**HYDRO-TECH NIGERIA LTD & ANOR**

**V.**

**LEADWAY ASSURANCE CO. LTD & ORS.**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 22ND DAY OF JANUARY, 2016

CA/E/256/2008

**LEX (2008) - CA/E/256/2008**

**OTHER CITATIONS**

3PLR/2016/21 (CA)

(2016) LPELR-40146(CA)

**BEFORE THEIR LORDSHIPS**

HELEN MORONKEJI OGUNWUMIJU, J.C.A

MASSOUD ABDULRAHMAN OREDOLA, J.C.A

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A

**BETWEEN**

HYDRO-TECH NIGERIA LTD

REV. HYDE ONUAGULUCHI - Appellant(s)

AND

1. LEADWAY ASSURANCE CO. LTD.

2. FIDELITY BANK PLC

3. FEDERAL MINISTRY OF WATER RESOURCES & RURAL DEVELOPMENT Respondent(s)

**REPRESENTATION**

CHIJIOKE NWANKWO, Esq. with him, BARTH O. EZEA, Esq. For Appellant

AND

I.A. AKARAIWE, Esq. with him, F. B. AGIM, Esq.

2nd and 3rd Respondents Unrepresented - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

BANKING AND FINANCE - MORTGAGE - EQUITABLE MORTGAGE: How equitable mortgage can be created

COMMERCIAL LAW - CONTRACT - AGREEMENT: Written agreements – Need for extraneous matters not to be read into or used to modify same - Whether parties are bound by the terms of their agreement they voluntarily undertook to carry out under the said agreement

DEBTOR AND CREDITOR LAW:- Equitable Mortgage – How created - Mere deposit of the title deeds which could be received or retained as a security for a loan - Agreement to create a legal mortgage - Mere equitable charge of the mortgagor's property

DEBTOR AND CREDITOR LAW:- Equitable mortgage - Whether it is unknown to law that an equitable mortgage is required to be registered before it can be held enforceable and/or admissible – Whether only a legal mortgage is mandatorily required to be made in deed form, executed by both parties and registered in accordance with the extant Law

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ADDRESS OF COUNSEL: Duty of court not to replace requirement as to evidence with address of counsel no matter how sound and articulate

ACTION - OBJECTION: Where no argument was subsequently proffered - Whether it is deemed, that the ground of objection has been abandoned

APPEAL - FRESH ISSUE(S)/POINT(S)/QUESTION(S): Where issue was neither raised by the appellants in their counter affidavit nor argued by the appellants before the lower Court – Whether incompetent

APPEAL - ISSUE(S) FOR DETERMINATION: Need for all issues raised for determination of an appeal to emanate and/or relate to a valid ground or grounds of appeal as contained in the notice of appeal - Whether failure in that regard renders the issue incompetent and liable to be struck out

APPEAL - ISSUE(S) FOR DETERMINATION: Whether a party is bound to expressly state the ground upon which an issue was distilled from – Whether a party to an appeal is not bound to expressly state the ground(s) upon which an issue or issues were distilled from (even though such practice is highly desirable) provided that it is clearly discernible that the said issues emanated from valid grounds of appeal on record

COURT - DUTY OF COURT: Interpretation of agreement - Where the wordings of the terms of an agreement are clear and unambiguous – Bounden duty of a Court of law to interpret such agreement literally without the addition(s) of any extraneous matter - Whether a Court of law is usually required to take into consideration the conduct of the parties to the said agreement, in order to give meaningful and proper effect to their agreement

EVIDENCE - INTERPRETATION OF DOCUMENT:- Where the relationship(s) between two (2) or more parties have been reduced to a written document – Whether a Court of law is bound to interpret the said document literally as it is written, provided the wordings are not vague and/or ambiguous

EVIDENCE - UNCHALLENGED/UNCONTROVERTED EVIDENCE: Whether deemed admitted in law

JURISDICTION - FEDERAL HIGH COURT: Combined reading of Sections 69 (1) (a) and 102 of the Insurance Act – Whether invests Federal High Court with jurisdiction over matters falling within the provisions of the extant Insurance Act

JURISDICTION:- As a threshold issue, touching at the main root of the case - Whether can be raised at any stage of the proceeding even for the first time at the Apex Court with or without the leave of the Court

WORDS AND PHRASES - "PERFORMANCE BOND" - "SURETY": Definition of

**MAIN JUDGMENT**

**MASSOUD ABDULRAHMAN OREDOLA, J.C.A.** (Delivering the Leading Judgment):

This is an appeal against the judgment of the Federal High Court, Enugu Judicial Division delivered by Justice A. O. Faji, J. on the 2nd day of March, 2007. The suit was commenced vide Originating summons dated 24/06/2005, wherein the plaintiff/1st respondent, pursuant to the determination of questions raised and consequent upon the determination of the said questions, sought for the grant of specified reliefs or orders, against the 1st and 2nd defendants/1st and 2nd appellants herein. The reliefs and orders are reproduced below:

(a) A DECLARATION that the Claimant is entitled to receive from the Defendants jointly and severally payment of the sum of N9,079,295.50 (Nine Million and Seventy Nine Thousand, Two Hundred Nine and Five Naira Fifty Kobo) together with interest thereon as found by the Honourable Court from March 14, 2005 until repayment.

(b) An ORDER of the Honourable Court entering judgment against the Defendants jointly and severally for the aforesaid such of (sic) N9,079,295.50 (Nine Million and Seventy Nine Thousand, Two Hundred Nine and Five Naira Fifty Kobo) and interest thereon.

(c) An ORDER OF FORECLOSURE by the Honourable Court empowering the Claimant to sell off the Defendants' landed property at Plot 5, Block 22, New Haven West, Enugu North L.G.A of Enugu State of Nigeria covered by Building Certificate of Occupancy deposited with the Plaintiff by the Defendant and registered as No. 86 at page 86 in Volume 1099 of the Lands Registry in the office at Enugu pursuant to Personal Indemnity executed by the 2nd Defendant and Indemnity Agreement executed by the 1st Defendant in favour of the Plaintiff in respect of N9,079,295.50 (Nine Million and Seventy Nine Thousand, Two Hundred Nine and Five Naira Fifty Kobo) which said sum constitutes counter-indemnity entered into by the Plaintiff on behalf of the 1st Defendant, in respect of FIXED SUM contract No. ST WSSE -?? KT/102/LOT6: Radda Town, Katsina State for Construction/Rehabilitation of Water Supply Scheme under the Small Towns Water Supply and Sanitation Programme, awarded to the Defendants and which contract was breached by the Defendants by renegotiating the contract sum, inspite of express stipulation in contract agreement (Exhibit A) against renegotiation being a contract of fixed sum, and said sum called in and paid on their behalf by the Plaintiff;

3. Costs and Expenses of this action

(i) Payment of said indemnified sum and interest thereon;

(ii) Costs and Expenses of recovery of said sum including solicitors fees."

