

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON FRIDAY, THE 19<sup>TH</sup> DAY OF NOVEMBER, 2021**  
**BEFORE HIS LORDSHIP, HON. JUSTICE I. E. EKWO**  
**JUDGE**  
**SUIT NO: FHC/ABJ/CS/1449/2020**

**BETWEEN:**

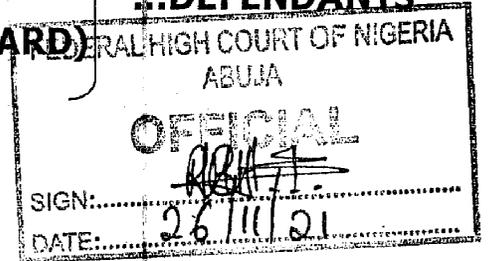
1. PPP ADVISORIES
2. CIVIL SOCIETY LEGISLATIVE  
ADVOCACY CENTER (CISLAC)
3. ISSA SHUAIBU & CO.  
(PPP ADVISORIES CONSORTIUM)

.....CLAIMANTS

**AND**

1. ATTORNEY GENERAL OF THE FEDERATION/  
MINISTER OF JUSTICE
2. DAYO AKPATA (SAN)  
(CHAIRMAN MINISTERIAL TENDERS BOARD)
3. BUREAU OF PUBLIC PROCUREMENT

...DEFENDANTS



**JUDGEMENT**

In the Writ of Summons taken out by the Claimants against the Defendants, the following reliefs are thereof endorsed to wit:

1. A DECLARATION that the disqualification of the Claimants by the Defendants as communicated via a letter dated 28<sup>th</sup> July 2020 wherein the Claimants Technical/Financial Bids submitted were not adjudged responsive due to the fact that the lead partner is not a registered Civil Society Organization (CSO) is wrongful, illegal and void. The Claimants having satisfied the requirement of the

*JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G.F., MINISTER OF JUSTICE & 2 ORS SUIT NO: FHC/ABJ/CS/1449/2020*

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Request for Proposal (RFP) in respect of the Monitoring of the Implementation of the Tripartite Agreement for the Sharing, Transfer, Disposition, Repatriation, and Management of Forfeited Assets and the entire bidding process.

2. A DECLARATION that the procuring entity can no longer disqualify the Technical Bid of the Claimants after the pre-qualification of the Technical and issuance of letter of invitation for financial bid opening.
3. A DECLARATION that after the opening of the financial proposal of the prequalified bidders, the procurement entity can only proceed in accordance with sequence outlined in Section 51 of the Public Procurement Act, especially (4) (5) (6) (7) and (8) in assessing financial bid and not to raise a prequalification issue that is not contained in the Request for Proposal (RfP).
4. A DECLARATION that the disqualification of the Claimants based on a petition by one of the bidders without confronting the Claimants with the petition is against the principle of fair hearing.
5. A DECLARATION that the basis for the disqualification of the Claimants is not founded on any specific prequalification criteria as set out in the Request for Proposal (RfP) which is the document that specifies the prequalification and evaluation criteria.
6. A DELARATION that the certificate of No Objection

wrongfully issued to one of the bidders (CLEEN FOUNDATION) by the 3<sup>rd</sup> Defendant is null and void and of no effect.

7. AN ORDER setting aside the decision of the Procurement Panel adjudging the Claimants Technical and Financial proposal as non-responsive.
8. AN ORDER directing the Defendants to issue a letter declaring the Claimants as the winning bidder, and invite the Claimants for negotiation, haven achieved the highest combined technical and financial score and therefore emerged the winner of the bid.
9. The sum of N50,000,000.00 (Fifty Million Naira Only) as cost of suit.
10. 10% on the Judgment sum to be awarded by the court per annum till the liquidation of same.

The averments of the Claimants are that the 1<sup>st</sup> Claimant is a registered business name in Nigeria with the Corporate Affairs Commission (hereinafter referred to as CAC) who is into consultancy services for infrastructural procurement, financing and development activities, the 2<sup>nd</sup> Claimant is a registered Civil Society Organization (hereinafter referred to as CSO) in Nigeria with the CAC, and, the 3<sup>rd</sup> Claimant is a registered business name with the CAC. The Tripartite Agreement signed between the Government of Federal Republic of Nigeria, the Bailiwick of Jersey and the Government of the United States of America regarding the Sharing, Transfer, Repatriation, Disposition and Management of certain forfeited assets,

requested for the appointment of consultants by the Nigerian Government to monitor the implementation of the agreement and further prescribes that procurement process shall be in accordance with Nigerian laws, public procurement procedures and guidelines. The Defendants made publication in Daily Trust Newspaper of Wednesday, 4<sup>th</sup> March 2020, requesting for the Monitoring of the Implementation of the Tripartite Agreement for the Sharing, Transfer, Disposition, Repatriation, and Management of Certain Forfeited Assets. The 1<sup>st</sup> - 3<sup>rd</sup> Claimants entered into a Joint Venture Agreement and formed PPP Advisories Consortium (a consortium of three (3) entities) for the purpose of participating in the bid, and, prepared and submitted a technical and financial proposal to the procuring entity. The technical bid opening was conducted on 28<sup>th</sup> May, 2020 where a total of seventeen (17) firms submitted proposals and the Procurement Panel informed members that they will commence evaluation of the bids and only firms that meet the eligibility requirements and minimum technical score will be invited for the opening of the financial proposal. The opening of the financial proposal was held on 24<sup>th</sup> June 2020, and the technical scores of the four (4) firms that were adjudged to be responsive and pre-qualified were publicly announced and displayed on the screen, as well as the quoted prices proposed by each of the firms, and, the financial proposal of each of the four (4) pre-qualified entities was counter signed by the representatives of the three (3) other bidders. After attending the technical bid opening on 28<sup>th</sup> May 2020, and financial bid opening on 24<sup>th</sup> June

