IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 27TH DAY OF JANUARY, 2023

BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
AMINA ADAMU AUGIE	**JUSTICE, SUPREME COURT**
ADAMU JAURO	**JUSTICE, SUPREME COURT**
TIJJANI ABUBAKAR	**JUSTICE, SUPREME COURT**
EMMANUEL AKOMAYE AGIM	**JUSTICE, SUPREME COURT**

SC/CV/210/2021

BETWEEN:

1. ANCHORAGE LEISURES LIMITED
2. SILOAM GLOBAL SERVICES LIMITED — **APPELLANTS**
3. HONEYWELL FLOUR MILLS PLC

AND

ECOBANK NIGERIA LIMITED === **RESPONDENT**

JUDGMENT
(DELIVERED BY EMMANUEL AKOMAYE AGIM,JSC)

This appeal No. SC/CV/210/2021 was commenced on 28-1-2021 when the appellants herein filed a notice of appeal against the judgment of the Court of Appeal sitting in Lagos delivered on 14-12-2020 in Suit No. CA/LAG/CV/975/2019 setting aside the judgement of the trial Federal High Court sitting in Lagos delivered

on 31-5-2019 in Suit No. FHC/L/CS/1219/2015 on the ground that the appellants as plaintiffs had no locus standi to sue and this feature robbed the trial court of jurisdiction to try and determine the suit and in the alternative, allowing the appeal to it as meritorious. The respondent to this appeal, on 27-1-2021 also filed a notice of cross appeal.

The parties herein filed, exchanged and adopted their respective briefs as follows – appellants' brief, respondent, cross appellant brief, appellant's reply brief and respondent/cross appellant's reply brief.

The appellant's brief raised 3 issues for determination as follows –

"1. **Was the lower court correct that its earlier decision in Appeal No: CA/L/1270/2015-Ecobank Nigeria Limited V. Anchorage Leisures Limited and Ors, (decide on 30th March, 2016 and affirmed by the Supreme Court in SC:406/2016 – Ecobank Nigeria Limited V. Anchorage Leisures Limited and Ors delivered on 13th July, 2018) did not decide/resolve the entitlement/ title of the Appellants (as plaintiffs) vis-a-avis Honeywell Group Limited to have filed Suit No: FHC/LCS/1219/2015? Grounds 1, 3, 6, 7 and 10.**

2. **Did the lower court correctly strike out Appellant's claim qua suit at the trial court for lack of locus standi or absence of a right to proceed against the Respondent in the overall circumstances of the case before it? Grounds 2, 4, 5, 8, 9, 11 and 12.**

3. **Was the lower court correct in its consideration and resolution of the outcome of the 22nd July, 2013 meeting between the parties, and, the subsequent setting aside of the decision of the trial court which granted the reliefs claimed by Appellants as plaintiffs before the said trial court? Grounds 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22".**

The respondent/cross appellants' brief raised the following issues for determination –

"1. **Was the Lower Court right in law, to have found that the Respondents lacked the locus standi to file Suit No:FHC/L/CS/1219/2015 at the trial court and to consequently strike out same for want of locus standi and legal competence? (Distilled from Grounds 2, 4, 5, 8, 9, 11 and 12 of the Notice of Appeal).**

2. **Whether the Lower Court was not correct to have held that the issues as to the Appellants' (as plaintiffs) locus standi to file Suit No: FHC/L/CS/1219/2015 WAS NOT DECIDED AND/OR RESOLVED BY THE Court of Appeal in Appeal No:CA/L/1270/20 – Ecobank Nigeria Limited V. Anchorage Leisures Limited and Ors (delivered on**

30th March, 2016) and by this Honourable Court in SC:406/2016 – Ecobank Nigeria Limited V. Anchorage Leisures Limited and Ors. (delivered on 13 July, 2018). (Distilled from Grounds 1, 3, 6, 7 and 10 of the Notice of Appeal)"

3. **Whether the Lower Court rightly held that there was no valid and enforceable agreement reached on 22nd July, 2013 and rightly set aside the decision of the trial court which granted the reliefs sought by the Appellants? (Distilled from Grounds 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the Notice of Appeal)"**

I will determine this appeal on the basis of the issues raised for determination in the appellants' brief.

Let me deal with issues Nos. 1 and 2 as they relate to the *locus standi* of the appellants to bring Suit No. **FHC/L/CS/1219/2015** that led to this appeal.

I have carefully read and considered the arguments of both sides in their respective briefs on these issues.

It is not in dispute that Appeal No. **CA/L/CS/1270/2015** arose from rulings of the trial Court at interlocutory stage of the proceedings in Suit No. **FHC/L/CS/1219/2015**. The appeal against the judgment of the Court of Appeal in **CA/L/CS/1270/2015** came to this Court as **SC/406/2016.** The judgment of this court therein delivered on 22-7-2018 is

reported as **Ecobank(Nig) Ltd v. Anchorage Leisures Ltd (2018) 18 NWLR (Pt. 1651) 201.**

Appeal No. **CA/LAG/CV/975/2019** is against the final judgment of the trial Court in the same Suit No. **FHC/L/CS/1219/2015**. This Appeal No. **SC/CS/2010/2021** is against the final judgment of the Court of Appeal in **CA/LAG/CV/975/2019**.

