

IN THE FEDERAL HIGH COURT  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
ON THURSDAY THE 21<sup>ST</sup> DAY OF NOVEMBER, 2019  
BEFORE HIS LORDSHIP,  
HON JUSTICE A.M. LIMAN  
JUDGE

SUIT NO: FHC/L/CS/125/2019

BETWEEN

INSTITUTE OF CHARTERED ACCOUNTANTS  
OF NIGERIA (ICAN)

} PLAINTIFF

AND

1. FEDERAL INLAND REVENUE SERVICE (FIRS)
2. CHARTERED INSTITUTE OF TAXATION  
OF NIGERIA (CITN)

} DEFENDANTS

**JUDGMENT**


The Plaintiff Institute of Chartered Accountants of Nigeria (hereinafter called ICAN) Commenced this action by Originating Summons against the Defendants.

(1) Federal Inland Revenue Service (hereinafter referred as FIRS) and (2) Chattered Institute of Taxation of Nigeria (hereinafter referred to as CITN)



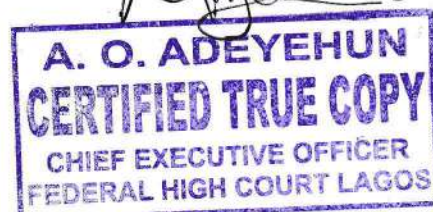
In the Originating Summons the Plaintiff asks the Court for the determination of following questions.

- i. Whether FIRS is entitled to exclude professionals without CITN practicing license from filing tax returns on behalf of their clients as contained in a letter dated 23<sup>rd</sup> April, 2018 addressed to the Chartered Institute of Taxation of Nigeria sequel to a formal request made by CITN to that effect?
- ii. Whether having regard to all known laws now promulgated whatsoever and howsoever including but not limited to the Companies Income Tax Act 2007, Federal Inland Revenue Service (Establishment Act) 2007, Institute of Chartered Accountants of Nigeria Act 2007, Institute of Chartered Accountants of Nigeria Act and the Constitution of the Federal Republic of Nigeria (FRN) 1999 (as amended), a Chartered Accountant cannot practice, administer, hold himself out, be consulted and file tax returns as an Accountant cum tax agent/practitioner in Nigeria without being a member of the Chartered Institute of Taxation of Nigeria?

  
22/11/2020

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- iii. having regard to the relevant Constitutional provisions particularly Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether a party/person may be compelled to join an association?
- iv. Without prejudice to (iii) supra, whether membership of Chartered Institute of Taxation of Nigeria is a condition precedent to practice as tax agents/practitioners in Nigeria?
- v. Whether CITN as a statutory body is entitled to compel ICAN another statutory body to direct its members to register with CITN before such members are entitled to practice taxation?
- vi. Whether ICAN members can be excluded by the Defendants from tax practice in Nigeria?
- vii. Having regard to the provisions of Section 27 of the Constitution of Federal Republic of Nigeria 1999 (as amended), whether the decision of the Court of Appeal delivered on 15<sup>th</sup> day of February, 2013 is not valid, subsisting, extant and binding on all authorities and



persons including but not limited to Federal Inland Revenue Service (FIRS) and Chartered Institute of Taxation of Nigeria (CITN)?

- viii Without prejudice to (vii) supra, whether a party can by an agreement, memorandum, circular, letter whatsoever and howsoever called, obviate the legality/bindingness of a Court decision?
- ix Whether the Letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with the Court of Appeal Judgment dated 15<sup>th</sup> February, 2013 in Suit No. CA/L/673/07: Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria?
- x Further to (i-ix) supra, whether an order can be made against a person who is not a party to the suit?
- xi Whether the Letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No:



FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with S. 5(1) & (2) and other salient provisions of the Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment Regulations, 2011 (Sections 5 (2) and (10) (a & b thereof)?

- xii Whether the Letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with relevant statutory provisions, to wit, Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria 200, as amended by the Companies Income Tax (Amendment) Act 2007 (Sections 55 (6) (a) & (b) thereof) and Institute of Chartered Accountants of Nigeria Act No. 15 of 1965 Sections 1, 14 (1) (b) 7 (C) and 20 (3) thereof)?
- xiii Whether by a holistic interpretation of Section 14 (1) (a)-(d) of the Institute of the Chartered Accountants of Nigeria Act, Chartered Accountants either functioning

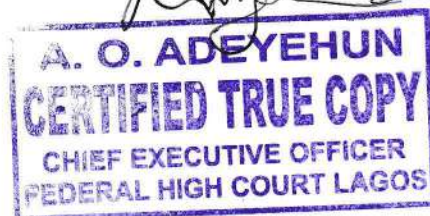


as Fellows, Associates or Registered Accountants under the Act, with sufficient knowledge and skills are not deemed to practice as Accountants or perform any service inclusive of Auditing and Taxation or any other service unhindered?

- xiv Whether the FIRS letter dated April, 23<sup>rd</sup>, 2018 directing non- CITN members to obtain the stamp and seal of CITN before they can be eligible to practice taxation in Nigeria is not a gross violating of applicable laws including the recent Court of Appeal Judgment dated 15<sup>th</sup> February, 2013 in the case of Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria?