2020, the representative of the Claimants prepared a report of the proceedings and submitted same to the Senior Partner/CEO of PPP Advisories Consortium. At the opening of the financial proposal, the names, and technical scores of the four (4) firms that met the minimum score were announced with the Claimants leading with 88.35%. Upon opening the financial proposals of the four (4) firms which was read out and displayed on a screen the bid prices of each of the firm and the Claimants had the lowest financial proposal and led with a bigger margin. The Claimants later heard that there was a petition written against them by one of the bidders, alleging that their Lead Partner is not a registered CSO, but the petition was not brought to the attention of the Claimants by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants nor by the Procurement Panel. The Claimants wrote a petition dated 27<sup>th</sup> July 2020 to the 1<sup>st</sup> Defendant complaining about the non-invitation of their Consortium for negotiation several weeks after the scores of all parties were known and also inquired to know the veracity or otherwise of the petition allegedly written against them which they were not given the opportunity to defend themselves, but the 1<sup>st</sup> Defendant did not respond. The Claimants then received a letter dated 28<sup>th</sup> July, 2020, signed by the 2<sup>nd</sup> Defendant informing them that the Claimants was not selected because their Technical and Financial proposals were not adjudged responsive due to the fact that due diligence conducted on the Lead Partner reveals that it is not a registered CSO in accordance with the requirement of the advertisement, the 2020 Tripartite Agreement and the Request for

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ABUJA  
26/11/21

Proposal (RfP). The reason in the 2<sup>nd</sup> Defendant letter of 28<sup>th</sup> July, 2020 adjudging the Claimants Technical and Financial proposal as not responsive is not founded on any specific pre-qualification criteria set out in the Request for Proposal which is the document that specifies the pre-qualification requirements and evaluation criteria. The decision of the procurement panel to disqualify the Claimants was informed by the petition written against the Claimants which was never brought to the attention of the Claimants. The Claimants wrote the 2<sup>nd</sup> Defendant on 4<sup>th</sup> August, 2020, requesting for administrative review of the decision of the procurement panel. The 2<sup>nd</sup> Defendant responded in a letter dated 14<sup>th</sup> September, 2020 to the Claimants letter of 4<sup>th</sup> August 2020, addressed to the Solicitor General of the Federation and Permanent Secretary, Ministry of Justice (hereinafter referred to as SGF) stating that the Claimants letter was receiving attention. This was not done, instead, the 2<sup>nd</sup> Defendant went ahead to wrongfully declare one of the bidders (Cleen Foundation) winner of the bid and wrongfully obtained a letter of 'No Objection' for them from the 3<sup>rd</sup> Defendant. The Claimants wrote the 3<sup>rd</sup> Defendant a letter dated 28<sup>th</sup> August 2020, requesting for administrative review of the wrongful decision of the Ministry of Justice Tenders Board. The 3<sup>rd</sup> Defendant in a letter dated 15<sup>th</sup> September 2020 responded to the Claimants letter of 28<sup>th</sup> August 2020, stating that the Claimants letter was receiving attention, but one of the four (4) firms earlier invited for the opening of the financial proposal (Cleen Foundation) was wrongfully declared winner of the bid and issued

a certificate of No Objection by the 3<sup>rd</sup> Defendant.

Claimants called three witnesses.

PW1 is one Mohammed Kumalia who adopted his Witness Statement on Oath of 3<sup>rd</sup> November, 2020 and tendered documents pleaded in paragraphs 5, 6, 7, 8, 11, 14, 15, 27, 28, 32, 33, 38 and 39 thereof in bundle as Exhs. PW1-A1-A529.

Upon cross examination, PW1 said he was representing PPP Advisories, and did not know if PPP Advisory Consortium was not a Civil Society Organisation but just a description of 3 parties coming together as one and it is not a legal entity. PPP Advisories Consortium did not bid. The three (3) Claimants, PPP Advisories, CISLAC and Issah Shuaiby & Co., they participated jointly. PPP Advisories Consortium is not a legal entity. He was conversant with the partnership agreement between Federal Government of Nigeria, USA and Bailiwick of Jersey and that agreement is binding and sacrosanct. The RfP is the guiding document that every consultant must follow. PPP Advisories Consortium is not a legal entity and has not bided and is not party to this joint venture. There are three (3) contracting parties here, Federal Government of Nigeria, USA and Bailiwick of Jersey and the three (3) must agree before a Civil Society Organisation must be contracted. The requirement of the RfP is that for any entity to give consent it must sign a Joint Venture Agreement and the chairman of the 2<sup>nd</sup> Claimant had signed an agreement subjecting their Civil Society Organisation as a member of the three (3) parties. The 1<sup>st</sup> Claimant is the lead partner of the consortium, but it is not a registered Civil Society Organisation. The reason for the wrongful disqualification of the Claimants is the fact that the Claimants is not a Civil Society Organisation. d

PW2 is one Daniel Joseph, a manager of PPP Advisories. PW2 adopted his Witness Statement on Oath of 3<sup>rd</sup> November, 2020 and identified two reports already tendered as pages 526 - 527 and 528 - 529 respectively of Exhs. PW1-A1 - A529.

PW2 during cross examination said that he was not in the employment of a Civil Society Organisation. The report he generated was also done in the cause of his employment. He is an Estate Surveyor and his company sent him to go and represent them and take note of what is happening at the Procurement Panel. He endorsed the report on behalf of PPP Advisories Consortium and not on behalf of the PPP Advisories as his employer. Upon being confronted with pages 62 and 63 of Exhs. PW1-A1-A529, PW2 said that PPP Advisories Consortium bided. He said he was not the owner of the company but was employed as a manager and was not in the capacity to answer questions on the legal capacity, the names on the agreement and those who signed the agreement.