In Appeal No. **CA/L/CS/1270/2015**, the Court of Appeal held, concerning the nature of the transaction of 22-7-2013 in Suit No. **FHC/L/CS/1219/2015** the cause of action and the right of the appellants to bring the suit, thusly – **"I have carefully perused the said statement of claim with particular reference to paragraphs 6 to 24 as well as the reliefs sought in paragraph 45 and the only rational conclusion, I can draw therefrom is that there is a banker/customer relationship between the Respondents and the Appellant. It did not disclose any fact based on simple contract and whatever was done by OBA OTUDEKO as chairman of Honeywell Group Ltd was strictly for and on behalf of the Respondents and there is no question of Novation or transfer of liability from the Respondents to the Honeywell Group Ltd as alluded to by the Appellant. The said**

statement of claim also show that the Respondents have a genuine cause of action that entitles them to file the Suit.... On the aspect of raising the issue of cause of action for the first time in the reply which is seen as overreaching the Respondents. For whatever it is worth, the issue of cause of action has been addressed in this judgment with a finding that the Respondents have a genuine cause of action. The said issue therefore becomes a moot point. The allegation of breach of fair hearing is also found not sustainable".

In the appeal against the judgment of the Court of Appeal in **CA/L/CS/1270/2015** in **SC/406/2016** reported as **Ecobank(Nig) Ltd v. Anchorage Leisures Ltd (2018) 18 NWLR (Pt. 1651) 201 at 220 – 221** this court did not clearly decide the question of the cause of action in Suit No. **FHC/L/CS/1219/2015**and the locus standi of the appellants to sue. It held that **"the finding of the trial Court discountenancing the objection of the appellant in the cause of action as it relates to third party negotiations was not appealed as in the Court below and so remains binding and cannot be reopened at this stage either without a ground of appeal so holding".**

However, in determining the jurisdiction of the trial Federal High Court to entertain the suit, it held concerning the nature of the transaction and the basis of the action thusly-

> **"As a guide I shall cite the case of Bank of the North v. Yau (2001) 10 NWLR (Pt. 721) 408 at 438 paras D-E, this court per Ayoola JSC held thus:-**
>
> **In the course of carrying on business of banking, a bank enters into several contractual relationships and performs various roles. It is important in an action between bank and customer to be clear which of the several contractual relationships forms or form the basis of the action. In this case, it is pertinent to note only four of these possible relationships, namely:**
>
> **(i) The relationship of creditor and debtor that arises in regard to the customer's funds in the hands of the bank;**
>
> **(ii) The relationship of creditor and debtor that arises when the bank loans money to**

the customer or allows him to overdraw on these accounts;

(iii) The relationship that arises from the role of the bank as a collecting bank of cheques drawn or other banks or branches of the same bank by a third person; and

(iv) The possible role of the bank as a holder for value of a negotiable instrument." (Italics mine for emphasis)

The said meeting was also specifically referenced in relief 45 (a) of the statement of claim thus:

"A declaration that the plaintiffs (as customers), by the agreement reached at the meetings of July 22, 2013 and December 12, 2013 with the defendant (as banker to the plaintiffs) are not indebted to the defendant in any amount apart from the agreed sum of ₦3,500,000,000.00 (Three Billion, Five Hundred Million Naira) as

full and final settlement/liquidation of their indebtedness."

Evidently, clear from what has been showcased above is that what is available as the relationship between the parties is that of banker/customer, a situation of interaction emanating from a banking transaction where both parties assumed the role of creditor and debtor however the colouring presentation may seem to be. See Bank of the North v. Yau (supra).

Therefore, the meeting between the parties on the 22nd of July, 2013 was in the capacities of customers and bankers respectively for the resolution of the discharging of obligations arising from that relationship of debtors and creditors.

It follows that the objection raised by the appellant in the court below would be headed for failure since that meeting of 22nd July, 2013 was held in the clear purview of the

banker/customer relationship. The decision of the court below in that regard being not appealed against has the matter settled for all time."

There is no doubt that in **SC/CS/406/2016** the *locus standi* of the appellants to sue was not specifically raised for determination and was not specifically determined by this Court. But this court in the above quoted part of its judgment therein determined that the appellants and the respondent were engaged in the meeting in their capacities as customers and their banker and debtors and their creditor to negotiate the discharge of the appellants' debt payment obligation under their respective loan contracts with respondent. This decision clearly determined the nature of the transaction of 22-7-2013 and the relationship of the parties thereto. So, the Court of Appeal should not have exercised its jurisdiction to determine whether the appellants were parties to the transactions in the meeting of 22-7-2013 and other meetings that arose from it and whether the agreement of 22-7-2013 concerning the debt payment obligation of each appellant under its individual loan contract with the respondent was between only Dr. Oba Otudeko, Chairman of Honeywell Group Ltd and respondent. The Supreme Court having held on 13-7-2018 in SC. 406/2016 that

the parties met on 22-7-2013 in the capacities of customer and banker and creditor/debtor to resolve the discharge of their loan or debt repayment obligations arising from their debtor/creditor relationship, it becomes idle and futile to contend that the very appellants whose loan repayment obligations was the subject of the meeting and who were the customers and creditors, were not parties to that meeting and the agreement in the meeting.

