

IN THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL
HOLDEN AT ABUJA

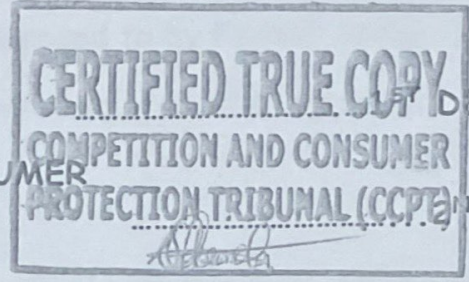
SUIT NO: CCPT/OP/1/2022

BETWEEN

1. FESTUS SANMI ONIFADE } CLAIMANTS
2. COALITION OF NIGERIA CONSUMERS }

AND

1. MULTI-CHOICE NIGERIA LIMITED 1ST DEFENDANT
2. FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION 2ND DEFENDANT



JUDGMENT

This Suit commenced with Motion Ex-parte dated and filed on the 29th day of March 2022, supported by a-nine-(9)-paragraph Affidavit of Urgency and a-13-paragraph Affidavit in support of Motion Ex-parte with a Written Address in support of the Application.

The said Motion Ex-parte was accompanied with Motion on Notice dated and filed on the 29th day of March, 2022, and Originating Summons dated and filed on the 29th day of March, 2022 but now substituted with an Amended Originating Summons (with the leave of this Honourable Tribunal) dated and filed on the 7th day of June, 2022

The said Motion Ex-parte was brought pursuant to:

- i. Section 39(1) & (2) of the Federal Competition and Consumer Protection Act, 2018
- ii. Orders 26 Rule 5 (2), (3) & 26 Rule 6(1), 2(2) Federal High Court (Civil Procedure) Rules, 2019
- iii. Section 47 paragraphs (a), (b), (c), (d) of the Federal Competition and Consumer Protection Act, 2018
- iv. Under the inherent Jurisdiction of this Honourable Tribunal

Praying for the following reliefs:

- 1. AN ORDER of Interim Injunction restraining the 1st Defendant / Respondent either by itself, agents, representatives, officers or privies, however described, from carrying out the impending increase in tariffs and cost of its products and services intended to take effect from the 1st day of April, 2022 until the hearing and determination of the Motion on Notice already filed before this Tribunal.

- 2. AN ORDER of this Honourable Tribunal mandating the 1st Defendant/Applicant to maintain status quo pending the hearing and determination of the Motion on Notice.
- 3. AND for such further Order or other Orders as this Honourable Tribunal may deem fit to make in the circumstances.

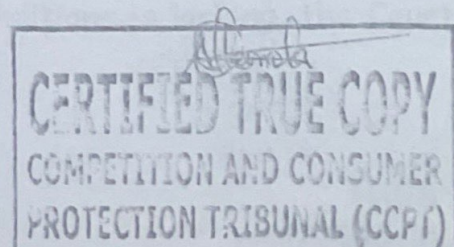
UPON READING the Affidavit in support, the Exhibits attached and the Written Address dated and filed on the 29th day of March, 2022 in the Competition and Consumer Protection Tribunal Registry deposed to by Festus Sanmi Onifade Esq; and AFTER HEARING Festus Sanmi Onifade Esq, for the Applicant, this Honourable Tribunal then ORDERED as follows.

That:

- 1. The 1st Defendant/Respondent is hereby restrained, either by itself, agents, representatives, officers or privies, however described, from carrying out the impending increase in tariffs and cost of its products and services intended to take effect from the 1st day of April, 2022 until the hearing and determination of the Motion on Notice already filed before this Honourable Tribunal.
- 2. The 1st Defendant/Respondent is hereby mandated to maintain Status Quo pending the hearing and determination of the Motion on Notice.
- 3. All parties in this Suit are to appear before this Honourable Tribunal on the 11th day of April, 2022 at 10:00am for the hearing and determination of the Motion on Notice.

Dissatisfied with the **ORDERS** of this Honourable Tribunal made on the 30th day of March, 2022, the 1st Defendant/Applicant filed a Motion on Notice dated the 31st day of March, 2022 now substituted with Motion on Notice dated the 13th day of July, 2022 and filed on the 15th day of July, 2022 (with the leave of this Honourable Tribunal) brought pursuant to Section 39(1) and (2) and Section 47 of the Federal Competition and Consumer Protection Act, 2018 and under the inherent Jurisdiction of this Honourable Tribunal praying this Honourable Tribunal for the following Orders:

- 1. AN ORDER for stay of execution of the Order of this Honourable Tribunal made on the 30th day of March, 2022 pending the determination of the instant Application.
- 2. AN ORDER setting aside and discharging the ORDER of the Competition and Consumer Protection Tribunal made on the 30th day of March, 2022 in the present Suit.

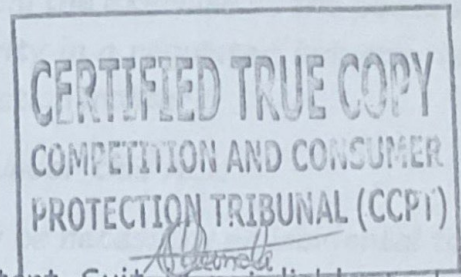


3. AN ORDER of this Honourable Tribunal striking out the Suit in *limine* for want of Jurisdiction by the Tribunal.
4. AND for such further Order or other Orders as this Honourable Tribunal may deem fit to make in the circumstances.

The said Motion on Notice is predicated on six (6) grounds and supported by 13 paragraphs Affidavit deposed to by MOHAMMED ADEDIJI. The 1st Defendant's/Applicant's learned Counsel Jamiu Agoro, relied on all the averments in the said Affidavit. Attached with the Affidavit is Exhibit A, which is the Orders of this Honourable Tribunal made on the 30th day of March, 2022.

The 1st Defendant/Applicant also filed a Written Address in support of the instant Application and adopted all the arguments and submissions contained in the Written Address and thereafter urged this Honourable Tribunal to grant the instant Application.

The Motion raised one single issue for determination.



ISSUE FOR DETERMINATION

Whether considering the facts of this case, the instant Suit is not liable to be dismissed/struck out for lack of Jurisdiction.

LEGAL ARGUMENT

In his Written Address Jamiu Agoro, Counsel to the 1st Defendant/Applicant dwelt extensively on the issue of Jurisdiction of this Honourable Tribunal. He then said that Jurisdiction is the very basis on which any Court tries a case; it is the lifeline of all trials. It is trite that the issue of Jurisdiction is a threshold and is paramount and of a great importance in the adjudication of any matter. Jurisdiction of a Court has to do with the competence of the Court to entertain and determine a matter.

Learned Counsel went on to submit that "a Court is said to be competent when it is properly constituted as regards members and qualifications of the members of the bench and no member is disqualified for one reason or the other. The subject matter of the case is within its Jurisdiction and there is no feature in the case which prevents the Court from exercising its Jurisdiction, the case comes before the Court initiated by the process of Law and upon fulfilment of any condition precedent to the exercise of Jurisdiction. He cited the case of MADUKOLU V. NKEMDILIM (1962) LPELR - 24023 (SC).

He then argued that where any of the foregoing conditions is lacking, the Court will lack Jurisdiction to entertain such matter. He said;

"Of relevance to our argument in support of the instant Application is the third condition that the case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent in the exercise of Jurisdiction".

The Learned Counsel then drew the attention of this Honourable Tribunal to the provisions of Section 47 and Section 146 of the Federal Competition and Consumer Protection Act, 2018 which states as follows:

Section 47

1. The Tribunal have power to-
 - (a) hear Appeals from or review any decision of the Commission taken in the course of the implementation of any of the provision of this Act as may be referred to it;
 - (b) hear Appeals from or review any decision from the exercise of the powers of any sector or specific regulatory authority in a regulated industry in respect of Competition and Consumer Protection matters;
 - (c) issue such Orders as may be required of it under this Act;
 - (d) make any ruling or such other Orders as may be necessary or incidental to the performance of its function under this Act.
2. Notwithstanding the provisions of subsection (1) (b), all Appeals or request for review of the exercise of the power of any sector of specific authority shall first be heard and determined by the Commission before such Appeals can lie before or be determined by the Tribunal.

Section 146 of the Act provides that:

- 1) A Consumer may seek to enforce any right under this Act, a transaction or agreement, or otherwise resolve any dispute with an Undertaking that supplied the goods or services to the consumer by-
 - (a) referring the matter directly to the Undertaking that supplied the goods or services;
 - (b) referring the matter to the applicable industry sector regulator with Jurisdiction, if the Undertaking is subject to the Jurisdiction of the regulator; or
 - (c) filing a Complaint directly with the Commission.

It is the view of the 1st Defendant/Applicant Counsel that Section 47 clearly states the functions conferred on this Honourable Tribunal and that the Tribunal cannot go

out of and perform functions that are not situated in *Section 47* of the Federal Competition and Consumer Protection Act, 2018. And that *Section 47* that donates Jurisdiction to this Honourable Tribunal has no qualifications or exceptions.

TO THE 1ST DEFENDANT/APPLICANT

"The Claimants have utterly and irredeemably failed to satisfy the condition precedent to activating the Jurisdiction of this Honourable Tribunal".

Premised on this contention, Counsel then submitted that this Honourable Tribunal lacks the Jurisdiction to look at, examine, entertain and or determine any of the Complaints made by the Claimants because:

- (a) The Claimants cause of action does not flow from any resolved Decision of the Federal Competition and Consumer Protection Commission to bring this action within the contemplation of *Section 47* of the Act.
- (b) The Complaint of the Claimant against the planned increment of tariff of the objector over its services which was to commence on the 1st day of April, 2022 offends the provisions of *Section 146* of the Act.

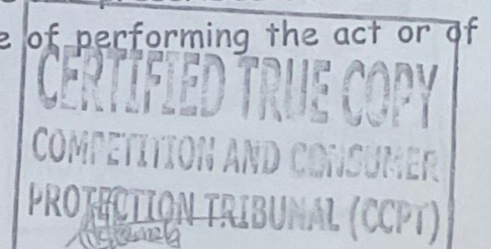
It is the view of the Learned Counsel that the Complaint of the Claimants against the planned increment of the 1st Defendant tariffs on the 1st day of April, 2022 offends *Section 146* of the Act.

Learned Counsel further submitted that *Section 146* of the Act clearly provides how an aggrieved consumer could move to enforce his rights under the Act and that an aggrieved consumer such as the Claimants who wishes to approach the Tribunal shall as a matter of necessity first approach the Service Provider in question or approach the Regulator of the Content Provider or file a Complaint to the Federal Competition and Consumer Protection Commission (The Commission).

Learned Counsel further submitted that in the absence of a Complaint made to such Service Provider/Regulator of the Content Providers or the Commission and a Decision reached by the Commission on such Complaint, the Claimants cannot institute this action before this Honourable Tribunal.

Learned Counsel then submitted that the doors of the Tribunal are not directly accessible to an aggrieved consumer who has not explored the condition stipulated in *Section 146 Subsection (1)* of the Act, and that the conditions stipulated in *Section 146 Subsection (1)* are conditions precedent to the activation of the Jurisdiction of this Honourable Tribunal as provided for in *Section 47* of the Act.

Learned Counsel said, it is trite, that where a Statute has prescribed the mode of performing an act or of exercising a right; that mode



exercising the right must be strictly complied with and that any act done in contravention of the manner provided is a nullity.

Learned Counsel relied on the cases of UNITY BANK PLC V OLATUNJI (2015) 5 NWLR (PT. 1452) 203; and ALABI V THE OLUBADAN IN COUNCIL & ANOR (2021) LPELR-56294 (CA).

Learned Counsel further submitted that it is a settled position of our Jurisprudence that failure to fulfil a condition precedent to the institution of an action is a fundamental irregularity which touches and affects the Court's Jurisdiction to entertain and adjudicate on the matter. It robs the Court of the requisite Jurisdiction to adjudicate on such matter as aptly held in ORAKUL RESOURCES LTD V NCC (2007) ALL FWLR (PT 390) 1487 @1506 that;

"When a condition precedent for doing an act has not been complied with, no subsequent act thereto can be regarded as valid. The non-closing of such thing renders the subsequent action void".

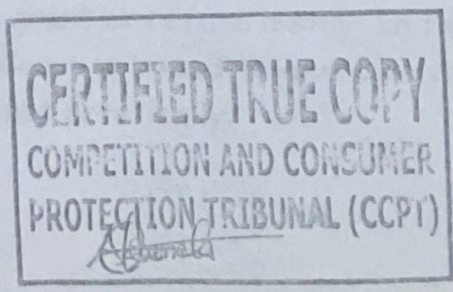
Learned Counsel also relied on the authority of EVBUOMWAN V. BENDEL INSURANCE COMPANY PLC (2000) LPELR-8161 (CA) where the Court of Appeal; per AKINTAN JCA held thus:

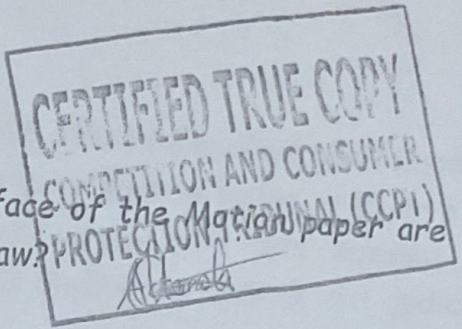
"Any failure to comply with any of the conditions precedent to the exercise of Jurisdiction would amount to a defect in the competence of the Court and such would render the entire proceedings before the Court a nullity" see MADUKOLU & 2 ORS V NKEMDILIM (2006) 2 LC 208 (1966) (VOL. 2) 374 @ 379. Learned Counsel also relied on the authority of AGBOOLA V. AGBODEMU & 2 ORS (2008) LPELR- 8461 (CA).

In conclusion, Learned Counsel urged the Tribunal to decline Jurisdiction and set aside the Order of 30th day of March, 2022 same having been made without Jurisdiction and to also strike out this Suit for being incompetent with substantial costs.

THE CLAIMANT'S RESPONSE

F.S ONIFADE in response to the instant Application of the 1st Defendant/Applicant said that the Claimant filed 17 paragraphs Counter Affidavit in opposition to the 1st Defendant's Motion on Notice and that they rely on all the averments in the Affidavit in urging this Honourable Tribunal to dismiss the instant Application with substantial cost because the Application lacks merit, it is frivolous, it is vexatious and an abuse of the Process of this Honourable Tribunal. In his Written Address, Learned Counsel raised two (2) issues for determination...





ISSUES I

Whether the prayers as contained in the face of the National paper are not incongruous and therefore not grantable in Law?

ISSUES II

Whether by virtue of the Claimants' unresolved Petition dated the 19th day of May, and the 2nd day of July, 2020, the right of the Claimants has not been breached and infringed upon thereby igniting the Jurisdiction of this Honourable Tribunal?

On issue I, the Claimants said that on the face of the 1st Defendant's Application are three (3) independent Prayers to with:

- (a) A stay of execution of the Order of this Honourable Tribunal granted on the 30th day of March, 2022;
- (b) An Order setting aside the ORDER of 30th March, 2022;
- (c) An Order striking out the Suit for want of Jurisdiction.

Learned Counsel then said "it's our submission that these prayers are independent in nature and they have different conditions for each of them to be granted".

F.S. Onifade Esq

He went further to submit that it is on Record that this Honourable Tribunal gave an ORDER to the 1st Defendant not to increase its prices of products from the 1st day of April, 2022 until the determination of the Motion on Notice fixed for the 11th day of April, 2022. But by the nature of the 1st defendant, they stated before this Honourable Tribunal that the issue of increase is a COMPLETED ACT and that all Devices had been configured and deployed for the increase to take effect inspite of the ORDER of this Honourable Tribunal.

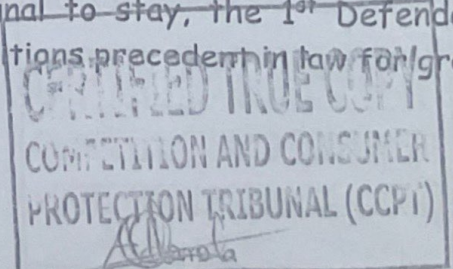
As to the conditions that must be met by an Applicant for stay of execution, Claimants relied on the case of *VASWANI TRADING CO.LTD V. SAVALAKH & CO (1972) ALL NLR 922; (1972) 12 SC 50. See also AJOMALE V. YADUAT PT (2) (1991) 5 NWLR (PT.191) PG.266; AKILU V. ODUNTAN & ORS (1991) 2 NWLR (PT171) PG1.*

Where the Court established the conditions to be met before an Application for stay is granted:

- (a) The Courts have the unimpeded discretion to grant or refuse a stay. In this and in all other instances of discretion, the Court is bound to exercise the discretion both judicially and judiciously and not erratically.

- (b) A discretion to grant or refuse a stay must take into account the competing rights of the parties to justice. A discretion that is based in favor of an Applicant. For stay but does not adequately take into account the Respondents' equal right to justice is a discretion that is not judicially exercised.
- (c) A winning Plaintiff or party has a right to fruits of his Judgment and the Court will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of the Judgment in his favor until a further Appeal is entertained.
- (d) An unsuccessful litigant applying for a stay of execution must show special or exceptional circumstances eloquently pleading that the balance of justice is obviously weighed in favor of a stay.
- (e) What will constitute these special or exceptional circumstances vary from case to case. However, such circumstances involves a consideration of some collateral circumstances and perhaps in some cases inherent matters which may, unless the Order for stay is granted, destroy the subject matter of the proceedings or Judgment or foist helplessness or render nugatory any Order or Orders of the Appellate Court or paralyze, in one way or the other, the exercise by the litigant of his constitutional right of Appeal or generally produce a situation in which whatever happens to the case and in particular even if the Appellant succeeds in the Court of Appeal, there could be no return to status quo.
- (f) The nature of the subject matter in dispute, whether maintaining the Status Quo until a final determination of the case will meet the justice of the case.
- (g) Whether the Judgment is in money and costs and whether there is a remarkable probability of recovering these back from the Respondent if the case succeeds.
- (h) Poverty is not a special ground for granting a stay of execution except where the effect will be to deprive the Appellant of means of prosecuting the Appeal.

Learned Counsel thereafter said that from the circumstances of the instant Application, there is nothing left for this Honourable Tribunal to **STAY** because the impending increase which the Claimants had sought to restrain the 1st Defendant/Applicant from, had already taken effect on the 1st day of April, 2022. And that assuming there is anything left for the Tribunal to stay, the 1st Defendant /Applicant has also failed woefully to satisfy the conditions precedent in law for grant



of stay of execution. Claimants then concluded that the instant Application is frivolous, vexatious and an abuse of Court Process, liable and destined to fail and then urge this Honourable Tribunal to dismiss the Application in its entirety with Cost.