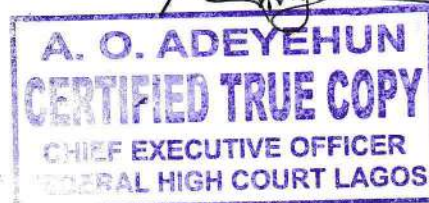
Where upon the Plaintiff claims against the Defendants as follows:-

1. A Declaration that the rights of members of the **Institute of Chartered Accounts of Nigeria (ICAN)** to act/hold themselves out as tax practitioners, consultants and administrators under and by virtue of the ICAN Act,

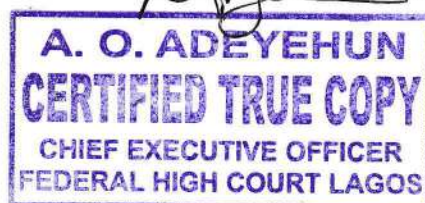


Companies and Allied Matters Act (CAMA) and other enabling statutes are valid, extant, subsisting and legal.

2. A Declaration that under and by virtue of the ICAN Act, CAMA and other enabling statutes which allow members of the **Institute of Chartered Accounts of Nigeria (ICAN)** to act as auditors and be involved in tax-accounting practice, members of the Plaintiff can act/hold themselves out as tax practitioners, consultants and administrators.
3. A Declaration that in pursuance of the provisions of Section 24 (f) of the Constitution and Section 335, 337 and schedule 2 to CAMA, members of the Plaintiff are entitled to act, advise and consult on matters that are referred to them by tax payers.
4. A Declaration that by virtue of the existing laws including but not limited to the Court of Appeal decision delivered on 15<sup>th</sup> February, 2013 and the provisions of Section 287 of the Constitution, the Plaintiff's members' right to act/hold themselves out as tax practitioners, consultants and administrators is valid, extant, subsisting and legal.



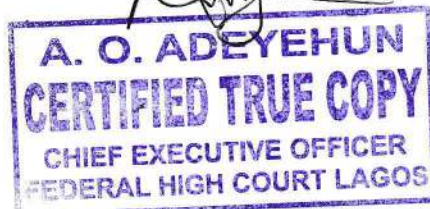
5. A Declaration that under and by virtue of the provisions of Section 40 of the Constitution, the Defendants cannot compel members of the **Institute of Chartered Accounts of Nigeria (ICAN)** to join the 2<sup>nd</sup> Defendant.
6. A Declaration that an agreement, memorandum, circular, letter whatsoever and howsoever called, no matter how beautifully couched, cannot obviate the legality/bindingness of a Court decision.
7. A Declaration that the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with the Court of Appeal Judgment dated 15<sup>th</sup> February, 2013 in Suit No. CA/L/673/07: Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria.
8. A Declaration that the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler





is not inconsistent with the provisions of Section 5 (1) & (2) and other salient provisions of the Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment Regulations, 2011 (Section 5 (2) and 10 (a & B thereof).

9. A Declaration that the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with relevant statutory provisions, to wit, Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria 200, as amended by the Companies Income Tax (Amendment) Act 2007 (Sections 55 (6) (a) & (b) thereof) and Institute of Chartered Accountants of Nigeria Act No. 15 of 1965 Sections 1, 14 (1) (b) 7 (C) and 20 (3) thereof).
10. An Order setting aside the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler



is not inconsistent with the Court of Appeal Judgment dated 15<sup>th</sup> February, 2013 in Suit No. CA/L/673/07: Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria.

11. An Order setting aside the letter dated 23<sup>rd</sup> day of April, 2018 dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with S. 5(1) & (2) and other salient provisions of the Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment Regulations, 2011 (Sections 5 (2) and (10) (a & b thereof).
12. An Order setting aside the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with relevant statutory provisions, to wit, Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria 200, as amended by the Companies

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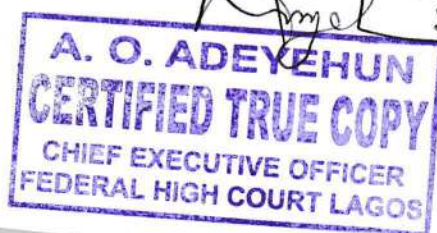


Income Tax (Amendment) Act 2007 (Sections 55 (6) (a) & (b) thereof) and Institute of Chartered Accountants of Nigeria Act No. 15 of 1965 Sections 1, 14 (1) (b) 7 (C) and 20 (3) thereof)

13. An Order of Injunction restraining the Defendants from implementing or direct to be implemented the contents of the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler.
14. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The Plaintiffs case as set out in the affidavit supporting the Originating Summons is correctly articulated by the Plaintiff counsel at the hearing of the suit in his opening address.

"The Plaintiffs who are the body regulating Professional accountants in Nigeria is aggrieved about a letter written by the Defendant FIRS dated 23<sup>rd</sup> April 2018 wherein the 1<sup>st</sup>



Defendant is contending that for the Plaintiff to practice as professional in Taxation in Nigeria they have to obtain a stamp and seal of CITN before they can file tax Return with FIRS. The contention of the Plaintiff however is that before the FIRS notice was issued there has been a legal proceedings between the Plaintiff and CITN before the High Court, Lagos and in that proceedings five reliefs were sought by the 2<sup>nd</sup> Defendant against the Plaintiff and those reliefs do not include affixing stamps and seals of CITN before tax returns can be filed with FIRS. The High Court granted the five reliefs, but on appeal, the Court of Appeal upheld reliefs 1, 2 and 4 but set aside reliefs 3 and 5 which sought to compel the Plaintiff from practicing taxation in Nigeria except through the control of the 2<sup>nd</sup> Defendant. Both appeal and cross appeal to the Supreme Court were dismissed having been withdrawn by the parties.

