence, on 14th January 2020, when the matter came up for adoption of final written addresses, the Appellants moved their Preliminary Objection together with their final written address and the 1st Respondent adopted his argument in opposition to the Preliminary Objection as well as his final written address after which the Court adjourned for judgment.

e. However, the Court in its judgment delivered on 11th March 2020 failed to consider the Appellants' Preliminary Objection and proceeded to deliver judgment against the Appellants.

f. The judgment of the trial Court was issued in blatant violation of the Appellants' right to fair hearing having been delivered without considering the Appellants' Preliminary Objection and is therefore a nullity in law and liable to be set aside.

g. The Preliminary Objection raises a threshold issue of jurisdiction which the trial Court is bound to hear and determine before delivering the final judgment.

h. The law is settled that a court of law must hear and dispense with all pending applications in a matter before delivering a final judgment.

i. The trial Court's failure to rule on the Preliminary Objection while proceeding to deliver a final judgment amounts to refusing the application without hearing it and is tantamount to a denial of fair hearing.

Ground 2

The trial Court erred in law and breached the Appellants right to fair hearing when it held that the Appellants were subject to the directives of the 2nd and 3rd Respondents issued without recourse to the President.

Particulars of error:

a. It was the case of the 1st Respondent that in the absence of the 1st Appellant's board of directors, the Appellants were bound by directives unilaterally issued by the 2nd and 3rd Respondents.

b. The Appellants on their part adduced credible and uncontroverted documentary evidence demonstrating that by a circular from the Office of the Secretary to the Government of the Federation dated 16th July

2015 *(Exhibit A11)*, all matters requiring the attention of the 1st Appellant's board were to be directed to the President until the reconstitution of another board for the Appellants.

c. The trial Court however failed to consider this pivotal and credible piece of evidence and proceeded to enter judgment against the Appellants on the ground that they were subject to the directives of the 2nd and 3rd Respondents.

d. The failure of the trial Court to consider Exhibit A11 tendered by the Appellants and admitted in evidence without any objection is a breach of the Appellants right to fair hearing and the decision of the Court in (c) above is therefore a nullity in law.

Ground 3

The trial Court erred in law and breached the Appellants' right to fair hearing when it failed to consider the Appellants' objection to the admissibility of Exhibit SA18 *(Report of the Committee Set up to Investigate the Management Crisis at Nigerian Bulk Electricity Trading Plc. (NBET) Volume II)* and proceeded to enter judgment against the Appellants on the basis of the said Exhibit.

Particulars of error:

a. The Appellants stated unequivocally in their Statement of Defence that there was no indication that the Committee purportedly set up by the 2nd and 3rd Respondents ever concluded its assignment or communicated its findings (if any) to the Appellants.

b. During trial, the 1st Respondent sought to tender Exhibit SA18 but the Appellants challenged the admissibility of the said Exhibit. The Court however held that it would admit all documents sought to be tendered and parties should address the Court on the admissibility of the documents in their final written addresses.

c. In their final written address adopted on 14th January 2020, the Appellants contended that whilst Exhibit SA18 which originally is a letter dated 20th March 2018 may be admissible in evidence, the 1st Respondent curiously attached a strange and unknown document titled *"Report of the Committee Set Up to Investigate the Management Crisis at Nigerian Bulk Electricity Trading Plc. (NBET) Volume II"* to the letter.

d. The objections of Appellant to the admissibility of the report were that –

   i. The purported report was neither referred to nor mentioned as an annexure to the letter of 20th March 2018.
   ii. It was also neither pleaded nor frontloaded as provided in the Evidence Act, the rules of the National Industrial Court and a plethora of judicial authorities.
   iii. The document is also a public document and there is nothing to show that it was certified by an officer having custody of the document.

e. None of the Respondents responded to the objection of the Appellants in this regard and the law is trite that where a party fails to respond to an issue raised by an adverse party in its written brief, same will be deemed conceded. See ***Nwankwo v. Yar'Adua (2010) All FWLR (Pt. 534) 1 at 22.*** In ***INEC v. Nyako (2011) 12 NWLR (pt. 1262) 439 at 531 paras G-H,*** the Court of Appeal held that –

> *The legal consequence of the choice or failure to answer points in a brief of argument by the party affected is now elementary. In law, such a party is deemed to have no answer to and therefore has conceded to the points.*

f. The Court however completely failed to consider or pronounce upon the valid and cogent objection of the Appellants to the admissibility of the report and relied on the inadmissible report in entering judgment against the Appellants.

g. The failure of the trial Court to consider the objection of the Appellants above is a fundamental breach of the Appellants' right to fair hearing and renders any decision founded on the said report a nullity in law.

4. RELIEFS SOUGHT BY THE APPELLANTS

a. **AN ORDER** allowing this appeal.

b. **AN ORDER** setting aside the part of the judgment delivered by the trial Court wherein the Court granted the reliefs sought by the 1st Respondent against the Appellants.

5. PARTIES AFFECTED BY THE APPEAL

a. **The 1st Respondent**
c/o His Counsel
A. O. Olori-Aje & Co.
Terseley Chambers
Suites 112/113, Theodak Plaza
1st Floor, Wing C, Constitution Avenue
Opposite National Hospital Road
Central Business District, Abuja

b. **The 2nd Respondent**
Honourable Minister, Federal Ministry of Power, Works and Housing
Mabushi District, Abuja

c. **The 3rd Respondent**
Federal Ministry of Power, Works and Housing
Mabushi, Abuja

DATED this 19th day of March 2020

Oyetola Oshobi SAN
Olayinka I. Arasi Esq.
Winnie Egbuna (Mrs.)
Umar Faruq Hussain Esq.
Counsel for the Appellants
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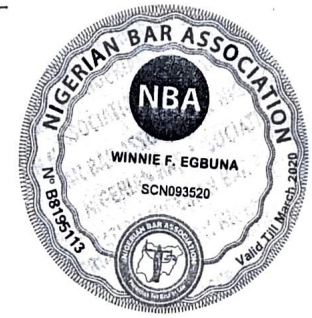

FOR SERVICE ON:

1. **The 1st Respondent**
   c/o His Counsel
   A. O. Olori-Aje & Co.
   Terseley Chambers
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   Central Business District, Abuja

2. **The 2nd Respondent**
   Honourable Minister, Federal Ministry of Power, Works and Housing
   Mabushi District, Abuja

3. **The 3rd Respondent**
   Federal Ministry of Power, Works and Housing
   Mabushi, Abuja

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Our Ref:

17th March 2020

The Managing Director
Nigerian Bulk Electricity Trading Plc. (NBET)
2nd & 3rd Floors
Nigerian Electricity Regulatory Commission (NERC) Building
Plot 1387 Cadastral Zone A00
Central Business District, Abuja

Attention: Dr. Marilyn Amobi

Dear Madam

RE: SUIT NO. NICN/ABJ/349/2018
SAMBO ABDULLAHI
v.
NIGERIAN BULK ELECTRICITY TRADING PLC & 3 ORS.

We refer to the above suit and write further to the judgment delivered by the National Industrial Court, Abuja *coram* Oyewumi J. on 11th March 2020, wherein the Court granted the reliefs sought by the Claimant in part. It is our candid opinion that the judgment is faulty on **MANY** grounds and liable to be set aside if NBET decides to appeal same. Hence, it is important we evaluate the said judgment and the next steps NBET should/may pursue in order to protect itself in the best possible way –

1.0. BACKGROUND

1.1. The Claimant is an employee of NBET and was until 13th June 2017, the Head of Audit at NBET. Sometime around June 2017, the Office of the Accountant-General of the Federation *("OAGF")* posted treasury accountants from its pool to head the finance and audit departments of

NBET. These postings necessitated certain internal redeployments to accommodate the treasury accountants. Consequently, the Claimant was redeployed to the Learning and Development Department.