PW3 is one Engr Saidu Njida who adopted his Witness Statement on Oath of 24<sup>th</sup> March, 2020 and tendered documents pleaded on paragraphs 3, 4, 5, 6, 7 and 8 thereof, that is, a copy of *subpoena ad testificandum* dated 4<sup>th</sup> March, 2021 with other documents attached thereto numbering pages 1 - 14- Exhs. PW3-A1 to PW3-A14.

During cross examination PW3 stated that his Foundation participated in the bidding exercise and was not pre-qualified. He wrote a letter of appeal to the Bureau of Public Procurement and the Ministry.

This is the case of the Claimants.

The case of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is that the name of the 2<sup>nd</sup> Defendant is not properly spelt by the Claimants. The engagement of a

consultant or a CSO was not limited to Nigerian procurement laws and regulations. All the bidders understood that the selection process included consultations with the Parties to the Agreement/Competent Authorities. By Article 8(B) of the Tripartite Agreement, the members of the Project Monitoring Team are to include the representatives of the Federal Ministry of Justice, Federal Ministry of Finance, Accountant-General of the Federation and a CSO as described in Article 9 of the Agreement and a Consortium as constituted by the Claimants was not contemplated by the Tripartite Agreement and other solicitation documents. A CSO was to be appointed in accordance with the Tripartite Agreement itself and upon the prior approval of the Competent/Implementing Authorities. PPP Advisories Consortium is not a CSO as contemplated by Article 9 of the Tripartite Agreement, adverts and Request for Proposal. The PPP Advisories Consortium is not a qualified and registered entity. The purported Joint Venture Agreement between the Claimants did not establish or make reference to any consortium to be known as PPP Advisories consortium. The Board of Trustees of the 2<sup>nd</sup> Claimant did not authorize its participation in the bidding exercise and the filing of the instant suit. It is standard practice or procedure under Nigerian procurement practices that a potential consultant, contractor, service provider or vendor, etc. which is an artificial entity must be registered with the CAC, be a tax payer, be registered with the 3<sup>rd</sup> Defendant, National Pension Commission, Industrial Training Fund (ITF), National Social Insurance Training Fund (NSITF), etc. However, PPP Advisories Consortium did not satisfy the foregoing requirements. There was no provision for joint submission of bids without the client's prior approval sought and obtained. d

Any joint submission of bids must still be done by a registered CSO and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants at no time sent the Request for Proposal (RfP) to the Claimants in this matter. The RfP was only sent to the PPP Advisories Consortium who is not a party to the instant suit. The Claimants herein are totally different and independent from PPP Advisories Consortium. Of the total of 19 bidders/CSOs that submitted proposals for the consultancy/monitoring service, the Claimants herein did not make any submission. Furthermore, the bid opening exercise was witnessed and monitored by observers from the Institute of Chartered Accountants of Nigeria, Nigerian Bar Association, and the Council for the Regulation of Engineering in Nigeria. No letter was sent to the Claimants in this matter as only the entities that participated in the technical bid were subsequently invited for the financial evaluation exercise. The contents of the reports referred to by the Claimants does not represent a true reflection of what transpired during the procurement exercise. The process of selecting a qualified and competent CSO was conducted by an Inter-Ministerial Procurement Panel consisting of the representatives of the Federal Ministry of Justice and the 3<sup>rd</sup> Defendant while both the USA and Bailiwick of Jersey also constituted concurrent Panels for the same purpose. By the Tripartite Agreement only registered CSOs were to be considered for appointment and the 1<sup>st</sup> and 3<sup>rd</sup> Claimants are not CSOs within the provisions of the law, Tripartite Agreement, advertisements published on 4<sup>th</sup> March 2020 in the Daily Trust, Punch, Federal Tenders Journal of 9<sup>th</sup> and 22<sup>nd</sup> March 2020, the Economist of 14<sup>th</sup> March 2020, repeat publications on 17<sup>th</sup> April 2020, as well as the Request for Proposal on the contract, all of which do not in any way suggest that a non-CSO will lead a Consortium in a project to be

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ABUJA  
26/11/21

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executed by a CSO. The Claimants could have made the 2<sup>nd</sup> Claimant the lead partner, but they failed to do so. The Claimants herein never participated in the bid but the unregistered PPP Advisories Consortium. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not receive any petition against the Claimants and did not act based on any petition in disqualifying PPP Advisories Consortium rather a routine due diligence conducted on all bidders which revealed that PPP Advisories Consortium was not a registered entity and is not a CSO as contemplated by Articles 8 and 9 of the Tripartite Agreement and as advertised in the media. PPP Advisories Consortium was disqualified not only on account of the Lead Partner (the 1<sup>st</sup> Claimant herein) not being a CSO but also because the Consortium as constituted is not registered and does not qualify to be a CSO in every respect contemplated by the Tripartite Agreement and other relevant documents relating to the procurement exercise. The Defendants followed due process in the selection or choice of the CSO that eventually emerged as the winner of the bid process. After the bid opening exercise, the Procurement Panel (Evaluation Committee) commenced the evaluation process/preliminary examination prior to the detailed Technical Evaluation to check the bidders' compliance with the requirements as stated in the Tripartite Agreement, Public Procurement Act, newspaper advertisements, Request for Proposal, etc. At the end of the preliminary examination, four out of the sixteen bidders qualified for detailed Technical Evaluation. These are Anti-corruption & Research based Data Initiative, CLEEN Foundation, Foundation for Public-Private Partnerships in Nigeria and IBLF Global. PPP Advisories Consortium was initially not pre-qualified to participate in the Technical Evaluation for not being a registered CSO however it was