The originating summons was accompanied by a thirty-seven (37) paragraph affidavit and exhibits.

Upon being served with the above stated processes, the appellants filed a thirty-five (35) Paragraph Counter-Affidavit together with exhibits in opposition to the originating summons. The appellants vide a motion on notice filed on 21/11/2005 sought and obtained the order of the lower Court to join the 3rd and 4th defendants (2nd and 3rd respondents, respectively) to the suit. While the 3rd respondent did not respond or file any process at the lower Court, the 2nd respondent filed a counter - affidavit on 5/04/2006 in opposition to the motion for joinder as well as the substantive suit. It is pertinent to observe here that, notwithstanding the fact that the appellants were the party who sought and obtained the order of the lower Court to join the 2nd respondent, however, they neither made any specific allegation against the said 2nd respondent nor contradict all the facts deposed to by the said 2nd respondent.

After the close of pleadings, parties were ordered by the learned trial judge to file their respective written addresses, which they did. After the written addresses of the parties were adopted in addition to their oral submissions thereon, the learned trial Judge found, answered and concluded as follows;

"1. As regards question a, the answer is yes i.e. exhibit D has become enforceable.

2. As regards question b, the answer is yes i.e. Plaintiff is entitled to a refund under the indemnity agreement and personal indemnity.

3. As regards question c, the answer is yes. The Plaintiff is entitled to foreclosure on the Defendants property at Plot 6, Block 22 New Haven West Enugu.

4. As a corollary the Plaintiff is entitled to a refund of the sum of N9,079,295.50 from 1st and 2nd Defendants only. In the absence of evidence as to the interest rate, I am unable to make a pronouncement on interest. Accordingly, I grant the reliefs as claimed as against 1st and 2nd Defendants only but without any award of interest."

Dissatisfied with the above decision of the learned trial judge, the appellants filed an appeal against the said decision vide notice of appeal on 23/03/2007 and an amended notice and grounds of appeal with leave granted by this Court on 26/05/2014.

In accordance with the Rules of this Court, the parties filed their respective amended briefs of argument. The appellants' amended brief of argument was settled by Barth Ezea Esq. and filed on 27/11/2014 but deemed as properly filed on 23/06/2015. The 1st respondent's amended brief of argument was settled by Ikeazor Akaraiwe Esq. It was filed on 3/07/2015. Also, the 3rd respondent's amended brief of argument was settled by Danladi S.M. Esq. and filed on 06/07/2015. Appellants filed reply briefs to the said briefs.

The appellants' counsel in the amended appellants' briefs, distilled five (5) issues for determination; the issues are as follows;

"1. Having Regard to Exhibit E (which concerns a guarantee to Federal Government of Nigeria), was the lower Court right in concluding that 2nd defendant/appellant (Dr. Hyde Onuaguluchi) personally indemnified the plaintiff/1st respondent (Leadway Assurance Co. Ltd.) for the counter indemnity or guarantee (Exhibit D which was not authorized by the Appellants) but which the plaintiff/1st Respondent purportedly issued to FSB International Bank Plc; and that the 2nd Defendant/Appellant pledged his property Exhibit F (Plot 6, Block 22, New Haven West Enugu) in mortgage to the Plaintiff/1st Respondent in respect of the said counter indemnity or guarantee Exhibit D (which is the same terms as Exhibit FA4 at pages 286 - 7 of Records).

2. Having Regard to Exhibit F (Plot 6, Block 22, New Haven West Enugu) was the lower Court right in concluding that the mere deposit of Exhibit F with the Plaintiff/1st Respondent by the 2nd Appellant without any written and signed memorandum creating an equitable mortgage, automatically creates an equitable mortgage, upon which a Federal High Court can grant a foreclosure over Exhibit F - a landed property covered by Statutory Right of Occupancy.

3. Having Regard to Exhibit D which is the counter indemnity or guarantee that was not authorized by the 1st Defendant/Appellant as required by the applicable laws of Enugu

State Nigeria: and which the Plaintiff/1st Respondent purportedly issued to FSB International Bank PLC, was the lower Court right in concluding that the 1st and 2nd Appellants were jointly and severally liable to the Plaintiff/1st Respondent for a maximum sum of N9, 079,295.50 (Nine Million and Seventy Nine Thousand, Two Hundred Nine and Five Naira Fifty Kobo) For Contract No: STWSSE-KT/102/LOT 6: Radda Town Katsina State based on Exhibit G.

4. Having regard to the circumstances of this case, was the Learned Trial Judge right when he employed inadmissible evidence to arrive at his decision and failed to advert his mind to the laws applicable to the issues he decided in his Judgement delivered on 2nd March 2007.

5. Having regard to the circumstances of this case, did Section 7 (1) (o) of the Federal High Court (Amendment) Act 1991 grant the Federal High Court exclusive Jurisdiction to entertain Suit No. FHC/EM/CS/113/2005 filed 24th of June 2005 and which concerns: simple contract of indemnity; and Mortgage over landed property covered by Statutory Right of Occupancy."

The learned counsel to the 1st respondent on his own part, raised a notice of preliminary objection on three (3) grounds namely;

"i. That Ground 8 of the Notice of Appeal offends the rule that appeals lie against ratios decidendi and not submissions of counsel or obiter dicta;

ii. That all the issues for determination as argued by the Appellants are incompetent not flowing from or relating to having stated (sic) the grounds of appeal they are predicated upon;

"iii. That Ground 3 of the Grounds of appeal are (sic) a new case set up on appeal."

In the same vein, the learned counsel to the 1st respondent equally distilled five (5) Issues for the determination of this appeal, the issues are as follows.