1.2. The Claimant however rejected his redeployment on the grounds that he was being victimized and that by the Financial Regulations governing the civil service, the Claimant, being a professional auditor could not be posted or redeployed to a department outside his professional cadre. He also contended that the Managing Director ("MD") of NBET lacks the power to effect an organizational restructuring such as creation of a new department and redeployment of staff without the approval of the Board of NBET. In furtherance of his rejection of his redeployment, the Claimant seized the two audit stamps issued to NBET by the OAGF *(One for his use and the other allocated to another staff of NBET)*. The Claimant also seized the keys to the audit security safe maintained by NBET and all directives issued to him by the OAGF to return the audit stamps and keys to the security safe yielded no result.

1.3. Consequently, NBET vide a memo dated 27th December 2017 communicated the stoppage of the Claimant's salary to him on the grounds of his seizure of audit stamps and keys to security safe. The letter also mentioned that having rendered himself redundant by failing to move to his new department, it was no longer in the public interest for NBET to continue to pay him his salaries.

1.4. Irked by the above, the Claimant commenced this suit by a Complaint filed on 7th December 2018 and essentially sought an order of Court directing NBET and its MD to pay the Claimant's salaries and emoluments from 27th December 2017 when same was stopped/suspended. The Claimant also filed a Motion on Notice which prayed the Court for an order restraining NBET and its MD from dismissing the Claimant from the 1st Defendant's employment.

1.5. During trial, the Claimant testified in person whilst Mrs. Itohan Ehiede, then Head of Corporate Services testified in support of NBET's case. Parties adopted their final written addresses on 14th January 2020 and the Court reserved its judgment for 11th March 2020. On 11th March 2020, the Court delivered its judgment wherein it granted the reliefs sought by the Claimant in part. Specifically, the Court held that the stoppage of the salaries and emoluments of the Claimant was unlawful. The Court also held that NBET's refusal to approve the Claimant's request for annual leave was wrongful, more so when the reason for refusing same, according to the Court, lacked merit. The Court however held that the Claimant failed to prove he was deprived of his National Health Insurance Scheme *("NHIS")* benefit and that NBET's action has caused him emotional and psychological trauma as to be entitled to general damages.

1.6. Consequently, the Court directed that the Claimant be paid his accrued salaries and emoluments from December 2017 till date and that same should be paid within thirty (30) days from the date judgment was delivered failing which the said sum will attract twenty-one (21%) percent interest per annum until payment is made.

2.0. REVIEW OF JUDGMENT

2.1. Upon a review of the judgment delivered by the Court, we are of the considered view that the Court erred on many grounds in reaching its conclusions in favour of the Claimant and our position in this regard is premised on the following grounds deducible from the judgment –

2.1.1. The Court failed to consider NBET's preliminary objection to the competence of the suit and which preliminary objection was adopted on 14th January 2020. This is a clear and fundamental breach of NBET's right to fair hearing and the result of which is that the judgment delivered by the Court is a nullity in law.

2.1.2. The Court held that NBET is subject to the supervision of the Ministry of Power on the ground that Mrs. Itohan Ehiede testified during cross-examination that NBET takes instructions from the Ministry in the absence of the board and that NBET made representations to the Ministerial Committee set up by the Ministry is respect of the Claimant and Mr. Waziri Bintube. This position is however completely unfounded in law and unsupportable by evidence led during trial. This is so because during trial, documentary evidence was adduced demonstrating that NBET's board was dissolved by the Federal Government by a circular dated 14th August 2015 and in which circular it was stated that all matters requiring the attention of the board should be directed to the President pending the reconstitution of a new board. We also demonstrated to the Court that the Ministry is merely represented as a member of the board and nothing more, hence the impossibility and impracticability of the Ministry exercising supervisory powers over NBET. The Court however failed to take cognizance of the above facts and evidence in reaching its perverse conclusion and which failure is tantamount to a breach of NBET's right to fair hearing.

2.1.3. The Court also held that by a letter dated 20th March 2018, the Ministry had directed NBET to pay the Claimant his accrued salaries and being NBET's supervisory Ministry, NBET should have complied with the said directive. It is noteworthy that NBET challenged the admissibility of this document in its final written address on the ground that same was neither pleaded nor frontloaded as to make it admissible in evidence. The Claimant did not submit contrary arguments in opposition to NBET's challenge to the admissibility of this document, which meant that he conceded to our argument on same. However, the Court failed to consider this objection and went ahead to rely on the said document in holding that the Ministry of Power has the power to set up a ministerial

committee and give directive to NBET which is to be carried out by the MD. Relying on the same document, the Court held that the issuance of the document is proper and the decision of the Committee declaring the non-payment of the Claimant's salary as unlawful ought to have been implemented by the MD. This is another clear breach of NBET's right to fair hearing and affects the validity of any finding(s) made based on the said letter.

2.1.4. The Court held that the Claimant's salary was stopped in December 2017 but NBET only constituted a Disciplinary Hearing Committee ("DHC") in respect of the Claimant in July 2018 and that since his salary was stopped before the setting up of the DHC, same was not in conformity with NBET's Human Resources Policy Manual and amounted to putting the cart before the horse. Again, the setting up of the DHC was never the case of NBET but that of the Claimant. As a matter of fact, at no point did NBET make any reference to the DHC as a step towards disciplining the Claimant for his refusal to accept redeployment and report at work. Rather, the crux of NBET's case at the trial was that it suspended the Claimant's salary in view of his failure to work, which disentitles him to earn his salary and other emoluments. In fact, NBET stated unequivocally in its Statement of Defence that the Claimant's reference to the DHC was diversionary as the DHC was constituted for an entirely different infraction(s).

2.1.5. In any event, Section 6.4.8 of the HR Manual which the Court misinterpreted and relied on provides that any employee that absents himself without authorization "*shall be subject to the provision of the disciplinary process and the employee shall not be remunerated for such period of absence.*" The simple and clear interpretation of the above is that notwithstanding the disciplinary process that such employee may face, he shall not be remunerated for the period of his absence, which in our opinion was the step taken by NBET. Hence,

the Court completely misdirected itself and breached NBET's right to fair hearing when it held that NBET should have set up the DHC before stopping the Claimant's salary when NBET never made a case for the setting up of the DHC.

2.1.6. On the Court's finding that annual leave is a statutory right which an employer cannot deny an employee under the Labour Act. It is submitted that the Court erroneously relied on the Labour Act in reaching this conclusion. This is because the Act expressly excludes an employee performing professional functions from the operation of the Act.

2.1.7. Furthermore, just like remuneration, annual leave is a right an employee is entitled to subject to fulfilling the terms and conditions of his contract of employment. NBET did not deny the right of the Claimant to apply for leave, it however has to be done properly. The Claimant's application did not take the appropriate form and it is within NBET's right to ensure that was done. In the instant case, the Claimant applied for annual leave using the designation of Head, Internal Audit when in fact he had ceased to hold that office following his redeployment to the L and D unit. This is clear evidence of insubordination and of the fact that the Claimant was redeployed to the L and D unit but failed to accept the redeployment and sought to formally proceed on leave on the basis of a department that he no longer headed. The Claimant did not only engage in gross acts of insubordination, he also expected NBET to endorse same by approval of his application for annual leave as Head of Internal Audit. The decision of the Court is undoubtedly perverse and untenable in law.

3.0. RECOMMENDATIONS/FURTHER STEPS

3.1. The effect of the judgment of the Court is that NBET is liable to pay the Claimant his salaries and emoluments from 27th December 2017 till date. In order to protect NBET's interest against any form of enforcement of the judgment, our recommendations are as follows –

3.1.1. It is our considered view that NBET should appeal the judgment on the grounds we have highlighted above and also file an application to stay execution of the judgment pending the hearing and determination of NBET's appeal to the Court of Appeal. This would in the interim prevent the Claimant from taking any steps towards enforcing the monetary component of the judgment. We also consider it is necessary for NBET to challenge the decision of the Court that NBET is/was subject to the supervisory powers of the Ministry of Power over the internal workings of NBET. This is more so as the pronouncement of the Court albeit outright erroneous, now represents the position until it is set aside particularly by an appellate court.