eventually listed based on the request of the other parties to the Agreement. Upon the due diligence conducted by the Defendants and the Review of the Technical and Financial Evaluation Report conducted by Bailiwick of Jersey and USA as conveyed by a letter dated 15 December 2020, the said PPP Advisories Consortium was disqualified for submitting an application that was technically deficient and financially inadequate, lack of personnel and relevant experience and for not being registered as a CSO. The other parties to the Tripartite Agreement, Bailiwick of Jersey and the USA also sent in their Reports/Comments on the procurement process which clearly shows that PPP Advisories Consortium is not only unregistered but lacking in key parameters/competence required for the project. Neither the Claimants herein nor the PPP Advisories Consortium made any complaints to them on the procurement exercise. It is averred that CLEEN Foundation was adjudged the most qualified and competent by the Procurement Panel and Implementing Authorities, namely; Bailiwick of Jersey and the United States of America who had a right to exercise veto power or consenting right in the selection process as set out in Article 9, particularly Schedule 7, Para. 19 (i) of the 2020 Tripartite Agreement. The Procurement Panel concluded the bidding process in July 2020 and while the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought for the approvals of the 3<sup>rd</sup> Defendant and the Federal Executive Council in August 2020, in compliance with FGN/SGF CIRCULAR NO: SGF.50.5.52/III/652 of 11/10/2017 and other extant FGN Circulars on procurement, before the commencement of the instant suit in November 2020. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants as well as the Federal Ministry of Justice, being the procuring entity on behalf of Bailiwick of Jersey and USA, are not bound to pre-qualify any bidder or declare such

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26/11/21

bidder as the winner, they are also not bound to award the contract to any bidder and reserves the right to annul the entire procurement process at any time. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their pleading raise a Preliminary Objection on grounds as follows:

1. That the Plaintiffs' suit has become statute barred in view of Section 2(a) of the Public Officers Protection Act and Section 54 (7) of the Public Procurement Act 2007.
2. The Plaintiffs were not party to the bid/tender exercise and cannot commence any action challenging a transaction they were not privy to (paragraphs 16, 17, 20 and 21 of the Statement of Claim).
3. The Plaintiffs cannot sue in respect of the disqualification of PPP Advisories Consortium.
4. The Plaintiffs lack the *locus standi* to commence this suit against the Defendants.
5. The Plaintiffs are not juristic persons and lack the legal capacity to sue and be sued.
6. PPP Advisories Consortium that participated in the bidding exercise is not a juristic person and is equally an unregistered entity.
7. That PPP Advisories Consortium that participated in the bidding process cannot carry on business in Nigeria having not registered as required by the Companies and Allied Matters Act.
8. The participation of PPP Advisories Consortium in the bid was *ab initio* illegal and fraudulent as it contravened Section 122 of the Request for Proposal.

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ABUJA

26/11/21

9. The Plaintiffs' suit is moot, hypothetical and an academic exercise.
10. The Plaintiffs' suit as presently constituted is incompetent.
11. This Honourable Court lacks the jurisdiction to hear and determine the Plaintiff's suit as presently constituted.

It is their prayer thereof that this Court makes an Order striking out and/or dismissing the Claimants suit for being incompetent and for want of jurisdiction or dismiss same with substantial cost for being otiose, vexatious, arm-twisting, an abuse of Court process and for lacking in merit.

1<sup>st</sup> and 2<sup>nd</sup> Defendants called one witness: Mrs. Juliet Ibekaku Nwagwu (DW1) who adopted her Witness Statement on Oath of 17<sup>th</sup> February, 2021. DW1 said she is a Special Assistant to the Attorney-General of the Federation and was the person nominated to chair the committee that led to the process of the project and participated in the negotiations between the countries. DW1 referred to documents in paragraphs 21, 22 and 25 pleaded in her Witness Statement on Oath numbering pages 1 - 15 and tendered them, that is, Exhs. DW1-A1 to DW1-A15.

During cross examination DW1 said she was not a member of the Procurement Panel, but she coordinated it. It is the request for proposal that determines how financial bids are to be submitted. For the purpose of this project, it is the RfP, the tripartite agreement and any other agreement submitted. It is the law of the Federal Government of Nigeria that governs the tripartite agreement, but the tripartite agreement will override it at any point in time where there is a conflict. The RfP was issued for the consulting firm. The name of the consulting firm on the RfP is PPP

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Advisories. The Claimants were not qualified but were listed based on plea by other parties.

The case of the 3<sup>rd</sup> Defendant is similar to that of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

The 3<sup>rd</sup> Defendant called one witness: Nasir Bello (DW2) who said he is a Procurement Specialist with the 3<sup>rd</sup> Defendant and works as a director. He adopted his Witness Statement on Oath of 19<sup>th</sup> January, 2021 and tendered documents pleaded in paragraphs 14, 26, 27 and 46 thereof, that is, Exhs. DW2-A1 - DW2-A27.

DW2 said during cross examination that he was conversant with all procurement laws and provisions particularly the Public Procurement Act. He said that opening bid was held in the conference hall of Ministry of Justice on 24<sup>th</sup> June, 2020. There was an attendance sheet that all the firms that were invited signed. The Public Procurement Act prescribed how to make request for proposal based on certain condition that if there is an agreement bill, it will supersede the law. The law supersedes the RfP. The criteria to be used in evaluation of bid is based on the RfP. The core competency was for CSOs. Part of the RfP stated that for some of the services to be rendered, the core competence is to engage CSOs and the statement referred to the bilateral agreement. Based on the due diligence conducted, PPP Advisory is the consultant while CISLAC is the CSO. Due diligence was conducted before PPP Advisory was disqualified for submitting a Technical bid that is insufficient. PPP Advisory technical score was 88 percent. It was at this stage that other parties brought reasons for them to be disqualified. On page 12.2 of the RfP, the comment on the technical evaluation report is that the lead consultant has the most

relevant core competency. The 1<sup>st</sup> Claimant filed this suit before the 3<sup>rd</sup> Defendant could respond to the request for administrative review. Attendance list for the opening of financial bid tendered as Exh. DW2-B during cross examination of DW2.