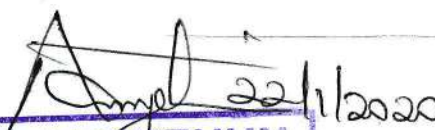
It is the contention of the Plaintiff that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants seek to rewrite the Judgment of the Court of Appeal and the Supreme Court by introducing the element of stamp and seal before the practice of taxation that negates the Court of Appeal and Supreme Court pronouncements. The Plaintiffs are



therefore challenging the letter issued by the 1<sup>st</sup> Defendant FIRS compelling members of the Plaintiff to obtain stamp and seals, as they are not part and parcel of the Court of Appeal Judgment. Plaintiffs are also saying that the Memorandum of Understanding executed by the parties cannot rewrite the Judgment of the Court of Appeal and the Supreme Court. That the Memorandum cannot be used to as a basis to comprise the Judgment of the Court of Appeal.

The 1<sup>st</sup> Defendant filed a counter affidavit to the Originating Summons. It is sworn to by Olufemi Asekun, a staff of the legal service Department of the 1<sup>st</sup> Defendant. In it, the deponent deposed to the following relevant facts:

1. That the 1<sup>st</sup> Defendant merely acted in accordance with the Judgment of the High Court which was upheld by the Court of Appeal to the effect "that claimant is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendant on any other professional body or institution.

  
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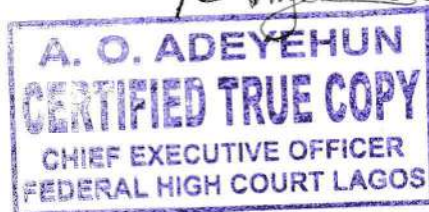
2. 1<sup>st</sup> Defendant the fact that the letters dated 2<sup>nd</sup> April, 2018 and 17<sup>th</sup> January, 2019 are in accordance with the Judgment of the Court of Appeal (Exhibit FIRS "C" and "D").
3. That the Public Notice was issued in accordance with the Judgments of the High Court and the Court of Appeal to the effect that the 2<sup>nd</sup> Defendant is vested with the power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Plaintiff and any other professional body or institution in good faith to prevent quackery in tax administration.
4. That for the purpose of filling Companies Income Tax Returns, the 1<sup>st</sup> Defendant is statutorily empowered by the relevant Tax law to appearance from time to time the person or company who are qualified to file return with the 1<sup>st</sup> Defendant on behalf of tax payers within its tax jurisdiction.



The 2<sup>nd</sup> Defendant filed a 30 - paragraph counter affidavit. It is deposed to by Adefisayo the Registrar and Chief Executive Officer of the 2<sup>nd</sup> Defendant. The relevant facts contained in the affidavits are set out below as follows:-

1. That contrary to the Plaintiff's contention, there is no attempt by the Defendants to disapprove or delist any member of the Plaintiff from the non-existent list of professionals qualified and reorganized the 2<sup>nd</sup> Defendant, with the approval of the 1<sup>st</sup> Defendant only insistent on compliance with the 2<sup>nd</sup> Defendant's notice attached to the said affidavit as Exhibit 4.
2. That the 2<sup>nd</sup> Defendant was duly enacted in 1992 whose objective, apart from regulating its members, was to regulate and control the profession of taxation in Nigeria in all its ramifications to the exclusion of any other professional body or institute in Nigeria.
3. The 2<sup>nd</sup> Defendant contend that any knowledge of taxation acquired by members of the Plaintiff in order to become members of the Plaintiff does not automatically qualify

*A. O. Adeyehun* 22/1/2020



them to practice taxation unless they join the 2<sup>nd</sup> Defendant as members

4. That the Plaintiff's Appeal and 2<sup>nd</sup> Defendant's Cross-Appeal No SC/492/2015 mentioned therein, were withdrawn and struck out by the Supreme Court because the Plaintiff and the 2<sup>nd</sup> Defendant settled their differences arising from the Judgment in Appeal No. CA/L/673/2007 amicably and thereupon executed a memorandum of understanding and terms of settlement both dated the 12<sup>th</sup> of February, 2015.
5. That neither the Federal Inland Revenue (Establishment) Act Cap F36, LFN, 2004 nor Tax Administration (self Assessment) Regulations of 2011 contains a list of agents qualified to file Tax Returns in Nigeria.
6. That regulation of the Tax Administration (self Assessment) Regulations of 2011 attached to the affidavit in support of the Originating Summons as Exhibit 8 was specifically enacted by the 1<sup>st</sup> Defendant during the pendency of Appeal No. CA/673/2007 in order to avert accusation of partiality against the 1<sup>st</sup> Defendant pending the determination of the Judgment in the Appeal.

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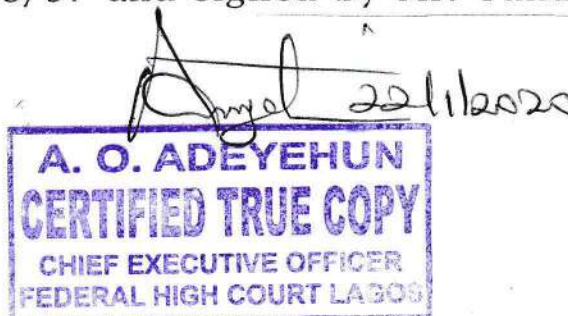
7. That the said letter dated 23<sup>rd</sup> April, 2018 by the Executive Chairman of the 1<sup>st</sup> Defendant (attached to the Plaintiff's affidavit as Exhibit 3 is in consonance with and pursuant to the CITN Act and the three reliefs upheld in the Judgment of the Court of Appeal in Appeal No. CA/673/2007.