3.1.2. However, where NBET decides to pay the Claimant his accrued salaries and emoluments and not appeal the judgment of the Court, but is nevertheless desirous of sanctioning the Claimant for his misconducts even after the stoppage of his salaries, we would advise that same should be done in strict compliance with the HR Policy Manual in order not to give any room for a successful challenge of NBET's action in Court. In this regard, we note that NBET had sometime in December 2018 set up a DHC to conduct hearing in respect of allegations of gross misconduct against the Claimant. However, same was suspended following the *status quo* order made by the erstwhile judge handling the matter. In view of the fact that the matter is now concluded, the DHC can resume its

hearing and sanction the Claimant in accordance with the HR Manual.

3.1.3. Alternatively, NBET could disband the existing DHC and constitute a new one. Whichever it settles for, it is important for NBET to be guided by the provisions of the HR Manual as it applies to the Claimant which we shall briefly highlight below:

3.1.4. Section 6.2.6.3 provides that the DHC for AGMs and above shall be constituted by the Board Committee on HR or the MD/CEO and shall have as members the HHRA and two other persons not lower than a DGM. Sections 6.2.6.7 – 6.2.6.13 spell out the procedure the DHC should adopt in its hearing from commencement to conclusion.

3.1.5. In all of the above, it is pertinent to note that under the sections 6.2.4.1(iv), 6.2.5.2(iii) and 6.2.5.3(vii) of the HR Manual, any sanction recommended by the DHC against the Claimant (*excluding a written warning*) must be endorsed by the Board Committee on HR before same can be implemented. With this provision in mind, the Claimant may be suspended with half or no pay under Section 6.2.6.5 pending the outcome of the hearing of the DHC or implementation of its recommendations.

3.1.6. Lastly, NBET may decide to appeal the judgment, apply for stay of execution of the judgment (in which case NBET does not have to pay the accrued salaries and emoluments) and thereafter resume DHC proceedings against the Claimant.

3.1.7. It must however be noted that the Court is empowered under the rules to direct an Appellant to deposit the judgment sum into an account held by the Court as a condition for grant of stay of execution. In the same vein, if NBET's appeal does not succeed at

the Court of Appeal, it may be liable to pay interest at 21% per annum on the judgment sum awarded by the Court.

4.0. CONCLUSION

4.1. Whilst we look forward to your Organization's reaction and/or instruction in respect of the subject matter, we thank your organization for the confidence reposed in our Firm in representing your interest in this matter.

4.2. Please accept the assurances of our highest esteem.

Yours sincerely

Babalakin & Co

BABALAKIN & CO

TO/AI/WE/FH

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.O. OYEWUMI

DATED: 11TH OF MARCH, 2020 SUIT NO.: NICN/ABJ/349/2018

BETWEEN:
SAMBO ABDULLAHI ..... CLAIMANT

AND

1 **NIGERIAN BULK ELECTRICTY TRADING PLC (NBET)**
2 **DR. MARILYN AMOBI**
3 **HONOURABLE MINISTER, FEDERAL .....DEFENDANTS**
MINISTRY OF POWER, WORKS AND HOUSING
4 **FEDERAL MINISTRY OF POWER, WORKS AND HOUSING**

REPRESENTATIONS:
A.O Olori-aje with him M.I Abdullahi, A.S Gobir, S.O Yahaya, Bello Lukman Ibrahim for the claimant.
O. Oshobi (SAN) with him O. I. Arasi, W.A Egbuna, U.F. Hussein for the 1st - 2nd defendants.
No appearance for the 3rd and 4th defendants.

JUDGMENT

By a Complaint and Statement of facts both filed on the 7th December, 2018, the Claimant sought the following reliefs jointly and severally against the Defendants.

a. A DECLARATION that the suspension of salary and emoluments,

Denial/embargo on access to National Health Insurance Scheme benefits, denial of 2017 and 2018 annual leave till the time of filing the suit by the 1st and 2nd Defendants is unlawful, illegal, null and void.

b. A Declaration that the 2nd Defendant lacks the vires to unilaterally suspend punish and/or withhold the salary, emoluments and all other benefits accruable to the Claimant without approval by the Board of 1st defendant.

c. AN ORDER directing the immediate payment of Claimant's accumulated salary and emoluments and all other benefits accruable to the Claimant as staff of the 1st Defendant from 22nd December 2017 till date.

d. AN ORDER directing the 3rd Defendant to ensure strict compliance by 1st and 2nd Defendants with the directives in the 3rd Defendant's letter dated 20th March 2018.

e. AN ORDER of general damages of **₦250, 000,000.00** (Two Hundred and Fifty Million Naira) in favour of the psychological trauma and injuries suffered by the Claimant as a result of the 1st and 2nd Defendants actions.

The 1st and 2nd Defendants subsequently filed their Joint Statement of Defence on 3rd April 2019. In the course of trial, the Claimant testified as CW1, he adopted his written statement on oath dated 7/12/18 and 30/4/19 respectively as his evidence in this case, he equally tendered documents which were admitted and marked as Exhibits SA-SA35. He was cross examined by the defendants. The 1st and 2nd Defendants called a sole witness, one Mrs Itohan Ehiede, Head, Corporate Service Department of the 1st Defendant, she adopted her written statement on oath dated 30/10/19 as her evidence in this case, Exhibits A – A17 were tendered through her and consequently admitted in evidence by the Court, she was equally cross examined by the claimant's counsel.

The case of the Claimant, as contained in his witness statement on oath is that he was employed by the 1st Defendant vide a letter dated 12th June 2012 as the Head of Internal Audit of the 1st Defendant. He averred that sometime in August 2016, he raised audit queries over payment of return flight tickets for the 2nd Defendant as well as the engagement of legal advisory service by the 2nd Defendant. That the above audit queries led 2nd Defendant to seek the intervention of the Office of the Accountant General of the Federation (OAGF) on the reassessment of the self-accounting status granted to the 1st Defendant in 2012. He continued that the above

action of the 2nd Defendant led to the posting of treasury officers from the OAGF to the 1st Defendant's internal audit unit and which posting allegedly compromised the objectivity of the OAGF. This according to him led to his subsequent redeployment by the 2nd Defendant to the learning and Development Unit (the L and D Unit) of the 1st Defendant allegedly in violation of the Public Service Rules (the PSR) as well as the 1st Defendant's Board Charter (the Board Charter) and Human Resources Policy Manuel (the HR Manual). The Claimant stated also that another employee of the 1st Defendant, one Mr Waziri Bintube was equally redeployed by the 2nd Defendant in similar circumstance as a result of which he co-authored a petition to the 3rd Defendant being, according to him, the supervising Ministry of the 1st Defendant. He further stated that the 1st Defendant vide a memo dated 27th December 2017 stopped the payment of his salaries and emoluments on the grounds that the he rendered himself redundant and refused to release audit stamps issued to him by the OAGF. He contended that his redeployment was without any job description but that he was directed to meet his Line Manager to advise him on his job functions. That he was carrying out his duties in his new Unit to the extent directed by his Line Manager pending the intervention of the 3rd Defendant.

He affirmed that he initially withheld the audit stamps issued to him despite repeated demands by the Accountant General of the Federation because the rule on returning same was not followed and there was no Board directive to him. He averred that he eventually released the audit stamps to the Permanent Secretary of the 4th Defendant when too much pressure was exerted on him. The Claimant further stated that he informed the 4th defendant of the stoppage of his salaries and emoluments after which the 3rd and 4th Defendants set up a ministerial committee which recommended the payment of his salaries and emoluments. It is his further testimony that he was arrested by the Department of State Security (DSS) on 17th July 2018 on the orders of the 2nd Defendant and was detained till the next day and upon his release on 18th July 2019[SIC], the 2nd Defendant issued him a query for his absence from the office for two days. He also alleged that he reported at the new office building of the 1st Defendant without working tools, desk and/or official space to carry out his duty as a staff and that he has been ex-communicated by the 1st Defendant since moving to its new office building.