At this point I have to consider the Preliminary Objections in this case before going into the substantive merit.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their Preliminary Objection have repeated the grounds set out in their pleading and the prayer for striking out and/or dismissing the Claimants' suit for being incompetent and for want of jurisdiction.

It is averred in the affidavit in support that the Federal Government of Nigeria (hereafter referred to as FGN) in pursuing the repatriation of funds looted to Jersey through the United State of America by the then Head of State, General Sani Abacha, entered into a Tripartite Agreement with the Bailiwick of Jersey and the Government of the United State of America for the FGN to validly utilise the repatriated funds on the infrastructure/project agreed, was to engage a CSO to monitor the spending of the funds on the agreed projects. In order to properly implement that Tripartite Agreement and to be transparent in the implementation of the Tripartite Agreement, the 1<sup>st</sup> Defendant called for tender to be made for a bidding for the selection of the CSO that will be involved in the implementation of the Tripartite Agreement as contained in Article 9 of the agreement. The PPP Advisories Consortium also participated in the tender but was late. It was disqualified on the ground that the Lead Partner of the consortium was not a registered CSO as stipulated in the Tripartite Agreement. On 28<sup>th</sup> July, 2020, the SGF on

behalf of the Honourable Attorney General of the Federation (hereinafter referred to as HAGF) notified PPP Advisories Consortium of its disqualification on the ground that due diligence conducted disclosed that the lead partner in PPP Advisories Consortium is not a CSO in accordance with the requirement of the Tripartite Agreement. The Claimants in this matter did not participate in the bidding exercise that led to the selection of CLEEN Foundation as the CSO that will monitor the spending of the Funds repatriated to Nigeria. The Claimants have no legal capacity to form a consortium in Nigeria. It is averred that the PPP Advisories Consortium is not registered with the CAC as required by the Companies and Allied Matters Act (hereinafter referred to as CAMA) and the Registrar General of the CAC did not give his consent for the registration of PPP Advisories Consortium. Business names and a CSO cannot form a consortium in Nigeria. It is only companies incorporated in Nigeria to do business that have the capacity to form a consortium and once a consortium is registered, the consortium is a separate entity from companies that came together to form the consortium. The Claimants in this matter lack the *locus standi* to initiate and maintain this action against the Defendants and have no right or interest under the Tripartite Agreement. The Claimants' suit has not disclosed any cause of action against the Defendants. By paragraph 34 of the Statement of Claim, the Claimants became aware of the decision to disqualify them since 28<sup>th</sup> July 2020. By paragraph 45 of the Claimants' statement of claim, the 3<sup>rd</sup> Defendant informed the Claimants on 15<sup>th</sup> September, 2020 that their complaint was receiving attention. The Claimants thus had the right to appeal to the Federal High Court within 30 days from 15<sup>th</sup> September, 2020, and, this suit was filed on 3<sup>rd</sup> November,

2020.

The Claimants have joined issues with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on their Preliminary Objection by filing a counter-affidavit and averring therein that the 1<sup>st</sup> - 3<sup>rd</sup> Claimants/Respondents' entered into a Joint Venture Agreement and formed PPP Advisories Consortium (a Consortium of three companies) for the purpose of participating in the bidding for the selection of a CSO and submitted a proposal and they achieved the highest combined technical and financial score. In the eligibility requirements for the Monitoring of the Implementation of the Tripartite Agreement for the Sharing, Transfer, Disposition, Repatriation, and Management of Certain Forfeited Assets as contained in the Request for Proposal (RfP), it is not stated that where two or more consultants or entities enter into a Joint Venture Agreement to form a Consortium like that of the Claimants/Respondents', that the Lead Partner must be a CSO. After evaluation of the Technical Proposals was completed, the procurement panel issued the Claimants/Respondents' a letter dated 23<sup>rd</sup> June 2020, informing them of their pre-qualification for the financial stage and inviting them to attend the financial bid opening exercise. The Claimants/Respondents have the *locus standi* to initiate and maintain this action against the Defendants/Applicants because the Claimants/Respondents' submitted a proposal for the bidding for the monitoring of the Implementation of the Tripartite Agreement for sharing, Transfer, Disposition, Repatriation and Management of the funds repatriated to Nigeria in accordance with the Request for Proposal

(RfP) and participated in the Technical and Financial opening exercise conducted by the procuring panel. The 3<sup>rd</sup> Defendant/Applicant had 21 days from 16<sup>th</sup> September 2020 to make its decision, after which the 30 days' period for the Claimants/Respondents to appeal to the Federal High Court will start to count. The Claimants/Respondents' suit was filed on 3<sup>rd</sup> November, 2020, which is still within time. The Claimants/Respondents' filed this suit on 3<sup>rd</sup> November 2020 and the Defendants/Applicants' were duly served with same on 4<sup>th</sup> December 2020. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants' filed their Notice of Preliminary Objection on 20<sup>th</sup> January 2021, 36 days after they were served with the Claimants/Respondents' originating processes. Granting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants' application will amount to injustice and the Court is thereby urged to refuse and dismiss the application as it would be in the interest of justice to hear the matter of the Claimants/Respondents' on its merit.