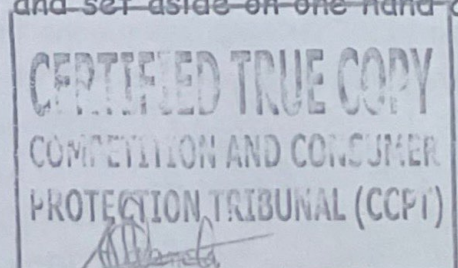
In response to the 1st Defendant /Applicant's second prayer of setting aside and discharging the ORDER of the 30th day of March, 2022, the Claimants said, "it is the law that the Court will not review its Ruling or Judgment once given and delivered, save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary Judgment or Order so as to give effect to its meaning or intention" And that once a Court delivers its Judgment or Ruling, subject to the "slip rule" principle, that Court becomes Functus Officio and cannot revisit the issue by setting aside its own Judgment and re-hearing the parties Learned Counsel on the authority of **ADIGUN V ATTORNEY GENERAL OYO STATE (NO.2) (1987) 2 NWLR Pt56. Pg.197.**

Not done yet, Learned Counsel went on to cite the case of **BARRISTER ORIKER JEV & ORS V IYORTOM & ORS (2015) NWLR (PT.1483)484** the Supreme court laid out the conditions under which Courts can set aside its own Order or Judgment;

- (a) When the Judgment is obtained by fraud or deceit either is the Court or of one or more of the parties such a Judgment can be impeached or set aside by means of an action which may be brought without leave;
- (b) When the Judgment is a nullity such as when the Court itself was not competent and a person affected by an Order of the Court which can properly be described as a nullity is entitled *ex debito justitiae* to have it set aside.
- (c) When it is obvious that the Court was misled into giving a Judgment under a mistaken belief that the parties consented to it;
- (d) Where the Judgment was given without Jurisdiction; and
- (e) Where the procedure adopted is such as to deprive the Decision or Judgment of a character of legitimate adjudication.

Learned Counsel then submitted that the instant Application of the 1st Defendant /Applicant fails to show that the Order they sought to set aside has any inherent defect warrant being set aside and therefore urge this Honourable Tribunal to dismiss the Application in its entirety with substantial cost.

Learned Counsel further submitted that prayers 1, 2 and 3 cannot be granted simultaneously as the Tribunal cannot stay execution ~~and set aside on one hand and~~



strike out on another hand as the reliefs are not mutually exclusive. That the conditions for grant of each of the reliefs are not the same in Law.

In conclusion on issue I, Claimants submitted that when a Court/Tribunal is faced with Motion of incongruous Prayers, such Application would be dismissed as it is incompetent and an abuse of Court Process. Claimants then urge this Honourable Tribunal to dismiss the Application with substantial cost.

Issue II

On issue II, Learned Counsel informed the Tribunal that on 19th day of May, 2020, they wrote a Petition to the 2nd Defendant Titled: *POWERS OF THE COMMISSION TO REGULATE PRICE; ABUSE OF POWER OF DOMINANCE IN MARKET AND IMPENDING PRICE HIKE BY MULTI-CHOICE /DSTV IN NIGERIA*. That the Claimants grievances were centered around the then May, 2020 price hike of the 1st Defendant, but that the grievances were not limited to the issue of price hike alone. Claimants then referred the Tribunal to the Affidavit in support of Originating Summons and EXHIBIT MC A

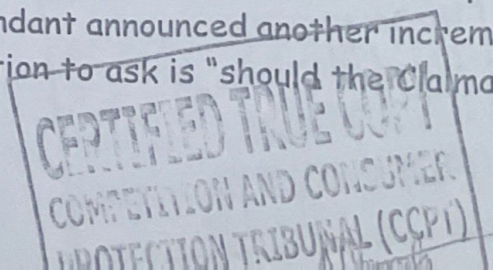
Learned Counsel then gave a summary of their Complaints as contained in the said Petition as follows;

- (a) That viewing content of the 1st Defendant is re-cycled products
- (b) That the 1st Defendant need to adopt Pay-As-You-View in billing its products and services
- (c) That the 1st Defendant should make local Television Stations free for Nigeria Consumers on its platform.
- (d) That the 1st Defendant incessant price increment is repressive, unjustified, unfair and uncalled for.

Learned Counsel further submitted that it is on Record that till date, that the Claimants' Complaint have not been resolved and that the 1st Defendant alluded to this fact in their paragraph 8 of Affidavit in support of Motion on Notice which read thus:

"That no Decision has been reached by the Federal Competition and Consumer Protection Commission regarding the Claimants Petition against the 1st Defendant /Objector's 2020 hike in the tariffs of its services"

Learned Counsel went on to submit that while their Complaint anchored on the price increase of 2020 remained unresolved, the 1st Defendant announced another increment again in March, 2022. And that the pertinent question to ask is "should the Claimants



fold their arms and wait indefinitely for the 2nd Defendant". The Claimants immediately answered the question in the negative that the Law does not envisage that in the event of deliberate act of omission of the 2nd Defendant by failing to investigate and hear the Complaints of consumer on alleged infractions and rights violation, that such consumer should wait endlessly.

Learned Counsel then said that Claimants cause of action is ignited by virtue of Section 47 of FCCPA, 2018. That by virtue of Section 47 of the Federal Competition and Consumer Protection Act, 2018, the Tribunal is empowered under the Law to review the activities and powers of the Commission. That the powers of the Tribunal are not limited to hearing Appeals and Complaints arising from the Decision of the Commission alone but also, the Tribunal possesses the requisite powers to review acts of omission and commission of the Commission as in the present circumstances.

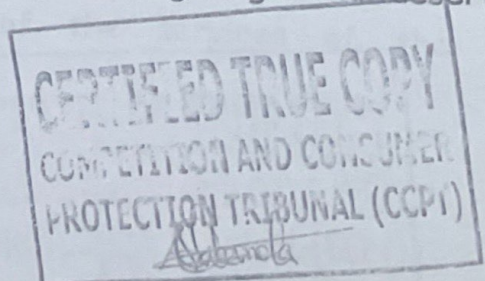
It is the view of the Claimants that assuming without conceding that the Claimants must submit fresh Complaint to the 2nd Defendant before the Jurisdiction of this Honourable Tribunal can be activated, in respect of the March, 2022 price increment, the window period of 8 days between the 22nd day of March, 2022 when the announcement was made and the 1st day of April, 2022 when the increment was scheduled to take effect is grossly inadequate for the Claimants to ventilate their grievances and a violation of the Claimants' right to fair terms and bargain within reasonable time. The increment is therefore unjust, unreasonable and an imposition of the price on the consumer which breached the Claimants' right to negotiate fair cost as a monthly subscriber.

In view of the above arguments in the Written Address, the Learned Counsel then submitted that this Honourable Tribunal has the competence and Jurisdiction to hear and determine the matter and then urge the Tribunal to discountenance the objection of the 1st Defendant and proceed to hear this matter on merit.

Learned Counsel further submitted that this Application is frivolous, scandalous, vexatious and an abuse of Court Process.

In conclusion the Learned Counsel submitted that the 1st Defendant's Application is an attempt to throw a clog in the wheel of justice. And that it is calculated to insult the sensibility of the institution of justice and make mockery of the Order of the Tribunal.

Learned Counsel F.S Onifade therefore urged the Tribunal to hold that, the 1st Defendant has abused her powers of Dominance. The Claimant concluded by saying "we submit that the Claimants have established a clear recognized legal right that deserves the intervention of this Honourable Tribunal".



Learned Counsel then urged this Honourable Tribunal to grant all the reliefs sought by the Claimants and do justice in this case.

Replying on points of law, Jamiu Agoro Esq, the 1st Defendants/Applicant's Counsel said that it is not true that the only time the Tribunal can review its Decision is when such reviews is intended to correct slips. That this Honourable Tribunal has powers to set aside its Decision. And that the essence of Appeal is to review the Decisions of a body.

Lastly, that the totality of the Complaint as contained in the instant Application is not limited to price hike but to the fact that there is no Decision of the Commission submitted for review before this Honourable Tribunal. The 1st Defendant then urged the Tribunal to grant all her Prayers.

SUMMARY OF ARGUMENTS BY PARTIES

1. 1ST DEFENDANT/APPLICANT ARGUMENT

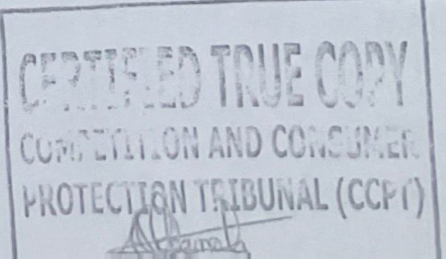
Summary of the 1st Defendant/Applicant's argument is that only Section 47 of the Federal Competition and Consumer Protection Act, 2018 donates Jurisdiction to this Honourable Tribunal to hear Appeals or review any Decision of the Federal Competition and Consumer Protection Commission (THE COMMISSION). That Section 47 which donates Jurisdiction to this Honourable Tribunal has no qualifications or exceptions.

Secondly, that the Claimants/Respondents failed to meet the condition precedent as set out in Section 146 of the Federal Competition and Consumer Protection Act, 2018 and to the extent that the Claimants jumped the gun, this Honourable Tribunal should decline Jurisdiction and grant his Prayers namely:

1. Stay execution of the Order of this Tribunal granted on the 30th day of March, 2022.
2. Set aside and discharge the Order of this Tribunal made on 30th day of March, 2022.
3. Strike out the Order of this Honourable Tribunal made on 30th day of March, 2022.

2. CLAIMANTS/RESPONDENTS ARGUMENT

Summary of the argument on the part of the Claimants is that they have previously filed two separate Petitions with the 2nd Defendant which remained unresolved till the time the 1st Defendant/Applicant announced another increase in the tariffs of her products and services with effect from the 1st day of April, 2022 and that such increase affects their rights as consumers of the services of the 1st Defendant/Applicant.



That the reliefs of the 1st Defendant /Applicant in the instant Application are not grantable as the prayers are independent in nature and that there are different conditions for each of them to be granted.

That the 1st Defendant /Applicant having gone ahead to disobey the Order made on 30th day of March, 2022 by this Honourable Tribunal when they referred to the Order as a *COMPLETED ACT*, cannot turn around to ask this Honourable Tribunal to stay execution of the said Order when there is nothing left to stay.

The Claimants also said that beyond the issue of price increase, are issues of *PAY-AS-YOU-VIEW*, abuse of dominance and the need to make Local Television Stations free to her Nigerian consumers. They concluded that Section 47 of the Federal Competition and Consumer Protection Act, 2018 goes beyond just hearing of Appeals or Reviews of Decision of the COMMISSION but that Section 47 confers Jurisdiction on the Tribunal to review failures or omissions of the COMMISSION. Claimants therefore called on this Honourable Tribunal to dismiss the Application with cost.

ISSUES FOR DETERMINATION

The 1st Defendant /Applicant formulated one issue for determination while the Claimants formulated two issues for determination in their briefs.

ISSUE RAISED BY 1ST DEFENDANT/APPLICANT

1. *Whether considering the facts of this case, the instant Suit is not liable to be dismissed/struck out for lack of Jurisdiction.*

ISSUES RAISED BY THE CLAIMANTS

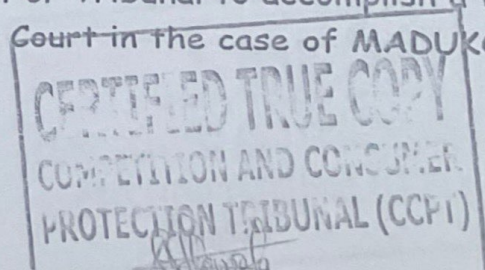
2. *Whether the Prayers are contained in face of the Motion paper are not incongruous and therefore not grantable in Law.*
3. *Whether by virtue of the Claimants unresolved Petitions dated 19th day of May and 2nd day of July 2020, the rights of the Claimants have not been breached and infringed upon thereby igniting the Jurisdiction of this Honourable Tribunal.*

CONSIDERATION OF ISSUES

ISSUE 1

Whether considering the facts of this case, the instant Suit is not liable to be dismissed /struck out for lack of Jurisdiction.

The question for Jurisdiction is the cardinal point of adjudication. This is because it has always been seen as the starting point for Court or Tribunal to accomplish a valid judicial exercise. To possess Jurisdiction, Supreme Court in the case of MADUKOLU



V. NKEMDILIM (1962) 1 ANLR (PT 4) 557 held: to the effect that the basic components of Jurisdiction of a Court is attained when:

- (a) It is properly constituted with respect to numbers and qualifications of its members.
- (b) The subject matter of the action is within the Jurisdiction of the Court and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
- (c) The action is initiated by due process of Law and upon the fulfillment of the condition precedent to the exercise of Jurisdiction.

We shall therefore proceed to examine each of the conditions that can confer Jurisdiction on this Honourable Tribunal.

(a) CONSTITUTION OF THE TRIBUNAL

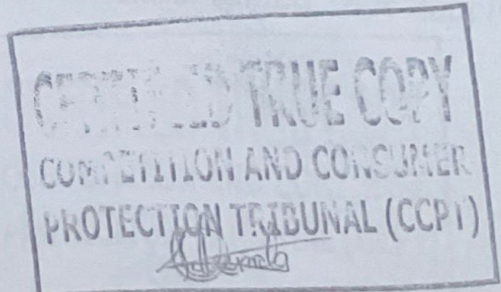
In the instant case, whether the Tribunal is properly constituted with respect to numbers is a question of Law as succinctly answered by the provisions of Section 48 (1) & (2) of the Federal Competition and Consumer Protection Act 2018, which states inter alia:

- 1. The Chairman of the Tribunal shall be responsible for the management and assignment of cases before the Tribunal to the other members of the tribunal.
- 2. For the purpose of subsection (1) members shall be constituted into panels of at least three members.

(b) SUBJECT MATTER OF THE ACTION

On the subject matter of the action, if the name of the Tribunal does not constitute a prima facie ground to assume Jurisdiction in terms of the subject matter, then Section 39 (2) FCCP Act, 2018 may confer requisite Jurisdiction when it provides as follows.

"The Tribunal shall adjudicate over conducts prohibited under this Act and exercise the jurisdiction, powers and authority conferred on it under this Act or any other enactment"



See also the provisions of *Section 72 (1) & (2) (a)* of FCCP Act 2018 which provides as follows:

- 1) *Subject to the provisions of subsection (3) any abuse by one or more undertakings of a dominant position in a market is prohibited*
- 2) *For the purpose of this Act, an abuse of dominant position occurs where one or more undertakings in a dominant position*
 - a) *charge an excessive price to the detriment of consumers.*

It is trite that when determining subject matter of the Court or Tribunal as the case may be, to assume Jurisdiction, recourse must be had to the Claim(s) of the Plaintiff as contained in the Originating Process such as the Writ of Summons or an Originating Summons.

In the Supreme Court Decision in the case of **ATTORNEY GENERAL OF THE FEDERATION V. GUARDIAN NEWSPAPER LIMITED (1999) 9 NWLR (PT 68) 187 at 233**, it was held:

"It is the Claim of the Plaintiff which determines the Jurisdiction of the Court. This is because it is the Plaintiff who invokes the constitutional right for a determination of his rights and accordingly the exercise of the judicial powers"

In the same vein, the Supreme Court in the case of **BABALE V. ABDULKADIR (1992) 2 NWLR (PT 281) 254** held that:

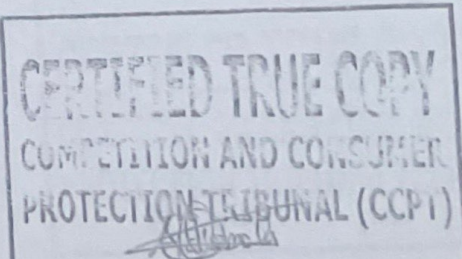
"The Court is competent to exercise Jurisdiction whenever the subject matter of the Claim is within the Jurisdiction of the Court and the Court is properly constituted in its composition and qualification of its members"

C) THE PROCESS BY WHICH THE ACTION IS INITIATED AND CONDITION PRECEDENT TO THE EXERCISE OF JURISDICTION

Whether the action is commenced by a due process is an issue the Originating Process can answer on the face value without much effort.

However, it would appear that the only area of divergent view is whether the Claimants met the condition precedent as set out in Section 146(1) of the Federal Competition and Consumer Protection Act, 2018 which states as follows:

- 1) *A consumer may seek to enforce any right under this Act, a transaction or agreement or otherwise resolve any dispute with an undertaking that supplied the goods or services to the consumer by:*



- a) referring the matter directly to the undertaking that supplied the goods and services.
- b) referring the matter to the applicable industry sector regulator with jurisdiction, if the undertaking is subject to the jurisdiction of the regulator or
- c) filing a complaint directly with the Commission.

There is no doubt that the Claimants did not petition the Federal Competition and Consumer Protection Commission concerning the planned increase in the tariffs of the product and services of the 1st Defendant/Applicant of the 1st day of April, 2022. There are also clear and indisputable evidence that the Claimants filed two Complaints with the Commission dated 19th day of May and 2nd day of July 2020 which has remained unresolved till date. The Commission (2nd Defendant in this suit) did not deny receipt of both Petitions.

We have taken a critical look at the opening paragraph of Section 146(1) FCCP Act, 2018 and didn't find any where it was made mandatory for an aggrieved consumer to follow or take the steps as listed in the said Section 146(1)

It is our view that if the framers of this Law wanted the said conditions to be made mandatory, they would have used the word "SHALL" instead of the word "MAY".

Assuming but without conceding that anybody wish to interpret the word "MAY" in a mandatory manner. Section 146(2) has provided an option to an aggrieved consumer.

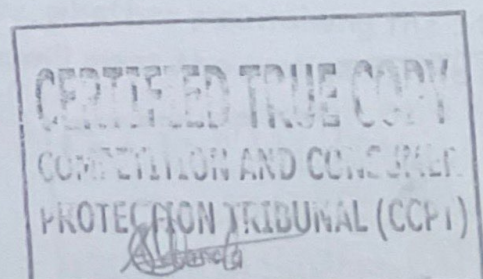
Section 146(2) provides that:

- 2) Notwithstanding the provisions of Subsection (1), an aggrieved consumer can directly approach a Court with appropriate Jurisdiction to seek redress.

From the Provisions of Section 146(2), it is our view that there are no mandatory conditions precedent to be fulfilled by an aggrieved consumer before approaching this Honourable Tribunal.

It is a matter of choice if an aggrieved consumer decides to take his/her Complaints to the Commission. He/she is not in any way by Law or the said Section 146(1) bound to either first take their Complaints to an Undertaking that supplied them goods or services or to the Industry Sector Regulator or file Complaint with the Commission.

We have therefore come to a conclusion that **ISSUE 1** raised by the 1st Defendant/Applicant is resolved in the negative.

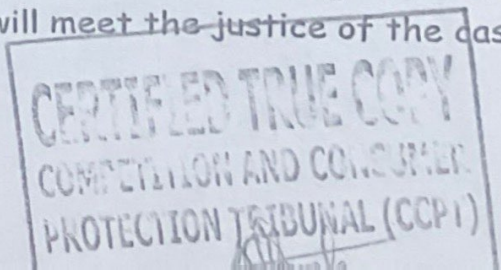


ISSUE II

Whether the Prayers as contained in the face of the Motion paper are not incongruous and therefore not grantable in Law.