The 1st and 2nd Defendants in their joint defence to this suit, averred that the 3rd and 4th Defendants are neither constituted nor conferred with any power to oversee the affairs of the 1st Defendant's Board of Directors. The 1st and 2nd Defendants pleaded that the posting of professional accountants from the OAGF to the 1st Defendant was one of the conditions to be fulfilled for the granting of a full-fledged self-accounting status initiated sometime in 2012 long before the 2nd Defendant became the Managing Director/Chief Executive Officer (MD/CEO) of the 1st Defendant. They continued that in line with the above, the OAGF posted two officers to head the audit and finance department of the 1st Defendant which necessitated certain redeployments to accommodate the new members of the 1st Defendant's management team. This led to the redeployment of the Claimant to the Learning and Development Unit of the 1st Defendant where the Claimant was expected to utilize the best of his skills to provide leadership to the unit. That after his redeployment to the L and D Unit, the Claimant failed to report at new unit but rather became an authority unto himself exemplified by his flagrant disregard of repeated directive and demands issued to the Claimant to return audit stamps and keys to the 1st Defendants security safe. That the Claimant's redeployment was lawful and consistent with the 1st Defendant HR Manuel and that the HR Manuel clearly defined the L and D responsibility of the 1st Defendant. The 1st Defendants also averred that the Claimant's Line Manager in various correspondences affirmed the refusal of the Claimant to relocate to his new unit. They averred that the stoppage of the Claimant's salary was taken in the public interest and is also consistent with the Financial Regulations as it is patently unreasonable for the Claimant to continue receiving his full salary as an employee of the 1st Defendant while deliberately refusing to report at work and rendering himself redundant. They contended that there is no indication that the committee set up by the 4th Defendant was a lawful creation based on the operative guidelines regulating the relationship between parastatals/Government-owned companies and the Government. It was also their case that there is no indication that the said committee ever completed the task or otherwise disclosed its finding to the 1st and 2nd Defendants. Notwithstanding the above, 1st and 2nd Defendants maintained that the 3rd and 4th Defendants lack the vires to issue directives to the 1st Defendant in relation to its internal workings as it is neither constituted nor conferred with the powers of the board of the 1st Defendant.

They continued that upon the dissolution of the Board of the 1st Defendant, the 2nd Defendant was directed to refer matters requiring the attention of the 1st Defendant's Board to the President and not the 3rd and 4th Defendants. The 1st and 2nd Defendants therefore contended that there is no evidence that the President delegated his authority to the 3rd and 4th Defendants in relation to any matter concerning the 1st Defendant. On the allegation of deprivation of work tools, the 1st and 2nd Defendants stated that the Claimant has a fully functional workstation within the 1st Defendant's premises but that he developed the habit of regularly occupying the 1st Defendant's conference room during the few periods of his presence in the office. They also maintained that the 1st Defendant's IT personnel was detailed to assist him in resolving whatever difficulty he had in accessing his official e-mail, he indicated that emails should be directed to his private email. Lastly, the 1st and 2nd Defendants pleaded that the Claimant's suit is statute-barred and liable to be dismissed for lack of jurisdiction and urged the Court to dismiss this case.

Both learned counsel filed their respective final written addresses on behalf of their clients. The issues framed by both of them are one and the same. Having given an indepth consideration of the issues in contention before the Court vis a vis the reliefs sought by the claimant, it is in my respectful view that the issues that will meet the justice of this case are, whether or not the 1st and 2nd defendants have the power to suspend claimant's salaries, emoluments and if the answer to this is in the negative, then is the claimant entitled to his claims? I will make reference to pertinent portions of the submissions and arguments of learned counsel in respect of these two issues in the course of this judgment.

First, I need to deal with certain preliminary issues raised by learned counsel in their final addresses. Learned defence counsel brought to the attention of the Court the derogatory and unwarranted attacks on his person, professional ethics, competence and capacity conspicuously in the claimant's final written address especially at paragraph 6.2.9 of the said address where the learned claimant's counsel inexplicably asserts that counsel for the 1st and 2nd Defendants have no moral values and also failed in upholding the legal profession. It is germane for me to state from the outset that words are the most powerful form of communication and so our choice of words is important. Therefore, it must be carefully and

constructively used in such a way that it would not pass a wrong signal or impugn on the integrity of another. Words according to the Holy writ are sharper than any two edged sword. If negatively deployed, it can hurt, harm and humiliate. The words of **Ngwuta JCA(As he then was)** becomes relevant in this instant where he said in the case of ***His Holiness Olumba Olumba Obu v. Apostle Ekanem O. Ekanem & Ors [2010] LPELR-8623CA;*** thus "***Learned Counsel as gentlemen colleagues and brothers at Bar have no personal issue one against the other. Win or lose the case they remain learned friends and colleagues. This is a necessary relationship that transcends, and enhances the conduct of, the cases they handle. Civility in spoken and written language is a lubricant that prevents law suits from degenerating into combat, and by which the participants emerge from our adversary process without blisters and swollen faces.".(P. 16, paras. E-G.*** I find it also pertinent here to state that the learned claimant's counsel was not careful and civil in the choice of his words in passing on his arguments in favour of his client. This should not happen between learned friends as lawyers are regarded. As aptly put by His Lordship Ngwuta JCA as he then was in Olumba Olumba's case supra, win or lose the case, learned claimant's counsel and the learned defendant's counsel remain learned friends and colleagues. It is in this regard that I discountenanced the derogatory words deployed by the learned claimant's counsel in his final written address questioning the integrity and professionalism of the learned defence counsel before the Court and urge the learned claimant's counsel to reach out to his learned friend for the 1st and 2nd defendants in the spirit of comradeship.

An issue of concern to the learned claimant's counsel, is that the 1st and 2nd defendants failed to comply with the provision of Order 45 Rule 2 of NICN Rules 2017. To the claimant, the rule requires a written address to be at most 35 pages, whereas the 1st and 2nd defendants filed a 40 page final address, hence the Court should declare same as incompetent and strike it out. It is the argument of the 1st and 2nd defendants that the provisions of Order 45 Rule 2 is directory and not mandatory. They then urged the Court treat same as an exception to the rule. This Court by Order 5 Rule (3) of NIC Rules 2017, may direct a departure from the rules where the interest of justice so requires. The 1st and 2nd defendants had expounded in their reply address the reason for which they overshot the required 35 pages of final written address. I find the reason cogent, credible, reasonable and

same will not prejudice the claimant in any way. In other words the extra 5 pages of the defendants' final address has not in any way occasioned injustice to the claimant. He had the opportunity of responding to all the issues framed and addressed by the defendants. At best the Court may discountenance the portion that is in excess. As rightly submitted by the learned defence counsel, this provision is not mandatory. The import of which is that it is discretionary. Where a Court has a discretionary power on an issue, the discretion is to be exercised judicially and judiciously. ***See Lagos State Government & Anor v. Beneficial Endowment Ltd [2018] LPELR-45779CA.*** A judicial and judicious exercise of my discretion in this instant is to allow the final written address filed by the defendants and pronounce it as competent. It is in the light of this that I invoke the provision of Order 5 of the rules of this Court by departing from the strict provisions of Order 45 Rule 2 and find the final written address filed by the 1st and 2nd defendants as competent. I so find and hold.