This decision of this court clearly settled the issue of the appellants being parties or strangers to the negotiations of their debt payment obligations and agreement reached in that meeting. The decision of this Court on that issue is final and cannot be reopened or reviewed under any guise by this or any other Court. The Court of Appeal was wrong to have returned to considering or determining that same issue as basis for its determination of the *locus standi* of the appellants to bring the suit leading to this appeal. After considering the position of the appellants in the meetings of 22-7-2013 and the follow up meetings, it held that they were not parties to the meetings and the agreements reached in the meeting, that they were strangers to the agreement, that the agreement was between the respondent and Honeywell Group Limited, and that therefore the appellants have no *locus standi* to bring this suit or action to enforce the agreement in the said

meeting concerning their debt repayment obligations under their loan contracts with the respondent.

By virtue of Ss. 235 and 287(1) of the 1999 Constitution and the operation of the doctrine of issue estoppel, the Court of Appeal lacked the jurisdiction to engage in the determination of the issue of whether the appellants were parties or strangers to the meetings and the agreement of 22-7-2013 and the follow up meetings. Since its determination of the *locus standi* of the appellants to bring this action to enforce the agreement in the said meetings, is solely based on its determination that they are strangers and not parties to the meeting and the agreements reached in them, then it has no jurisdiction to determine if they had such *locus standi*. The law is settled that where the determination of a question before a court is predicated on its determination of an underlying question that it has no jurisdiction to determine, then it would lack the jurisdiction to determine the question before it.

The provision of S. 235 of the 1999 Constitution that **"no appeal shall lie to any other body from any determination of the Supreme",** establishes the finality of any decision of this court. S.287(1) of the same 1999 Constitution which provides that **"the decision of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by**

Courts with subordinate question to that of the Court of Appeal", places a mandatory constitutional duty on the Court of Appeal to follow or obey it.

Issue estoppel is the part of our law that provides that where an issue in a case had been clearly judicially determined by the Court, the parties in the case and their privies are barred or estopped from re-litigating that issue in that case or another case and the Court is estopped from exercising its jurisdiction to repeat the determination of that issue or revisit it in any manner in that case or another case involving the same parties and relevant facts and issues. So the Court of Appeal was estopped by the earlier decision of this court on that issue from exercising its jurisdiction to repeat the determination of the issue. See **Bamishebi&Ors. v. Faleye&Ors. (1987) 4 SC 1, Udo &Ors. v. Obot &Ors. (1989) 1 SC (Pt. 1) 64, Ladega&Ors. v. Durosimi&Ors. (1978) 3 SC 82** and **Ezewani v. Onwordi (1986) LPELR**.

As it is, the exercise of jurisdiction is a nullity. Therefore, its decision that the appellants are strangers and not parties to the meeting and agreement of 22-7-2013 and the follow up meetings and the derivative or consequential determination that therefore the appellants lack the *locus standi* to sue to enforce the said

agreement are a nullity and are hereby set aside for lack of jurisdiction.

Since, as this court held in SC. 406/2016, **"the meeting between the parties on 22nd of July, 2013 was in the capacities of customers and bankers respectively for the resolution of the discharging of obligations arising from that relationship of debtors and creditors"**, they have the *locus standi* to sue in respect o the negotiations concerning their rights or obligations in such relationship. The facts of this case that formed the basis of our said decision in SC.406/2016 are as follows. Each appellant took a loan from Oceanic Bank Plc and was separately and individually liable to repay its said debt. The 1st appellant obtained 450 million naira to complete its Radission Blue Hotel at OzumbaMadiwe Street Victoria Island Lagos. Oceanic Bank Plc availed it this loan in a letter of offer dated 11-12-2006. The loan obtained by the 2nd appellant was by way of an underwriting commitment to the sum of 2.3 billion naira to purchase shares in blue chip companies such as First Bank of Nigeria Plc., which was later restructured as a five year term loan for it on a one year moratorium by letter dated 14-12-2011. The 3rd appellant borrowed the sum of 10 million US Dollars and 200 million naira to import its raw materials and augment its working capital

requirement. Oceanic Bank Plc approved this loan in its letter of 14-9-2005.

Each appellant utilized its loan but failed to repay the loan as and when due in spite repeated demands by Oceanic Bank. The respondent at some point purchased Oceanic Bank and assumed it assets including the debts due from each appellant to Oceanic Bank Plc and their accounts as customers to the bank.