There is no question as to whether this Honourable Tribunal has powers to stay execution, set aside or strike out any Order made by this Honourable Tribunal. However, there are different conditions that an Applicant must prove exist before such Prayers are granted. The conditions to be met before an Application for stay of execution can succeed are clearly listed in the case of VASWANI TRADING CO. LTD V. SAVALAKH & CO (1972) (SUPRA) as follows:

- a) The Courts have the unimpeded discretion to grant or refuse a stay. In this and all other instances of discretion, the Court is bound to exercise the discretion both judicially and judiciously and not erratically.
- b) A discretion to grant or refuse a stay must take into account the competing rights of the parties to justice. A discretion that is based in favor of an Applicant for stay but does not adequately take into account the Respondents equal right to justice is a discretion that is not judicially exercised.
- c) A winning Plaintiff or party has a right to the fruits of his Judgment and the Court will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of the Judgment in his favour until a further Appeal is entertained.
- d) An unsuccessful litigant applying for a stay of execution must show special or exceptional circumstances eloquently pleading that the balance of justice is obviously weighed in favour of a stay.
- e) What will constitute these special or exceptional circumstances vary from case to case. However, such circumstances involves a consideration of some collateral circumstance and perhaps in some cases inherent matters which may, unless the ORDER for stay is granted , destroy the subject matter of the Proceedings or Judgment or foist helplessness or render nugatory any Order or Orders of the Appellate Court or paralyze, in one way or the other, the exercise by the litigant of his constitutional right of Appeal or generally produce a situation in which whatever happens to the case and in particular even if the Appellant succeeds in the Court of Appeal, there could be no return to the Status Quo.
- f) The nature of the subject matter in dispute, whether maintaining the Status Quo until a final determination of the case will meet the justice of the case.



- g) Whether the Judgment is in money and costs and whether there is a remarkable probability of recovering these back from the Respondent if the case succeeds.
- h) Poverty is not a special ground for granting a stay of execution except where the effect will be to deprive the Appellant of the means of prosecuting the Appeal.

Different from the conditions listed above for a grant of stay of execution, the Supreme Court in the case of **BARRISTER ORIKER JEV & ORS V. IYORTOM & ORS (2015) NWLR (PT 1485) 484** set out the conditions under which a Court can set aside and discharge its own Order or Judgment different from the conditions under which a Court may grant stay of execution as follows:

- a) When the Judgment is obtained by fraud or deceit either in the Court or of one or more of the parties, such a Judgment can be impeached or set aside by means of an action which may be brought without leave.
- b) When the Judgment is a nullity such as when the Court itself was not competent and a person affected by an Order of Court which can properly be described as a nullity, is entitled *ex debito justitiae* to have it set aside.
- c) When it is obvious that the Court was misled into giving a Judgment under a mistaken belief that the parties consented to it.
- d) When the Judgment was given without Jurisdiction; and
- e) Where the Procedure adopted is such as to deprive the Decision or Judgment of the character of legitimate adjudication.

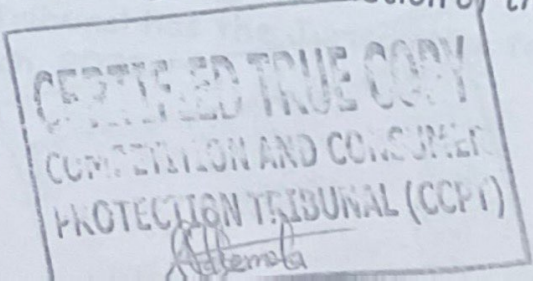
It is our strong view that the 1st Defendant/Applicant have not fulfilled the conditions precedent for the grant of her Prayers as there are separate conditions for the grant of each of the reliefs sought by the 1st Defendant/Applicant.

We have come to the conclusion that the reliefs as contained in the face of the Motion paper are incongruous and therefore not grantable.

We will now proceed to review ISSUE III as formulated by the Claimants/Respondent.

ISSUE III

Whether by virtue of the Claimants unresolved Petitions dated 19th day of May and 2nd day of July, 2020, the rights of the Claimants have not been breached and infringed upon thereby igniting the Jurisdiction of this Honourable Tribunal?



There is no dispute as to whether the Claimant filed Petitions dated 19th day of May and 2nd day of July, 2020 with the Commission, what is in controversy is whether Section 146(1) places mandatory conditions precedent on an aggrieved consumer before proceeding to this Honourable Tribunal.

Therefore, we do not see any right that was breached as nothing prevents the Claimants or any other would-be aggrieved consumer from approaching this Honourable Tribunal.

See Section 39(2) which provides as follows:

"The Tribunal shall adjudicate over conducts prohibited under this Act and exercise the Jurisdiction, powers and authority conferred on it under this Act or any other enactments"

See also Section 146(2)

"Notwithstanding the provisions of subsection (1), an aggrieved consumer can directly approach a Court with appropriate Jurisdiction to seek redress"

There is no doubt as to whether this Honourable Tribunal is within the contemplation of Court referred to in Section 146 subsection (2) as the Black's Law Dictionary Eight Edition at page 1844 defines Tribunal as:

"Tribunal (tribyoo-nal)

- (1) *A Court or other adjudicatory body*
- (2) *The seat, bench or place where a judge sits.*

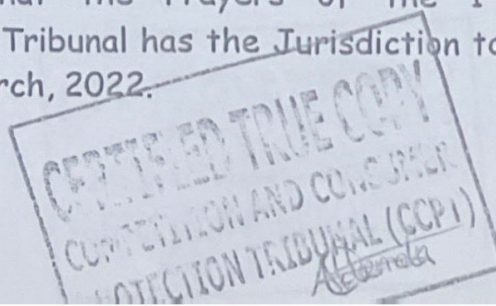
This Honourable Tribunal is obviously an adjudicatory body, let us also draw attention to the Provisions of *Section 50 subsection (2) (e)* which provide thus:

The Tribunal shall, for the purpose of discharging its duty under this Act have power to:

- e) *"Do anything which, in the opinion of the Tribunal is deemed necessary to issue a final and reasoned decision on the merit of the matter before it.*

VERDICT

Having resolved all the issues raised by both the 1st Defendant/Applicant and the Claimants, we have come to the conclusion that the Prayers of the 1st Defendant/Applicant lacks merit as this Honourable Tribunal has the Jurisdiction to have granted the Orders made on the 30th day of March, 2022.



The Application is hereby dismissed without cost.

ORDER OF THE HONOURABLE TRIBUNAL MADE ON 11TH DAY OF APRIL, 2022 BY THE PRESIDENT'S APPLICANT

The Order was brought pursuant to Section 35 (1) and (4) and Section 47 of the Competition and Consumer Protection Act, 2010 and under the inherent jurisdiction of the Honourable Tribunal dated 11th and filed 11th day of April, 2022, giving this Honourable Tribunal for the following Orders:

1. An Order staying execution of the Order of this Honourable Tribunal made on the 11th day of April, 2022 pending the determination of the proper Application.
2. An Order setting aside and discharging the Order of the Competition and Consumer Protection Tribunal made on the 11th day of April, 2022, in this regard, save and except such orders made without Jurisdiction.
3. Add for such further Orders or other Orders as this Honourable Tribunal may deem fit to make in the circumstances.

The Motion on Notice has 5 (five) grounds for the Application supported by 12 paragraphs Affidavit deposed to by GOZDE ORKUNOGLU. Affidavit along with the Motion on Notice is EXHIBIT A which is The Motion on Notice dated and filed on 21st day of March, 2022. Learned Counsel also filed a Written Subpoena in support of the Motion Application and adopted the submissions contained in the Affidavit.

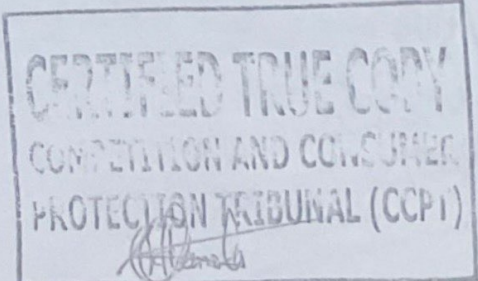
Learned Counsel thereafter urged this Honourable Tribunal to grant as the Applicant the application. Learned Counsel raised one sole issue for determination:

ISSUE FOR DETERMINATION

Whether it is in the interest of justice to grant the Applicant's application.

LEGAL ARGUMENT OF THE APPLICANT

In his legal argument, Counsel Agre, submitted that since there is no evidence to the satisfaction of a court, the issue is adjourned on the basis of the evidence submitted and the only jurisdiction that the Court has is to adjourn the matter to determine whether it had jurisdiction to hear and determine the matter.



MOTION ON NOTICE CHALLENGING THE ORDER OF THIS HONOURABLE TRIBUNAL MADE ON 11TH DAY OF APRIL, 2022 BY THE 1ST DEFENDANT/APPLICANT

This Motion was brought pursuant to Section 39 (1) and (2) and Section 47 of the Federal Competition and Consumer Protection Act, 2018 and under the inherent Jurisdiction of this Honourable Tribunal dated 13th and filed 14th day of April, 2022 praying this Honourable Tribunal for the following Orders:

1. AN ORDER staying execution of the Order of this Honourable Tribunal made on the 11th day of April, 2022 pending the determination of the instant Application.
2. AN ORDER setting aside and discharging the Order of the Competition and Consumer Protection Tribunal made on the 11th day of April, 2022, in this present Suit same having been made without Jurisdiction.
3. AND for such further Orders or other Orders as this Honourable Tribunal may deem fit to make in the circumstances.

The Motion on Notice has 5 (five) grounds for the Application supported by 12 paragraphs Affidavit deposed to by GOZIE ONUMONU. Attached along with the Motion on Notice is EXHIBIT A which is the Motion on Notice dated and filed on 31st day of March, 2022. Learned Counsel also filed a Written Address in support of the instant Application and adopted the submissions contained in the Written Address.

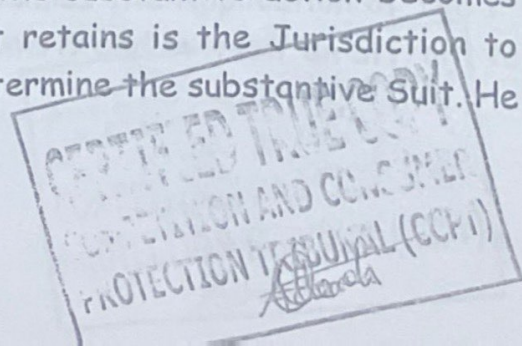
Learned Counsel thereafter urged this Honourable Tribunal to grant all the Prayers in the Application. Learned Counsel raised one sole issue for determination.

ISSUE FOR DETERMINATION

"Whether it is in the interest of justice to grant this Application"

LEGAL ARGUMENT OF THE APPLICANT

In his legal argument, Jamiu Agoro, submitted that when there is a challenge to the Jurisdiction of a Court, its power to adjudicate on the substantive action becomes suspended and the only Jurisdiction that the Court retains is the Jurisdiction to determine whether it has Jurisdiction to hear and determine the substantive Suit. He



then relied on the case of SEPLAT PETROLEUM DEVELOPMENT V. BRITANIA U. NIGERIA LTD & ORS (2014) LPELR-23126 (CA) Where the Court of Appeal held:

"Jurisdiction can be challenged in various forms and in this case, it was by preliminary Objection. It has been decided that once Jurisdiction is challenged, the Court should first determine whether it has Jurisdiction or not that at that stage, the only Jurisdiction the Court has is to determine whether it has Jurisdiction or not and not to do any other business of the Court with regards to the subject matter"

Learned Counsel also placed reliance on the authorities of INCORPORATED TRUSTEES OF ISLAND CLUB & ORS V. SIKUADE (2016) LPELR-42278 (CA); SALAKO V. ABINDE & ORS (2017) LPELR-50725 (CA)

Learned Counsel further argued that so far as the Order of this Honourable Tribunal of 11th day of April, 2022 was made during the pendency but before the determination of the Applicant's Application challenging the Jurisdiction of the Honourable Tribunal, same was made without Jurisdiction and with respect a nullity.

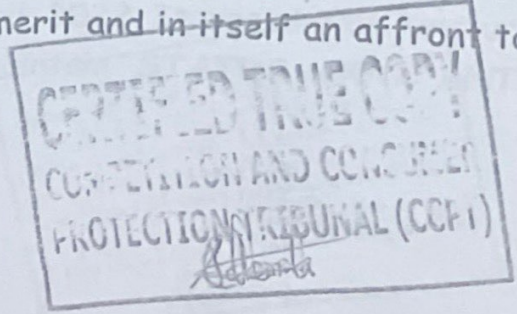
Not done, Learned Counsel said "what is more, the said Order of 11th day of April, 2022 is for all intent and purposes same as Prayer 3 of the Claimants pending Application for Committal Proceedings filed on the 8th day of April, 2022, despite the Applicant being within time to react to same, the Honourable Tribunal granted an Order tantamount to granting Prayer 3 of the Claimants Application without given the Applicant the opportunity to be heard. This is a clear breach of the Applicant's right to fair hearing. As such, the said Order ought to be set aside. He relied on the case of NDIC V. JACKSON DEVOS LTD (2014) LPELR-33.

In conclusion, Learned Counsel prayed this Honourable Tribunal to set aside the Order of 11th day of April, 2022 same having been made without Jurisdiction.

CLAIMANTS RESPONSE

On his part, F.S Onifade in response to the 1st Defendant/Applicant's Motion on Notice, informed this Honourable Tribunal that he filed a Counter Affidavit dated 26th day of April, 2022 and filed same day and that the said Affidavit contains 9(nine) paragraphs and a Written Address.

Learned Counsel placed reliance on all the averments in the Affidavit and argument in support same in urging this Honourable Tribunal to dismiss the Application of the 1st Defendant/Applicant in its entirety because it lacks merit and in itself an affront to the inherent powers of this Honourable Tribunal.



Learned Counsel went on to submit that he further adopts his earlier arguments which he canvassed on the issue of Jurisdiction before this Honourable Tribunal that the Tribunal has all the powers on Jurisdiction to hear and determine the Claimants' case particularly the Order granted on the 11th day of April, 2022. Learned Counsel went on to raise one sole issue for determination.

ISSUE FOR DETERMINATION AS FORMULATED BY CLAIMANTS

"Whether the said ORDER of this Honourable Tribunal made on the 11th day of April 2022 was not made judicially and judiciously"

LEGAL ARGUMENT

Learned Counsel commenced his argument in response to the instant Application by asking whether the said Order made on the 11th day of April, 2022 was within the discretion of this Honourable Tribunal and whether the Tribunal exercised its discretion judicially and judiciously.

Learned Counsel went on to draw the attention of this Honourable Tribunal to the case of **ZAKIRAI V. MUHAMMAD (2017) NWLR (PT 1594) 181 @ 192** Where it was held that:

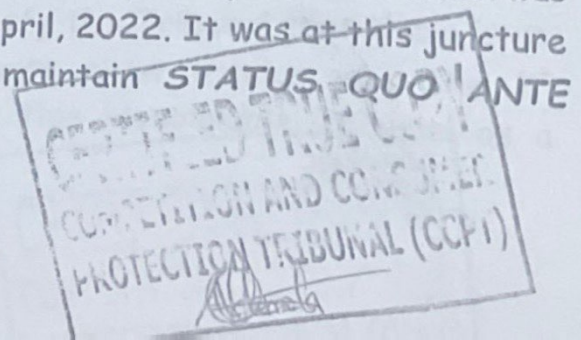
Judicial discretion is described as a sacred power that inheres to a judge and which should employ judicially and judiciously. In the judicious and judicially exercise of discretion, a Court must be guided by the spirit and principle of law. The exercise has to be judicious in the sense that it must be based on sound decision marked by discretion, wisdom and good sense.

Learned Counsel drew the attention of the Tribunal to **LONGMAN DICTIONARY OF LAW** definition of **DISCRETION** and **JUDICIAL DISCRETION** as follows:

-**DISCRETION**: *"the right of an official, e.g., a judge, to act in certain circumstances and within given limits and principles on the basis of his Judgement and conscience"*

-**JUDICIAL DISCRETION**: *"The power residing in the Court, of deciding a question fairly where latitude of Judgment is allowed"*

Learned Counsel said that at the resumed hearing of the instant case on 11th day of April, 2022, the 1st Defendant/Applicant had informed the Tribunal of its intention to file a Reply to the Claimants' Counter Affidavit dated 8th day of April, 2022 which was served on them on that same day being 11th day of April, 2022. It was at this juncture that the Honourable Tribunal Order parties to maintain **STATUS QUO ANTE**



BELLUM, meaning that parties should maintain their respective positions before the hostility as at 30th day of March, 2022 until the issue of Jurisdiction is determined.

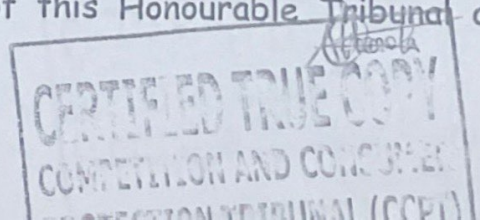
Learned Counsel proceeded to submit that it is the preservation of the **RES** the (incessant price increase and particularly the impending price hike of 1st day of April, 2022) which is one of the grievances of the Claimants, that the Tribunal Ordered parties to maintain Status Quo Ante Bellum. And that it was not a fresh Order as being argued by the Applicant. The Order was meant to protect interest of parties and preserve the integrity of the Tribunal and the subject matters of the dispute between parties continuing, Claimants said that it is this **RES** (the increase in price) that the 1st Defendant/Applicant had Claimed in its Motion on Notice is a "**COMPLETED ACT**". It is the opinion of the Claimants that where either of the parties takes any step or alter their position during the pendency of this Motion, such party will be overreaching the Tribunal or acting in Contempt of the Orders of the Tribunal. Sadly, the 1st Defendant/Applicant by its actions have preempted the outcome of their Motion on Notice challenging the Jurisdiction of the Tribunal by altering its position by increasing the price of its products and services which is one of the subject matter of this Suit even before the matter is heard by the Tribunal. In the event that the Tribunal holds that it has Jurisdiction to hear and determine the matter, it will mean that the Tribunal will be acting in void because one of the subject matters of the Suit would have been dissipated by the Applicant even before the Application on Jurisdiction is determined.

Learned Counsel then submitted that owing to the facts and circumstances of the present case, this Honourable Tribunal rightfully, judicially and judiciously exercised its discretionary powers in the interest of justice by asking parties to maintain status quo ante bellum and that this position will not only preserve the RES but also the integrity of the Tribunal as the **DOMINIS**(Umpire) in this Suit.