Before going into the merit of this suit, it is noteworthy that the 3rd and 4th defendants in this suit from the inception of this matter till this day have failed and or neglected to enter appearance or defend themselves and exercise their right of cross-examining the claimant in compliance with the provision of Section 36 of the 1999 Constitution as amended. ***Onnoghen JSC (CJN as he then was) in the case of Chief Leo Degreat Mgbenwelu v. Augustine Olumba (suing by his attorney Chief W.C. Okorie) Suit No. SC.83/2007, Judgment delivered by the apex court in December, 2016, he held thus-***

> ***It is not the duty of court to compel a party duly served with originating processes to defend the action, where he has no such a desire. All that is required of the court is to create and maintain an enabling environment for parties to exercise or take advantage of their right to fair hearing in any proceeding before it***

Given the above highlighted decision of the apex Court coupled with the facts on record which is absolutely in consonance with the trite position of the law as reiterated in the reasoning of the apex court, it is obvious that the 3rd and 4th defendants by their own volition in this case failed to present themselves of the opportunity of a hearing and therefore cannot complain of an infringement on their

right to be heard. They were certainly given ample opportunity to defend their case but chose to stay away without any just cause. I so hold.

Now, the law is notorious that where evidence given by a party to any proceedings or by his witness is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seised of the proceedings to act on the unchallenged evidence before it. This is because in such circumstance the evidence before the court obviously goes one way as there is nothing in such a situation to put on the other side of the imaginary scale as against the evidence given by or on behalf of the claimant. See the cases of ***Mabamije v Otto [2016] LPELR -26058 SC; Mrs Esther Ighreriniovo v S.C.C Nigeria Ltd &Ors [2013] LPELR-20336SC; Amayo v Erinmwingbovo [2006] LPELR- 458 SC.*** **The apex court by** ***Chami v. UBA PLC [2010] 6 NWLR (PT. 1191)474SC; held that where a party offers no evidence as in this instance against the claimant's case, the burden placed on the claimant is minimal as argued by the learned claimant's counsel, since there is no evidence challenging the case of the claimant. The claimant is then at liberty to use the unchallenged evidence to establish his case.*** It cited with approval its decision in ***Osun State Government v. Danlami (Nig) Ltd [2003] 7 NWLR, (PT. 818) 72 @ 99.*** However, the claimant is not absolved from the burden placed on him by law in proving the merit of his case, but with minimal evidential proof which lies on him as stated supra. See the case of ***Unity Bank v Olatunji [2013] 15 NWLR (Pt. 1378) 503, p. 531.*** I so find and hold.

It is germane for the Court to determine the admissibility or otherwise of Exhibits SA, SA1, SA7, SA8, SA10, SA16, SA19, SA20 and SA25. It is the defendants' contention that these documents are inadmissible in evidence and should be expunged from the record of the Court as they are contrary to the provisions of Section 102 of the Evidence Act, 2011. The claimant on this issue stated that the arguments of the defendants is misconceived as the documents in question have satisfied the criteria on admissibility of documents as the documents were pleaded, relevant and admissible. According to the learned claimant's counsel, a notice to produce the original of those documents was given to the 1st and 2nd defendants on the 15th of March, 2019, but they failed to produce same hence he tendered the copies he had. Cited in support is the case of ***Ibironke v. MTN [2019] LPELR-47483CA***. learned defence counsel argued in his reply on point of law that by Section 102 of the Evidence Act, the claimant can only tender certified true copies

of these documents. That by Section 97(2)(C) of the Evidence Act, 2011 is clear on secondary evidence permissible under our laws. That it is only the certified copy of the document that is admissible and not photocopy and urged the Court to expunge the documents from the record of Court.

A perusal of the documents discloses that Exhibit **SA** is a photocopy circular dated 8/12/2016 and written by the 4th defendant to the Managing Director/CEO of the 1st defendant; **SA1**, is a photocopy circular dated 6/03/2017 and written by the 4th defendant to the Managing Director/CEO of the 1st defendant, a photocopy of a letter dated 27th February, 2015 written by the Office of the Head of Service of the Federation to the 4th defendant; a photocopy of a letter dated 26th May, 2016 from the Office of the Head of the Civil Service of the Federation to the Auditor General of the Federation; **SA7** is a photocopy of a letter dated 5th June, 2017 from the office of the Accountant General of the Federation to the Managing Director of the 1st defendant; **SA8** is a photocopy of a letter dated 30th May, 2017 from the office of the Accountant General of the Federation to the Managing Director of the 1st defendant; **SA10** is a photocopy letter dated 13th June, 2017 from the claimant to the 3rd defendant; **SA16** is a photocopy letter dated 5th January, 2018 from the claimant to the 3rd defendant; **SA19 and SA20** are photocopies of letters dated 18th of May, 2017 and 6th February, 2018 from the 4th defendant to 1st defendant; **SA25** is a photocopy letter dated 19th July, 2017 from the claimant to the 3rd defendant. By Section 102 of the Evidence Act, 2011, hereunder captured thus;

> ***The following documents are public documents;***
> *a.* ***Documents forming the official acts or records of the official acts of;***
> *i.* ***The sovereign authority;***
> *ii.* ***Official bodies and tribunals; or***
> *iii.* ***Public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and***
> *b.* ***Public records kept in Nigeria of private documents"***

Of importance is also Section 89(a)(i) and (g) of the Evidence Act, which provides that a secondary evidence may be given of the existence, condition or content of a document when the original is shown or appears to be in possession or power of

the person against whom the document is sought to be proved, or the original is a public document within the meaning of Section 102. Also of importance is the provision of Section 91 of the Evidence Act, which provides that a secondary evidence of a content of a document referred to in Section 89(a) shall not be given unless the party proposing to give secondary evidence has previously given to the party in whose possession or power the document is or to his counsel such notice to produce it. The law is of common that for a document to acquire the status of a public document it must have been made by a public officer or kept by a public officer. Therefore a document is public based on custody or origin. A cursory examination of Exhibits SA, SA1, SA7, SA8, SA19, SA20 and SA25 show that they are official acts or records of the official acts of Public officers. It is on record that the claimant had infact given the 1st and 2nd defendants notice to produce two of the document tendered under contention. Id est exhibit SA10 dated 13th June 2017 and exhibit SA25 dated 19th July, 2018 respectively. The defendants did infact failed to produce these two documents. I will like to determine the admissibility or otherwise of these two documents first, before going on with the rest of the documents. By Section 89(a)(i) and 89 (g) as well as Section 91 of the Evidence Act 2011, the claimant having given a notice to the defendants to produce these documents and the failure of the defendants to produce same, has the right to tender a secondary evidence of the two documents in evidence. It is a trite position of law that where a notice to produce is served on a party who fails to produce same, then the law allows secondary evidence of such document to be adduced where available. In other words, the purpose of issuing notice to produce is to allow the person who gives the notice to tender secondary evidence of the required documents where the adverse party fails to produce them. See ***Buhari v Obasanjo*** supra, ***Ajagbe v Babalola [2010] LPELR (3668) CA***; ***Ibironke v. MTN supra***. I discountenance with respect the submission of the 1st and 2nd defendants that the two documents by Section 97(2)(c) must be certified by the claimant even after given notice to produce. Infact reference to Section 97 of the extant Evidence Act is to the effect that an admission of execution of a party to an attested document, which is contrary to the situation in the instant case is like turning the law over its head. It is in the light of these sound position of the law that I find and hold that exhibits SA10 and SA25 tendered by the claimant is admissible in law and stands admitted on record.