1. Whether the Federal High Court had jurisdiction to entertain this suit? (Ground 8).

2. Whether the Personal Indemnity Form (Exhibit E to the affidavit in support of originating summons) executed by the 2nd Appellant in favour of the 1st Respondent did not constitute a contract between the 2nd Appellant and the 1st Respondent with the goal of making the 2nd appellant personally liable to indemnify the 1st Respondent for the counter-indemnity issued by the 1st Respondent on behalf of the 2nd Appellant. (Ground2)

3. Whether deposit with the 1st Respondent by the 2nd Appellant of Exhibit F (title deeds to the 2nd Appellant's landed property Plot 5, Block 22, New Haven West, Enugu) was not in furtherance of Exhibit E (2nd Appellant's Personal Indemnity Form). (Grounds 3 and 5)

4. Whether the entire transaction, and in particular Exhibits D (Counter - Indemnity), Exhibit E (Personal Indemnity) with Exhibit F (title deed) attached, and G (Indemnity) was subject to Insurance Act, 2003 and the Companies and Allied Matters Act, 2004 or Contract Law (Cap 26) of Enugu State? (Grounds 4 and 5).

5. Whether the judgment is against the weight of evidence. (Grounds 1 and 7).

The learned counsel to the 3rd respondent in the same manner as the 1st respondent's counsel raised a notice of preliminary objection on the following ground:

"(a) The 4th Defendant now 3rd Respondent Objector (4th defendant at the trial Court) is not a juristic person (natural or artificial) known to law. As such the Court cannot entertain any claim against a party who is not known to law."

The learned counsel to the 3rd respondent on his own part distilled two (2) issues for the determination of this appeal. The issues are as follows:

"1. Whether considering the totality of the issues raised by the Appellants, a reasonable cause of action has been disclosed against the 3rd Respondent.

2. Whether the subject matter of the suit falls within jurisdiction of the trial Court."

In response to the respondents' preliminary objections as well as some salient issues raised in their respective briefs, the appellants filed their reply briefs on 21/07/2005 and 28/08/2015 to 1st and 3rd respondents' preliminary objections and briefs, respectively. In line with the established principle of law, the respondents' preliminary objections would be considered and determined first before the main appeal.

Ground 1 of the 1st Respondent's Preliminary Objection.

The learned counsel to the 1st respondent contended that notwithstanding the fact that 1st respondent's counsel submitted wrongly that Section 7 (1) (o) of the Federal High Court (Amendment) Act, 1991 (instead of Section 7 (1) (s) grant exclusive jurisdiction to the Federal High Court in relation to the subject matter of the case; that the learned trial judge made no pronouncement nor relied on this submission while delivering his judgment. Thus, the learned counsel contended that ground 8 of the grounds of appeal in the instant appeal matter did not flow from the judgment of the lower Court. Therefore, the ground should be held as being incompetent for not flowing from the ratio decidendi of the judgment complained against. The learned counsel relied on the case of Michael Adejoh Itodo v. Hon. Yunusa Gabriel Olofu & Ors. (2010) LPELR - 4342 (CA). The learned counsel urged this Court to strike out the said ground and the issue distilled therefrom.

In response to the 1st respondent's objection, the learned counsel to the appellants submitted that there are exceptions to the general rule, that new issue cannot be raised on appeal. The learned counsel submitted that the exceptions are as follows:

(a) Where the point of law raised disclosed ex facie that the Court has no jurisdiction.

(b) Where the points of law raised involves the determination of the case before the Court.

However, the learned counsel maintained that the above new issue or point of law can be raised pursuant to the leave of the Court. The learned counsel relied on the cases of Attorney- General of Oyo State & Anor. v. Fairlakes Hotel Limited (1988) 5 NWLR (Pt. 92) 1 and Galadima v. Tambai (2005) 6 SC (Pt. 1) 195, 204. Thus, the learned counsel urged this Court to discountenance ground 1 of 1st respondent's preliminary objection.

I shall now address this aspect of the appeal. It is not in doubt that the appellants challenged the jurisdiction of the lower Court to hear the matter in their written address at the lower Court and the respondents replied on this point. It is also not in doubt that the ground being challenged, borders on the jurisdiction of the lower Court to entertain the suit in the first instance.

The law is well settled that issue of jurisdiction which is a threshold issue, touches at the main root of the case, can be raised at any stage of the proceeding. As such, it can even be raised for the first time at the Apex Court with or without the leave of the Court. See the cases of Opobiyi v. Muniru (2011) 18 NWLR (Pt. 1278) 387 @ 403, paras. F - G; Shelim v. Gobang (2009) 12 NWLR (Pt. 1156) 435 @ 452, paras. B - D.

It is also on record that the appellants had, vide a motion on notice dated and filed on 26/11/2014 sought and obtained the leave of this Court which was granted on 23/06/15 for the appellants to raise and argue this ground (among others) in the amended notice of appeal. Thus, it is my finding that the objection in this regard is highly misplaced and accordingly discountenanced.

Ground 2 of the 1st Respondent's Preliminary Objection.

It is the contention of the learned counsel to the 1st respondent that the issue for determination as distilled by the appellants are incompetent and thus liable to be struck out for failure on the part of appellants' counsel to specifically state the grounds from which each of the issues were raised from. The learned counsel cited and relied on the cases of Nyon v. Noah (2007) (Vol; 28) WRW 181 @ 191 and Ugo v. Obiekwe (1989) 2 SC (pt. 11) 41, (1989) 1 NWLR (pt. 99) 556.

In response, the appellants' counsel submitted that the learned counsel to the 1st respondent did not properly understand the authorities upon which his objection was based with regard to this ground. The learned counsel went further to submit, that parties are only admonished and exhorted to refer to the grounds from which issues for determination were raised for proper adjudication; but there was nowhere in the referred cases where the Court held that failure to state the grounds from which issues for determination were raised from, is fatal to the issues so raised. The learned counsel therefore urged this Court to discountenance this objection.

It is a trite principle of law that all issues raised for determination of an appeal must emanate and/or relate to a valid ground or grounds of appeal as contained in the notice of appeal; failure in this regard will entail that the issue would be held incompetent and liable to be struck out. See the cases of Triana Ltd. v. U.T.B. Plc. (2009) 12 NWLR (Pt. 1155) 313 @ 329, paras. D - E; Madumere v. Okafor (1995) 4 NWLR (Pt. 445) 637.