One, Dr. Oba Otudeko, Chairman Honeywell Group Limited, who was not a party to any of the loan contracts between each appellant and the respondent but obviously has an interest in each of the appellants and who is not a party to this case, promoted and facilitated a negotiation of their repayment obligations under their individual loan contracts to secure a waiver by the respondent of some of the amount of debt due from each of them. The negotiation which took place on 22-7-2013 resulted in an oral agreement that the appellants jointly pay a collective sum of 3.5 billion naira as full and final satisfaction of the sum total of their individual indebtedness being 5.5 billion naira subject to the conditions that, they pay a collective sum of 500 million naira immediately on 22-7-2013 and 3 billion naira in lump sum before the then visiting Central Bank of Nigeria (CBN) examiners who were in the respondent's bank examining its records departed from the

bank. The specific date of the departure of said examiners from the respondent bank was not stated.

In the light of the foregoing, I resolve issues Nos. 1 and 2 in favour of the appellant.

Let me now determine issue No. 3 which asks - **Was the lower court correct in its consideration and resolution of the outcome of the 22nd July, 2013 meeting between the parties, and, the subsequent setting aside of the decision of the trial court which granted the reliefs claimed by Appellants as plaintiffs before the said trial court?**

I have carefully read and considered the arguments in the respective briefs on this issue.

The central question in this case is whether the respondent is legally bound to accept the 3.5 billion naira collectively paid by the appellants as complete and final liquidation of their respective debts to it by virtue of the understanding reached in the meeting of 22-7-2013 and the follow up meetings to negotiate the payment of their outstanding indebtedness arising from the loan each of them took from the respondent.

The trial court and the Court of Appeal determined this issue on the basis of the contents of the correspondences exchanged

between the respondent and Honeywell Group on behalf of the appellants in between the meetings in the bid to forge some consensus ad idem.

"The instant suit turns on the interpretation of documents. Exhibit A is dated 22/7/13 and states the agreement reached at the meeting of 22/7/13. Plaintiffs were to pay N3.5Billion in full and final settlement of their indebtedness to the Defendant. There was also an agreement for plaintiff to immediately pay N500million. Parties are ad idem on this.

Plaintiffs now proposed to pay the remaining N3Billion in three equal half yearly instalments.

It would seem that 3 half payment of N3Billion was not part of the agreement otherwise it would have been as stated as was said of the N500M. Obviously, the N500Million had been paid before Exhibit A was written.

On the face of exhibit, A, it was received in the Defendant's Managing Director's office at 12:19 on 24th July, 2003. Even though dated 22/7/13 therefore,

exhibit A1 which referred to exhibit A was received by plaintiffs on 23/7/2013. See exhibit B11. Exhibit A1 did not acknowledge receipt of N500Million. It however reiterated the agreement as follows:

'Please note that the agreement was for a full and final payment of N3.5Billion to be part paid immediately by N500Million on Monday July 22 2013 and the balance to be paid immediately thereafter before the Central Bank of Nigeria (CBN) Examiners leaves the Bank. Kindly therefore revert in line with the agreement.'

Indeed, paragraphs 16-19 of the deposition of PW! Confirm the contents of exhibit A1. Exhibit A1 therefore reiterated the agreement. It also seems that plaintiffs did not respond to exhibit A1. The Defendants did not also tell the plaintiffs the exit date of the examiners from the bank-actual or proposed.

PW1 in paragraph 21 also described the agreement of 22/7/13 as a firm agreement. Parties however discussed how the remaining N3Billion will be paid leading to a meeting on 12/12/13. As at that

time, plaintiffs had paid N1,350,000,000= of their indebtedness.

It is instructive to note that in the interim, the plaintiffs had restated that the agreement of 22/7/13 was for a bullet payment of N3.5Billion. The plaintiffs however made a proposal to pay by 3 equal bi-annual installments. The plaintiff also observed that the sticky issue was the repayment time-frame. A meeting was thus proposed to conclude the takeoff date for the installment payments. This is contained in exhibit A2- plaintiff's letter to Defendant's Managing Director date 6/9/13 received on 9/9/13 at 11:04am. By December, 2013, N1,350,000,000= had been paid.

At that time too, there was no reaction from Defendants as to plaintiff's proposal. Defendant however collected N850,000,000= before the meeting of 12/12/13 took place. The only reaction was by letter dated 7/10/13 to which plaintiffs responded by exhibit A3-a letter to Defendant's Managing Director dated 8/10/13. It would seem from the contents

of exhibit A3 that Defendant's letter of 7/10/13 did not address the issue.

Again, by exhibit A3, plaintiffs requested a meeting with Defendants to discuss how the remaining N3Billion would be paid. Exhibit A3 shows therefore that at 8/10/13, plaintiffs had paid only N500Million.

The meeting of 12/12/13 took place. Exhibit A4 is the record. Exhibit A4 is dated 10/1/14 addressed to Defendant's Managing Director. The agreements at the meeting were:

- Plaintiffs to immediately pay N1Billion in addition to the N1,350,000,000= already paid.
- Payment of the remaining N1.15 billion to be accelerated.