Parties filed their respective written addresses:

The Plaintiff's counsel submitted five issues for determination, namely:-

1. Whether the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with the Court of Appeal Judgment dated 15<sup>th</sup> February, 2013 in Suit No. CA/L/673/07: Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria.
2. Whether the letter dated 23<sup>rd</sup> day of April, 2018 written by the office of the Executive Chairman of Federal Inland Revenue Service with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler

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is not inconsistent with S. 5(1) & (2) and other salient provisions of the Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment Regulations, 2011 (sections 5 (2) and 10 (a & b thereof), Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria 2004, as amended by the Companies Income Tax (Amendment) Act 2007 (Sections 55(6)(a) & (b) thereof) and Institute of Chartered Accountants of Nigeria Act No. 15 of 1965 (Sections 1, 14 (1) (b) 7 (c) and 20 (3) thereof)

3. Having regard to the relevant provisions of Companies Income Tax Act 2007, Federal Inland Revenue Service (Establishment Act) 2007, Institute of Chartered Accountants of Nigeria Act and the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether a Chartered Accountant cannot practice, administer, hold himself out, be consulted and filed tax returns as an Accountant cum tax agents/practitioners in Nigeria without necessarily being a member of the Chartered Institute of Taxation of Nigeria.

*Angel* 22/11/2020  
**A. O. ADEYEHUN**  
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4. Having regard to the provisions of Section 287 of the Constitution of Federal Republic of Nigeria 1999 (as amended), whether the decision of the Court of Appeal delivered on 15<sup>th</sup> day of February, 2013 is not valid, subsisting, extant and binding on all authorities and persons including but not limited to **Federal Inland Revenue Service (FIRS)** and **Chartered Institute of Taxation of Nigeria (CITN)**
5. Having regard to the relevant Constitutional provisions particularly Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether a party/person may be compelled to join an association.

Learned counsel for the 1<sup>st</sup> Defendant also submitted the same 5 questions for determination formulated by the learned counsel for the Plaintiff.

The learned counsel for the 2<sup>nd</sup> Defendant did not formulate any issue for determination but argued his case based on the order in which the Plaintiff's learned counsel organized his legal argument.



Considering the fact that both learned counsel for the Plaintiff and 1<sup>st</sup> Defendant agreed on the same issues for determination, and also the learned counsel for the 2<sup>nd</sup> Defendant did not formulate any issues, it is proper for the purpose of resolving the issues that have arisen from this suit that I should adopt the five issues on which the parties are apparently agreed.

However before embarking on the analysis of the issues for the determination it is necessary to examine the Statutory and Regulatory provisions of the enactments on which the parties have agreed are particularly relevant and key to the resolution of the issue formulated by the parties.

Secondly, it is also prudent to examine the effect of the Judgments of the Lagos State High Court, the Court of Appeal and the legal consequences of withdrawal of both the Appeal and the Cross-Appeal before the Supreme Court which led to their dismissal.

From the Plaintiff's questions for determination in his Originating Summons, the following statutory enactments and regulations are referred to:

1. Chartered Institute of Taxation of Nigeria Act.



2. Institute of Chartered Accountants of Nigeria Act No 15 of 1965
3. Companies Income Tax Act Cap C21 LFN 2072004.
4. Federal Inland Revenue Service (establishment Act) 2007
5. Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
6. Federal Inland Revenue Service (establishment) Act 2007  
Tax Administration (Self-Assessment Regulation 2011 (section 5(2) and 10 (a) (b) thereof).

#### Chartered Institute of Taxation of Nigeria Act

The following are the relevant provisions:

Section 1. (1) There is hereby established a body to be known as the Chartered Institute of Taxation of Nigeria (in this Act referred as "the Institute") which shall be a body Corporate under that name and be charged with the general duty of -

- (a) determining what standards of knowledge and skill are to be attained by persons seeking to be become registered members of the Taxation



Profession (in this Act referred to as ("the Profession) and reviewing those standards, from time to time as circumstances may require

- (b) Securing in accordance with the provisions of this Act, the establishment and maintenance of a register of fellows, associates, graduates and student members of the institute and the publication from time to time of list of those persons; and
  - (c) regulating and controlling the practice of the profession in all its ramifications;
  - (d) maintaining in accordance with this Act; of discipline within the profession;
  - (e) performing, through the Council established under section 4 of this Act, the functions conferred on it by this Act
2. (1) subject to the provisions of this Act, persons admitted to membership of the Institute shall be registered as members in the category of - (i)



fellows; (ii) associate members; and (iii) graduate members.

(2) persons registered under this Act as members shall be entitled to be enrolled -

- (a) as fellows, if they satisfy the Council that for the period of five years membership immediately preceding the date of application in that behalf, they have been fit persons and have, in addition to being the holders of approved academic qualifications, been in continuous practice as professional Tax practitioners or administrators;
- (b) as associate members for the period of not less than three years immediately preceding the date of application in that behalf, (the period of membership of the Institute of Taxation in the discretion of the Council (counting in that behalf), have been enrolled as graduate members and are otherwise fit persons; and

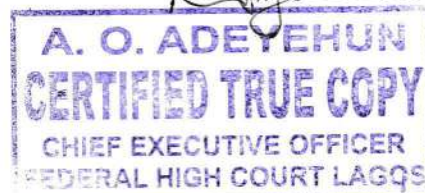


(c) as graduate members, if they satisfy the Council that they have passed the Institute's examinations and are otherwise fit and proper persons to be enrolled.

10.(11) subject to section 11 of this Act and to rules made under section 8 of this Act, a person shall be entitled to be registered as a member of the institute if.