Responding to the Prayers of the 1st Defendant/Applicant praying the Tribunal to set aside the Order made on 11th day of April, 2022, Claimants said that before an Order of a Court/Tribunal can be set aside, certain conditions must be fulfilled by the Applicant namely:

- a) *Whether the Judgment was obtained by fraud*
- b) *Whether the Judgment was giving in absence of Jurisdiction*
- c) *Whether the Court was misled in giving the Judgment.*

Learned Counsel relied on the authority of **ADEGOKE MOTORS LTD V. ADESANYA & ANORS (1989) 3 NWLR (PT 109) 250 @ 274**. Claimants then said that in the instant case the Applicant has failed woefully to satisfy the Tribunal that there is no presence of any of the above conditions Claimants then wonder why the 1st Defendant/Applicant who described the Order of this Honourable Tribunal as a



"COMPLETED ACT" turn around to ask the Honourable Tribunal to stay execution of the same Order that the Applicant has already disobeyed and said that any person who wants a Court to exercise equitable remedy in his favor must come with clean hands. He who wants equity must do equity. Learned Counsel relied on the case of **NIMASA & ANOR V. HENSMOR NIG LTD (2012) LPELR 7913 (CA)** wherein PEMU JCA held at page 9 as Follows:

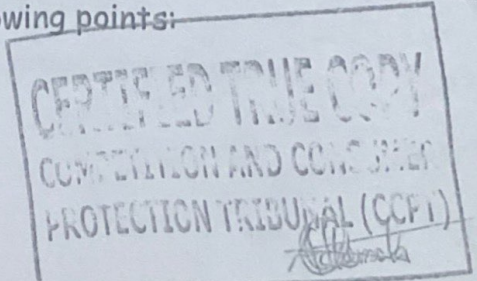
"The Applicants, having disobeyed the Order of the lower Court ... had no right to approach this Court seeking the same Order, which had been granted them at the Lower Court, he who seeks equity must do equity. He who comes to equity must come with clean hands. Equity leans against double portions" PER TOBI EBIOWEI, JCA

The maxim bars relief for anyone guilty of improper conduct in the matter at hand. It operates to prevent affirmative recovery for the person with "UNCLEAN HANDS" no matter how unfairly the person's adversary has treated him or her. The maxim is the basis of the clean hand's doctrine. Its purpose is to protect the integrity of the Court. It does not disapprove only of illegal acts, but will deny relief for bad conduct that, as a matter of public policy, ought to be discouraged. A Court will not ask whether the bad conduct was *INTENTIONAL*. This rule is not meant to punish carelessness or a mistake. It is possible that the wrongful conduct is not an act but a failure to act. The bad conduct that is condemned by the clean hand doctrine must be a part of the transaction that is the subject of the lawsuit. It is not necessary that it actually have hurt the other party. On the allegation by the 1st Defendant/Applicant that they were not given fair hearing, Learned Counsel submitted that any party who has been given the opportunity to defend himself on an issue and such party fails to take advantage to defend himself, such party cannot and should not say that his right of fair hearing has been breached.

In conclusion, Learned Counsel F.S Onifade urged this Honourable Tribunal to dismiss this instant Application because the Tribunal has Jurisdiction both to assume and hear Claimants matter and make the **ORDER** made on 11th day of April, 202, which is to maintain **STATUS QUO ANTE BELLUM** and go ahead and grant the Application and dismiss the Application of the 1st Defendant/Applicant.

POINT OF LAW RAISED BY 1ST DEFENDANT/APPLICANT

Jamiu Agoro Esq., Learned Counsel to the Applicant, filed a Counter Reply on Point of Law on 14th day of June, 2022 to the Claimants Counter Affidavit filed on 26th day of April, 2022. Learned Counsel went on to adopt the averments contained in the said Reply on Point of Law. Learned Counsel made the following points:



1. That to the extent that their Application dated 31st day of March, 2022 was pending, the Tribunal lacks power to, make preservative Order.
2. That the Order of this Honourable Tribunal made on the 11th day of April, 2022 during the pendency of the Application challenging the Jurisdiction of this Honourable Tribunal filed on the 31st day of March, 2022, is a nullity. He relied on the authority of APC v. ASEKHOMEH & ORS (2020) LPELR - 50032 (CA)
3. That this Honourable Tribunal lacks the Jurisdiction to make any Order be it preservative or otherwise.

Applicant's Counsel then concluded by asking this Honourable Tribunal to grant the instant Application.

SUMMARY OF APPLICATIONS OF PARTIES

1. 1ST DEFENDANT/APPLICANT ARGUMENT

The Arguments of the 1st Defendant/Applicant can be summarized as follows:

- a) That to the extent that their Application dated 31st day of March, 2022 was pending, the Tribunal lacks Jurisdiction to make a preservative Order.
- b) That the Order of this Honourable Tribunal made on the 11th day of April, 2022 during the pendency of the Application challenging the Jurisdiction of this Honourable Tribunal filed on 31st day of March, 2022 is a nullity
- c) That the Tribunal lacks the jurisdiction to make any Order be it preservative or otherwise.
- d) That the Tribunal breached the Applicant's right to fair hearing by granting the Order made on 11th day of April, 2022 as the said Order is for all intent and purposes same as Prayer 3 of the Claimants pending Application for Committal filed on the 8th day of April, 2022.

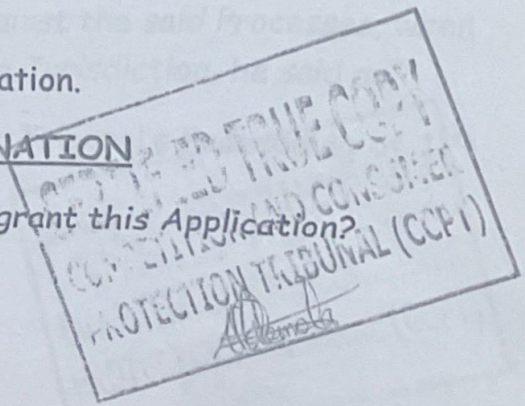
1st Defendant/Applicant therefore prayed the Tribunal for the following Orders:

1. Stay execution of the Order of this Tribunal granted on the 11th day of April, 2022, pending the determine of the instant Application.
2. Set aside and discharge the Order of this Honourable Tribunal made on the 11th April, 2022
3. And for such further Order or other Orders as this Honourable Tribunal may deem fit to make.

Learned Counsel formulated one sole issue for determination.

1ST DEFENDANT/APPLICANT ISSUE FOR DETERMINATION

Whether it is in the interest of justice to grant this Application?



CLAIMANTS/RESPONDENT ARGUMENTS

The arguments of the Claimants can be summarized as follows:

1. That this Honourable Tribunal has the inherent powers to exercise judicial discretion and that the Tribunal merely exercised her judicial discretion in the making of the Order of 11th day of April, 2022.
2. That it was the failure of the 1st Defendant/Applicant to move their Application when the Applicant told this Honourable Tribunal that they were not ready to move their Application of 31st day of March, 2022 that led the Tribunal to Order parties to maintain Status Quo Ante Bellum meaning that parties should maintain their respective positions before the hostility as at 31st day of March, 2022 until the issue of Jurisdiction is determined.
3. That the action of the 1st Defendant/Applicant by describing the Order of this Honourable Tribunal as a "COMPLETED ACT" is overreaching the Tribunal.
4. That the Prayers of the 1st Defendant/Applicant are not grantable in Law as the Application did not meet any of the conditions that may warrant granting their Prayers.

The Claimants formulated only one issue for determination.

ISSUE FOR DETERMINATION FORMULATED BY CLAIMANTS

Whether the said Order of this Honourable Tribunal made on the 11th day of April, 2022 was not made judicially and judiciously?

CONSIDERATION OF ISSUES

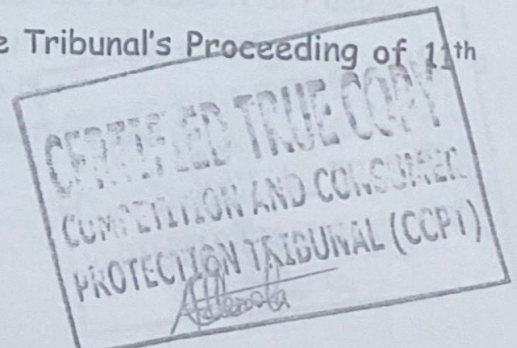
ISSUE 1

Whether it is in the interest of justice to grant this Application?

To resolve the issue as formulated by the 1st Defendant/ Applicant, we would quote from the Record of Proceeding of 11th day of April, 2022 and I quote:

"Thereafter, Counsel to the 1st Defendant then orally moved that "in view of the Counter Affidavit and Written Address that has just been served on us on behalf of the Claimants and considering the assertions and defense contained in the said Processes, we would therefore be asking for an adjournment to enable us file a Reply against the said Processes, when asked if he was ready to move his Motion on Jurisdiction, he said no"

We would also like to quote the concluding part of the Tribunal's Proceeding of 11th April, 2022 and I quote:



"Having listened to the arguments of the Counsel in this Suit for all parties, and upon the Applications of Counsel to the 1st and 2nd Defendants for an adjournment to enable them file further Processes, this matter shall be adjourned to enable the Tribunal hear and determine the Motion on Jurisdiction"

In paragraph 3(three) of the grounds of the Application of EXHIBIT A attached to the Motion on Notice the 1st Defendant/Applicant said as follows:

"That the price review and increase had already been effected, thus the Tribunal lacks the power to restrain a completed act"

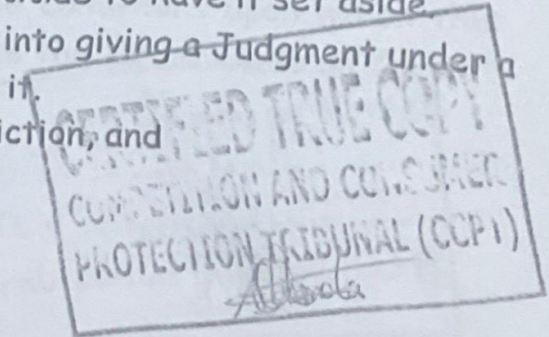
This is an obvious admission by the Applicant that in spite of the Order of the Honourable Tribunal made on 30th day of March, 2022 asking the Applicant not to proceed with the planned increment in tariff of their products and services on the 1st day of April, 2022, that they still went on to increase the tariffs of their products and services in total disregard of this Honourable Tribunal thereby rendering the Order of this Honourable Tribunal a nullity.

The question to ask is "can the Applicant rightfully" appear before this Honourable Tribunal to ask this Tribunal to stay execution of an Order that they admit that they have already rendered a nullity and of no effect by proceeding to increase the tariffs of their products and services? To me, the answer is No.

Those who seek equity must do equity see NIMASA & ANOR V. HENSMOR NIG LTD SUPRA.

The action of the Applicant is condemnable and will not be encouraged or tolerated by this Honourable Tribunal. Concerning the Prayer of the Applicant to set aside and discharge the Order of this Honourable Tribunal made on the 11th day of April, 2022, we decided to critically examine the conditions set out in the case of BARRISTER ORIKER JEV & ORS V. IYORTOM & ORS SUPRA where the Supreme Court laid out the conditions under which Courts can set aside its own Order or Judgment as follows:

- a) where the Judgment is obtained by fraud or deceit either in the Court or of one or more of the parties such a Judgment can be impeached or set aside by means of an action which may be brought without leave.
- b) when the Judgment is a nullity such as when the Court itself was not competent and a person affected by an Order of Court which can properly be described as a nullity is entitled *ex debito justitiae* to have it set aside.
- c) Where it is obvious that the Court was misled into giving a Judgment under a mistaken belief that the parties consented to it.
- d) When the Judgment was given without Jurisdiction, and



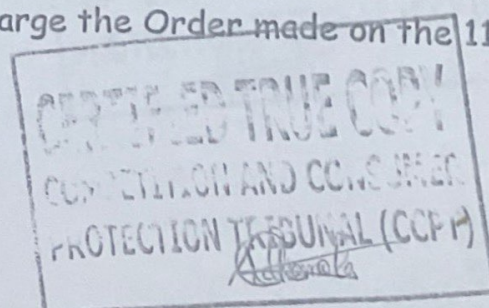
- e) Where the procedure adopted is such as to deprive the Decision or Judgment of a character of legitimate adjudication.

Going through the 1st Defendant/ Applicant's Motion on Notice and the oral submissions of the Applicant's Counsel, we found nowhere they demonstrated that any of the condition precedent for the grant of an Application to set aside and discharge the Orders of this Honourable Tribunal made on the 11th day of April, 2022 exist.

FINDINGS/CONCLUSIONS

After thoroughly reviewing the Application of the 1st Defendant/Applicant, we have come to the following conclusion:

1. That we had earlier ruled that this Honourable Tribunal has Jurisdiction to have made the Order made on 30th day of March, 2022. Upon which this instant Application is predicated.
2. That the Order made on 11th day of April, 2022 was made upon the failure of the 1st Defendant/Applicant to move their Application questioning the Jurisdiction of this Honourable Tribunal to have made the Order of 30th day of March, 2022
3. That the Tribunal was left with no other option than to order the parties to maintain Status Quo Ante Bellum meaning that parties should maintain their respective positions before the hostility as at 31st day of March, 2022 until the issue of Jurisdiction is determined.
4. That the Applicant soiled their hands by deliberately disobeying the Order of this Honourable Tribunal that was legally and lawfully made on 30th day of March, 2022
5. An Applicant who has an Application to move before a Court and was duly invited to move same but willfully and deliberately fails to move his Application cannot turn around to accuse the same Court of failure to grant the Prayers contained in the Application neither can he lawfully claim of been denied fair hearing
6. At the time this Honourable Tribunal Ordered parties to maintain Status Quo Ante Bellum on the 11th day of April, 2022, this Honourable Tribunal was yet to commence hearing of the substantive Suit.
7. That the 1st Defendant/Applicant failed to demonstrate before this Honourable Tribunal that they met any of the conditions upon which this Honourable Tribunal can set aside and discharge the Order made on the 11th day of April, 2022.



Therefore, we have come to the final conclusion that issue 1 is resolved in the negative we will now proceed to consider issue formulated by the Claimants/Respondent.

ISSUE 2

Whether the said Order of this Honourable Tribunal made on the 11th day of April, 2022 was not made judicially and judiciously?

Having just resolved issue 1 as formulated by the 1st Defendant/Applicant in the negative and following the conclusions reached above, one cannot but conclude that issue 2 as formulated by the Claimants is resolved in the affirmative, that the Order of this Honourable Tribunal made on the 11th day of April, 2022 was made judicially and judiciously.

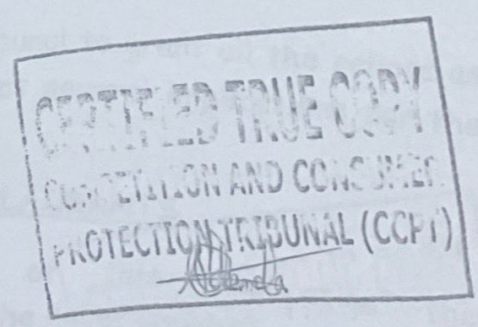
The Order of this Honourable Tribunal made on 11th day of April, 2022 was also made to preserve and protect the integrity of this Honourable Tribunal and in conformity with the powers vested on this Honourable Tribunal by *Section 50 subsection (2)(e)* which provides thus:

"The Tribunal for the purpose of discharging its duty under this Act, have power to-
(e) do anything which in the opinion of the Tribunal, is deemed necessary to issue a final and reasoned decision on the merit of the matter before it,"

VERDICT

Having resolved the issues raised by both the 1st Defendant/Applicant and the Claimants, we have come to the conclusion that the Prayers of the 1st Defendant/Applicant lacks merit as this Honourable Tribunal has the Jurisdiction to have made the *Order* made on the 11th day of April, 2022 where in this Honourable Tribunal *ORDERED* parties to maintain *STATUS QUO ANTE BELLUM*

The instant Application is hereby dismissed without cost.



MOTION FOR CONTEMPT

This is a Motion on Notice brought pursuant to

- i. Section 51(1) & (2) of the Federal Competition and Consumer Protection Act, 2018.
- ii. Under the inherent Jurisdiction of this Honourable Tribunal.

Dated and filed on 8th day of April, 2022 praying this Honourable Tribunal for the following reliefs:

1. AN ORDER of this Honourable Tribunal Commanding the Managing Director and the Director and the Directors of the 1st Defendant/Respondent to appear before this Honourable Tribunal and SHOW CAUSE why they should not be committed to prison for willful disobedience of the Order of this Honourable Tribunal granted on the 30th day of March, 2022.
2. AN ORDER of this Honourable Tribunal Commanding the Managing Director and Directors of the 1st Defendant/Respondent (Multi-Choice Nig Ltd) should not be made to pay 10% of its annual turnover for contravention or failure to comply with an Interim Order of this Honourable Tribunal.

ALTERNATIVE PRAYER

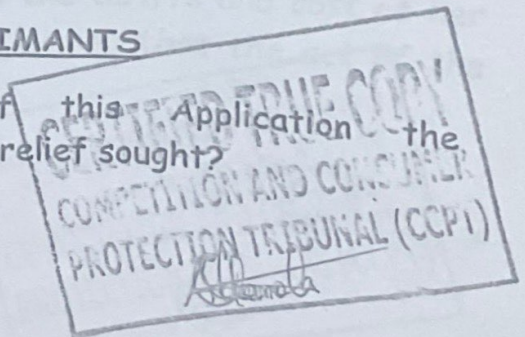
3. AN ORDER of this Honourable Tribunal Commanding and Mandating the 1st Defendant/Respondent either by itself, agents, representatives, officers or privies, however described to revert the price of all its products and services back to the price being charged before 1st day of April, 2022.
4. AND for such further Order or other Orders this Honourable Tribunal may deem fit to make in the circumstances.

The Application is brought on 7(seven) grounds supported by 23 paragraphs Affidavit deposed to by Festus Sanmi Onifade, Esq and 8(eight) EXHIBITS. Claimants also filed a Written Address in support of the Application.

The Application thereafter urge this Honourable Tribunal to grant all the reliefs as prayed. And that failure to grant this Application has several implications for the integrity of this Honourable Tribunal.

ISSUE FOR DETERMINATION FORMULATED BY CLAIMANTS

Whether from the circumstances of this Application the Claimants/Applicants are not entitled to the relief sought?



ARGUMENT IN SUPPORT OF THE APPLICATION

In his argument in support of the instant Application, Learned Counsel referred the Tribunal to the meaning of Contempt as defined by THE DICTIONARY OF ENGLISH LAW 4TH EDITION AT PAGE 217.

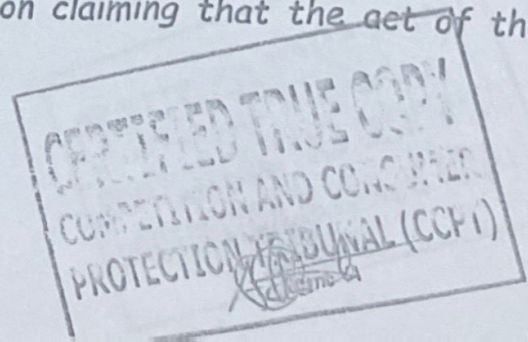
Contempt of Court is where a person who is a party to a Proceeding in a superior Court of Record fails to comply with an Order made against him or an undertaking given by him or where a person whether a party to a Proceeding or not does any act which may tend to hinder the course of justice or show disrespect to the Court's authority. Contempt is direct, which only insult or resist the powers of the Court or the persons of the judges who preside there, or consequential, which without such gross insolence, or direct opposition plainly tend to create a universal disregard of their authority.

Counsel went to highlight some keywords worth considering as follows:

- a) Failure by a party to an action to comply with the Order of the Court
- b) Hinder the course of Justice
- c) Show disrespect to the authority of the Court
- d) Insult the person or the judges who preside.