The submissions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants on their Preliminary Objection are predicated on three issues formulated by them for determination to wit:

1. *Whether the Plaintiffs' suit is not statute barred in view of the facts available in this case?*
2. *Whether the Plaintiffs in this matter possess the Locus Standi to initiate and maintain this suit against the Defendants herein?*
3. *Whether the Plaintiffs in this matter and PPP Advisories*

*Consortium are juristic persons over whom this Honourable Court can exercise jurisdiction.*

It is submitted on issue one that the Claimants maintained that after their consortium was denied being appointed as the monitoring CSO, they on 27<sup>th</sup> July, 2020 wrote a petition to the 1<sup>st</sup> Defendant and by a letter dated 28<sup>th</sup> July, 2020, the 2<sup>nd</sup> Defendant gave the reason why the PPP Advisories Consortium was not considered. Thus, the Claimants herein became aware of their disqualification since 28<sup>th</sup> July, 2020 as clearly stated in paragraph 34 of their Statement of Claim. This action was commenced on 3<sup>rd</sup> November, 2020. It is obvious that a period of over three (3) months has elapsed from 28<sup>th</sup> July 2020 - 3<sup>rd</sup> November 2020 when the Claimants commenced this action contrary to the provisions of S. 2 of Public Officers Protection Act (Cap. P41) LFN 2004 (hereinafter referred to as POPA 2004) which provides that actions against a public officer must be commenced within three (3) months; reliance is placed on *Ibrahim v. Judicial Service Committee, Kaduna State* (1998) 14 NWLR (Pt. 584) 1 at 38, and, *NPA v. Ajobi* (2006) 13 NWLR (Pt. 998) 477. It is trite law that where a statute prescribed a period for the doing of an act or institution of proceedings, such acts or proceedings shall not be brought after the time prescribed by the statute has expired. Any action commenced after the expiration of the limitation period is statute barred; reliance is placed on *Ayonronmi v. NNPC* (2010) 8 NWLR (Pt. 1197) 616 at 638-639, *F.C.E. Pankshin v. Pusmut* (2008) 12 NWLR (Pt. 1101) 405 at 419, and, *Woherem v. Emeruwa* (2004) 13 NWLR (Pt. 890) 398 at 415. The Claimants' suit is also statute barred by virtue of S. 54 (6) and (7) of the Public Procurement Act, 2007 (hereinafter referred to as PPA 2007);

reliance is placed on *Nasir v. Civil Service Commission Kano State & Ors.* (2010) LPELR-1943 (SC), *INEC v. Ogbadibo Local Government & 13 Ors.* (2016) 3 NWLR (Pt. 1498) 167 at 205. It is posited that having not initiated this suit within thirty (30) days after expiration of the twenty-one (21) days which the law gave to the 3<sup>rd</sup> Defendant to make a decision, the Claimants' alleged cause of action has indeed abated; reliance is placed on *Mbang v. Offiong* (2012) LPELR-19723 (CA). It is their conclusion on this issue that where a matter has become statute barred, the Court no longer has the jurisdiction to hear and determine such suit and they urge this Court to hold that this matter is statute barred and to decline jurisdiction to hear this suit.

The submission on issue two is that it is the PPP Advisories Consortium that has the legal right or the *locus standi* to approach the Court and not the Claimants in this matter and, PPP Advisories Consortium is not a party in this case. A review of the entire reliefs in this case shows that they are for the Claimants, who did not participate in the bidding and not PPP Advisories Consortium, who participated in the bidding. A Court of law cannot grant reliefs for or against an entity or person who is not a party before it; reliance is placed on *Azubuikwe v. PDP & Ors.* (2014) LPELR-22258 (SC), *Taiwo v. Adegboro* (2011) vol. 200 LRCN 72 at 882 and 889, *Owodunni v. Reg. Trustee C.C.C* (2000) 6 SC (Pt. 111) 60, *Basinco Motors Ltd v. Woermann-Line* (2009) 39 NSCQR 284, and, *Umar v. W.G.G (Nig.) Ltd.* (2007) 7 NWLR (Pt. 1032) 117. The averments of the Claimants are that the three Claimants herein came together to form PPP Advisories Consortium but under the Nigeria company law regime, once companies comes together to form a consortium, the consortium becomes a separate

legal entity from the companies that formed the consortium and it is also the law that a contract cannot be enforced by or against a party who is not a party to the contract, this is, the doctrine of privity of contract; reliance is placed on *Plateau Investment and Property Development Co. Ltd. v. Ebitota* (2001) FWLR (Pt. 64) 374, *Rebold Ind. Ltd v. Magreola* (2015) 8 NWLR (Pt. 1461) 210 at 227, 228-229. A limited liability company has a different personality from its directors/subscribers and the company is the only proper party to complain or institute an action in Court to protect its rights; reliance is placed on *Abacha v. A.-G., Federation* (2014) 18 NWLR (Pt. 1430) 31 at 49 – 50, and, *K. S. O. Allied Prod. Ltd v. Kofa Trad. Co. Ltd.* (1996) 3 NWLR 244 at 262-263. PPP Advisories Consortium is not a registered entity that can carry on business in Nigeria or participate in the bidding process for the engagement of consultants. If a Plaintiff or an Applicant does not have *locus* or the required standing to institute an action, the Court cannot properly assume jurisdiction to entertain the matter. By Article 21 (3) of the Tripartite Agreement, it is intended solely for the purposes of mutual assistance, understanding and co-operation amongst the Parties. It does not give rise to any right on the part of any private person and is not intended to benefit third parties. Therefore, the Claimants can only ventilate any perceived grievances through the PPP Advisories Consortium.