However, a party to an appeal is not bound to expressly state the ground(s) upon which an issue or issues were distilled from (even though such practice is highly desirable), provided that it is clearly discernible that the said issues emanated from valid grounds of appeal on record; failure to state the particular ground or grounds from which they emanated, would not and should not be held to be fatal to the issue(s) so formulated. Thus, it is my respectful view that this ground of objection is misplaced and it is accordingly discountenanced by me.

On the third ground of objection, the learned counsel to the 1st respondent failed and/or neglected to proffer arguments in respect of the same. Thus, it is deemed, that this ground of objection has been abandoned. Therefore, the ground is accordingly struck out. On the whole, having resolved the grounds of objection in the manner stated above; it is my humble opinion that the preliminary objections are highly misplaced and lacking in merit. Thus, they are accordingly dismissed by me.

On the preliminary objection raised by the counsel to the 3rd respondent, the learned counsel to the 3rd respondent contended that the 3rd respondent is not a legal entity capable of suing or being sued in accordance with the extant laws of Nigeria. The learned counsel further contended further that 3rd respondent is not a legal entity but is merely a body created for administrative convenience by the Federal Government of Nigeria. Thus, no Court of law could exercise a valid jurisdiction over it, and judgment given against it is null and void ab initio. The learned counsel therefore, urged this Court to strike out the name of the 3rd respondent from this case. The learned counsel relied on the following cases among others: Agbonmagbe Bank Ltd. v. General Manager G.B. Ollivant Ltd. & Ors. (1961) All NLR 115; (1951) 2 SCNLR 317; Reptico v. AfriBank (2013) 54 NSCQR, 600.

The appellants' counsel in the appellants' reply brief conceded to the fact that the 3rd respondent is not a legal entity capable of being sued. In addition, the learned counsel admitted that, the appellants had neither grievance nor claim against the 3rd respondent who has been misjoined in this matter. Thus, as argued by the learned counsel for the 3rd respondent, the position is such as to warrant it, to be struck out from this appeal. In this circumstance, the 3rd respondent's name is accordingly struck out. Thus, this appeal is hereby dismissed against the 3rd respondent and the brief filed by it, is accordingly discountenanced. Having resolved the preliminary objections in the manner stated above, I shall now proceed and address the main appeal.

I have gone through the judgement of the lower Court vis-a-vis the notice of appeal together with all the issues formulated by the parties. I am of the firm view point that issues 1, 2, 3, 4 and 5 distilled by the learned counsel to the 1st respondent are sufficient for the determination of this appeal. They adequately and properly captured the issues as distilled by the appellants' counsel. Thus, the issues are hereby adopted for the determination of this appeal. Nevertheless, the said issues have been re-crafted by me and would be considered in the following manner, seriatim:

1. Whether the Federal High Court had jurisdiction to entertain this suit. (Appellants' Issue 5)

2. Whether the personal indemnity form (Exhibit E to the affidavit in support of originating summons) executed by the 2nd appellant in favour of the 1st respondent did not constitute a contract between the 2nd appellant and the 1st respondent with the goal of making the 2nd appellant personally liable to indemnify the 1st respondent for the counter - indemnity issued by the 1st respondent on behalf of the 2nd appellant. (Appellants' issues 1 & 3).

3. Whether deposit with 1st respondent by the 2nd appellant of Exhibit F (title deeds to the 2nd appellant's landed property plot 6, Block 22, New Haven West, Enugu) was not in furtherance of Exhibit E (2nd appellant's Personal Indemnity Form). (Appellants' Issue 2).

4. Whether the judgment is against the weight of evidence. (Appellants' Issue 4).

Issue 1 (Appellants' Issue 5)

Whether the Federal High Court had jurisdiction to entertain this suit.

The learned counsel to the appellants contended that the proper analysis of the claim of the 1st respondent at the lower Court will show that the subject matters of the case are:

"(a) A purported simple contract of indemnity, and

(b) A purported mortgage over a landed property of the 2nd Appellant (Exhibit F) in the Record of Appeal covered by Statutory Right of Occupancy situated at New Haven Area of Enugu Capital Territory."

Flowing from the above, the learned counsel submitted that by virtue of Sections 272 (1), 315 (5) of the Constitution of Federal Republic of Nigeria, 1999 (as amended), and Section 39 (1) of the Land Use Act, Cap. 15, Laws of Federation of Nigeria, the Court that has jurisdiction is the Enugu State High Court and not the Federal High Court. The learned counsel further submitted that the Federal High Court Amendment Act (Decree 60) 1991, relied upon by the lower Court to entertain the suit is no longer applicable, as same has been annulled and or repealed by virtue of coming into effect of the Constitution. The learned counsel therefore, maintained that the lower Court lacked the proper jurisdiction to entertain the case in the first instance, with the effect that both the hearing and the judgment thereon are null and void. The learned counsel relied on the following cases among others; Madukolu v. Nkemdilim (1962) 2 SCNLR @ P. 34; Utih v. Onoyivwe (1991) 1 NWLR (pt. 166) 166. Nkuma v. Odili (2006) 5 NWLR (pt.977) 587 @ 608 and Oba Aremo II v. Adekanye & 2 Ors. (2004) 13 NWLR (Pt. 891) 572.

The learned counsel to the 1st respondent on his part, submitted that the Federal High Court had the requisite jurisdiction to hear the suit, pursuant to the following statutes:

a. Section 7 (1) (S) of the Federal High Court (Amendment) Act, 1991;

b. Section 102 of the Insurance Act, 2003; and

c. Section 80

The learned counsel further submitted, in essence that by virtue of the provisions of the statutes referred to above, exclusive jurisdiction is vested on the Federal High Court with respect to the main subject matter of this case.

Section 2 (3) (g) and (h) of the Insurance Act, 2003 Cap. 117, clearly and expressly include "bonds credit guarantee and suretyship insurance business" and "miscellaneous insurance business", as some of the general insurance businesses authorized and recognized in Nigeria.

The Black's Law Dictionary 8th Edition defines "Surety" as:

"A person who is primarily liable for the payment of another’s debt or the performance of another’s obligation".

Also, the Dictionary defined Performance Bond to mean:

"1. A bond given by a surety to ensure the timely performance of a contract."

"A third party's agreement to guarantee the completion of a construction contract upon the default of the general contractor - Also termed completion bond; surety bond; contract bond."