Claimants/Applicants proceeded to chronicle the events leading to the instant Application for Contempt Proceeding against the 1st Defendant/Applicant as follows:

1. That this Honourable Tribunal Upon hearing a Motion Ex-parte brought by the Claimants on the 30th day of March, 2022, made an Interim Injunction restraining the 1st Defendants/Respondent either by itself, agents, representatives, officers or privies, howsoever described from carrying out the impending increase in tariffs and cost of its products and services intended to take effect from 1st day of April, 2022, until the hearing and determination of the Motion on Notice, pending before the Tribunal, and asking parties to maintain Status Quo.
2. That the 1st Defendant/Respondent in complete affront and disobedience to the power of the Tribunal went ahead and increased the tariffs and cost of her services and products and also filed a Motion claiming that the act of the increase is already a "COMPLETED ACT"



3. That the 1st Defendant/Respondent was duly served with the Order, 24 hours before the commencement of the implementation of the increment, yet the 1st Defendant/Respondent claimed the Act of the increment intended to take effect on the 1st day of April, 2022 has been concluded and completed on the 31st day of March, 2022 in disregard to the said Orders of the Tribunal.
4. That the 1st Defendant/Respondent has a history of disobeying Orders of Court and institutions and then attached various Exhibits to support their arguments that the 1st Defendant/Respondent is fond of disobeying lawful Orders of Courts and institutions of government.

See Exhibits MM1 TO MM8.

Learned Counsel thereafter called upon this Honourable Tribunal to invoke the powers conferred on the Tribunal in Section 51(1) of the Federal Competition and Consumer Protection Act, 2018 which provide thus:

51(1) The Tribunal may impose administrative penalties only-

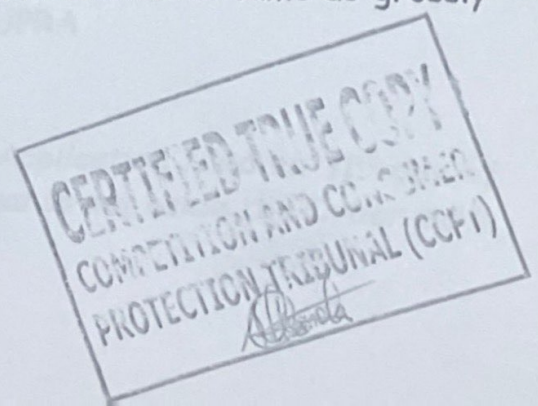
- (a) a prohibited practice under the Act, or
- (b) the contravention of or failure to comply with an interim order of the tribunal

Learned Counsel thereafter called on this Honourable Tribunal to grant his Application as prayed and invoke the necessary sanctions against the 1st Defendant/Respondent so as to protect the integrity of this Honourable Tribunal.

1st DEFENDANT/RESPONDENT RESPONSE

In response to the Claimants' Application, Counsel to the 1st Defendant, Jamiu Agoro, Esq said he filed a Counter Affidavit dated and filed on 29th day of April, 2022 in opposition to the Claimants' Motion on Notice filed on the 8th day of April, 2022. The Counter Affidavit is of 4 paragraphs deposed to by MOHAMMED ADEDIJI and attached with Exhibit A.

Learned Counsel relied on all the paragraphs in the Counter Affidavit and the annexure attached therewith. Learned Counsel also filed a Written Address. He went on to adopt the arguments and submissions in the Written Address and then urged this Honourable Tribunal to dismiss the Application of the Claimants and described same as grossly incompetent.



ISSUE FOR DETERMINATION AS FORMULATED BY 1ST DEFENDANT.

"Whether considering the peculiar facts of this case, the Claimants' Application for Committal is not liable to be dismissed for being unmeritorious.

LEGAL ARGUMENT

In his legal argument, Learned Counsel submitted that the Claimants' instant Application for Committal is that the 1st Defendant disobeyed the Order of this Honourable Tribunal made on the 30th day of March 2022, restraining the 1st Defendant from proceeding with the proposed increment in the tariffs of its product and services. But premised on erroneous argument, the Claimants are urging this Honourable Tribunal to:

- a) cite the Managing Director and the Directors of the 1st Defendant for Contempt and
- b) refuse the 1st Defendant from enjoying its right of audience before this Honourable Tribunal.

Learned Counsel then went on to submit and I quote:

"The 1st Defendant is not in breach of the Order of this Honourable Court made on the 30th day of March 2022"

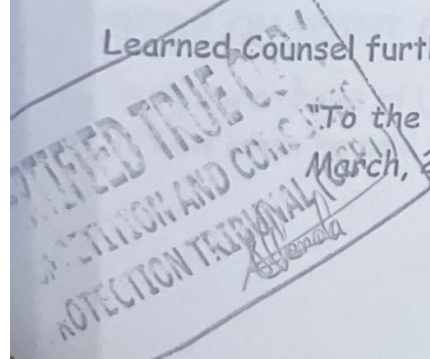
The 1st Defendant went on to say that the price increase which the Claimants sought to restrain had already been effected prior to 30th day of March, 2022 (when the Order under consideration was made) and 31st day of March 2022 (when the said Order was served on the 1st Defendant).

Counsel to the 1st Defendant went on to submit that an Interim Injunction is designed to protect or preserve the Status Quo Ante pending the happening of the event for which the Order is made. Where however, the thing or RES intended to be preserved has taken place or no longer exists, a party cannot be held in disobedience /contempt of the Orders of Court made after the event sought to be restrained had taken place. He relied on the authority of ALON & ANOR V. DANBRILL (NIG) LTD & ANOR (1997) LPELR-5904 (CA).

Counsel relied on several other authorities following his line of argument as found in ALON & ANOR V DANBRILL (NIG) LTD & ANOR SUPRA

Learned Counsel further argued that

"To the extent that the 1st Defendant's Application filed on 31st day of March, 2022 seeks this Honourable tribunal to set aside the Order made



on the 30th day of March, 2022, no Contempt Proceedings can lie against any of the officers of the 1st Defendant".

Counsel relied on the authority of MAIDUGURI METROPOLITANT COUNCIL & ANOR V. EZEKOR (2013) LPELR-22792 (CA) where it was held thus:

"It is pertinent to pause and state that there is a doubt about the position of the Law that every Nigerian citizen is bound to obey Orders of Court made against him until such Order is set aside even where the person affected by the Order believes that such order was irregular or even void as where the Court has Jurisdiction to make same... the above Rule as it has been said that to every Rule there is an exception and in the case at hand the Rules of Court permit a party to apply within a specified period of time that such Order made against him be set aside, varied or discharged. The position of Law is that a party who has availed himself of the provisions and applied within the time stipulated by the Rules cannot be held to be in Contempt of the Ex-parte Order of Court until his Application has been disposed of"

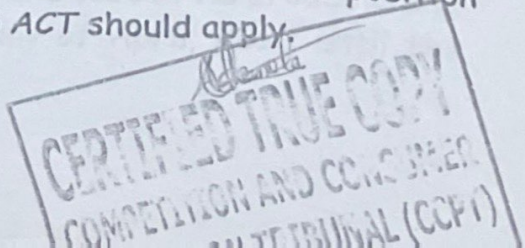
Counsel also relied on the authorities of INEC & ANOR V OGUEBEGO (2017) LPELR-42609 (SC) and SPDC (NIG) LTD V TENALO & ORS (2019) LPELR-49045 (CA)

On the mode of initiating Contempt Proceeding Counsel to the 1st Defendant submit that the instant Application has not fulfilled the legal requirements for initiating Contempt Proceedings. And that prior to the filing of Motion on Contempt, the alleged Contemnor must have been personally served with Form 48 and Form 49 as required under the SHERIFF AND CIVIL PROCESS ACT and that to the extent that these conditions were not fulfilled, prior to the filling of this instant Application, the Application ought to collapse. He relied on the authority of REGISTERED TRUSTEES OF NIGERIA ASSOCIATION OF MEDICAL HERBALIST & ORS V GAMBARI (2015) LPELR 40739 (CA).

Learned Counsel in conclusion said that in view of the incompetence of the instant Application, that this Honourable Tribunal is urged to uphold their arguments and resolve the solitary issue distilled for determination in favor of the 1st Defendant and consequently dismiss the instant Application for lacking in merit and substantial cost against the Claimants.

REPLY ON POINT OF LAW BY CLAIMANTS

Replying on Point of Law, F.S. Onifade said the 1st Defendant misconstrued the position of Law when he said the SHERIFF AND CIVIL PROCESS ACT should apply.



Learned Counsel went on to submit that the SHERIFF AND CIVIL PROCESS ACT does not apply in this case. That the Law setting up this Tribunal, Section 51 of the Federal Competition and Consumer Protection Act, 2018 gives this Honourable Tribunal powers to impose Penalties on any Undertakings that violates the Order of the Tribunal.

Claimants thereafter concluded by urging this Honourable Tribunal to grant their Application in the interest of Justice and in the interest of this Honourable Tribunal.

We shall now proceed to review the issue as formulated by the 1st Defendant and Claimants.

ISSUE FORMULATED FOR DETERMINATION BY CLAIMANTS

Whether from the circumstances of this Application the Claimants/Applicants are not entitled to the reliefs sought.

To resolve this issue, I would have to take a look at the meaning of Contempt of Court.

According to the Dictionary of English Law 4th Edition at Page 217

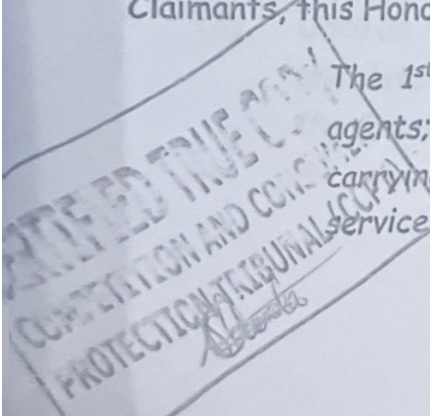
- *Contempt of the court is where a person who is a party to a proceeding in a Superior Court of Record fails to comply with an Order made against him or an Undertaking given by him or where a person whether a party to a Proceeding or not, does any act which may tend to hinder the cause of Justice or show disrespect to the Courts authority. Contempt are direct, which only insult or resist the powers of the Court or the person of the Judges who preside there or consequential, which without such gross insolence or direct opposition plainly tend to create a universal disregard of their authority.*

According To Oxford Advanced Learners Dictionary 10th Edition Page 331

Contempt of court is the crime of refusing to obey an Order made by a Court; not showing respect for Court or Judge.

This instant Application of the Claimants is predicated on the Order of this Honourable Tribunal made on the 30th day of March 2022, which the Claimants now alleged that the 1st Defendant/Respondent has disobeyed. Based on an Ex-parte Application of the Claimants, this Honourable Tribunal made an Order on the 30th March, 2022 that;

The 1st Defendant/Respondent is hereby restrained, either by itself; agents; representative, officers or privies, howsoever described, from carrying out the impending increase in tariffs and cost of its products and services intended to take effect from 1st day of April, 2022 until the



hearing and determination of the Motion on Notice already filed before this Honourable Tribunal.

The said Order was duly served on the 1st Defendant/Respondent.

In response, the 1st Defendant/Respondent filled a Motion on Notice with an attached Affidavit deposed to by GOZIE ONUMONU, dated and filed on 31st day of March, 2022.

Let us proceed to reproduce paragraphs 5, 6, 7 and 9 of the said Affidavit deposed to by GOZIE ONUMONU

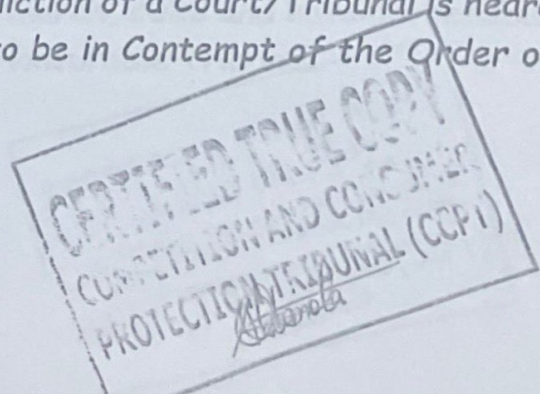
- 5. That the price increase was already effected prior to the 30th day of March, 2022 as all devices and technologies have already been configured and deployed to be compliant to the increase.
- 6. That it is a notorious fact that the cost of provided services such as diesel and other ancillary cost have astronomically increased since the last review.
- 7. That the Claimant made no Complaint to the Federal Competition and Consumer Protection Commission against the planned increment scheduled to commence on the 1st day of April, 2022
- 9. That no Complaint was made by the Claimants against the planned tariff increment of the 1st day of April, 2022 to the Federal Competition and Consumer Protection Commission or the industry Sector Regulator.

The 1st Defendant/Respondent denied being in breach of the Order of this Honourable Tribunal made on 30th day of March 2022. That to the extent that they filed an Application on 31st day of March, 2022 praying this Honourable Tribunal to set aside the Order made on the 30th day of March, 2022, that no Contempt Charge can lie against any of the officers of the 1st Defendant.

The 1st Defendant/Respondent in paragraph 3(d) (i) & (ii) of its Counter Affidavit deposed to by Mohammed Adediji further emphasized as Follows:

3 (d)

- (i) any party who has applied to set aside or appeal against an Order cannot be held to be in Contempt of the Order and
- (ii) Until an Application challenging the Jurisdiction of a Court/Tribunal is heard and determined, a party cannot be held to be in Contempt of the Order of the Courts/Tribunal



The Other argument of the 1st Defendant against the grant of the instant Application is that the Claimant failed to serve Contemnor Forms 48 and Form 49 personally as required under the Sheriff and Civil Process Act.

Let us make it clear that the Order made on 30th day of March, 2022 was against the planned increment of tariffs of products and services scheduled to commence on the 1st day of April, 2022 and not against any increment before 1st day of April, 2022 (if any).

In an attempt to prove that they did not disobey the lawful Order of this Honourable Tribunal, the 1st Defendant/Respondent have had to get itself in self contradiction. In one breath, 1st Defendant claimed that the Order of this Honourable Tribunal was made against a COMPLETED ACT. But on another breath, they refer to the increment as "THE PLANNED INCREMENT SCHEDULED TO COMMENCE ON THE 1ST DAY OF APRIL, 2022 and THE PLANNED INCREMENT of 1st DAY OF APRIL, 2022."

This is obviously a contradiction. In fact, in paragraph 6 of EXHIBIT A, the 1st Defendant tried to rationalize the tariff increase wherein they said:

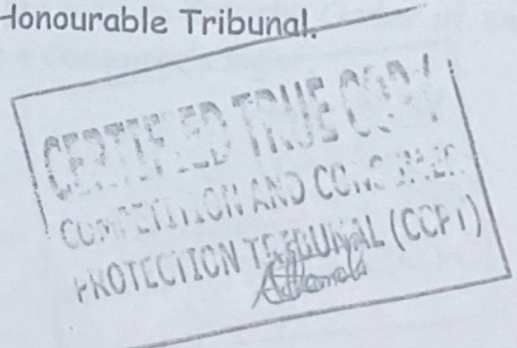
"That it is a notorious fact that the cost of provided services such as diesel and other ancillary cost have astronomically increased since the last reviews,"

Infact the 1st Defendant did not controvert the Claim of the Claimants that it was on 22nd day of March, 2022 that the 1st Defendant announced that there will be a price increase in their products and services effective 1st day of April, 2022.

So, we found no truth in the argument of the 1st Defendant that the Order of this Honourable Tribunal made on 30th day of March, 2022 was against a COMPLETED ACT.

It appears to us that the 1st Defendants proceeded with the planned increment as if there was no Order or that the Order was of no effect simply because they had applied to this Honourable Tribunal to set aside the said Order and had filed an Application questioning the Jurisdiction of this Honourable Tribunal to have made the Order of the 30th day of March, 2022.

Unfortunately, for the 1st Defendant, this Honourable Tribunal have refused to set aside the Order of this Tribunal made on 30th day of March, 2022 and have proceeded to assume Jurisdiction in the earlier Rulings of this Honourable Tribunal.



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On the argument by the 1st Defendant that prior to the filing of Motion on Contempt, that the alleged Contemnor must have personally been served with Form 48 and Form 49 as required under the Sheriff and Civil Process Act.

Section 51 of the Federal Competition and Consumer Protection Act, 2018, makes Specific Provisions on how to proceed against those who are in disobedience of the Interim Order of this Honourable Tribunal. Therefore, the Sheriff and Civil process Act does not apply.

Therefore, all the argument by 1st Defendant Counsel in opposition to the instant Application lacks merit.

Issue (1) as formulated by the Claimants is resolved in favor of the Claimants.

We shall now proceed to resolve the sole issue formulated for determination by 1st Defendants Counsel.

ISSUE FORMULATED FOR DETERMINATION BY 1ST DEFENDANT COUNSEL

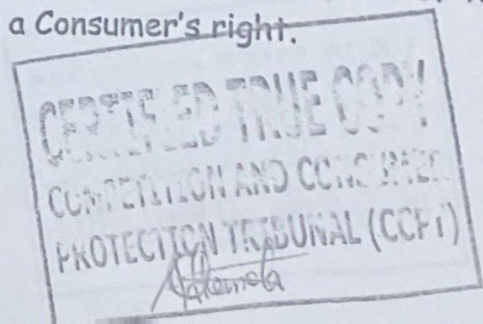
"Whether considering the peculiar facts of the case, the Claimants Application for Committal is not liable to be dismissed for being unmeritorious."

The facts of the instant Application are that on the 30th day of March, 2022, this Honourable Tribunal made a lawful Interim Order restraining the 1st Defendant from proceeding with the increase in tariffs and cost of its products and services intended to take effect from 1st day of April, 2022 until the hearing and determination of the substantive Suit. And to maintain STATUS QUO pending the hearing and final determination of the substantive Suit.

The 1st Defendant in flagrant disobedience of the Interim Order of this Honourable Tribunal proceeded to increase the cost of its products and services on the excuse that the said Order was made against a Completed Act and that having filed an Application questioning the Jurisdiction of this Honourable Tribunal, that they could lawfully proceed to act in the manner they did.

Having ruled earlier that the Order of this Honourable Tribunal made on 30th day of March, 2022, was lawful, and the 1st Defendant having disobeyed the said Order of this Honourable Tribunal, we have come to the conclusion that the Application for Committal has merit and not liable to be dismissed.

However, it's important to note that failure to comply with an Interim Order of this Honourable Tribunal is not the same as contravening a Consumer's right.



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Whereas *Section 51* relates to Administrative Penalties for contravention of or failure to comply with, an Interim Order of the Tribunal as in the instant Application, *Section 155* of FCCPA, 2018 relates to Penalties for contravention of consumer's right.

Let me reproduce the said Sections here.