Upon receipt of the N1Billion, Defendant will update the accounts of the plaintiffs on Central Bank of Nigeria (CBN) CRMS portal.

By exhibit A4 also plaintiffs confirmed full payment of the N3.5Billion. The Defendant was requested to remove negative caution on plaintiff's account on Central Bank of Nigeria (CBN) CRMS portal. The

plaintiff also asked for a letter of full discharge from any indebtedness to Defendant and release of all securities with Defendant.

Exhibit A4 was received by Defendant on 13/1/14 at 5:04pm. The Defendant responded by letter dated 7/2/14- exhibit A5. Defendant did not dispute the contents of exhibit A4.

It would therefore seem that at the meeting of 12/12/13, the parties agreed on fresh terms plaintiffs discharged their obligations and Defendant confirmed receipt of the money.

Defendant however stated that it could not issue the letter of non-indebtedness as the request for waiver was still going through its internal process.

To my mind, this is strange. The agreement contained in A1 was not subject to internal approval. Indeed, A1 was written because Defendant disagreed with the contents of exhibit A. There was no suggestion of an approval of the waiver/concession.

As regards A4 and A5 however, Defendant did not dispute A4 but wrote A5 almost a month thereafter contending lack of internal approval. There was definitely at that point in time an agreement which plaintiffs had fulfilled. The Defendant had no objection to the agreement. It however undertook to fulfill part of the agreement ie. update the status of the accounts at Central Bank of Nigeria (CBN) CRMS portal. It decided due to internal processes not to fulfill another part and was silent on the release of security in it custody.

Plaintiffs kept demanding compliance having paid the money by letters of 1/9/14- A6 and A7. Defendant did not fulfill its undertaking in A5.

By letter dated 14/11/14 – exhibit A8 (B16) Defendant responded to A6 and A7. Defendant stated that as at August 2013, the offer of waiver had lapsed and that as at 17/1/14 Plaintiffs were owing ₦3,116,731,061.07 ie. after the payment of 10/1/14 per A4.

One wonders therefore why that figure did not feature during the meeting of 12/12/13. Why it did not

feature in the exhibit A5 and why the undertakings in A5 were made if as at 17/1/14 there was still indebtedness. It was only after collecting N3.5Billion that Defendants now sought board approval for a waiver and then could not obtain board approval. It is note-worthy that the discussions took place from 22/7/13 to 12/12/13 and it was only on 14/11/14 that Board approval was refused- 1 year and 4 months thereafter.

There was another reason. The loan was a related party loan because Plaintiff's Chairman was a Director of Defendant's parent company. I think due diligence would have revealed this even at the point of account opening or loan disbursements. It is difficult to accept Defendants defence of non-compliance with KYC- know your customer-principles.

All this after a binding agreement had been made on 12/12/13.

It would seem that having written A5, Defendants were estopped from denying the fact that Plaintiff had discharged their obligations and were no longer

owing. I do not think Defendants can turn around, 9 months after exhibit A5 to say they had made some discoveries which they by reasonable diligence and prudence to have known as at the time of exhibit A5. Exhibit A4 was in terms of the agreement of 12/12/13. There is no dispute as to those terms. The effort of Defendant to resile from the agreement after Plaintiffs had fulfilled their own part must fail.

It is also clear that A5 accepted the payment without repudiation. The issue of examiners having left the Bank was not raised. Defendant's issues 2 and 3 resolved against it.

Issue 4 does not arise any more. Having decided the merits, the decision of the Banker's committee is not relevant save to say that the decision conforms with my findings.

I must however state that if indeed, Defendant's Managing Director sat on the committee then its decision seems flawed as it goes against the principle of nemo judex in causa sua."

The Court of Appeal did not agree with the conclusions or inferences the trial court drew from the contents of those correspondences. In considering whether the trial court correctly held that there is a valid contract, it held thusly- "**In Exhibit A, Honeywell group Ltd restated its understanding of the verbal agreement reached as follows:**

> **"Following from the meeting of July 22, 2013, we confirm our agreement to pay the sum of N3.5billion (Three Billion, Five Hundred Million Naira Only) as full and final settlement of our indebtedness to your bank.**
>
> **As part of the verbal agreement reached at the meeting, we shall immediately pay the sum of N500million towards the facilities. We propose that the balance of N3billion be paid in three equal half yearly installments (sic).**
>
> **Based on the above, we look forward to receiving your letter confirming the discussions above and acknowledging receipt of the N500million."**

In construction of documents, the duty on the court is to interpret the same, giving the words used their plain, simple and ordinary grammatical meeting. It seems to me

that the ordinary meaning of the words employed in Exhibit A above disclose an integral agreement, made subject to the fulfilment of the certain terms. Immanent in the said Exhibit A is that the agreement involves three integral components, id est, the payment of the agreed sum of N3.5billion in full and final settlement of the amount owed by immediately paying the sum of N500million. That is where the consensus seems to have ended because what follows next is a proposal to pay the balance of N3billion in three equal half yearly instalments. The use of the word "propose" clearly shows that Exhibit A does not contain any consensus on the payment of the balance of N3billion. So, to that extent, it is inchoate and does not constitute a valid contract since it did not adequately represent the verbal agreement reached.