From the above definitions of the salient terms embedded in the subject matter of this case, the entire transaction that took place in this case can be safely held to be a surety insurance business/transaction which also border largely on indemnification. In addition, the pertinent question that needed to be asked in the given circumstance and for determination of this issue is: What is the purpose of Exhibits D, E and G? This question can safely be answered in the following terms: That the various agreements (that is, the Exhibits) were entered into in order to provide a reliable financial cover to appellants' contract with the 3rd respondent. Thus, it can also be clearly and safely visualized, that the very foundation upon which the various agreements were entered into, was to provide the 3rd respondent with the concrete assurance that the appellants would be faithful to their contractual obligations to the 3rd respondent. That is to provide, the 3rd respondent with a performance bond in order to provide a safety net for them against the appellants' likely breach of their contractual obligations. Furthermore, the 1st respondent was by virtue of the various agreements placed in the position of a surety against the 2nd respondent in favour of the appellants.

Thus, I am of the firm view point that, based on the definitions of the terms given above; the contents of the exhibits and attitudinal conduct and disposition of the parties, the transaction that existed between the parties to this case can be safely and conveniently categorised or classified under Section 2 (3) (g) and (h) of the Insurance Act, 2003. Also by virtue of the combined reading of Sections 69 (1) (a) and 102 of the Insurance Act, l am of the firm view point that the Court vested with the requisite jurisdiction to entertain the suit is the Federal High Court. For purpose of clarity, I wish to reproduce the provisions of the above Sections:

"69. Settlement of claims

1) Where -

(a) civil proceedings are taken in Court in respect of any claim relating to any risk required to be insured against under this Act or any other law; and

(b) a judgment is obtained against the person insured then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this Section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest sum) not later than thirty days from the date of delivery of the judgment." (Underlined mine).

"102. lnterpretation

In this Act -

"Court" means Federal High Court;"

It has earlier been observed by me, that the subject matter of this case falls squarely within the ambit or coverage provided by provision of Section 2 (3) (g) and (h) of the Insurance Act (as it relates to "suretyship insurance business" and "miscellaneous insurance business"?). It can therefore be safely adjudged, that the claim of the 1st respondent falls squarely within the provisions of the extant Insurance Act as envisaged by Section 69 (1) of the Act reproduced above, thus, I find no hesitation in holding that the Court vested with the requisite jurisdiction to entertain and determine the subject matter of this case, is the Federal High Court as expressly stipulated by Section 102 of the Insurance Act.

It is pertinent to observe at this juncture, that the appellants' counsel while adumbrating on the appellants' brief, referred this Court to the recent Supreme Court case of Sun Insurance Nigeria Plc. V. Umez Engineering Construction Company Ltd. (2015) 11 NWLR (1471) 576, where his Lordship, Justice Mahmud Mohammed, C. J. N. at page 599 - 600, while construing the provisions of Section 251(1)(s) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Sections 73, 80 and 97 of the Insurance Act No. 2 of 1997, held as follows:

"... No civil jurisdiction at all has been conferred by the Act on the Federal High Court. The statute is quite plain therefore that it does not confer any exclusive or any jurisdiction at all for that matter on the Federal High Court to entertain and determine simple claims arising from contracts of insurance claims between the parties to that contract."

Even though the case referred to above, may remotely appear to be similar to the present case, however, they are clearly distinguishable. Case of apples and oranges. Whereas in the case referred to above, the major argument of the appellant hinged on the point that the High Court of Imo State had no jurisdiction to entertain any claim arising from any insurance claim and that such jurisdiction has been conferred and exclusively too on the Federal High Court by virtue of the combined reading of the provisions of Section 251(1)(S) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Sections 73, 80 and 97 of the Insurance Act No. 2 of 1997. The instant case has been prosecuted with another law which is materially and significantly different from the law relied on and upon which the above referred case was determined. It is necessary to observe here that the law upon which the referred case was tried has been somewhat repealed by virtue of Section 98 of the Insurance Act, 2003. It is also instructive at this juncture to reproduce Section 73 which forms the fulcrum of the appellant's claim in the above referred case. The said Section 73 states as follows:

"73 (1) Where -

(a) civil proceedings are taken in Court in respect of any claim relating to the death of or bodily injury to any person caused by or arising from the use of a motor vehicle covered by a policy of insurance; and

(b) judgment is obtained against the person insured; then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest on such sum) not later than 30 days from the date of delivery of the judgment."(Underlining mine)

It is obvious from the provisions of the above law (especially the underlined part) that the claim of the respondent/plaintiff in the referred case was not governed by any specific provision of the Insurance Act subsisting when the dispute arose. It was simply based on general insurance policy. Whereas, the subject matter of the present case was clearly governed by the Act; and by virtue of the combined effect of the provisions of Sections 69(1) and 102 (reproduced above), any action arising from any claim whatsoever on any risk required to be insured under any provision(s) of the extant Insurance Act or any other law whatsoever, the only Court vested with the jurisdiction to try such matter or matters is the Federal High Court.

Flowing from the above, I do not agree with the tendentious contention of the appellants' counsel that the subject matters of the instant case are merely;

(i) A 'simple' contract of indemnity, and

(ii) Mortgage Transaction.

It is thus, my firm view that the statute that governs the subject matter of this case is the Insurance Act, 2003; and by virtue of Section 2(3) (g), and (h) 69(1) and 102 of the Insurance Act, the only Court vested with the jurisdiction to entertain any suit with respect to the subject matter of this case is the Federal High Court. Consequently, the lower Court rightly assumed jurisdiction over the matter and the trial is not a nullity for any lack of jurisdiction whatsoever. On this basis, this issue is hereby resolved in favour of the 1st respondent.

Issue 2 (Appellants' Issues 1 & 3)

Whether the personal indemnity form (Exhibit E to the affidavit in support of originating summons) executed by the 2nd appellant in favour of the 1st respondent did not constitute a contract between the 2nd appellant and the 1st respondent with the goal of making the 2nd appellant personally liable to indemnity the 1st respondent for the counter-indemnity issued by the 1st respondent on behalf of the 2nd appellant.