Section 51

- (1) *The Tribunal may impose administrative penalties only for*
 - (a) *a prohibited practice under this Act or*
 - (b) *the contravention of or failure to comply with an Interim Order of the Tribunal.*
- (2) *An Administrative Penalty imposed under subsection (1) shall not exceed 10% of the undertakings annual turnover in Nigeria and its Exports from Nigeria during the preceding financial year.*

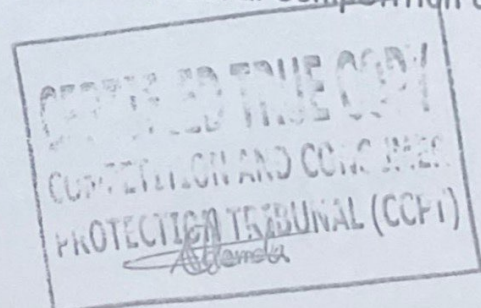
Section 155

Except where otherwise provided for in this Act, any person who contravenes any Consumer right commits an offence under this Act and-

- (a) *in the case of a natural person is liable on conviction to imprisonment for a term not exceeding five years or to payment of fine not exceeding N10,000,000.00 or to both the fine and imprisonment.*
- (b) *in the case of a body Corporate, is liable on conviction to a fine of not less than N100,000,000.00 or 10% of its turnover in the preceding business year, whichever is highest and*
- (c) *in the case of a body Corporate referred to in paragraph (b) of this Section, each director of the body Corporate is liable to be proceeded against and dealt with as specified in paragraph (a)*

The Provisions of *Section 155* doesn't apply to the instant Application. Therefore, relief one as prayed is not grantable. The Managing Director and Directors of the 1st Defendant are to appear before this Honourable Tribunal with Certified True Copy of their Audited Financial Report for year 2021 to enable this Honourable Tribunal determine the appropriate Administrative Penalty to impose on the 1st Defendant for being in Contempt of the lawful Interim Order of this Honourable Tribunal made on 30th day of March, 2022 as provided in *Section 51(3)* of the Federal Competition and Consumer Protection Act, 2018

Section 51



- 51
- (3) When determining an appropriate Penalty under subsection (1) the Tribunal shall consider-
- (a) the nature, duration, gravity and extent of the contravention
 - (b) any loss or damage suffered as a result of the contravention
 - (c) the behavior of the defaulting party
 - (d) the market circumstances in which the contravention took place
 - (e) the level of profit derived from the contravention
 - (f) the degree to which the defaulting party has co-operated with the Commission and the Tribunal; or
 - (g) whether the defaulting party has previously been found to be in contravention of any of the provisions of this Act.

The alternative reliefs as prayed by the Claimants are not granted and no Order as to cost.

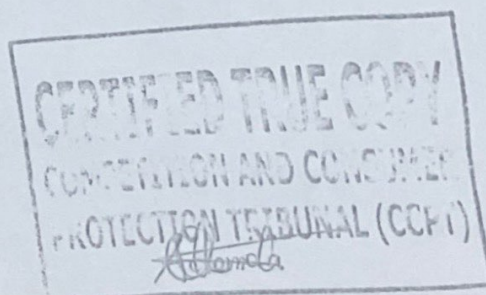
The 1st Defendant is to appear before this Honourable Tribunal on the 8th day of September, 2022 at 10.00 am with its Audited Financial Report for year 2021.

On resumed hearing on the 8th day of September, 2022, Jamiu Agoro, Esq Learned Counsel to the 1st Defendant informed the Tribunal that the Directors of the 1st Defendant were unable to attend the proceeding as they were all out of town hence, he was unable to produce the Audited Financial Report for year 2021 as requested by this Honourable Tribunal.

The Tribunal then adjourned for 10 minutes and thereafter returned to state as follows:

We have reviewed the position of Section 51 subsection 3 of the Federal Competition and Consumer Protection Act, 2018 and in compliance with the Provision of Subsection 2 of the same Section 51.

We hereby ORDER the 1st Defendant (Multichoice Nigeria Limited) to pay the sum of N25,000,000.00 (Twenty-Five Million Naira) only as Administrative Penalty for Contempt of this Honourable Tribunal.



ORIGINATING SUMMONS

This is an Originating Summons dated and filed on 7th day of June, 2022 with 23 paragraphs Affidavit in support and deposed to by FESTUS OLUWASANMI ONIFADE, ESQ. annexed to the Affidavit are 10 Exhibits namely;

- 1. Exhibit MC 1

A copy of the 1st Claimant's receipt of payment.

- 2. Exhibit MC 2

A copy of CTC of National Mirror Newspaper of 16th day of April, 2015 editorial page condemning the 1st Defendant for ignoring/disregarding Court Order.

- 3. Exhibit MC 3

A copy of an Order of the Federal High Court in Suit Number: FHC/ABJ/CS/894/2018

- 4. Exhibit MC 4

A copy of CTC of the Affidavit in support of Suit Number: FHC/ABJ/CS/844/2018 deposed to by EME DAVID OJUGO

- 5. Exhibit MC 5

Copy of CTC of Punch Newspaper of 23rd day of August, 2018.

- 6. Exhibit MC 6

Copy of CTC OF Independent Newspaper of 25th day of August, 2018.

- 7. Exhibit MC 7

A copy of the Claimant's Petition to the 2nd Defendant dated 19th day of May, 2020.

- 8. Exhibit MC 8

A copy of the Claimant's Reminder to the 2nd Defendant dated 2nd day of July, 2020.

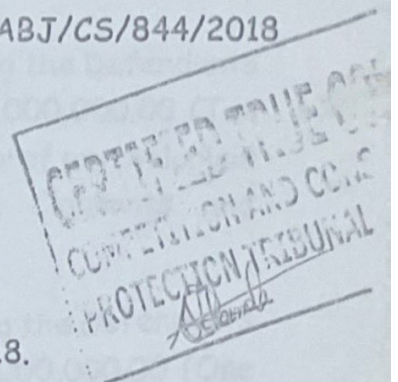
- 9. Exhibit MC 9

A copy of Record of proceedings of 14th day of July, 2021 of House of Representatives.

- 10. Exhibit MC 10

A copy of Record of Proceedings of 30th day of March, 2022 of the Senate of the Federal Republic of Nigeria.

The Originating Summons was brought pursuant to Sections 47, 70 and 72 of the Federal Competition and Consumer Protection Act, 2018 and Section 6(6) B of the



Constitution of the Federal Republic of Nigeria, 1999 (As Amended) praying the Honourable Tribunal for the following reliefs;

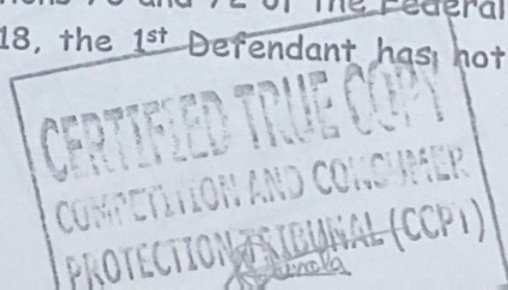
1. A DECLARATION that the tariffs and products increase in tariffs and products and services in respect of the 1st Defendant's products and services of May, 2020 and any other subsequent proposed increase of the 1st day of April, 2022 without prior resolution of the Claimant's Petitions to the 2nd Defendant is null and void and no effect whatsoever.
2. AN ORDER of this Honourable Tribunal directing and mandating the 1st Defendant, itself, agents, representatives, affiliates, officers or privies, howsoever described to revert back to the price regime prior to the price and products increase prior of April, 2020.
3. AN ORDER of this Honourable Tribunal directing and mandating the 1st Defendant, itself, agents, representatives, affiliates, officers, or privies, howsoever to adopt PAY-AS-YOU-VIEW model of billing for all its products and services forthwith.
4. AN ORDER of this Honourable Tribunal directing and mandating the Defendants jointly and or severally to pay the Claimants the sum of N10,000,000.00 (Ten Million Naira) only for general damages resulting from all manner of psychological traumas, hardship and the continuous violation of the Claimants and compensation for various anti-consumers' acts.
5. AN ORDER of this Honourable Tribunal directing and mandating the Defendants jointly and or severally to pay the Claimants the sum of N1,000,000.00 (One Million Naira Only) as cost of this Suit.
6. SUCH FURTHER ORDERS as this Honourable Tribunal may deem fit to make in the circumstances of this case.

Claimants relied on all the averments in the Affidavit in support of the Originating Summons and the Written Address. The fulcrum of the Claimants' Originating Summons is anchored on their Petitions to the 2nd Defendant dated 19th day of May, 2020 and 2nd day of July, 2020.

Learned Counsel went on to raise three (3) issues for determination.

ISSUES FOR DETERMINATION AS FORMULATED BY CLAIMANTS

1. Whether having regards to the chequered history and conduct of the 1st Defendant together with the Provisions of Sections 70 and 72 of the Federal Competition and Consumer Protection Act, 2018, the 1st Defendant has not abused its position of dominance in the market?



- 600
2. Whether by virtue of the Claimants unresolved Petitions dated 19th day of May, 2020 and 2nd day of July, 2020, the 1st Defendant increase of May, 2020 and any other increase is valid, lawful in Law?
 3. Whether by the various anti-consumer practices of the 1st Defendant and in view of the pending Petitions, the rights of the Claimants has not been violated?

LEGAL ARGUMENTS BY F.S. ONIFADE ESQ.

ISSUE 1

In his legal argument, F.S. Onifade Esq, drew the attention of this Honourable Tribunal to the Provisions of Section 70 of the Federal Competition and Consumer Protection Act, 2018 to support his argument that the 1st Defendant occupies a dominant position in the market.

Section 70 provides thus:

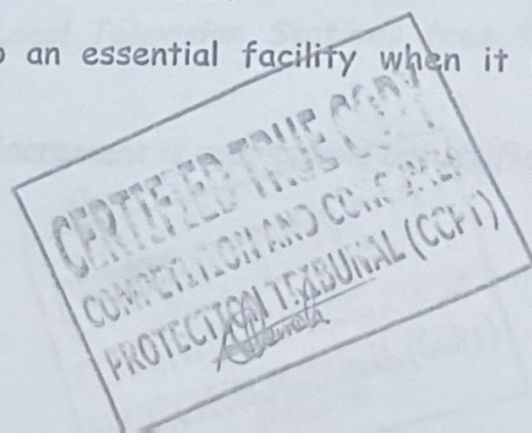
1. *For the purpose of this Act, an undertaking is considered to be in dominant position if it is able to act without taking account of the reaction of its customers, consumers or competitors.*
2. *A dominant position in a relevant market, exists where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.*
3. *The Commission shall publish the size of the market share that may constitute dominant position in particular markets.*

Counsel submitted that the 1st Defendant not only occupies dominant position in the market but has abused their dominant positions. Claimants therefore refer this Honourable Tribunal to *Section 72(2)* of the Federal Competition and Consumer Protection Act, 2018.

Section 72 (2) provides thus:

"For the purposes of this Act, an abuse of dominant position occurs where one or more undertakings in a dominant position-

- (a) charge an excessive price to the detriment of consumer;
- (b) refuse to give a competitor access to an essential facility when it is economically feasible to do so;



- (c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological efficiency and other pro-competitive gains; or
- (d) engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency and other pro- competitive gain which outweigh the anti-competitive effect of its act-

Arguing their case further, Learned Counsel submitted that the 1st Defendant on countless occasions unilaterally and independently without recourse to the consumer, customer or even the Regulator increased the prices of its products and services. And that not even the intervention of the National Assembly could stop them from constantly increasing their prices.

Learned Counsel then concluded that the 1st Defendant is not just occupying a dominant position in the market but has grossly abused its power of dominance in the market and therefore liable and then urge this Honourable Tribunal to so hold.

ISSUE 2

On issue two, which is;

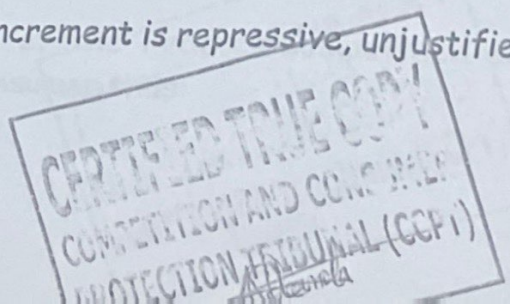
Whether by virtue of the Claimants unresolved Petitions dated 19th day of May,2020 and 2nd day of July, 2020, the 1st Defendant's increase of May,2020 and any other increase is valid, lawful in Law?

F.S. Onifade proceeded to state that in 2020, aggrieved by the 1st Defendants incessant increases and numerous anti-consumer practices, the Claimants petitioned the 2nd Defendants.

The Petition dated 19th May,2020 titled **POWERS OF THE COMISSION TO REGULATE PRICE. ABUSE OF POWER OF DOMINANCE IN MARKET AND IMPENDING PRICE HIKE BY MULTI-CHOICE/DSTV IN NIGERIA.**

The Claimants' Petition raised the following issues:

- (a) That viewing content of the 1st Defendant is recycled products
- (b) That the 1st Defendant need to adopt Pay -As -You- View in billing of his product and services
- (c) That the 1st Defendant should make Local Television Stations free for Nigeria consumers on its platform.
- (d) That the 1st Defendant's incessant price increment is repressive, unjustified, unfair and uncalled for.



And that it is the omission of the 2nd Defendant to investigate and hear the Claimants Complaints on all these infractions and rights violation including the continuous injury being done to their accrued rights that led to the present cause of action which the Claimants had invited this Honourable Tribunal to review by virtue of Section 47 of the Federal Competition and Consumer Protection Act, 2018 which empowers the Tribunal to do the followings:

1. The Tribunal shall have powers to -

- (a) hear appeals from or review any decision of the Commission taken in the course of the implementation of any of the provisions of this Act as may be referred to it,
- (b) hear appeals from or review any decision from the exercise of the powers of any sector of specific authority in a regulated industry in respect of competition and consumer protection matters;
- (c) issue such orders as may be required of it under this Act; and
- (d) make any rulings or such other Orders as maybe necessary or incidental to the performance of its functions under this Act.

Learned Counsel went on to submit that it is the failure of the 2nd Defendant to resolve their Complaints of 19th day of May, 2020 that led to the instant Suit and that in the face of their unresolved Petitions, the 1st Defendant cannot validly take any price adjustments or increase and thereafter called on this Honourable Tribunal to declare the April, 2020 increment of the products and services of the 1st Defendant and any other subsequent increase null and void ab initio.

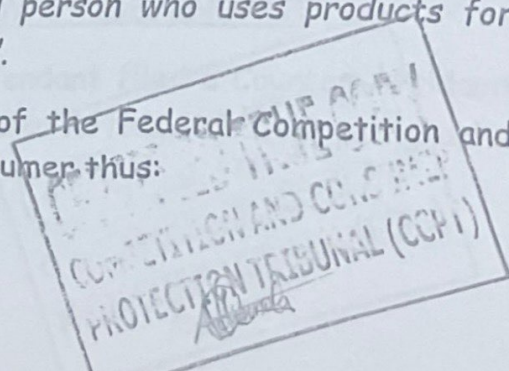
ISSUE 3

Whether by the various anti-consumer practices of the 1st Defendant and in view of the pending Petitions, the rights of the Claimants have been violated?

Arguing in support of issue 3, Learned Counsel went on to refer this Honourable Tribunal to the definition of Consumer as defined by *Black's Law Dictionary (9th Edition, 2009)* which defines CONSUMER as:

"a person who buys good or services for personal, family or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes".

They also referred the Tribunal to Section 167 of the Federal Competition and Consumer Protection Act, 2018 which describes Consumer thus:



- (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production of any other goods or articles for sale; or
- (b) to whom a service is rendered.

Learned Counsel then said that from the definitions above, that they are Consumers as they had deposed to in paragraph 4 of their Affidavit in support of the Originating Summons. That as Consumers and Customers of the 1st Defendant, they have rights which are protected under the Law as stipulated under Sections 114 to 133 of the Federal Competition and Consumer Protection Tribunal Act, 2018.

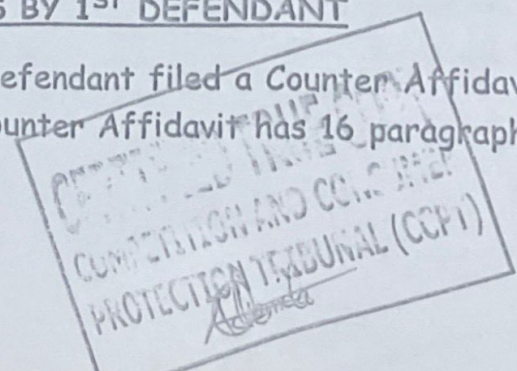
Learned Counsel thereafter went on to submit that the 8 (Eight) days' notice of price increment by the 1st Defendant to their monthly subscribers, was unfair, unjust, unreasonable and a deliberate attempt by the 1st Defendant to impose the new price increase on vulnerable Claimants who are left with no choice and that Claimants as Consumers of the 1st Defendant have continued to groan under the repressive exploitative, anti-consumer practices which they summarized as follows:

- (a) Exorbitant charges and arbitrary increase in fees without justification.
- (b) Disconnection during valid subscription cycle.
- (c) Failure to activate subscription days and weeks after payment.
- (d) Limited access to channels even after payment.
- (e) Poor quality of service/signal.
- (f) Poor consumer service and inability to access toll free Consumer care line.
- (g) Non-activation of free to air service on expiration of subscription.
- (h) Failure to adopt the pay as you view package option.

In their conclusion on issue 3, Claimants said that assuming the 1st Defendant has the right to increase the prices of its products and services unilaterally; the manner and nature of the increase is a breach and gross violation of their rights as consumers and therefore urge this Honourable Tribunal to so hold and award substantial damages against the 1st Defendant.

RESPONSE TO THE ORIGINATING SUMMONS BY 1ST DEFENDANT

In response to the Originating Summons by 1st Defendant filed a Counter Affidavit dated and filed on 22nd day of July, 2022. The Counter Affidavit has 16 paragraphs.



Attached to the Counter Affidavit is Exhibit MC 1. The Affidavit is deposed to by FRANCIS AGUNBIADE.

Learned Counsel relied on all the averments in the Affidavit including the Exhibit MC1 and the Written Address filed along with the Counter Affidavit and his oral submissions. The attached Exhibit MC1 is a copy of the Report of the House of Representatives Committee held on 17th day of March, 2020.

As a way of making preliminary points, Learned Counsel Jamiu Agoro, Esq., submitted that the instant action is not maintainable and incompetent because:

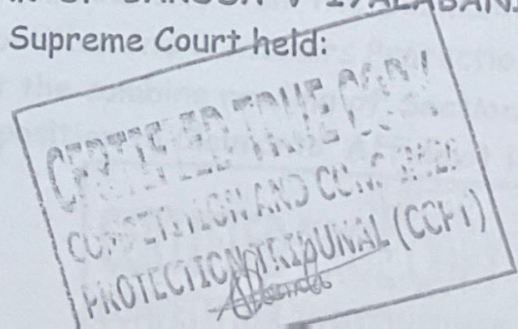
- (a) *The 2nd Claimant is not a juristic person and therefore lacks the competence to commence the instant action. Consequently, the 2nd Claimant ought to be struck out.*
- (b) *The Claimants have failed to disclose their Locus Standi and/or their right to commence this action.*

Learned Counsel further submitted that it is trite law that a party who has a right to commence or defend an action in Court must be a person known to Law, be it a natural or a creation of Statute and that parties in a Suit must be able to sue and be sued in their capacity.

Learned Counsel then referred this Honourable Tribunal to *AKAS V MANAGER & RECEIVER OF ESTATE OF ANWADIKE (2001) 8NWLR (PT 715) pg. 436*. Where the Court of Appeal held;

"A juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by the Law which includes an incorporated body and special artificial being created by legislation and revisited with the capacity to sue and be sued.

Counsel to the Defendant thereafter went to submit that the 2nd Claimant, *COALITION OF NIGERIA CONSUMER*, is not a juristic person and that searches conducted at the Corporate Affairs Commission showed that such an entity does not exist. That the Claimants have refused/neglected to attach the Certificate of Registration of the Incorporated Trustees to justify being a party in the Suit. He went further to state that the Originating Summons and Affidavit in support did not disclose the identity or loss suffered by the 2nd Claimant and that it is a well settled legal principle that only a juristic person can institute an action in Court. He relied on the authority of the Supreme Court in the case of *BANK OF BARODA V IYALABANI COMPANY LIMITED (2002) 12 SCM 7*, where the Supreme Court held:



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"It is not sufficient for a Plaintiff being a corporate or a Defendant for that matter to establish its juristic personality by merely stating its name with the addition of LIMITED or PLC".