The Appellant wrote Exhibit A1 in reply to Exhibit A. It therein stated, inter alia:

> "Please note that the agreement was for a full and final payment of =N=3.5Billion to be part paid immediately by =N=500 Million on Monday July 22,

2013 and balance to be paid immediately thereafter before the CBN examiners leave the Bank.
Kindly therefore revert in line with the agreement."

The above pericope from Exhibit A1 lays to rest any doubt as to whether there was a consensus ad idem in Exhibit A. Honeywell Group Limited having made proposal in Exhibit A which the Appellant did not accept, did not respond to Exhibit A1. So it cannot be definitely said whether it accepted that Exhibit A1 adequately represented the verbal agreement and that it gave its assent to the contents of Exhibit A1. This is so because mere mental assent or mere silence will on no account constitute sufficient legal acceptance: ORIENT BANK VS. BILANTE INT'L LTD (supra) at 100 and RABILU VS. USMAN (supra). So, hold that the failure of Honeywell Group Ltd to respond to Exhibit A1 is mental assent may amount to guessing and speculating that its silence is consent. So it still blows in the wind whether Exhibit A1 constitutes the consensus ad idem necessary for there to be a valid contract.
Be that as it may, it seems to me the Exhibit A1 equally discloses an agreement made subject to the fulfilment of

thereafter. Let me restate that where an agreement for payment is made subject to the fulfilment of certain specific terms and conditions, the agreement is not formed and not binding unless and until those terms and conditions are complied with or fulfilled. See BEST (NIGERIA) LTD VS. BLACKWOOD HODGE (NIG) (2011) LPELR (776) 1 at 38, TSOKWA OIL MARKETING CO. VS. BON LTD (2002) 11 NWLR (PT 777) 163 and NIGER CLASSIC INVESTMENT LTD VS. UACN PROPERTY DEVELOPMENT CO. PLC (2016) LPELR (41426) 1 at 20. So, the component and constituent parts of Exhibit A1 embodying the specific terms and conditions, as conveyed by the Appellant, have to be compiled with and fulfilled for there to be a valid and enforceable agreement.

It would appear that the term and condition on the payment of the balance which was an integral part of the discussions, in order for there to be the requisite consensus ad idem could not be agreed upon, such that the negotiations toward an agreement made on 22nd July 2013 remained inchoate. However, this notwithstanding, Honeywell Group Ltd part payments towards paying the balance of N3billion. These part payments, the

certain terms and conditions. Inherent in the said Exhibit A1 is that the agreement is for the payment of N3.5billion in full and final settlement of the debt owed, with N500million to be paid immediately and the balance to be paid "immediately thereafter." In the submissions of learned counsel the phrase "immediately thereafter" seems to have fallen through the cracks and they have founded their argument on the agreement being that the balance is to be paid before the CBN Examiners leave the bank, on account of which they have argued on whether the Appellant informed the Respondents when the CBN Examiners left the bank or whether the Chairman Honeywell Group Limited, as an experienced banker had knowledge of when the Examiners left. It is however my deferential view that the agreement on when the balance is to be paid as stated in Exhibit A1 is that after initial sum of N500million is paid, the balance is to be paid "immediately thereafter". This phrase is key in this matter. Accordingly, the component terms and conditions on which the verbal agreement is anchored are the agreement for payment of N3.5 billion by immediate payment of N500million and the payment of the balance immediately

Respondents have argued amount to part performance. The question that immediately jumps at me on this submission is part performance of what agreement? The inchoate agreement? When it is remembered that the Respondents were indebted to the Appellant, which debt they were obligated to repay, whether there was a negotiated settled amount or not, I am unable to see the payments made as part performance as there was no agreement to be performed or being partly performed since the necessary consensus ad idem was non-existent.

Turning to Exhibit A4 and A5, it is evident that the premises on which the said correspondences are predicated is the existence of a valid and subsisting agreement reached on 22nd July 2013, whereat it was agreed that the compromise and concessionary sum of N3.5billion is to be paid in full

and final settlement of the indebtedness. Having held that there is no such valid agreement reached on 22nd July 2013, the foundation on which any subsequent agreement can be anchored thereon based on the meeting of 12thDecember 2013 which is the basis on which Exhibits A4 and A5 were written is non-existent. The Latinism is ex nihilo, nihil fit, out of nothing, nothing comes: MANAGEMENT ENTERPRISES LTD VS OTUSANYA (1987) LPELR (1834) 1 at 74, IN RE:OTUEDON (1995) LPELR (1506) 1 at 16 and NZOM VS JINADU (1987) LPELR (2143) 1 at 44. In a summation these issues are resolved against the Respondents. The lower court did not correctly resolve the issues relating to the meetings of 22nd July 2013 and 22nd December 2013 and was wrong to hold that there was a valid contract which it made an order for its enforcement by granting the reliefs claimed by the Respondents.