(a) he passes the qualifying examination accepted by the Council under this Act and completes the practical training prescribed; or

(b) he is by law entitled to practice for all purposes as a tax administrator or practitioner in the country in which he the qualification was granted and, if the council so requires, he satisfies the Council that he has sufficient experience as a tax administrator or practitioner, or he satisfies the council that immediately before the

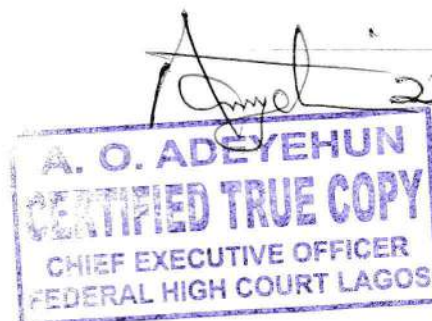




commencement of this Act he had not less than (i) one year's practical experience in accounting in the case of a registered member of the Institute of Chartered Accountants in Nigeria

(ii) two year's practical experience or tax administrator in practice in the case of a person who has passed the final of the Federal Board of Inland Revenue Training School examination or its equivalent; (iii) three years' practical experience in Taxation in the case of any other person possessing a degree certificate from any Nigerian or overseas recognized institution majoring in Taxation.

16. (1) subject to subsector (2) of this section, a person shall be deemed to practice as a member of the institute if in consideration of remuneration received or to be received and



whether by himself or in partnership with any other person

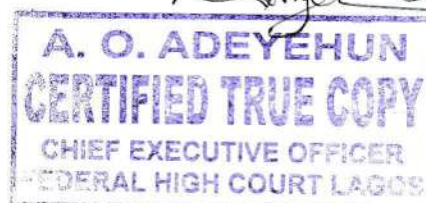
(b) he renders professional service or assistance in or about matters of principle or detail relating to taxation procedure; or

(c) he renders any other professional service which may or be regulations made by the council, with the approval of the minister, be designed as service constituting tax practice assistance in an above matter of principle or detail relating to taxation procedure, or

(d) he renders any other service which may be regulations made by the council, with the approval of the minister be designed as service constituting tax practice.

(2) Nothing in this section shall be construed so as to apply to persons who, while in the employment of any Government, are required under the terms or in the course of such employment to perform the duties or

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any of the duties of a Tax administrator or practitioner.

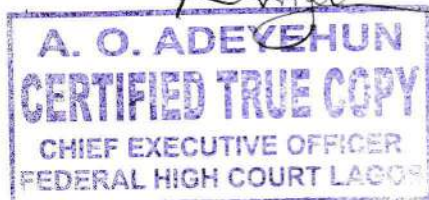
19(2) if, on or after the relevant date, any person who is not a member of the institute practices or holds himself out to practice as a tax administrator or practitioner for or in expectation of a reward or takes or uses any name, title, addition or description implying that he is in tax practitioner, he shall be guilty of an offence; provided that

22 --- "Profession" means, the profession of Taxation; "Registered" in relation a fellow, an associate member or a graduate member as the case may be "Tax administrator" means any person employed as a tax administrator.

Institute of Chartered Accountants of Nigeria Act provides as follows:-

S. (1) There shall be established a body to be known as the Institute of Chartered Accountants of Nigeria (In this Act referred

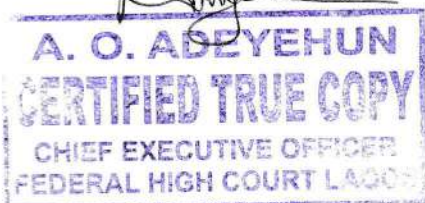
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to as "the Institute") which shall be a body corporate under that name and be charged with the general duty of -

(a) Determine what standards of knowledge and skill are to be attained by persons seeking to become members of the accountancy profession and raising those standards from time to time, as circumstance may permit.

(b) Securing in accordance with the provisions of this Act the establishment and maintenance of the register of fellows, associates and registered Accountants entitled to practice as accountants and auditors and the publication from time to time of lists of those persons; and



(c) performing through the council under this Act the functions conferred on it by this Act.

(5) Persons accorded by the Council under this Act status as Chartered Accountants shall be entitled to the use of that name and -

(a) Shall be recorded as fellows if they satisfy the said Council that for the five years next preceding the date of application in that behalf they have been fit persons and have in addition to being the holders of approved academic qualifications, been in continuous practice on their own account as Accountants or in partnership with other Accountants.

(b) Shall be recorded as follows if for the period of not less than ten years immediately preceding the date of application for such enrolment (the



period of membership of the Association, in the discretion of the Council, counting in that behalf) they have been enrolled as associate, or qualified to be so enrolled whether in practice as accountants or not and are otherwise fit person; and

8. Registration of accountants

- (1) Subject to section 12 of this act and to rules made under section 6 of this act a person shall be entitled to be enrolled as a chartered accountant if -
  - (a) he passes the qualifying examination for membership conducted by the Council under this Act and completes the practical training prescribed; or
  - (b) he holds a qualification granted outside Nigeria and for the time being accepted by the institute and, if the Council so requires, satisfies the Council that he has had



sufficient practical experience as an accountant.

(2) Subject to section 12 of this Act and to rules made under section 6 of this Act, a person shall be entitled to be registered as a registered accountant if he satisfies the Council that immediately before the appointed day he had not less than five years of experience as an inspector and auditor of company affairs under the provisions of the Companies and Allied Matters Act

14 When persons are demand to practice as accountants

1. Subject to subsection (2) of this section, a person shall be deemed to practice as an accountant if, in consideration of remuneration received or to be received, and whether by himself or in partnership with any other person -

a. he engages himself in the practice of accountancy or holds himself out to the public as an accountant; or



- b. he offers to perform or performs any service involving the auditing or verification of financial transactions, books accounts or records or the preparation, verification, or certification of financial, accounting and related statements; or
  - c. he renders professional services or assistance in or about matters of principle or details relating to accounting procedure or certification of financial facts or data; or
  - d. he renders any other service which may by regulations made by the Council with the approval of the Minister be designated as service constituting practice as an accountant
2. Noting in this section shall be construed so as to apply to persons who, while in the employment of any government or person, are required under the terms or in the course





of such employment, to perform the duties of an accountant or any of them.