It is the contention of the learned counsel to the appellants that the purpose of Exhibit E was for the 1st respondent to provide Performance Bond Guarantee to the Federal Government (through Federal Ministry of Water Resources); but the 1st respondent failed to discharge its obligation under the said agreement. Rather the Performance Bond Guarantee was provided by FSB International Bank Plc (3rd defendant). The learned counsel submitted, that since the 1st respondent has failed to issue the performance bond as requested, the purpose of Exhibit E has failed and has lapsed.

The learned counsel further submitted, that the lower Court with due respect was wrong to have converted Exhibit E from its written purpose to indemnify the issuance of performance bond to Federal Ministry of Water Resources, to become an indemnity to cover the issuance of unauthorised counter indemnity or guarantee, Exhibit D, to FSB International Bank Plc, which is not possible in law. The learned counsel referred this Court to the case of Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283, 311.

The learned counsel further insisted that Exhibit E is a "written undertaking" of which the lower Court is bound to interpret literally without admission of oral evidence, and failure to do so will amount to making a "new undertaking" for the parties which is not allowed in law. He called in aid, the case of Gurara Securities and Finance Ltd. v. T.I.C. Ltd. (1999) 2 NWLR (Pt. 589) 29, 48.

The learned counsel to the 1st respondent in response submitted that parties are bound by the terms of their agreement, which they have voluntarily entered into and no party shall be allowed to read into or incorporate anything extraneous into that agreement. He supported his submission with the case of SPDC Ltd. v. Chief N.Y. Allaputa (2005) 9 NWLR (Pt. 931) 475.

The learned counsel further submitted that the appellants are bound by:

i. Exhibit D (Counter Indemnity Agreement)

ii. Exhibit E (Personal Indemnity Form)

iii. Exhibit F (the title document of the appellants' landed property)

iv. Exhibit G (Indemnity Agreement); which together encapsulate the contract between the parties.

It is also the submission of the learned counsel to the 1st respondent that Courts are equally enjoined to look at the conduct of the parties or modus operandi in relation to the subject matter of an agreement in interpreting the same.

The learned counsel relied on the case of Nwobi v. Anukan (2000) FWLR (Pt. 18) 323 @ 336. Thus, the learned counsel urged this Court to hold, that the 2nd appellant's act of handing over the title document to his landed property (Exhibit F) should be regarded as an act or step, made and taken in furtherance of the guarantee agreement ably and adequately captured in Exhibits D, E and G above.

It is a trite principle of law, that parties to an agreement are bound to all the terms they voluntarily undertook to carry out under the said agreement. See U.B.N. v. Ajabule (2011) 18 NWLR (Pt. 1278) 152 @ 185.

Also, it is trite law that where the wordings of the terms of an agreement are clear and unambiguous, a Court of law is duty bound to interpret such agreement literally without the addition(s) of any extraneous matter. See U.B.N. v. Ajabule (2011) 18 NWLR (Pt. 1278) 152 @ 185, Ogundepo v. Olumesan (2011) 18 NWLR (Pt. 1278) 54 @ 69. However, while interpreting the terms of an agreement/contract, a Court of law is usually required to take into consideration the conduct of the parties to the said agreement, in order to give meaningful and proper effect to their agreement.

I have duly perused Exhibits D, E and G, and my observations are as follows;

(i) Exhibit D (Counter Indemnity) is an independent contract between the 1st Respondent and FSB international Bank Plc (2nd respondent) to which the appellants are the beneficiaries. This contract was made to enable 2nd respondent issue Performance Bond Guarantee to the appellants in order to enable them meet their contractual requirement with the 3rd respondent. It is expressly specified in the said Exhibit D that the 1st respondent's liability under the said Exhibit D would not be "affected by any change or addition to or other modification of the terms of the contract or of works to be performed thereunder or of any of the contract document between the employer (Federal Ministry of Water Resources - 3rd respondent) and the company (the 1st appellant)." From the wordings of the terms of the said Exhibit D, it can be vividly seen that the 1st respondent would be responsible and/or liable to the 2nd respondent to the tune of the amount guaranteed throughout the duration of the period of the indemnity contract, notwithstanding the amount of work already done by the 1st appellant or the amount remitted to the 3rd defendant.

(ii) Exhibit E (Personal Indemnity Form): This is an indemnity agreement entered into by 2nd appellant (as alter ego of the 1st appellant) agreed to be personally bound and/or liable to the 1st respondent to the amount the 1st respondent guaranteed to the 2nd respondent. Thus, it is an agreement made pursuant to Exhibit D, made in order to safeguard the business interest of the 1st respondent. This indemnity was expressly stated to be guaranteed by mortgage of the 2nd appellant personal and real estate in favour of the 1st respondent. The terms of this agreement were further confirmed by the provisions of Exhibit FA3, and Exhibit G (Indemnity Agreement). There is no where it was agreed that the 1st respondent was to directly provide the 3rd respondent with Performance Bond Guarantee, rather 1st respondent agreed to indemnify the 2nd respondent against any claim made against them made by the 3rd respondent in the event of the 1st appellant's breach of their contract agreement.

The above stated observations were also confirmed in paragraph 3 of the 2nd respondent's counter affidavit filed on the 5th day of April, 2006. It is pertinent to mention here that, these facts were neither seriously contradicted nor challenged by the appellants, thus they are deemed admitted by them in law. See Nzeribe v. Dave Eng. Co. Ltd. (1994) 8 NWLR (Pt. 361) 124; Omoregbe v. Lawani (1980) 4 - 5 S.C. 108; (1980) 4 - 5 S.C. (Reprint) 70.

It is therefore glaringly discernible, that Exhibit E constitutes a binding and enforceable contract between the 2nd appellant and 1st respondent with the main aim of making 2nd appellant personally liable to indemnify the 1st respondent for Exhibit D, which the 1st respondent issued on its behalf. It is also instructive to note here that, the 2nd appellant was authorised by virtue of a power of attorney dated the 25th day of September, 2003, to enter into all the above contracts on behalf of 1st appellant. Therefore, both the 1st and 2nd appellants are liable, jointly and severally to the 1st respondent. This issue is therefore resolved in favour of the 1st respondent.

Issue 3 (Appellants' Issue 2)

Whether deposit with 1st respondent by the 2nd appellant of Exhibit F (title deeds to the 2nd appellant's landed Property Plot 6, Block 22, New Haven West, Enugu) was not in furtherance of Exhibit E (2nd appellant's Personal Indemnity Form).