It is clear from exhibits A, A1 and A3 that the initial understanding of all the parties in the negotiation of 22-7-2013 was that, if the appellants collectively paid 500 million to the respondent immediately that day and 3 billion naira in lump sum before the visiting CBN examiners left the bank, the respondent would accept the 3.5 billion naira thereby paid as complete and final liquidation

of their respective outstanding debts to the bank and that instead following their said mutual understanding, the appellants turned around after the meeting to write to the respondent proposing that they pay the 3 billion naira in three equal half yearly installments instead of lump sum.

Exhibit A is a letter written by Honeywell Group Limited to the respondent shortly after the said meeting of 22-7-2013, on the same day. The exact text reads thusly-

> **"Following from the meeting of July 22, 2013, we confirm our agreement to pay the sum of N3.5 billion (Three Billion, Five Hundred Million Naira Only) as full and final settlement of our indebtedness to your bank.**
>
> **As part of the verbal agreement reached at the meeting, we shall immediately pay the sum of ₦500 million toward the facilities. We propose that the balance of N3 Billion ~~b~~e paid in three equal half yearly installments.**
>
> **Based on the above, we look forward to receiving your letter confirming the**

discussions above and acknowledging receipt of the ₦500 million.

We thank you in anticipation of your favorable consideration of our requests."

The respondent on the same 22-7-2013 promptly replied by a letter dated 22-7-2013 (exhibit A1) thusly –

"We refer to your letter dated July 22, 2013, various discussions and correspondences on the above subject matter and the discussion between our Managing Director Mr. Jibril Aku and your Chairman Oba Otudeko in respect of your indebtedness to Ecobank Nigeria Limited.

Please note that the agreement was for a full and final payment of N3.5 Billion to be part paid immediately by N500 Million on Monday July 22, 2013 and the balance to be paid immediately thereafter before the CBN examiners leave the Bank.

Kindly therefore revert in line with the agreement."

Exhibit A3 is the letter dated 6-9-2013 from Honeywell Group to the respondent in response to exhibit A2. It states thusly – "**We recall for good order's sake that the decision reached at the meeting of July 22, 2013 between our chairman and your good selves, was for a bullet payment of N3.5billion in full and final settlement of our indebtedness to Ecobank Limited. In respect of which, we offered and immediately paid the sum of N500million and proposed to pay the balance of N3billion in three equal instalments. We had an agreement at the aforementioned meeting on this matter, hence our surprise at your letter.**

In light of the above, the only sticky point is the settlement time frame. We propose in this respect, that we meet to conclude the takeoff date for the instalmental payments."

In the letter dated 8-10- 2013 from Honeywell Group to the respondent, it was acknowledged that the only outstanding issue from the previous meetings was the agreement on the instalmental repayment of the balance of 3 billion naira. The letter further states "In **order to lay this matter to rest and considering the valuable relationship between our two organizations which we hold in high regard, we again request a meeting between you and our chairman, Mr. Oba**

Otudeko at your earliest convenience. At the proposed meeting we hope to agree with you the instalments and duration for payment of the balance of N3billion.

We thank you in anticipation of your prompt response to our request and trust that we will bring closure to this rather protracted matter and we can in time commence more mutually beneficial business relationships between our two organisations."

In spite of the respondent's refusal to be paid the 3 billion naira in three equal half yearly installments, the appellants still went ahead to pay the said sum in installments. By December 2013, installments totaling ₦1,350,000.00 had been paid to the respondent. After completing the payment of the 3 billion naira by instalments, the appellant wrote exhibit A4 dated 10-1-2014, restating their mutual understanding in their meeting of 12-12-2013, stating that the 3.5 billion naira was fully paid and requesting inter alia that the respondent kindly issue them a letter of full and final discharge from any indebtedness to the bank and also release all security held against the loans to each appellant. The respondent wrote exhibit A5 dated 7-2-2014 in which it stated thusly- "Regarding the issuance of a letter of non-indebtedness, as your request for waiver/concessionary payment is still going

through our internal process, we will not be able to issue the letter."

Both sides exchanged further correspondences resulting in the respondent's letter dated 14-11-2014(exhibit A8) to the Honeywell Group. It reads thusly – "We **write in response to your recent letters dated September 01 2014, October 16, 2014 and various discussions in respect of above subject matter.**

Kindly recall our previous letter, specifically January 17th 2014, with which we had made a commitment that the status of your accounts would be updated on the CBN CRMS portal pursuant to the partial repayments receives by the bank on 25/9/2013, 18/12/2013 & 13/01/2014. Kindly be advised that the Bank manually update the CRMS platform with the partial payments received. However, in view of the fact that the sum of N3,116,731,061.07 as at 17th January 2014 remained outstanding on the three accounts, full repayment could not be reflected on the platform.