Next, are the other documents which the Court finds as against the argument of the learned claimant's counsel that he gave notice to produce, which are not in the list of documents listed in the notice to produce. That is exhibits SA, SA1, SA7, SA8, SA16, SA19 and SA20. By Section 104 (1)(2)of the Evidence Act supra provided that;

> ***1. Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is true copy of such document or part of it as the case may be;***
>
> ***2 The certificate mentioned in subsection (I) of this Section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be certified copies.***
> ***Section 105 provides that Copies of documents certified in accordance with Section 104 may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. "***

The above Section goes to show that a public document is admissible in its original form however, where a document is a photocopy or in duplicate it is equally admissible but must be duly certified by the officer in custody of such document. In this instant case, these exhibits as seen are duplicate of a public documents which by Section 104 of the Evidence Act supra must be certified, and by a run through of the documents, it is obvious that these documents are bereft of certification which Section 104 of the Evidence Act, supra requires. What is the effect of non-certification of a public document? It is trite that the non-certification of a duplicate of a public document is not admissible and thus must be expunged from the Court. In this case, all documents were admitted by the Court in view of clear agreement by the parties that all documentary evidence should be admitted subject to the right of all opposing parties to make submission in their final written addresses respecting objection to any of the documents. It is the duty of the judex at the stage of writing a judgment to expunge such a document from its record. The Court has the power to expunge the inadmissible evidence. See the cases of ***Buhari***

v. INEC [2008] 4 NWLR (Pt. 1078) 546 at P. 608, paras. D-F; Nigeria Bank for Commerce and Industry v. Ogbemi & Anor, Suit No: CA/J/93/2006, a judgment delivered on 25th May, 2012. Hashidu & anor v Goje & Ors [2003] LPELR 10310 CA; Metalimplex v A.G Leventis & Co Ltd [1976] 2 SC 91. In the case of *Agbaje v Adigun [1993] 1 NWLR (Pt. 269) 261*, the Apex Court held that when evidence has been wrongly admitted, the law is that the evidence must be expunged from the record at the point of writing the judgment. The Supreme Court went further to say that the basis for the rule is that the evidence does not go to any issue and that being so it cannot be legal evidence upon which the Court can make a finding of fact. See also the case of *Inyang v Eshiet [1990] 5 NWLR (Pt. 149) 178*. Applying this authorities to this instant, it is clear that Exhibits SA, SA1, SA7, SA8, SA19, SA20 as stated supra has no weight. In all, I hold that Exhibits SA, SA1, SA7, SA8, SA19, SA20 were wrongly admitted in evidence and thus expunged from the record of this Court for being inadmissible.

Regarding Exhibit SA16 it is a letter written by the claimant to the 3rd defendant. It is the defendants' arguments that by Section 102 (b) of the Evidence Act that a public document includes public records kept in Nigeria of private document. They contended that this exhibit despite being a private document acquires the status of a public document by virtue of forming part of official record and thus require certification for it to be admissible. Now, will it be right to say that this document form part of official record to attract certification? Exhibit SA16 is a letter written by the claimant seeking the intervention of the 3rd defendant on the purported crisis in the 1st defendant, on the stoppage of his salary and his alleged unwarranted deployment and humiliation by the 2nd defendant. In the case of *Ezenwa Onwuzurike v Damian Edoziem and Ors [2016] NGSC 76; [2016] LPELR 26056 SC*, the Apex Court on the question whether exhibit C a petition written to the Police by a private citizen had transformed to a public document had this to say;

> ***Exhibit C letter dated 24th June 1997... was addressed to the Commissioner of Police, Owerri Imo State. The ..... paragraph of the said Exhibit contains a plea to the police to save their souls from Ezenwa (the plaintiff/respondent) and his groups. The addressee- the Commissioner of police is a public officer charged under the Constitution of the land, for the maintenance of law and order Exhibit C in my humble***

view has become part of his official records of the police, in writing exhibit C and forwarding it to no other person than the Commissioner of Police, the writers, again in my view, intended that it (Exhibit C) be given official treatment, this acquiring official coloration. The Nigerian Police is a public institution carrying official tag. So, documents though private in nature, when sent to the Nigerian Police requesting it to discharge its Constitutional duties, upon their receipt by the Nigeria Police became public record kept by them of private document from the foregoing Exhibit C comes within the category of documents defined in Section 109 (b) of the Evidence Act (now Section 102(b) Evidence Act 2011). To hold otherwise is to accord section 109 (b) strained interpretation." See also ***Aromolaran v Agoro [2014] 18 NWLR (Pt 1438) 153***.

By ***Section 318 of the 1999 Constitution*** as amended the Minister is classified under the Civil Service of the Federation as it is assigned with the business of the Government of the Federation. By ***Section 18 (1) of the Interpretation Act, Cap I92 LFN, 2010***, a public officer means a member of the service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or the Public Service of a State. By a community reading of both Sections, the 3rd defendant is a public officer and a private correspondence sent to the 3rd defendant to seek his official intervention by virtue of his status at the material time formed part of a Public record kept in Nigeria of a private document. I say so in view of the fact that the said exhibit was not written to the 3rd defendant as a private person but in his official capacity and the act needed by the claimant is the official act of the 3rd defendant. Based on this, the said exhibits come under ***Section 102 of the Evidence Act*** supra and ought to have been duly certified under ***Sections 104 and 105 of the Evidence Act supra***. The failure thereof as I have held supra renders the document inadmissible and ought to be expunged. It is in the light of this that I expunge from the record of Court exhibit SA16. I so hold.

It is pertinent to say here that it is obvious the 1st and 2nd defendants have abandoned the issue of jurisdiction raised in their pleadings, this is because they failed to adduce any evidence in that regard and thus the Court discountenanced same.

To the main crux of this case, it is the claimant's contention that the suspension of his salaries and emoluments, denial/embargo on access to National Health Insurance Scheme benefits, denial of 2017 and 2018 annual leave by the 1st and 2nd defendants till the time of filing the suit is unlawful, illegal, null and void. Also that the 2nd Defendant lacks the vires to unilaterally suspend punish and/or withhold the salary, emoluments and all other benefits accruable to him without approval by the Board of 1st defendant. Deciding both claims together, claimant has averred that sequel to the audit query raised by him for the payment of the return flight ticket procured for the 2nd defendant before her assumption of office, the 2nd defendant resentful by his action redeployed him to another department in gross violation of Rules 020506(II) of the Public Service Rules and to which he and one Waziri Bintube wrote a Petition dated 13th June, 2017 to the 3rd defendant and on the 27th of December, 2017 he received vide his email, a memo titled stoppage of salary and emolument. The 1st and 2nd defendants in response stated that consequent upon the grant of a self-accounting status to the 1st defendant by the Accountant General of the Federation, vide a letter dated 13th December, 2012, the claimant was redeployed to head the Learning and Development unit within the 1st defendant while his organizational work rank of Deputy General Manager and his remuneration still remained intact. That based on this redeployment, the claimant started exhibiting some act of indiscipline in flagrant disregard of the terms of his employment as he failed to relocate to his new office and continue to parade himself as the Head of internal Audit of the 1st defendant. The 1st and 2nd defendants argued that the stoppage of the claimant's salary was necessitated by his inexplicable gross insubordination in refusing to assume his new office; that he resorted to idleness and absenteeism whilst receiving his full salary, he seized two audit stamps assigned to the 1st defendant and the keys to the audit safe of the 1st defendant and his refusal and disobedience of lawful directives to return the audits stamps. To the defendants the right of an employer to discipline its employee by imposing sanctions cannot be disputable. Cited in support are the cases of ***Imonikhe v Unity Bank Plc [2011]12 NWLR (PT.I1262) 6244 @ 649, parag. C as well as the case of UBN v. Salaudeen [2017] LPELR-443415CA.*** I wish to say that it is clear that the relationship between the claimant and the 1st defendant is that of master and servant relationship and not statutory as the terms of the conditions of the claimant's employment is regulated by Exhibits SA2, SA3 and SA9 (claimant's offer of employment and confirmation letter and the 1st defendant

Human resources policy manual), noteworthy is exhibit SA26 at the last page thereof where the claimant attested by hand dated 05 October, 2015 that exhibit SA9 details the terms of his employment with the 1st defendant and it is his duty to read, familiarize and abide by same. Although, both parties several times made copious reference to portions of the Public Service Rules. Moreover, parties are ad idem as demonstrated in their final written addresses that the above stated documents regulates the relationship between the claimant and the 1st defendant.