It is the contention of the appellants' counsel that there was no evidence before the lower Court upon which the learned trial judge wrongly (with due respect) based his conclusion that the mere deposit of Exhibit F was in furtherance of a mortgage transaction. The learned counsel contended further, that the deposit of Exhibit F was for the purpose of land search in preparation of a future transaction with 1st respondent and the lower Court was wrong to have concluded that the deposit was in furtherance of agreement in Exhibits D and E, especially on the basis that Exhibit D was not authorised by the appellants.

Again, the learned counsel contended that since Exhibit F was not in furtherance of Exhibits D and E, thus, in the absence of any memorandum expressly or impliedly creating an equitable mortgage between the parties, Exhibit F could not be held in law to have been deposited in furtherance of an equitable mortgage. The learned counsel placed heavy reliance on the following cases: Fortune Bank Plc v. Pegasus (2004) 1 SC (Pt. 11) 164, 173; Union Bank of Nigeria Ltd v. Professor Albert Ojo Ozigi (1994) 3 NWLR (Pt. 333) 385; and Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283, 310-311. The learned counsel therefore submitted, that the foreclosure granted on the basis of Exhibit F amounted to a serious error of law.

The learned counsel to the appellants submitted also, that in order for the deposit of Exhibit F to be interpreted to be either equitable or legal mortgage, it must receive the consent of Governor of the State and registered in accordance with the law. The learned counsel relied on the provisions of Section 22 (2) ,26 of Land Use Act, and Sections 2, 15 and 22 Land Instruments (Preparation and Registration) Law, Cap. 100, Revised Law of Enugu State Nigeria 2004, Vol. IV.

The learned counsel to the 1st respondent in response, submitted that even where there is no memorandum written, 'mere' deposit of title deeds creates an equitable mortgage, because the maxims "equity looks on that as done which ought to be done" and "equity looks to the intent rather than to the form" lie at the root of equitable doctrines governing mortgages." The learned counsel further submitted that, equitable mortgages can be created inter alia in the following ways:

i. By mere deposit of title deeds with a clear intention that the deed should be taken or retained as security for the loan;

ii. By an agreement to create a legal mortgage; and

iii. By mere equitable charge of the mortgagor's property.

He relied on the cases of Adaran Ogundiana v. OAL Araba & Anor. (1978) All NLR 165, (1978) 6 - 7 SC 42; Usenfowokan v. Idowu & Anor. (1975) 4 SC. (Reprint) 136.

The learned counsel to the 1st respondent then submitted that deposit by the 2nd appellant of his title deed (Exhibit F) which was in pursuance of his personal indemnity (Exhibit E) has created an equitable mortgage. The learned counsel contended that Exhibit E was the memorandum prepared in furtherance of the equitable mortgage. Also, it was the submission of the learned counsel that even if Exhibit E is not interpreted to be a memorandum in furtherance of an equitable mortgage, mere deposit of Exhibit F should have been interpreted to be in pursuance of creating an equitable mortgage.

On the issue of non-registration of Exhibits E and F in accordance with the extant provisions of the Land Use Act and Land Instruments (Preparation and Registration) Law of Enugu State. The learned counsel to the 1st respondent submitted that an equitable mortgage did not require registration whatsoever in order to become admissible in law. Thus, the learned counsel reiterated, that the voluntary signing of Exhibit E and handing over of Exhibit F to the 1st respondent were geared and/or targeted towards creating an equitable mortgage. The learned counsel referred us to the case of B.O.N. v. Akintoye (1999) 12 NWLR (Pt. 631) 392 @ 403.

I must say that I agree with the brilliant submission of the learned counsel to the 1st respondent, that equitable mortgage can be created in the following ways;

i. By mere deposit of the title deeds which could be received or retained as a security for a loan;

ii. By an agreement to create a legal mortgage; and

iii. By mere equitable charge of the mortgagor's property.

See Adaran Ogundiani v. O.A.L. Araba 687 S.C 55 @ 73. I also agree with the contention of the learned counsel to the 1st respondent that Exhibit E is a memorandum, executed with the mind set of creating equitable mortgage between the 2nd appellant and 1st respondent. The intention to create an equitable mortgage was clearly expressed in clause 2 of Exhibit E. It is trite in law that where the relationship(s) between two (2) or more parties have been reduced to a written document, a Court of law is bound to interpret the said document literally as it is written, provided the wordings are not vague and/or ambiguous. See Ogundepo v. Olumesan (2011) 18 NWLR (Pt. 1278) 54 @ 69.

Additionally, it is firmly established that oral and/or extraneous matter cannot be read into or used to modify a written agreement. See U.B.N. v. Ajabule (2011) 18 NWLR (Pt. 1278) 152 @ 185, paras. F - G; Ogundepo v. Olumesan (supra).

Flowing from the above, I have duly perused the said Exhibit E and found that the words used therein were clear and simple, thus, I am more inclined to interpret the same as it was written. From the wordings of the said Exhibit E, (particularly clause 2); it is clear that both the 2nd appellant and 1st respondent have expressed a clear intention to create an equitable mortgage over the property of 2nd appellant (Exhibit F), using same as a collateral to secure the counter indemnity which the 1st respondent granted to the 3rd Respondent on behalf of the 2nd appellant.

The above notwithstanding, it is trite law that a mere deposit of a title deed which cannot be accounted for in another way, is regarded as part performance of a contract to create a legal mortgage even when a word about a contract has not been uttered, such a deposit creates an equitable mortgage. See the case of B.O.N. Ltd. v. Akintoye (1999) 12 NWLR (Pt. 631) 392 @ 403. It is on the printed record placed before this Court that the 2nd appellant voluntarily handed over his title deeds (Exhibit F) to the 1st respondent. It is also on record that 1st respondent provided a guarantee cover to the 3rd respondent in favour of the appellants. Also, it is equally a glaring fact that the 1st respondent is a financial institution (and not a charity organization) who manages the funds (in form of premiums) of its customers. The simplest and natural conclusion that can be drawn (in the absence of any contrary fact) is that the handing over of Exhibit F by the 2nd appellant to the 1st respondent was to secure the 1st respondent's liability which it undertook on behalf of the appellants, pursuant to the Counter Indemnity Agreement (Exhibit D). That is, Exhibit F was deposited in order to create an equitable mortgage over the property in favour of the 1st respondent.