As you will recall the bank's in-principle understanding for you to pay the concessionary sum of N3.5Billion in full and final settlement of the total outstanding sum of N5.5Billion

as at Jully 22nd, 2013 lapsed in August 2013. Accordingly, the concession was no longer valid on 30th January, 2014 when the Bank received payment (please refer to our letter dated July 22nd 2013 to the company in this respect). Nonetheless, based on your continued proposal to pay the sum of N3.5Billion in full and final settlement of the total debt of N5.5Billion, we sought, to obtain requisite approval of our Board of Directors to the proposal. We however regret to inform that the approval of our Board could not be obtained. Furthermore, during a recent CBN/NDIC review of the Bank, the account were flagged as related part loans, on the basis that your chairman, Dr. Oba Otudeko, CFRPwas a former director of Ecobank Transnational Incorporated, our parent company.

Based on the foregoing, we formerly demand for the payment of the N3,557,431:04 being the outstanding aggregate balance on the three accounts. Kindly note that interest continue to accrue until full repayment."

It is clear from all the foregoing correspondences that the appellants opted out of the mutual understanding of payment of the 3 billion naira in lump sum as a condition for the respondent's waiver of some of their debts and rather triggered a new

negotiation by a proposal to pay it three equal half yearly instalments. It is glaring that the parties were unable to reach a consensus ad idem on this proposal. The appellants' assumption in exhibit A4 that in their meeting of 12-12-2013 some understanding was reached on the payment of the unpaid balance of the 3 billion naira by further instalments was deflated by the respondent's insistence in exhibits A5 and A8 that the appellants' debts remain undischarged even after their payment of 3.5 billion naira and that the concession to waive some of the debts lapsed in August 2013 when they failed to pay the 3 billion naira in lump sum. Therefore, the protracted negotiations did not yield any consensus.

The negotiations did not create any legal relations between the appellants and the respondent different from the one existing under their respective loan contracts with the respondent. The offer or proposal that the appellants pay the 3 billion naira in installments and still enjoy the waiver of some of their debts, was obviously, not accepted by the respondent. Therefore, no enforceable contract resulted from the negotiations as a contract cannot exist without offer and acceptance of the terms of the offer. See **Ngillari V NICON (1998) 6 SC 1, Lawal V Union Bank Nig Plc & Ors(1995) 2 NWLR(Pt.378) 407**. In any case, being a negotiation of the respondent's waiver of some of the debts owed

No consensus ad-idem
No enforceable contract resulted from the negotiations

by the appellants under their loan contracts with the respondent and the conditions for the waiver, the appellants were not in a position to furnish consideration for the waiver because they have the contractual obligation to pay their respective debts and the respondent has no contractual obligation to waive their obligation to pay their debts under their respective loan contracts. The contention that having paid 3.5 billion naira following the negotiations of 22-7-2013, the respondent must waive their accrued debts above the paid 3.5 billion naira has no contractual foundation. As this court held in Chukwuma V Ifeloye (2008) 12 SC (Pt.ii)291 " **Negotiation is negotiation and in any form, it is governed by the principles in the law of contract. In other words, to be a valid contract, there must be an offer and acceptance and in addition consideration. So, negotiation, cannot and does not on its own in my respectful view, constitute a contract."** See also UBA Ltd V Tejumola & Sons Ltd (1988) NWLR (Pt.79) 662

The respondent being the owner of the money due as debts from the appellants can decide to waive its right to recover all the debts due to it from each appellant. But it cannot be compelled to waive its said contractual right. If it refuses to waive the right or go ahead with the negotiation to secure its waiver of some of the debts, the

debtor must pay all the debts that have accrued under the loan contract. A waiver must be clear, unequivocal and voluntary. Where negotiations have resulted in an agreement by a person to receive a sum of money lesser than what is due to him under a written contract, the agreement must be in writing. See Auto **Import Export V Adebayo & Ors (2005) 19 NWLR(Pt.959)44.**

In the light of the foregoing issue no. 3 is resolved in favour of the respondent.

On the whole this appeal succeeds in part in respect of issues nos. 1 & 2 and fails in part in respect of issue no. 3.

Accordingly, I hold that the appellants had the locus standi to sue and that the trial court had the jurisdiction to determine the suit. I affirm the judgment of the Court of Appeal in Appeal No. CA//LAG/CV/975/2019 setting aside the decision of the trial court in Suit No. FHC/L/CS/1219/2015 granting the reliefs claimed for by the appellants. I hold that the appellants' claim at the trial court failed and is hereby dismissed.

The appellants shall pay costs of 3 million naira to the respondent.

EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

Certified True Copy
Usman. B. Kaura
REGISTRAR
SUPREME COURT OF NIGERIA
16/2/23

APPEARANCES:

Chief Wole Olanipekun SAN with Faith Adanghofua, Esq, Akintola Makinde, Esq, Qua, Bisiriyu Esq and Emeke Ananyi Esq, for the **Appellants**

A.B. Ogunba SAN with O.A Divine Esq, O.T. Ogunba Esq, and O.K Ogunba Esq for the **Respondent.**

Official

Certified True Copy
Usman. B. Baiwa
REGISTRAR
SUPREME COURT OF NIGERIA
16/2/23