The Status, which it is claiming for itself, has to be proved, except it is admitted by the opposing party by tendering its Certificate of Incorporation or such that other evidence as would prove is juristic personality.

In conclusion, Learned Counsel said that in the absence of any evidence to show the juristic personality of the 2nd Claimant, the only worthy action of this Honourable Tribunal is to strike out the name of the 2nd Claimant from the Suit.

On the argument that the Claimants lack the Locus Standi to maintain this action, 1st Defendant Counsel drew the attention of this Honourable Tribunal to the case of **BAKARE V AJOSE ADEOGUN (2104)6NWLR (Pt 1403) 320** where the Supreme Court defined the phrase "Locus Standi" thus:

"Locus Standi" is a Latin phrase meaning "place of standing", the right to bring an action or to be heard in a given forum. In other words, Locus Standi is the legal capacity of a Plaintiff/Claimant to institute an action in a Court of law in exercise of his Constitutional right".

The 1st Defendant Counsel further submitted that from the totality of Claimants' Affidavit filed in support of the Originating Summons, one can easily deduce that the instant Suit is filed as a public interest Suit because the Claimants are seeking declaratory and injunctive reliefs against the Defendants but unfortunately the Claimants have failed to disclose their special interest or the threat of injury that they will suffer from the alleged infringement complained of as required by Law.

Counsel then referred this Honourable Tribunal to the authority of **A.G. AKWA IBOM STATE V. ESSIEN (2004) 7 NWLR (Pt 872) 288 C.A**

Thereafter the 1st Defendant formulated one sole issue for determination.

ISSUE FOR DETERMINATION FORMULATED BY 1ST DEFENDANT

Whether in view of the Aggregate of facts in the Affidavit in support of the Originating Summons, the Claimants had made a Claim for the reliefs sought against the 1st Defendant?

Counsel argued that the Claimants' Suit is predicated mainly upon completed business acts of the 1st Defendant and monetary compensation. And said that the Claimants relied on *Sections 70 and 72(2)* of the Federal Competition and Consumers Protection Act, 2018. It was the view of the 1st Defendant that the combine reading of *Sections 70 & 72(2)* along with their Counter Affidavit in opposition to Claimants' Affidavit in

support of Originating Summons will show that there have been no exploitative and anti-market activities undertaken by the 1st Defendant. Relying on their Counter Affidavit, 1st Defendant declares that Nigeria operates a free market economy wherein customers can pay for goods and services of their choice and it is therefore inequitable for the Claimants to dictate (or use State organs) to direct the 1st Defendant on how to run their legitimate and private business.

Not done yet, Counsel went on to state that a further perusal of the Exhibits tendered by the Claimants will show that no particular Complaint was made by the Claimants prior to the institution of this Suit to the 1st Defendant and that all Complaints were made to the 2nd Defendant which in turn did not make a firm Decision on the allegations of the Petitions of the Claimants. The 1st Defendant then called on this Honourable Tribunal to dismiss this Suit as there are other Satellite Service Providers in the Industry and that the Claimants are free to patronize any of the said Service Providers. And that doing otherwise will be prejudicial and detrimental to the 1st Defendant's commercial interests.

WHETHER THE CLAIMANTS ARE ENTITLED TO MONETARY RELIEFS 4 & 5

On the question of whether the Claimants are entitled to monetary reliefs as contained in the Claimants' Reliefs 4 and 5, 1st Defendant's Counsel maintained that Claimants merely made general assertions without specifically stating or exhibiting evidence or how they suffered psychological traumas, hardships and the continuous violations of the Claimants' rights. And that he who asserts must prove. 1st Defendant relied on the provisions of *Section 131 of the Evidence Act* which provides thus:

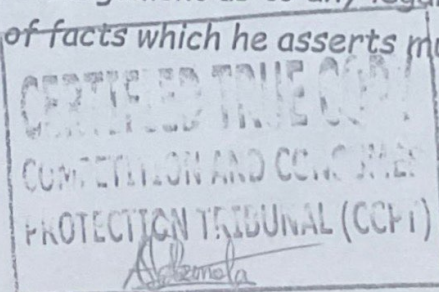
Section 131:

Burden of Proof:

- (1) *Whoever desires any courts to give judgement as to any legal right or liability dependent on the exercise of facts which he asserts must prove that those facts exist.*
- (2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

Learned Counsel also relied on the authority of *WOMILOJU V ANIBIRE (2010) 10 NWLR (Pt. 1203) 545* wherein Muhammad (SC) J.S.C stated thus:

"Whosoever desires any Court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that that those facts exist"



In urging this Honourable Tribunal to refuse Prayer 5 of the Originating Summons, Learned Counsel submitted that Prayer 5 is in the category of reliefs not grantable in Law and relied on the authorities of *GUINNESS NIGERIA PLC V EMMANUEL NWOKE* (2000) 15 NWLR (Pt.689) @135; and *CHRISTOPHER NWANJU V CAOSTAL SERVICES NIG.LTD* (2008) 11 NWLR (Pt.883) @Pg 552 (SC).

Similarly, Learned Counsel relying on the Provisions of *Section 88* of the Federal Competition and Consumer Protection Act, 2018 urged this Honourable Tribunal to refuse Reliefs 1, 2 and 3 of this Originating Summons.

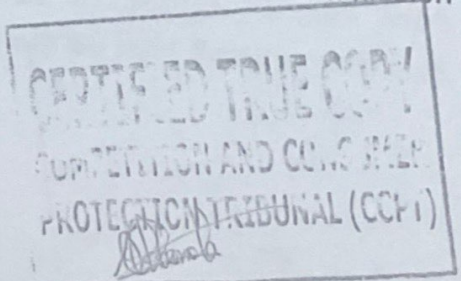
In conclusion, the 1st Defendant said that in view of the totality of their submissions, that this Honourable Tribunal should uphold their arguments and dismiss the instant Suit for lacking in merit.

2ND DEFENDANT RESPONSE TO THE ORIGINATING SUMMONS

In response to the Claimants Originating Summons, the 2nd Defendant filed a Counter Affidavit on 15th day of July, 2022. The Counter Affidavit is a-7-(seven)-paragraph Affidavit deposed to by *RITASON EMUROBOME*. The Counter Affidavit is supported by 7 Exhibits.

The said Exhibits are:

1. *Exhibit A* is a Report of Investigation of possible violations of the Rights of Nigerian Consumers in the Provision of Direct Satellite Broadcast DSTV under the Consumer Protection Council Act by Multichoice Nigeria Limited - ORDER OF COUNCIL
2. *Exhibit B* is Notice of Commencement of Investigation of Multichoice Nigeria Limited dated 9th day of November, 2017 by Consumer Protection Council.
3. *Exhibit C* is Investigation into Compliance with the Council's Orders of February, 2016 and alleged obnoxious, exploitative, unscrupulous practice by MultiChoice Nigeria Limited under the Consumer Protection Council Act.
4. *Exhibit D* is a Notice of Commencement of Investigation into possible violation of Consumer Rights/Anti-Competitive conduct under the Federal Competition and Consumer Protection Act, (FCCPA) 2018 and sundry Enactments/Guidelines with respect to Pay Tv Services addressed to the Managing Director of MultiChoice Nigeria Limited dated 28th August, 2020.
5. *Exhibit E* is titled: In the Matter of an Investigation into allegations of abuse of Dominance by MultiChoice Nigeria Limited- Order of the Commission dated the 4th day of February, 2022.



6. Exhibit F is titled: In the Matter of an Investigation into allegations of abuse of Dominance by MultiChoice Nigeria Limited: *FINAL ORDER AND NOTICE OF THE COMMISSION* dated 18th day of March, 2022.
7. Exhibit G is a letter addressed to the Managing Director of MultiChoice Nigeria Limited titled: RE: INVESTIGATION INTO ALLEGATIONS OF POSSIBLE VIOLATIONS OF CONSUMER RIGHTS AND ANTI-COMPETITIVE CONDUCT.

The 2nd Defendant also filed a Written Address alongside the Counter-Affidavit and relied on all the averments in the Counter-Affidavit.

They went on to formulate two issues for determination which are:

ISSUE I

Whether the 2nd Defendant has been negligent in investigating the Complaints vides the Petition dated 19th day of May, 2020 and 2nd day of July, 2020 and the purported tariff and product increase by the 1st Defendant.

ISSUE II

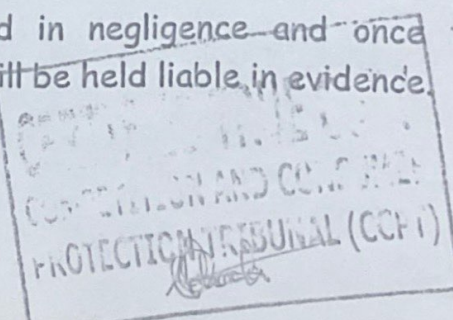
Whether the Claimants are entitled to the Claim of general damages against the 2nd Defendant.

In his legal argument, Chizenum Nsiten Esq., Counsel to the 2nd Defendant drew the attention of this Honourable Tribunal to the Provision of the Law where a Claimant intends to rely on the negligent act of a Defendant in deliberately neglecting to carry out an act which it is mandated to fulfill by relying on the case of P.W. (NIG) Limited V. MANSEL MOTORS Limited & ANOR (2017) LPELR- 43390 (CA), where the Court of Appeal held:

"Negligence is a tort and it is complete and actionable when three conditions are satisfied, these are:

- i. *The defendant owed a duty of care to the Claimant;*
- ii. *The duty was breached;*
- iii. *The Claimant suffered damages arising from the breach;*

A Claimant must prove the three conditions by preponderance of evidence or on balance of probabilities to succeed in an action rooted in negligence and once these requirements are satisfied, the Defendant in Law will be held liable in evidence.



He also relied on ABUBAKAR V. JOSEPH (2008) 13 NWLR (PT. 404)304; and IYARE V. BENDEL FEEDS AND FLOUR MILLS Limited (2008) 18 NWLR (PT. 1119) 300.

Learned Counsel to the 2nd Defendant went on to argue that contrary to the Claim of the Claimants in their Originating Summons to the effect that the 2nd Defendant refused and deliberately neglected to intervene to stop the price and tariff increase of April, 2020 and subsequent tariff increases, including that of 1st day of April, 2020, that the 2nd Defendant has clearly shown in its Counter- Affidavit that it has a long Record of previous Investigations bothering on both Consumer Protection and Competition Issues against the 1st Defendant and that the 2nd Defendant even secured an Order of Court compelling the 1st Defendant to desist from material decisions or actions that altered the proposed in-principle Agreements or Findings of the 2nd Defendant but that the matter is currently on Appeal before the Court of Appeal.

Counsel argued further that the Claimants' allegation, that the 2nd Defendant was negligent by refusing to investigate the activities of the 1st Defendant, especially in relation to its price and tariff increases in 2020, is inaccurate, untrue and unfair to the 2nd Defendant as it has shown that it has not breached its duty of care owed to the Claimants and consumers at large.

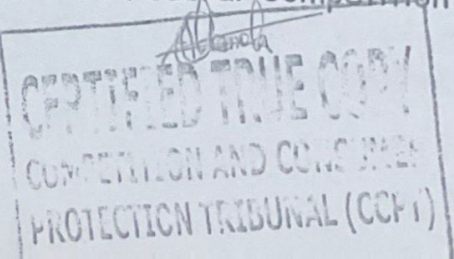
The 2nd Defendant's Counsel went on to submit that, they are not a Price Regulator and cannot regulate prices of goods and services, unless it is by the express Statutory Power to do so as spelt out in Sections 88-89 of the Federal Competition and Consumer Protection Act, 2018 (FCCPA). That the 2nd Defendant's responsibility in relation to price under the consumer protection mandate borders on situations where the prices of goods and services are manifestly UNFAIR, UNREASONABLE, UNJUST OR UNSCRUPULOUSLY EXPLOITATIVE OF CONSUMERS and to provide redress over such obnoxious practices as stipulated in Sections 17(g), (s) and 127 (1)(a) FCCPA.

In conclusion, the 2nd Defendant went on to submit that it cannot be accused of being negligent of duty to intervene in the said price increase by the 1st Defendant.

ISSUE 2

On issue 2, the 2nd Defendant submit that for a Claim of general damages to succeed, the Claimants must prove liability on the part of the Defendant. It relied on the authority of DIAMOND BANK PLC V WELLCARE ALLIANCE LIMITED (2015) LPELR (40762)

The 2nd Defendant also relied on Section 162(1) of the Federal Competition and Consumer Protection Act, 2018 which provides thus:



Section 162

- (1) "No proceedings, civil or criminal shall lie against the Commission for anything it may do or fail to do in the course of the performance or intended performance of its functions, unless it is shown that the Commission acted without reasonable care or in bad faith".

It was the submission of the 2nd Defendant that the Claimants are not entitled to the relief of general damages against the 2nd Defendant, and then urge the Tribunal to discountenance same.

In conclusion, 2nd Defendant urge this Honourable Tribunal to dismiss this instant Suit because the 2nd Defendant did not neglect its duty to intervene and investigate the affairs of the 1st Defendant with respect to its price increases coupled with the fact that the Claimants are not entitled to the award of general damages sought against the 2nd Defendant having failed to prove liability on its part and having failed to prove that the 2nd Defendant acted without reasonable care or in bad faith.

REPLY ON POINTS OF LAW BY THE CLAIMANTS.

RESPONSE TO 1ST DEFENDANT'S COUNTER-AFFIDAVIT.

Claimants said, they are in receipt of the Counter-Affidavit of the 1st Defendant dated and filed on 22nd day of July, 2022 and in response, they filed Counter on Points of Law dated and filed on 25th day of July, 2022 with an Exhibit and Written Address attached.

In their response, Claimants said that contrary to the averments of the 1st Defendant, that the 2nd Claimant is not a juristic personality, the 2nd Claimant being an unregistered Association can sue and be sued through its elected representatives and relied on the case of *GANI FAWEHINMI V NBA* (1989) 2 NWLR (PT 105) at 558.

On the issue of Dominance, Claimants said it is not in doubt that the 1st Defendant occupy a very Dominant position in the market as the Chairman of the 1st Defendant alluded to the fact that truly they occupy a Dominant position in the market, that it is paramount to know if the 1st Defendant truly occupy a Dominant position is listed in Section 72 of the Federal Competition and Consumer Protection Act 2018.

On the issue of Locus Standi, the Claimants said that the heavy reliance on the authority of *AG. AKWA IBOM STATE V ESSIEN* (2004) 7 NWLR [PT 872] at 288 (CA) by the 1st Defendant to question the Locus standi of the 1st Claimant, was misplaced as the said case does not apply at all. That the case has to do with an Environmental litigation where the consent of the Attorney General is required unlike

the instant case where the 1st Claimant is first and foremost a consumer of the 1st Defendant's services and that the Law in Sections 114-131 of FCCPA 2018 is in support of the Claimants. That the said Sections state the rights of the Consumer and if any of the rights stated in Sections 114-131 are breached or infringed upon, such consumer has Locus to approach the Commission or the Tribunal and that is what the Claimants have done in this case.

On the issue of competence of the Suit raised by the 1st Defendant, the Claimants said that the Courts have held in plethora of authorities that where there are mere irregularities, it will not in any way vitiate the competence of the Suit. They relied on the authority of ADEGBOLA & ORS V IDOWU & ORS (2020) 7 NWLR [PT 1722] at pg.129; also MISS OLUCHI J. ANWOKO V CHIEF (MRS) CHARITY O.N. OKOYE & ORS (SC) 153 (2003) where it was held:

"That the Jurisdiction of a Court donated either by the Constitution or by Statute remain unaffected by the breach of the Rules of Court".

In response to the objection to the grant of Reliefs 1,2 and 3 of the Originating Summons of the Claimants, by the 1st Defendants, the Claimants said that the reliance on Section 88 of the FCCPA, 2018 was misplaced as the reliefs sought by the Claimants is not limited to price regulation alone. As one of the reliefs of the Claimants is a relief that relates to PAY-AS-YOU-VIEW which is not within the contemplation of Section 88 of the Act.

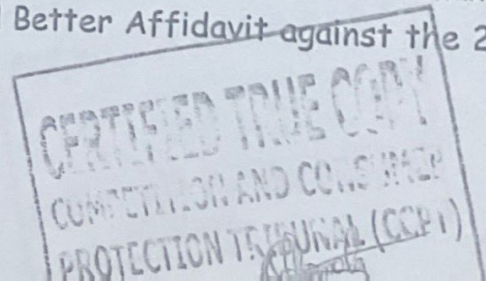
Finally, in response to the opposition of the 1st Defendant to the grant of Reliefs 4 and 5, the Claimants maintained that Sections 154 and 155 of the FCCPA, 2018, the Honourable Tribunal has both statutory and inherent powers to grant the reliefs as prayed.

In conclusion, the Claimants urge this Honourable Tribunal to discountenance and dismiss the objections of the 1st Defendant to their Originating Summons.

RESPONSE TO THE 2ND DEFENDANT'S COUNTER-AFFIDAVIT ON POINTS OF LAW.

The Claimants said, they adopt their earlier argument in respect of the Exhibit attached to the Counter-Affidavit of the 2nd Defendant. That none of the Exhibits referred to by the 2nd Defendant were received by the 1st Defendant.

On the issue of whether the 2nd Defendant is a price regulator or not, the Claimants said they adopt their argument in their Further and Better Affidavit against the 2nd



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Defendant wherein they stated that the 2nd Defendant had taken the 1st Defendant to Court in 2018.

In conclusion, the Claimants said they have proven a case of negligence against the 2nd Defendant and thereafter urge this Honourable Tribunal to discountenance all the objections and submissions of the 2nd Defendant and grant all the reliefs as stated in the Originating Summons.

We shall now proceed to examine and review the issues for determination as formulated by the parties in the instant Suit.

ISSUES FOR DETERMINATION.

ISSUES FORMULATED BY THE CLAIMANTS.

ISSUE 1

Whether having regards to the checkered history and conducts of the 1st Defendant together with the Provisions of Sections 70 and 72 of the Federal Competition and Consumer Protection Act, 2018, the 1st Defendant has not abused its position of Dominance in the market?

ISSUE 2

Whether by virtue of the Claimants' unresolved Petitions dated 19th day of May, 2020 and 2nd day of July, 2020, the 1st Defendant's increase of May, 2020 and any other increase is valid, lawful in law?

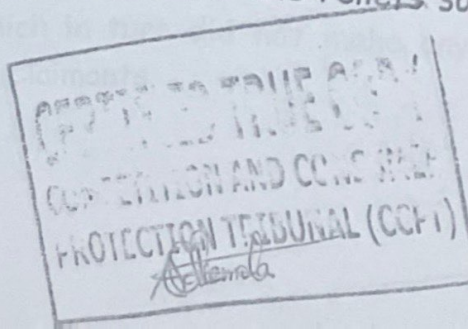
ISSUE 3

Whether by the various anti-consumer practices of the 1st Defendant and in view of the pending Petitions, the rights of the Claimants have not been violated?

ISSUES FOR DETERMINATION FORMULATED BY THE 1ST DEFENDANT

ISSUE 4

Whether in view of the aggregate of facts in the Affidavit in support of the Originating Summons, the Claimants had made a Claim for the reliefs sought against the 1st Defendant?