The learned counsel to the appellant's attempt to counter the fact by stating that, the document was deposited with the 1st respondent for the conduct of searches in preparation of a future transaction should be ingested and digested with a pinch of salt. It is equally important to state here that, address of counsel no matter how sound and articulate do not and cannot be a potent substitute for or taken as an evidence before the Court. See S. S. GMBH v. T. D. Ind. Ltd. (2010) 11 NWLR (Pt. 1206) 589 @ 612.

The contention of the learned counsel to the appellants made above, was not based on any evidence on record before the lower Court. Thus, the same is hereby rejected. Indeed, it is my firm view point that as regards Exhibits D, E and FA3, the act of the 2nd appellant of depositing Exhibit F with the 1st respondent was for the purpose of creating an equitable mortgage between the parties.

Also, it is unknown to law as the appellants' counsel contended that an equitable mortgage is required to be registered before it can be held enforceable and/or admissible (as the case may be) before a Court of law. Only a legal mortgage is mandatorily required to be made in deed form, executed by both parties and registered in accordance with the extant Law. Thus, having found and opined as stated above, I hereby resolve this issue in favour of the 1st respondent.

Issue 4 (Appellants' Issue 4)

Whether the judgment is against the weight of evidence.

It is the contention of the learned counsel to the appellants that the appellants did not authorize Exhibit D. The learned counsel contended further that the purpose for which Exhibit D was made was for the 1st respondent to issue performance bond to the 3rd respondent, which they failed to do. It is also the contention of the learned counsel that the transaction between the parties was fundamentally a simple contract of indemnity to which the law regulating the transaction is contract law of Enugu State. Consequently, it is the Enugu State High Court and not the Federal High Court that has the requisite jurisdiction to entertain the suit ab initio. Again, it is the contention of the learned counsel that one of the subject matters of the transaction is a mortgage transaction pursuant to the Land Use Act, to which only the Enugu State High Court is vested with the jurisdiction to entertain any suit emanating therefrom.

Again, the learned counsel contended that the document creating the purported mortgage is not registered pursuant to extant provision of the Land Instrument (Preparation and Registration) Law, thus the document is inadmissible, and the learned trial judge was (with due respect) in error to have ordered foreclosure on an inadmissible instrument that was made without the requisite authority of the appellants. Furthermore, the learned counsel contended that since there is no memorandum, evincing an agreement or an intention to create a legal or equitable mortgage, the lower Court was in error to have held that the 2nd appellant's act of depositing his title document without proper explanation was in furtherance of an equitable mortgage, which the learned counsel maintained was not contemplated by the parties.

The learned counsel to the 1st respondent in his response submitted that relevance is the touchstone of admissibility, and that Exhibits D, E (to which Exhibit F was annexed), and G were relevant to the instant case, and they were properly admitted by the lower Court. Also, the learned counsel further maintained that the submission of the learned appellants' counsel that the exhibits are inadmissible because they are not registered is erroneous. The learned counsel relied on the case of Oyediran v. Alebiosu II (1992) NWLR (Pt. 249) 550; and Shitta - Bey v. Att. - General of the Federation (1993) 7 SC (Pt. 11) 10 NWLR (Pt. 570) 392.

The learned counsel also submitted that the uncontroverted and/or unchallenged facts in the 3rd Respondent's counter -affidavit has helped in further establishing that, pursuant to Exhibit D, Exhibit E was entered into by the 2nd appellant and 1st respondent in which one of the terms of the said Exhibit E was for the parties to create an equitable mortgage in order to protect the likely eventuality and subsequent liability of the 1st respondent, which prompted the 2nd appellant to deposit Exhibit F with the 1st respondent. Thus, the learned counsel submitted, that the conducts of the parties should be taken into consideration while interpreting the agreement and that the 2nd appellant's conduct of voluntarily handing over Exhibit F to the 1st respondent should be held to be in furtherance of Exhibit E, therefore, making the appellants jointly and severally liable to pay the guaranteed sum of N9,079,295.50 (Nine Million, Seventy-Nine Thousand, Two Hundred Nine Hundred and Five Naira, Fifty Kobo), or in the alternative the 1st respondent should be held as having been entitled to an order of foreclosure of the 2nd appellant's property covered by Exhibit F. The learned counsel thereby urged this Court to dismiss this appeal for lacking in merit.

I have earlier held that the appellants are jointly and severally liable to the 1st respondent to the tune of the amount so guaranteed, and I do not intend to depart from my above findings, thus, in the given circumstance, I also adopt my reasons in respect thereof. Also, it has earlier been held by me that an instrument which evinced an equitable mortgage required neither the consent of the Governor nor required to be registered in order to make it valid and admissible before a Court of law and the same position is further maintained by me.

It is instructive to state here that the contention of the learned counsel to the appellants that Exhibit F was deposited with the 1st respondent for the purpose of searches in preparation for a future transaction is only not supported by any evidence on record, but also an act of setting up a new case on appeal. Since this issue was neither raised by the appellants in their counter affidavit nor argued by the appellants before the lower Court, thus, the contention is thereby discountenanced for being incompetent and also not supported by any evidence on record before the lower Court. See H. A. Willoughby v. I.M.B. (Nig.) Ltd. (1987) 1 NWLR (Pt. 48) 105 @ 107, Ojukwu v. Yar'?adua (2009) 12 NWLR (pt. 1154) 50 @ 149. On the whole and based on all that I have stated in this judgment, this issue is thereby resolved in favour of the 1st respondent.

In the premise and having resolved all the issues in the manner stated above, it is therefore my humble but firm view point that this appeal is totally lacking in both substance and merit. In the circumstance, the judgement of the lower Court is thereby upheld and this appeal is accordingly dismissed. Costs in the sum of N100, 000.00 (One Hundred Thousand Naira) is hereby awarded in favour of the 1st respondent only.

**HELEN MORONKEJI OGUNWUMIJU, J.C.A**.:

I agree.

**MISITURA OMODERE BOLAJI-YUSUFF, J.C.A**.:

I have had a preview of the judgment just delivered by my learned brother, HON. JUSTICE MASSOUD ABDULRAHMAN OREDOLA, JCA. I agree with the reasons therein advanced to arrive at the conclusion that the appeal has no merit and should be dismissed. I abide by the consequential orders made therein.