The submission on issue three is that both the Claimants and PPP Advisories Consortium lack not only the *locus standi* but also the juristic or legal personality to sue the Defendants. It is trite law that only juristic person(s) recognized in law that can sue and be sued. Before a Plaintiff can commence and/or maintain an action against a party, the juristic

personality of that party must be firmly established; reliance is placed on *Lion of Africa Ins. Co. Ltd. v. Esan* (1999) 8 NWLR (Pt. 614) 197 at 201. The 1<sup>st</sup> - 3<sup>rd</sup> Claimants and PPP Advisories Consortium are not juristic persons capable of suing and being sued. A cursory look at the Writ of Summons, the Statement of Claim and the reliefs sought in this Suit will reveal that the Claimants are suing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for disqualifying PPP Advisories Consortium and the 3<sup>rd</sup> Defendant for not taking a decision in favour of PPP Advisories Consortium. The law is well settled that the categories of juristic personalities include natural Persons or human beings, companies incorporated under the CAMA, 1990, and, corporation established by law or statute; reliance is placed on *Carlen v. University of Jos* (1994) 1 SCNJ 72 at 87-88. PPP Advisories Consortium is supposed to be an artificial person and can only come to life by registration and issuance of Certificate of Incorporation by the CAC in accordance with the provisions of the CAMA 2020. The Consortium is not registered and is unknown to the law and can therefore not lawfully participate in a bidding process and can also not be a party to a Court action; reliance is placed on *Umar v. WGG (Nig) Ltd* (2007) 7 NWLR (Pt. 1032) 117 at 150, *Babatunde v. Olateju* (2017) All FWLR (Pt. 893) 1206 at 1230, and, *Socio-Political Research Development v. Ministry of FCT & Ors.* (2018) LPELR-45708(SC). The 2<sup>nd</sup> Claimant does not have the legal capacity of suing or being sued. An entity registered under Part F of the CAMA 2020 as an Incorporated Trustee can only sue or be sued in the name of the 'registered trustees' of the body; reliance is placed on *Fawehinmi vs N.B.A. (No.2)* (1989) 2 NWLR (Pt. 105) 558 at 640 - 641.

In the end this Court is urged to resolve the issues in the preliminary

JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G.F., MINISTER OF JUSTICE & 2 ORS SUIT NO: FHC/ABJ/CS/1449/2020

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FEDERAL HIGH COURT

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26/11/21

objection in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and grant the reliefs sought therein.

The Claimants in response have formulated four issues for determination to wit:

- i. *Whether the Claimants/Respondents' suit before this Honourable Court is statute barred?*
- ii. *Whether the Claimants/Respondents' have locus standi to initiate and maintain this suit against the Defendants?*
- iii. *Whether the Claimants/Respondents in this suit are juristic persons in law?*
- iv. *Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants' preliminary objection was not filed out of time?*

Their submission on issue one is that their cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants arose after its letter of 14<sup>th</sup> September, 2020 which was the last communication between them in respect of the subject matter of this suit and not on 28<sup>th</sup> July, 2020 as alleged by them. This suit is not and cannot be statute barred having been initiated on 3<sup>rd</sup> November, 2020. The provision of S. 2 of the POPA Act cannot apply since the suit was filed within three (3) months as prescribed by the Act; reliance is placed on *Abubakar v. Bebeji Oil and Allied Products Ltd. & Ors.* (2007) LPELR-55 (SC). By S. 54 (6) and (7) of the BPPA the 3<sup>rd</sup> Defendant/Applicant is expected by law to act on the Claimants/Respondents' petition and decide within 21 working days upon receipt thereof. Therefore, 21 days from 8<sup>th</sup>

September, 2020 which the 3<sup>rd</sup> Defendant/Applicant acknowledge receipt of the Claimants'/Respondents' petition is 7<sup>th</sup> October 2020, and the 30 days given by the provision of S. 54 (7) of the PPA did not elapse before the Claimants/Respondents' filed this suit and the Claimants/Respondents' suit is not statute barred.

The submissions on issues two and three are taken together. Reference is made to Order 9 (26) (1) and (2), (27) and (28) Of the Federal High Court (Civil Procedure) Rules 2019 (hereinafter referred to as FHCCPR 2019) and reliance is placed on *Nto Andrew O. Ansa & Ors. v. the Owner/Managing Director RVL Motors* (2008) LPELR-8570 (CA), *Carlen (Nig.) Ltd. v. University of Jos & Anor.* (1994) LPELR-832 (SC), and, *Xingjian Power Transmission & Transformation Engineering Company v. Motract Global Networks Ltd.* (2019) LPELR-47677(CA) to posit that there is exemption that only a firm or partnership and individual carrying on business can sue and be sued under the registered business name. The Claimants/Respondents have the *locus* to sue and be sued and the name 'consortium' was only used to describe a union and nothing more as the Claimants/Respondents did not submit the proposal in the name of PPP Advisories Consortium but in the name of PPP Advisories and same was signed on behalf of PPP Advisories. It has always been a mistake on the part of the Defendants to have always referred to the Claimants as PPP Advisories Consortium without checking the claimant's proposal submitted as prescribe by the RfP (Form 4A1). The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants'

argument that the Claimants/Respondents are not privy to the bid and cannot commence any action is totally misconceived because the 1<sup>st</sup> - 3<sup>rd</sup> Claimants came together via a joint venture as required by the RfP and submitted their proposal for the contract and reference is made to the Claimants' joint venture agreement as frontloaded in the Statement of Claim.

The submissions on issue four is that by Order 29 (4) and (5) of the FHCCPR 2019 an application under the provision shall be made within 30 days after the service on the Defendant of the originating process. Where the Defendants filed an acknowledgment of the service and does not make such application within the period specified, the application can only be taken at the conclusion of the trial. The Notice of Preliminary Objection was filed out of the 30 days' period provided for in Order 29 (4) of the FHCCPR 2019 and they did not file the acknowledgement of service or attach such as exhibit to the affidavit in support of the Notice of Preliminary Objection. This is a mandatory provision, and this Court is urged to so hold. In the end, the Claimants urged this Court to discountenance the Counter-Affidavit and arguments of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants as baseless and lacking merit.