### Offences

18 (1) If any person for the purpose of procuring the registration of any name, qualification or other matter -

(a) makes a statement which he believes to be false in a material particular; or

(b) recklessly makes a statement which is false in a material particular,

he shall be guilty of an offence

(2) If, on or after the relevant date, any person not being a member of the Institute practices as an accountant for or in expectation of reward, or takes or uses any name, title, addition or description implying that he is in practice as an accountant, he shall be guilty of an offence:

(a) this subsection shall not apply in respect of anything done by him during the period of

three months mentioned in that section; and

*Ameyel* 22/11/2020



(b) if within that period he duly applies for membership of the Institute, then, unless within that period he is notified that his application has not been approved, this subsection shall not apply in respect of anything done by him between the end of that period and the date on which he is enrolled or registered or is notified as aforesaid.

3. If, on or after the relevant date, a registered accountant holds himself out as a chartered accountant or takes or uses any name, title, addition or description implying that he is a chartered accountant, he shall be guilty of an offence.

4. If the registrar or any other person employed by or on behalf of the Institute willfully makes any falsification in any matter relating to the register, he shall be guilty of an offence.

  
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5. A person guilty of an offence under this section shall be liable -
- a. on summary conviction to a fine of an amount not exceeding one hundred naira;
  - b. on conviction on indictment to a fine of an amount not exceeding one thousand naira or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
6. Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be



liable to be proceeded against and punished accordingly.

7. In this section "the relevant date" means the third anniversary of the appointed day or such earlier date as may be prescribed for the purposes of this section by order of the Minister published in the Federal Gazette; and for the purposes of this section different dates may be prescribed for different territories within the meaning of the Constitution of the Federal Republic of Nigeria.

19. Interpretation

In this Act unless the context otherwise requires -  
"accountant" includes an auditor "chartered accountant" means an accountant enrolled as a fellow or associate member of the Institute.

Companies Income tax Act:

Federal Inland Revenue Service Act:

S55



- (6) For the purpose of this section
- (a) every Company shall designate a representative who shall answer every query relating to the company's tax matter;
  - (b) a person designated by a company pursuant to paragraph (a) of this subsection shall be from members of the person knowledge also in the field of taxation as may be approved from time to time by the Board.

Section 105. Interpretation

- (1) in this Act, unless the context otherwise requires -  
"Board" means the Federal Board of Inland Revenue referred to in section 1 of this Act.

Federal Inland Revenue Service (Establishment) Act Tax Administration (self Assessment) Regulations 2011

- 5 - (1) A tax payer must file returns under self-Assessment in person or engage the services of accredited agents to file returns on his behalf

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(2) For an agent to carry out the services required under this regulation the agent must be truly certified by anyone of the underlisted bodies .....

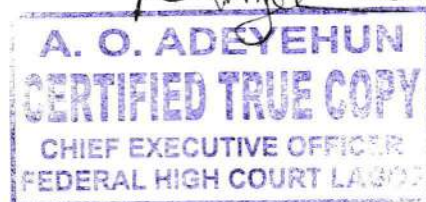
- (a) The Association of National Accountants of Nigeria;
- (b) The Chartered Institute of Taxation of Nigeria; and
- (c) The Institute of Chartered Accountant of Nigeria

On the decisions of the Lagos State High Court and the Court of Appeal: A proper analysis of the two decisions may require setting out the outlines of the Orders both Court made to be able to determine what concrete effect the decision of the Court of Appeal has on the respective statutory powers and rights of the parties.

The reliefs sought from in the suit No. M/476/2005



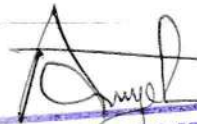
1. A Declaration that Taxation is legally recognized in Nigeria as a profession separate and distinct from (the) Accountancy profession.
2. A Declaration that the claimant is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendant or any other professional body or institute in Nigeria.
3. A Declaration that it is illegal for any member of the Defendant who is not a member of the claimant to practice or hold himself out to practice as a tax administrator or practitioner for or in expectation of reward in Nigeria
4. A Declaration that it is unlawful for the Defendant to forestall or impede the claimant's efforts to regulate tax practice.
5. An Order restraining members of the Defendant who are not members of the Claimant from practicing, representing or holding themselves out as Tax Administrators or practitioners in violation of the



Chartered Institute of Taxation of Nigeria Act No 76 of  
1990 Cap C10 LRN 2004

In its Judgment the Court granted all the five reliefs sought  
in the following terms:-

- i. A Declaration is made that taxation is legally recognized in Nigeria as a profession separate and distinct from accountancy profession.
- ii. A Declaration is made that the Claimant is vested with the power to regulate and control the practice of Taxation in all its ramifications to the exclusion of the Defendant and any other professional body or institute in Nigeria.
- iii. A Declaration is made that it is illegal for any member of the Defendant who is not a member of the Claimant to practice or hold himself out as practicing tax administrator or tax practitioner for, or in expectation of a reward in Nigeria.
- iv. A Declaration is made that it is unlawful for the Defendant to forestall or impede the Claimant's effort to regulate tax practice.

  
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- v. An Order of perpetual injunction is made restraining members of the Defendants who are not members of the Claimant from practicing, representing or holding themselves out as tax administrators or practitioner in violation of the Chartered Institute of Taxation of Nigeria Act No. 76 of 1992 Cap C10 of the Laws of the Federation of Nigeria 2004.