Indisputably, the conditions and terms of service is the central and substratum of the case and hence all issues regarding this suit must as of law be founded upon it as parties are bound by the terms and conditions of the contract of service as it is the bedrock upon which the employment relationship stands, See the cases of ***Obanye v. Union Bank of Nigeria Plc[2018] LPELR 44702 SC; Union Bank v Salaudeen supra; Obelema N. Briggs v Ibinabo Harry & 2 ors [2016] 9 NWLR (1516) P. 45; Cadbury Nigeria PLC v Olubunmi Oni [2014] 3 ACELR P. 118.*** It is settled that where the terms of the contract are clear and unambiguous; the parties are not allowed to renege on it or look elsewhere. Also true is the trite position of the law that the Court is not equally allowed to read into the contract. The apt reasoning of the apex Court in the case ***Gabriel Adekunle Ogundepo & Anor v. Thomas Enitan Olumesan [2011] 8 NWLR (PART 1278) 54 AT 70C-D per FABIYI, JSC who said: "I need to still point out at this stage that it is not the business of a Court to re-write parties contract for them. The duty of the Court is to interpret the contract as contained in the instrument made by the parties on their own free volition..."*** See also the case of ***Akinola & ors v. Lafarge Cement WAPCO Nig Plc [2015] LPELR, 24630.*** I agree with the learned 1st and 2nd defence counsel that an employer is vested with the right to terminate, discipline and or punish its employee but the right I must add is limited to the extent that it must be done in accordance with the terms and conditions of service as argued also by the learned claimant's counsel in his final address. If I may ask, can the 1st and 2nd defendants suspend the claimant's salary and other emoluments by his contract of employment? By virtue of Exhibit SA11 a letter dated 27th of December, 2017 the claimant's salary and emolument was stopped by the 1st and 2nd defendants, on the ground that the claimant refused his redeployment to the department of learning and development unit by a letter dated November 7th 2016, i.e. exhibit SA28; refusal to hand over to one Mrs. Hauwa Bello the Deputy Director of

Internal Audit; the seizure of 2 audit stamp and the keys to the security safe of the 1st defendant. An examination of exhibit SA9 reveals that this infraction falls under disorderly behaviour (e.g. excessive noise-making, rude & **obstinate behaviour**) underline mine under clause 6.3.11 (sanctionable offences at pages 107). ***Clause***

6.2.4.1 of exhibit SA9 provides that;
QUERY

i. where an employee commits a misdemeanor or an offence which constitutes a breach of laid down rules and regulations, as contained in the employment Manual or that is not specifically provided but in no doubt constitutes a misconduct, such an employee shall be notified of the act of alleged misconduct and be required to make written representations of same within forty eight (48) hours to HRD copying the line Manager.

ii. Where the misdeamenour or offence as stated above involves an employee of the AGM grade level and above, such an employee shall be notified of the act of alleged misconduct and be required to make written representations of same within forty eight (48) hours to the Head HRD copying the Managing Director/CEO.

iii. Should the employee fail to comply with the request within the provided time frame, or refuses to receive the query, such employee shall be deemed to have admitted guilt of the allegation and the appropriate disciplinary sanction shall be levied against him/her. HRD shall take the necessary next steps implement the related penalties against such employee.
iv. In the case of misconduct involving an employee of the AGM grade level and above, The HHRA shall notify the MD/CEO and Board Committee on HR prior to implementing the related penalties/sanctions against such employee.

6.4. Attendance/absenteeism

6.4.1 It is the policy of the organization to minimize absenteeism and chronic absenteeism. Employees are expected to put in a minimum of 40 hours of work per week. The official resumption time shall be not later than 8.30am while closing time shall be not earlier than 5.30pm daily.
6.4.3 An employee who has been absent for three or more consecutive working days is required, upon returning to work, to present a note from a licensed physician indicating the nature of the employee's medical condition and any limitations to the HRD.

6.4.8 All unauthorized and or unreported absences shall be considered as absences without official leave (AWOL) and will be subject to the provisions of the disciplinary process and the employee shall not be remunerated for such period of absence.[Emphasis mine]

6.4.9 Any employee who is absent from duty for three or more consecutive working days without the requisite approval shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing;

6.4.10 it is the responsibility of the employee to notify his/her line manager and HRM of any absence.

6.4.12 Furthermore absence without leave for five or more consecutive days shall be grounds for constituting a competence enquiry committee on grounds of incompetence and negligence of duty. The constitution and procedure competence enquiry committee will be in line with the provisions of the disciplinary hearing process and the HRD will be the secretariat of this committee."

The claimant was issued a query by the 1st defendant on the 20th July, 2018 vide Exhibit SA 22 on the grounds that he hardly comes to work and that in fact on Tuesday and Wednesday 17th and 18th of July 2018 and also that on the 19th of July, 2018 he showed up for about an hour with no authorization. The Claimant on the 16th of February, 2018, vide exhibit 17 was formally invited by the 4th defendant to a meeting of a committee on the 1st defendant's staff matters slated for

the 21st February, 2018. On the 20th of March, 2018, by Exhibit SA18, the 3rd defendant following the resolution from the Report of the committee set up to investigate the Management crisis at Nigerian Bulk Electricity Trading Plc, i.e. the 1st defendant, ordered the 1st defendant to effect the payment of salaries of the claimant and also to refrain from taking decisions which includes suspension of his salaries and emolument. The 1st and 2nd defendants refused to comply with this directive and this necessitated the letter dated 26th of March, 2018, id est exhibit SA 21 from the claimant to the 1st defendant. The claimant on the 25th July, 2018 responded to the query denying all the assertions against him. He was also invited to a disciplinary proceeding on the 10th day of December, 2018 exhibit SA27. The 1st and 2nd defendants stated vide their written submission that there is no law, regulation or evidence before this Court empowering any Minister to give directives of any nature to the 1st Defendant and the 1st Defendant is not statutorily subject to any individual ministerial directive notwithstanding the fact that the 4th Defendant is represented by the 3rd Defendant on the 1st Defendant's Board of directors. They stated that the Guidelines Regulating the Relationship between Parastatals/State-owned Companies and their Supervising Ministries (ExhibitSA27) enjoins that ***"the Ministry is not to take over the running of the Parastatals/Government-owned Companies under them by getting involved in their day to day management."*** The Guidelines also provides that ***"the enabling laws of parastatals empower Ministers to issue broad policy directives of a general nature to be observed by the Management Boards of Parastatals and Government-owned Companies."*** They posited that taking steps or making any pronouncement in matters which relates to engagement, discipline and termination of the employment of any of 1st Defendant's staff does not relate to policy formulation by the 3rd and 4th Defendants but an attempt to get involved in the day to day management of the 1st Defendant which is illegal and invalid. Parties are ad idem that the 1st defendant is a Government owned Company, however by exhibit SA27 that is the Administrative Guidelines Regulating the Relationship between Parastatals Government owed Companies and the Government it is clear that the Board of the 1st defendant should be responsible for the conditions of services of its staff as stated at paragraph 15 it provides thus;

> ***Subject to the limitation imposed in these guidelines and the laws establishing the parastatals, the Board of the Parastatals shall be***

competent to conduct negotiations and consultations with the staff unions on staff welfare and conditions of service of their members."