ISSUES FOR DETERMINATION FORMULATED BY THE 2nd DEFENDANT

ISSUE 5

Whether the 2nd Defendant has been negligent in investigating the Complaints vide the Petition dated 19th day of May, 2020 and 2nd day of July 2020 and the purported tariff and product increase by the 1st Defendant?

ISSUE 6

Whether the Claimants are entitled to the Claim of general damages against the 2nd Defendant?

We shall now proceed to determine each issue as formulated by the parties.

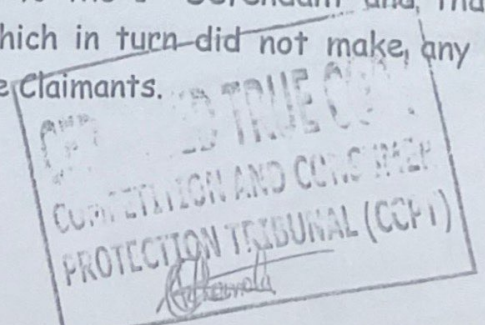
ISSUE ONE.

In arguing their issue No.1, F.S. Onifade Esq., Learned Counsel submitted that the 1st Defendant does not only occupy Dominant position but has consistently abused their Dominant position as the 1st Defendant on countless occasions unilaterally and independently without recourse to the consumer, customer or even the regulator increased the prices of its products and services. Learned Counsel then urged this Honourable Tribunal to resolve issue no. 1 in favor of the Claimants.

In reply, Jamiu Agoro, Learned Counsel to the 1st Defendant submitted that the combined reading of Sections 70 and 72(2) of the Federal Competition Consumer Protection Act, 2018, heavily relied upon by the Claimants, along with the 1st Defendant's Counter-Affidavit in Opposition to the Claimants Affidavit in support of Originating Summons will show that there have been no exploitative and anti-market activities undertaken by the 1st Defendant.

Counsel further submitted that Nigeria operates a free market economy wherein consumers pay for goods and services of their choice and that it is therefore inequitable for the Claimants to dictate (or use State organs) to direct the 1st Defendant on how to run their legitimate and private business.

Learned Counsel went further to submit that a critical examination of the Exhibits tendered by the Claimants will show that no particular Complaint was made by the Claimants prior to the institution of this Suit to the 1st Defendant and that all Complaints were made to the 2nd Defendant which in turn did not make any firm Decision on the allegations of the Petitions of the Claimants.



Learned Counsel to the 1st Defendant then called on this Honourable Tribunal to dismiss the Suit as there are other Satellite Service Providers in the Industry and that the Claimants are free to patronize any of the said Service Providers as doing otherwise will be prejudicial and detrimental to the 1st Defendant's commercial interests.

On the part of the 2nd Defendant, Chizenum Nsiten Esq., Learned Counsel to the 2nd Defendant submitted that the 2nd Defendant had at various times investigated the 1st Defendant bothering on both Consumer Protection and Competition Issues and that the 1st Defendant even secured an Order of Court compelling the 1st Defendant to desist from material decisions or actions that altered the proposed in-principle Agreements or Findings of the 2nd Defendant but that the matter is currently on Appeal before the Court of Appeal .

Learned Counsel further submitted that the 2nd Defendant is not a Price Regulator and so cannot regulate prices of goods and services unless it is by the express statutory powers to do so as spelt out in Sections 88 and 89 of the Federal Competition Consumer Protection Act, 2018 and that the 2nd Defendant's responsibility in relation to price under the Consumer Protection mandate border on situations where the price of goods and services are manifestly unfair; unreasonable; unjust or unscrupulously exploitative of consumers and to provide redress over such obnoxious practices as stipulated in Sections 17(g), (s) and Section 127(1)(a).

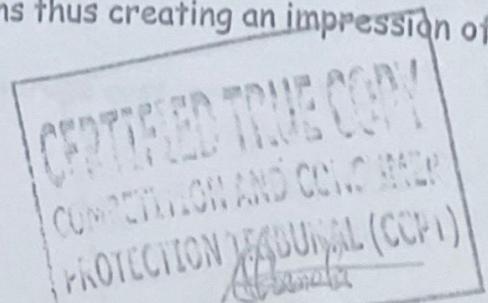
The submissions to issue No. 1 by all sides is carefully examined:

The main crux of this Suit is predicated on the Petitions written by Festus Onifade Esq. on behalf of COALITION OF NIGERIA CONSUMERS to the 2nd Defendant dated 19th day of May, 2020 titled: Power of The Commission to Regulate Price; Abuse of Power of Dominance in Market and Impending Price Hike by MultiChoice/DSTV in Nigeria. The said Petition is marked as *Exhibit MC 7*. This was followed up by a Reminder Letter dated 2nd day of July, 2020 and marked as *Exhibit MC 8*.

The essence of the Petition was to have the 2nd Defendant stop the 1st Defendant from proceeding with the planned price increase of products and services scheduled to commence on the 1st day of June, 2020.

The 1st Defendant went ahead to increase the price of their products and services on the 1st day of June, 2020 as planned.

Though the 2nd Defendant received both Petitions, they did not invite the Claimants to defend their Petitions neither were they informed of the steps taken by the 2nd Defendant to address the issues raised in the Petitions thus creating an impression of negligence.



On the 22nd day of March, 2022, the 1st Defendant announced another price increment in their products and services scheduled to commence on the 1st day of April, 2022 hence this Suit.

The Claimants are of the strong view that the 1st Defendant's frequent price increases without recourse to the consumer amounts to an abuse of Dominant position.

There is indeed no doubt that the 1st Defendant occupies a Dominant position. This was alluded to by the Chairman of the 1st Defendant (Adewunmi Ogunsanya) in a This Day Paper publication of 5th day of July, 2020. See Exhibit MC A attached to Claimants' Further and Better Affidavit and Reply on Points of Law to the 1st Defendant's Counter-Affidavit dated and filed on 22nd day of July, 2022. What is however not clear is whether the 1st Defendant can be said to be abusing its dominant position in the market or not.

Therefore, it will be necessary to take a critical look at the Provisions of Section 72 (2), (3), (4) of the Federal Competition Consumer Protection Act, 2018.

Section 72

(2) For the purposes of this Act, an abuse of dominant position occurs where one or more undertakings on a dominant position-

(a) charge an excessive price to the detriment of the consumers;

(b) refuse to give a competitor access to an essential facility when it is economically feasible to do so;

(c) engage in an exclusionary act, other than an act listed in paragraph (a) if the anti-competitive effect of that act outweighs its technological efficiency and other pro-competitive gains; or

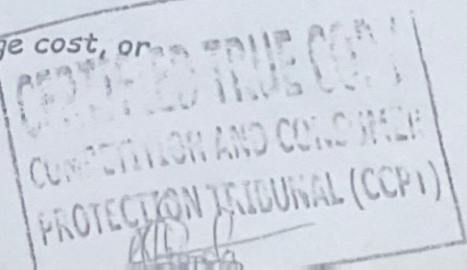
(d) engage in any of the following exclusionary acts, unless the prime concerned can show technological efficiency and other pro-competitive gains which outweigh the anti-competitive effects of its act.

(i) requiring or inducing a supplier or customer not to deal with a competitor,

(ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible,

(iii) selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of the contract or forcing a buyer to accept a condition unrelated to object of the contract

(iv) selling goods or services below their marginal or average cost, or



SECTION 72(2)(3) AND (4)
FEDERAL COMPETITION AND CONSUMER PROTECTION ACT 2018

(v) buying up a scarce supply of intermediate goods or resources required by a competitor.

(3) An undertaking shall not be treated as abusing its dominant position if its conduct-

(a) contributes to the improvement of production and distribution of goods or services or the promotion of technological or economic progress, while allowing consumers a fair share of the resulting benefits;

(b) is indispensable to the attainment of the objectives referred to in paragraph (a), and

(c) does not afford the undertaking the possibility of eliminating competition in respect of a substantial part the goods and services concerned.

(4) An undertaking may be considered as abusing its dominant position with regards to subsection (3)(c) of this section if the Commission is satisfied that its activities-

(a) have the effect of unreasonably lessening Competition in a market; and

(b) impede the transfer or dissemination of technology.

*The combined reading of the above provisions in Section 72(2)(3) and (4) clearly * vindicates the 1st Defendant of abuse of dominance as there is no proof that the 1st Defendant (though occupies a dominant position) abused her position of dominance of all the conditions listed in Section 72 of the Federal Competition Consumer Protection Act 2018, of how an abuse of dominance can be established, the Claimants only relied on one as provided in Section 72(2)(a) which states thus:

"Charge an excessive price to the detriment of consumers"

Unfortunately, the Claimants failed to show how the price increase in contention were either "excessive" or "detrimental" to the consumer especially in a free market economy like Nigeria.

It is a notorious fact that Nigeria operates a free market economy wherein consumers pay for goods and services of their choice.

* It is our conclusion that the conducts and activities of the 1st Defendant does not in * any way amount to an abuse of dominant position as envisaged in Section 72 of the Federal Competition and Consumer Protection Act, 2018.

ISSUE TWO

The Claimants in this Suit wrote a Petition dated 19th day of May, 2020 to the 2nd Defendant against the planned price increase of goods and services of the 1st

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Defendant scheduled to commence on the 1st day of June, 2020 and abuse of dominance in the market. The Claimants on the 2nd day of June, 2020 wrote a Reminder Letter/Petition on the same subject matter to the 2nd Defendant.

The 2nd Defendant acknowledged receipt of the said Petition but did not communicate with the Claimants on the action taken to address the Petitions.

The 1st Defendant went ahead to implement the price increase of her products and services on the 1st day of June, 2020.

On the 22nd day of March, 2022, the 1st Defendant again announced a planned price increase of her products and services scheduled to commence on 1st day of April, 2022 and has since gone ahead to implement the price increase as planned.

Claimants are now of the opinion that in view of the unresolved Petitions dated 19th day of May, 2020 and 2nd day of July, 2020, the 1st Defendant's increase of prices of her products and services of May, 2020 and any other subsequent price increments is not valid and unlawful and that this Honourable Tribunal should hold same. Unfortunately, we beg to differ from the position of the Claimants.

Having just resolved Issue 1, to the effect that the 1st Defendant has not abused her dominant position in the market, and the fact that Nigeria operates a free market economy, we found no new evidence to support the Claims of the Claimants.

On the contrary, the price increase of products and services of the 1st Defendant on May, 2020 is valid and lawful. Neither this Honourable Tribunal nor the "Commission" have powers to fix or regulate prices of goods and services.

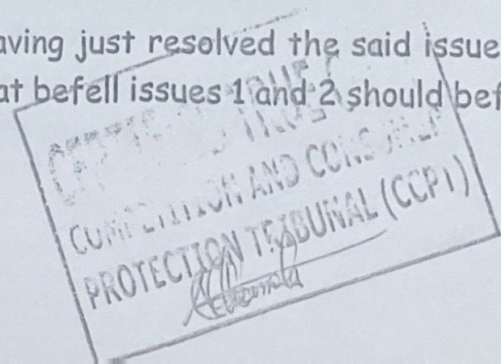
Only the President of the Federal Republic of Nigeria has the powers to regulate prices of goods and services under stipulated circumstances which does not apply in this instance. See Section 88(1) of the Federal Competition Consumer Protection Act, 2018 which states

"For the purpose of regulating and facilitating competition only, the President may from time to time, by Order published in the Federal Gazette, declare that the price for goods or service specified in the Order shall be controlled in accordance with the provisions of this Act"

We found no merit in issue two and it is hereby resolved in the negative.

ISSUE THREE

Issue number 3 flows from issues 1 and 2. And having just resolved the said issues 1 and 2 in the negative, it follows ordinarily that what befell issues 1 and 2 should befall issue 3 as formulated by the Claimants.



We found no evidence of exploitative and anti-consumer activities on the part of the 1st Defendant. Unfortunately, the Claimants did not exhibit any evidence of the said hardship they suffered and how their rights are violated.

Those who assert must prove. See *WOMILOJU V ANIBIRE* (2010) 10 NWLR [PT 1203] @ 545 wherein Muhammed J.SC stated thus:

"Whomsoever desire any Court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

Therefore, issue number 3 is again resolved in the negative.

ISSUE FOUR

This is the sole issue formulated by Jamiu Agoro, Counsel to the 1st Defendant for determination. Having already resolved all the issues formulated for determination by the Claimants on the negative as the Claimants could not convince this Honourable Tribunal of any legal entitlement, it follows therefore that issue number 4 is resolved in favor of the 1st Defendant.

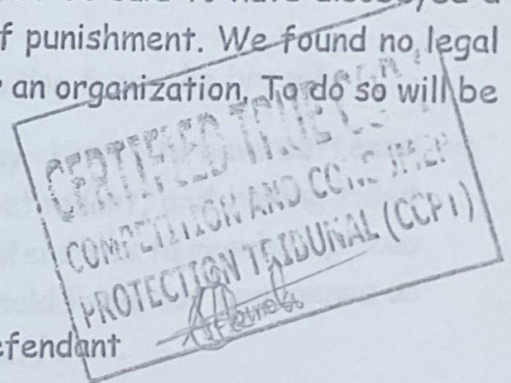
Whereas it is true that the Claimants petitioned the 2nd Defendant complaining of the activities of the 1st Defendant, there is no evidence before this Honourable Tribunal that the Commission took any Decision on the said Petitions written by the Claimants to the Commission. Therefore the 1st Defendant cannot be said to have disobeyed a non-existing Order of the 2nd Defendant deserving of punishment. We found no legal authority backing punishment of an innocent person or an organization. To do so will be unfair, unjust and unlawful.

ISSUE FIVE

This is one of the two issues formulated by the 2nd Defendant

On 19th day of May,2020, the Claimants wrote a Petition to the 2nd Defendant, complaining of the activities of the 1st Defendant (Multi Choice Nigeria Limited) on 2nd day of July,2020, the Claimants wrote a Reminder Letter as a follow up to their Petition dated 19th day of May,2020.

Both Letters were received and acknowledged by the 2nd Defendant. But going through all the Exhibits attached to the Counter Affidavit in support of the Originating Summons, we found nowhere the 2nd Defendant either invited the Claimants to defend their Petitions or where they were informed of the action(s) being taking to address their Petitions, though there are clear evidence that the



2nd Defendant seems to have commenced investigation of some of the issues complained about in the Petition of the Claimants as can be seen in Exhibit D

Though the 2nd Defendant made an Order and Final Order against 1st Defendant as demonstrated in Exhibits E and F, there are no evidence of compliance to the Orders by the 1st Defendant and there is also no evidence of enforcement of the said Order of the Commission.

There is however evidence that the 2nd Defendant attempted to address all the issues raised in the Petitions of the Claimants except that of price increase of products and services of the 1st Defendants which is beyond the mandate of the Commission.

However, the failure on the part of the 2nd Defendant, in our view, is not actionable because of the failure of the Claimants to prove before this Honourable Tribunal what damages they suffered by the said negligence of the 2nd Defendant to act on their Petitions. We rely on the authority of P.W.(NIG) LTD V MANSEL MOTORS LIMITED & ANOR (2017) LPELR-43390 (CA). Where the Court of Appeal held:

"Negligence is a tort and it is complete and actionable when three conditions are satisfied, these are:

- i. The defendant owed a duty of care to the Claimant;*
- ii. The duty was breached.*
- iii. The Claimant suffered damages arising from the breach.*

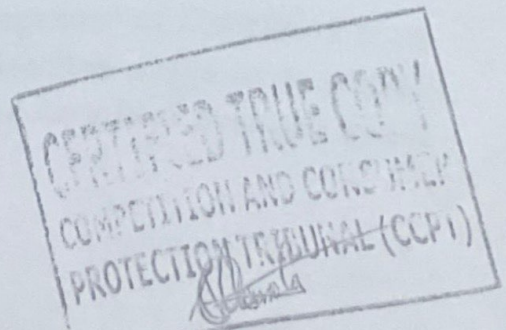
* The Claimants having failed to prove the damages they claimed to have suffered due to the said negligence on the part of the 2nd Defendant, and having ruled earlier, that it is not within the mandate of the 2nd Defendants to regulate prices of goods and services, the 2nd Defendant cannot be held liable for negligence as the Claimants failed to establish what damage they suffered. *

ISSUE SIX

This is the second issue formulated for determination by the 2nd Defendant Counsel. The Claimants had argued that they suffered psychological traumas, hardship and violation of their rights. Unfortunately, they were unable to prove that they indeed suffered any damage that may entitle them to a Claim of Ten Million Naira (₦10,000,000) as general damages.

He who asserts must prove.

See Section 131 of the Evidence Act



- (i) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.
- (ii) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

It is our conclusion that the Claimants are not entitled to a damage of Ten Million Naira (₦10,000,000) or any other amount whatsoever as damages.

CONCLUSION

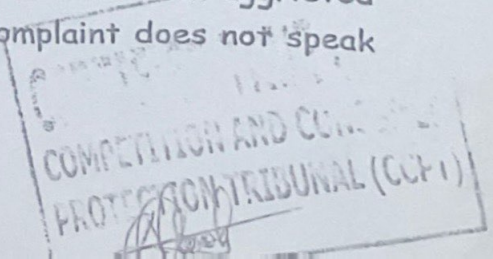
Having resolved all the issues raised by all parties in the instant Suit, we have come to the following CONCLUSIONS:

1. That Prayers 1, 2 and 3 as sought by the Claimants are not grantable in Law as the 2nd Defendant have no powers to regulate prices of goods and services of the 1st Defendant neither is such powers vested on this Honourable Tribunal. The power to regulate prices of goods and services are vested only on the President of the Federal Republic of Nigeria as stipulated in Section 88(1) of the Federal Competition and Consumer Protection Act, 2018
2. Reliefs 4 and 5 as prayed lacks merit and therefore not granted as the Claimants failed to prove that they indeed suffered any psychological trauma, hardship or violation of their rights.

However, we had earlier found that the 2nd Defendant have commenced investigation of the activities of 1st Defendant aimed at addressing the numerous Complaints of Consumers and Customers of the 1st Defendant.


The Complaints from consumers of the product and services of the 1st Defendant are not likely to abate anytime soon unless and until most of the lingering issues are jointly resolved by the Commission and the 1st Defendant (Multi Choice Nigeria Limited) in the overall interest of both Consumers, Service Providers and the Nigeria Economy. Therefore, the Commission (2nd Defendant) must, as a matter of urgency find out, if the 1st Defendant adopts Pay-As-You-View in other countries especially South Africa and see how same can be adopted in Nigeria and publish its Findings within Six months of this Order.

The 2nd Defendant must also improve in the management of Complaints from the public that it is established to serve. A situation where an aggrieved Consumer does not get feedback on a duly filed Complaint does not speak well of the Commission.

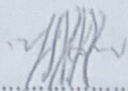


This matter is hereby remitted to the Commission to resolve all lingering Issues between the 1st Defendant and numerous Consumers of the products and services of the 1st Defendant.

- 1. Thomas E. Okosun, Esq.
Hon. Member (South South) (Presiding)


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- 2. Ibrahim El. Yakubu
Hon. Member (North West)

I Concur 

- 3. Sola Salako-Ajulo
Hon. Member (South West)

I Concur 