The counter claim on its part stands dismissed.

The counter claim which was wholly dismissed claimed the following reliefs:

1. A declaration that the Chartered Institute of Taxation Act No. 76 of 1992 is an existing law which is neither superior nor capable of abolishing the vested interest of the Defendant/Counter-Claimant's members and of other accounting bodies under other existing law(s) ie the Institute of Chartered Accountants Act, the Companies and Allied Matters Act. The Companies Income Tax Act, the Personal Income Tax Act to act or hold themselves out as Tax practitioner and Administrators.

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2. A Declaration that the vested rights of the Counter-Claimant's members to act/hold themselves out as Tax Practitioner, Consultants and administrators under and by virtue of the ICAN Act, Companies and Allied Matters Act and other enabling statutes are valid and subsisting
3. A Declaration that having regard to the vested rights of the Counter-Claimants' members to act as Auditors and be involved in Tax Accounting practice as specified in the ICAN Act, Companies and Allied Matters Act and other enabling statutes, the Claimant's decision to compel the Counter- Claimant's members to register as members of the Claimant as a condition for enjoying their vested professional rights violates the freedom of the Counter Claimant's members to associate and belong to (sic) to a Professional body of their choice as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria and (is) consequently null and void
4. A Declaration that in the light of section 24 (f) of the 1999 Constitution, the Counter Claimant's members are



entitled to act, advise and consult on matters that are referred to them by Tax payers.

5. A Declaration that pursuant to section 335, 337 and schedules 2 of (sic) the Companies and Allied Matters Act (1990) the counter-claimant's members are empowered and therefore entitled to prepare - Audit, Advise consult on and defend (their) computations of financial facts and data, including taxation without being members of the Claimant ...
6. An Order of Perpetual Injunction restraining the Claimant and her officials from hindering or disturbing the Counter-Claimant's members who act as tax Practitioners/Administrators or insisting that members of the Counter-Claimant should register with the Claimant as a condition for carrying on their statutory functions or holding themselves out as Tax practitioners, Administrators and Consultants.

The basis for the decision of the learned Judge in granting all the relief sought by the Claimant and for dismissing the Counter-claim in its entirety is illustratively highlighted in the



following passage of the Judgment on page XVII of the Judgment:-

"I again do not agree with defence counsel that because the Defendant has adequate means of ensuring that its own rules regulates and disciplinary procedures will apply to any of its members that chooses to engage in tax practice, therefore, there is no need for those members to be made to join the Claimant. In the first place, the CITN Act has created a clear distraction between the accountancy profession and the Taxation profession. If the Council of the Institute of Taxation is to have overall superintendence of and proper control over all those who practice this newly created profession, as is the intendment of the Act, then it would, all contraire, lead to an absurdity, and to confusion. To have other bodies enforcing their own different rules and regulations and disciplinary procedures, over them. The intended control that the Clamant has been given by law will be of no real use and effect, as its authority would be weak, and in its place will arise a Tower of Babel, with different governing councils speaking different tongues on

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the same profession. That I dare say, would not be in Tandem with the intention of the law makers as distilled from the clear, simple words of the CITN Act by which they (the Law Makers) gave the Clamant the sole authority to regulate and control. Tax practice in all ramifications an here I use the word "Ramification" adversary and to enforce discipline against administrators and practitioners.

At the Court of Appeal, the Applicant who were aggrieved by the Judgment and orders of the trial Court appealed against only Judgment on the Claim.

In its Judgment, the Court of Appeal allowed appeal in part stating that:

'Consequently, upon the foregoing the appeal partially succeeds on the ground of non-joinder of the Appellants members resulting in the setting aside of orders (iii) and (v). all other Orders of the lower court or thus, orders (iii) and (iv) contained in the Judgment



delivered on 12<sup>th</sup> March, 2007, in suit No.M/476/05 are hereby affirmed:

In view of the above, what therefore is the implication of the Judgment of the Court of Appeal? Having affirmed orders i, ii and iv and all the Reliefs in Counter Claims which were not appealed against and set aside, did the decision of the Court of Appeal significantly alter the core of the Judgment of the Trial Court having regard to the mutual positions of the parties as adjudged by the Trial Court?

The above questions are fundamental to the essence of the questions for the determination of the court formulated in the Plaintiffs Originating Summons. The answers to the above question may provoke several legal issues that could affect either propriety or competence of suit as it relates to the Joinder of the 2<sup>nd</sup> Defendant.

A correct analysis of the Judgments of the Lagos State High Court and the Court of Appeal would appear to have completely

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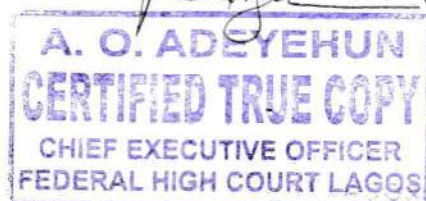
resolved several of the questions for determination presented by the Plaintiff to its Originating Summons.

Questions ii, iii, iv, v, vi, vii, xiii in the Plaintiffs Originating Summons in this suit are precisely the same question 1, 2 and 3 in the suit No. M/426/2005 in which the court in its Judgment of 12<sup>th</sup> day of March, 2007 resolved them in favour of the Claimant.

Equally, reliefs 1, 2, 3, 4, 5, are essentially in the sought in the instant Originating Summons are essentially the same or similar or having the same effect as the reliefs 1, 2 and 4.