It is worthy to mention that at the period that the claimant's salary was stopped the Board of the 1st defendant was dissolved. It is trite that the law does not exist in vacuum. It is plain on record of this Court that DW during cross examination when asked if at the period under consideration the 1st and 2nd defendants take instructions from the 3rd defendant, she answered in the affirmative and stated that they do take instructions from the 3rd defendant. She equally admitted that the 2nd defendant attended the ministerial committee because she accompanied her and the 2nd defendant cooperated with the committee, the import of which is that the 2nd defendant agreed to the supervision of the 3rd and 4th defendants over the 1st defendant and thus submitted to it. Infact by paragraph 14 of exhibit SA27, the Board and the management which includes the 2nd defendant shall not without reference to the Minister i.e. the 3rd defendant, take any action involving a change of policy or one which is likely to lead to public controversy. The issue of financial autonomy/self-accounting to the 1st defendant consequent upon which the office of the Accountant General transferred its staff to the 1st defendant's Audit department leading to the cause of action in this case, is nothing but a policy issue as well as the controversy that which was aired on a radio program tagged " Berekete family program" on the 16th and 23rd of November 2018 respectively, stated in exhibit SA27, should be an issue that the 2nd defendant ought to have tabled before the 3rd defendant in the absence of the Board. It is in the light of all these that I find that the 3rd defendant has the power to set up the ministerial committee and equally give directive to the 1st defendant which is to be carried out by the 2nd defendant, in this case the issuance of exhibit SA18 is proper and ought to have been carried out by the 2nd defendant. I so hold.

Assuming but not conceding to the fact that the 1st and 2nd defendants can discountenance the directive of the 3rd and 4th defendants, it is germane to state that the claimant's salary was stopped since 27th of December, 2017 and was issued a query in 2018 for absence without leave contrary to clause 6.48 of exhibit SA9. I say so on the premise that upon the stoppage of his salary, clause 6.48 presupposes (I reproduce for better emphasis) that "***All unauthorized and or unreported absences shall be considered as absences without official leave (AWOL) and will***

be subject to the provisions of the disciplinary process and the employee shall not be remunerated for such period of absence." **[Underlines mine].** This was not the case in this instant suit as the claimant's remuneration was stopped long before disciplinary process was taken against him. This is a case of putting the cart before the horse. The issuance of the query and setting up of a disciplinary committee after stoppage of his salary and emolument after about 7 months was an afterthought. It is trite as reiterated supra that parties are bound by the contract of employment as they must follow strictly the terms and conditions of employment. In effect, the 1st and 2nd defendants having failed to follow strictly its rules of engagement with the claimant is in breach of same and hence the act of the suspension of his salaries from December, 2017 till date is wrongful. Consequently, I resolve issue one in favour of the claimant.

With regards to claimant's claim of 2017 and 2018 annual leave, it is clear by exhibit SA9 at clause 4.5.5 – 4.5.6.4 that claimant is entitle to annual leave. From the records before the Court precisely Exhibit A, an email dated 18th of August, 2017, sent to the claimant by one Abba Aliyu, the General Manager in L & D Department, it is seen that the claimant's request for 9 days outstanding annual leave was rejected by the 1st and 2nd defendants on the grounds that the approval granted by Abba Aliyu is invalid in that the claimant has not relocated to his department yet and he indicated in the leave form that his department is internal audit. I have perused exhibit SA9 and I have not seen where an employee's leave will be rejected on the premises for which claimant's leave was rejected by the 1st and 2nd defendants in this present. It is trite in the World of work that annual leave is a statutory right of an employee and every employee is entitled to same. Infact the contract of claimant's employment recognizes his right to leave as expounded in exhibit SA9. ILO Convention. C132 Revised in 1970 for Holiday with pay, ratified by Nigeria, Articles 2 and 3 thereof provides that;

> ***Art.2.This convention applies to all employed persons, with the exception of seafarers;***
> ***Art.3 Every person to whom this convention applies shall be entitled to an annual paid holiday of a specified minimum length.***

Further to the above, Section 18 (1) of the Labour Act, Cap L1 LFN, 2010 provides that Every employee shall be entitled after twelve months continuous service to a holiday with full pay. It is clear from the two statutory provisions cited supra, that labour jurisprudence abhors withholding of leave under any guise, ploy or reason whatsoever. Therefore the argument of the 1st and 2nd defendants that the claimant's annual leave was rejected on the basis that he has not relocated to his new department L and D department is contrary to the statutory provision. It is in this light that I find and hold that the denial of the claimant's 2017 and 2018 leave is wrongful, an unfair labour practice and against international best practice. I so hold.

Next, is issue two, which is whether or not the claimant is entitle to his claims. On the claimant's claims on denial/embargo on access to National Health Insurance Scheme benefits, he stated vided paragraph 50 of his pleadings, that since the stoppage of his salary, emoluments and other entitlements including his National Health Insurance Scheme he has been rendered financially impotent to take on the duties of his family. The 1st and 2nd defendants vide its witness statement on oath at paragraph 61 denied this assertion as false and inconsistent. The law is elementary and trite that he who asserts must prove. see Section 131 of the Evidence Act supra, See the cases of ***Cadbury Nig Plc v Oni supra***; ***Edosomwan v. Idugboe [2019] LPELR-46423CA; George Onwudike v First Bank of Nig. Plc [2013] LPELR, 20385.*** There is nothing on record evincing that he was denied his National Health Insurance Scheme benefits as he wants the Court to find for him and thus this claim must fail. I so find and hold.

The claimant prays for an order directing the immediate payment of accumulated salary and emoluments and all other benefits accruable to him as staff of the 1st Defendant, from 22nd December 2017 till date. It is right to re-emphasis that claimant's employment in this case has not been determined but that his salary and other entitlements were withheld by the 1st and 2nd defendants. I have held supra that the 1st and 2nd defendants contrary to its terms and conditions of service withheld the claimant's salary and other emolument wrongfully. Although the 1st and 2nd defendants argued that he did not work as stated by his line manager vide exhibit SA13, I find from exhibit SA13 that his line manager did infact state at paragraph 1 of that memo to the 2nd defendant that he engaged the claimant on

different tasks. The import of which is that the claimant did actually worked and thus entitled to be paid his salaries and emoluments. Consequently I find that the claimant is entitled to his salaries from 22nd December, 2017 till today 11th of March, 2020. I so hold.

The claimant claims the sum of **₦250, 000,000.00** (Two Hundred and Fifty Million Naira) as general damages in favour of the psychological trauma and injuries suffered by the Claimant as a result of the 1st and 2nd Defendants actions. It is the law that damages are designed to compensate for such results as have actually been caused. See the case of ***Godwin Chukwu & ors v Gabriel Makinde & anor [2007] 9 NWLR (Pt. 1038) 195 CA***. It is trite that the Court cannot award general damages for psychological trauma and injuries which have not been proven. The claimant has failed to canvass evidence to substantiate his claim for same, it is in consequence that I discountenance his claim for damages and dismiss same.

It is in the light of the above evaluation and reasoning that I find and hold that the Claimant's Claims succeeds in part, in the final analysis and for the avoidance of doubt. It is declared and ordered as follows:

1. That the suspension of claimant's salary and emolument is wrongful
2. That the refusal of his annual leave for 2017 and 2018 is wrongful, an unfair labour practice and against international best practice.
3. That his claims for denial on access to National Health Insurance Scheme benefits fails.
4. That the 2nd defendant lacks the vires to unilaterally suspend punish and/or withhold the salary, emoluments and all other benefits accruable to the Claimant.
5. That the claimant is entitled to all his salaries and emoluments and all other benefits accruable to him as staff of the 1st Defendant from 22nd December 2017 till today 11th of March, 2020.

6. That claimant's claim d fails.
7. All sums awarded in this Judgment is to be paid within 30 days of this judgment, failure upon which it attracts 21% interest thereon per annum.

No Order as to cost.

Judgment is entered accordingly entered

Hon. Justice Oyebiola Oyejoju Oyewumi

Presiding Judge

CHIEF REGISTRAR
DATE 12th March 2020
NATIONAL INDUSTRIAL COURT

NATIONAL INDUSTRIAL COURT OF NIGERIA, ABUJA
CERTIFIED TRUE COPY

NATIONAL INDUSTRIAL COURT
SIGN
DATE 12/03/2020
TRN No: Z 1148501/4

CTC fee ₦230:00

RUFAI ZAINAB AHMED (MRS)
SNR REGISTRAR II
SIGN.....
DATE.....
12th - March - 2020