As stated above earlier, these reliefs were affirmed the Court of Appeal, and upon a correct analysis of the reliefs granted by the Trial Court and affirmed by the Court of Appeal, they appear to flow directly from the all the questions for determination which the Trial Court resolved in favour of the Claimant in that Court.

It is significant to note that the effect of the setting aside of reliefs 3 and 5 as granted by the trial Court did not affect either expressly or impliedly the resolution of all the questions for

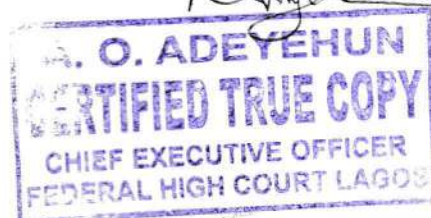


determination in favour of the Claimant. This is because, the rationale of the Court of Appeal in setting aside the reliefs was not based on question whether the Learned trial/judge was in error in his analysis of the relevant statutory provisions both CITN and ICAN Acts but the court based its decision on the failure of non-Joinder of all persons who were likely to be affected by the potential criminalization of their conduct without being afforded the opportunity to defend themselves.

It is important to illustrate this point by quoting the relevant passage of the Judgment of the Court of Appeal on this point:

‘Based on the foregoing, the non-joinder of the Applicant’s members to the action to the action in the lower Court is not fatal to the Respondent’s suit. The action in the lower Court therefore properly constituted. At best the failure to join the Applicant’s members will only affect the orders if any made against them, as not being parties they are not bound and the Order(s) were given in breach of their right to fair hearing. See

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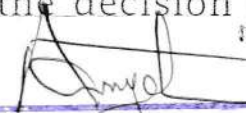




Onyeckwulunne V. Ndukue (1997) 7 NWLR (pt. 512) 277; Okpata V. Obo (1960) SCNLR 103 at 110. Orders (iii) and (v) are accordingly set aside. The issues herein therefore partially succeeded'.

It is in light of the above that one finds it intriguing why did the Plaintiff in this suit, having failed both of the trial Court and substantially at the Court of Appeal on the primary of construction of key provisions of the CITN and ICAN Acts, at least as between it and the 2<sup>nd</sup> Defendant in this suit reintroduce the same questions though couched in a more florid and flowery language in the instant suit? Aren't these questions already determined and the issues which arose out of them are already resolved?

The above queries bring to the fore the critical Consideration whether the suit as it is constituted between the Plaintiff and the 2<sup>nd</sup> Defendant is not both res judicata and or issue estoppel. Even though these defences are not raised by the 2<sup>nd</sup> Defendant, can this court in resolving the question sought to determination overlook or and deliberately ignore the decision of the Court of

  
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Appeal in suit No. M/476/2005, both Judgments which. The Plaintiff ironically relied on as the basis for grounding its claims in this suit.

Learned Counsel for the Plaintiff in Written Address Relied on the Judgment of the Court of Appeal setting aside reliefs iii and v which was granted by the Court of Appeal and submitted that its effect is not to restrain ICAN members from practice taxation in Nigeria.

I must with due respect to the Learned Counsel for the Plaintiff state that the interpretation of the Judgment is grossly faulty, a misled conception which strictured the broad effect of the entire Judgment of the Court. Reading the Reliefs iii and v in isolation from the other three Reliefs will fail to capture the broad essence of the entire suit which was to determine the respective specific statutory functions of each of the institutions. That is whether both share common professional calling or are both are mutually distinguished with the others in terms of the statutory and professional callings. The Judgment of the trial Judge which the

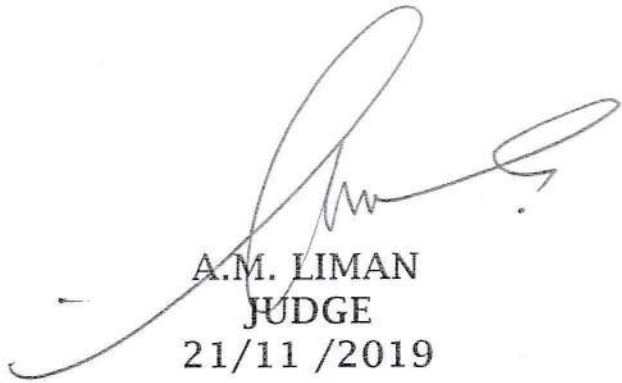
  
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Court of Appeal affirmed in part wholly resolved and affirmed the mutual distinctiveness of each of the two parties. In other words, in terms of practice of taxation and accountancy, ICAN and CITN are mutually exclusive. This means, neither can venture into the statutory and professional domain of the other. Okuno J in her Judgment very eloquently laid down in very lucid and beautifully expressive language. This Judgment leaves no one in doubt as to the status of the parties in relation to Accountancy and Taxation profession.

In the light of the above, it is my respectful view that, even without reference to the defence of Res Judicata Or issue estoppel, the questions for determination ii, iii, iv, v, vi, vii, and xiii sought to be answered by the court which have already been resolved by the Lagos State High Court are in a Judgment submitted by the Plaintiff for the consideration of this court, cannot avail the Applicant, are therefore resolved against the Plaintiffs and accordingly Reliefs 1, 2, 3, 4, and 5 are hereby refused.

  
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Having refused Reliefs 1, 2, 3, 4. which directly affect the 2<sup>nd</sup> Defendant, the result is that there is virtually no reasonable cause of action left against the 2<sup>nd</sup> Defendant for which it will be required to defend and for this reason, the action against it is accordingly dismissed.


  
A.M. LIMAN  
JUDGE  
21/11 /2019

Cashier,  
pls. collect the sum  
of ₦1,500,000  
C/O. Amiel CEO

22/11/2020  
Pdn

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DATE 22/11/2020

  
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