The 3<sup>rd</sup> Defendant has also entered a Notice of Preliminary Objection pursuant to S. (1) of the PPA, 2007, Order 29 (1) of the of the FHCCPR 2019 and under the inherent jurisdiction of this Court challenging the jurisdiction of the Court to hear and determine this suit for being incompetent on the grounds that:

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FEDERAL HIGH COURT

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1. Section 14 (1) of the Public Procurement Act, 2007 provides that a mandatory pre-action notice be served on the 3<sup>rd</sup> Defendant before commencing any action thereof.
2. That the Plaintiffs in flagrant violation of the provision of the said section failed, refused and/or neglected to serve on the 3<sup>rd</sup> Defendant the mandatory pre-action notice.
3. That the present suit as presently conceived and constituted is incompetent and this Honourable Court lacks the jurisdiction to entertain same.

This Court is therefore urged to strike out this suit for failure of the Claimants to issue and serve a pre-action notice on the 3<sup>rd</sup> Defendant as envisaged by S.14 (1) of the PPA.

I will revert to the Preliminary Objection of the 3<sup>rd</sup> Defendant upon the determination of the Preliminary Objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The first ground of objection by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against this action is that it is statute barred and referred to S. 2(a) of the POPA 2004 wherein it is provided that:

2. Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Laws or of one public duty or authority or in respect of any alleged neglect or default in the execution of such act, Law, duty or authority.

- (a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three

26/11/21

months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within three months next after the ceasing thereof.

The submission of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is that the cause of action in this case arose on 28<sup>th</sup> July, 2020 when the Claimants became aware that they were disqualified but commenced this action on 3<sup>rd</sup> November, 2020 which is a period beyond three (3) months contrary to the provision of S. 2 of POPA 2004. On the other leg, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants also submit that this suit is statute barred by virtue of S. 54 (6) and (7) of the PPA 2007 in that the suit was not commenced within thirty (30) days after expiration of the twenty-one (21) days which the law gave to the 3<sup>rd</sup> Defendant to make a decision. It is provided in S. 54 (6) and (7) of the PPA 2007 as follows:

- 54 .....
- (6) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
  - (7) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with decision of the Bureau, the bidder may appeal to the Federal High Court within 30 days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

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26/11/21

The submission of the Claimants on the first leg of objection is that their cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants arose after their letter of 14<sup>th</sup> September, 2020 which was the last communication between them in respect of the subject matter of this suit and not on 28<sup>th</sup> July 2020 as alleged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. Therefore, this suit is not statute barred having been initiated on 3<sup>rd</sup> November, 2020, so, the provision of S. 2 of the POPA Act 2004 does not apply as this suit was commenced within three (3) months as prescribed by the Act. They submit with respect to S. 54 (6) and (7) of the PPA that the 3<sup>rd</sup> Defendant/Applicant is expected by law to act on the Claimants/Respondents' petition and make a decision within 21 working days upon receipt thereof. The 21 days from 8<sup>th</sup> September, 2020 which the 3<sup>rd</sup> Defendant/Applicant acknowledge receipt of the Claimants/Respondents' petition is 7<sup>th</sup> October 2020, and the 30 days given by the provision of S. 54 (7) of the PPA did not elapse before the Claimants/Respondents' filed this suit, therefore, the Claimants/Respondents' suit is not statute barred.

The jurisprudence in statute of limitation canvassed in this suit by the parties comes with manifold inhibitions; see *NEPA v. Olagunju* (2005) 3 NWLR (Pt. 913) 602 at 624 where it was stated thus:

"It is settled that a defence found on statute of limitation is a defence that the Plaintiff has no cause of action. It is a defence of law which can be raised *in limine* and without any evidence in support. It is sufficient if *prima facie*

*facie*, the date of taking the cause of action outside the prescribed period is disclosed in the writ of summons and statement of claim. See *P. N. Udoh Trading Co. Ltd. v. Abere* (2007) 11 NWLR (Pt. 723) 114, at 922; *Egbe v. Adefarasin* (1985) 1 NWLR (Pt. 3) 549. It is clear from the principles enunciated in the cases referred to above that the invocation of the limitation period is spontaneous on the establishment from the statement of claim and the writ of summons that the stipulated period has elapsed."

This action is principally aimed at the act of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for disqualifying the Claimants in the bidding process. Therefore, it is an action that is squarely targeted at an act that falls directly within the framework of S. 2 (a) of the POPA 2004. Going by the provisions of the law, such action ought to have been brought within the period provided for in s. 2 (a) of the POPA 2004. The calculation of time bar has been stated in numerous judicial pronouncements; see for example *Ajayi v. Adebisi* (2012) 11 NWLR (Pt. 1310) 137 at 169 -170, where it was stated per Adekeye JSC (as he then was) that:

"The yardsticks to determine whether an action is statute-barred are:

- (a) The date when the cause of action accrued.
- (b) The date of commencement of the suit as indicated in the writ of summons.
- (c) Period of time prescribed to bringing an action to be ascertained from the statute in question.

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FEDERAL HIGH COURT  
26/11/21

Time begins to run for the purpose of the limitation law from the date the cause of action accrues. *British Airways Plc v. Akinyosoye* (1995) 1 NWLR (Pt. 374) pg.722. *Shell Petroleum Development Co. (Nig.) Ltd. v. Farah* (1995) 4 NWLR (Pt.382) pg.148. *Jallco Ltd. v. Owoniboye Tech. Serv. Ltd.* (1995) 4 NWLR (Pt. 391) pg.534. *Asaboro v. Pan Ocean Oil Corp. (Nig.) Ltd.* (2006) 4 NWLR (Pt. 971) pg.595. *Ogunko v. Shelle* (2004) 6 NWLR (Pt. 868) pg.17. *Osun State Government v. Dalami Nigeria Ltd.* (2007) All FWLR (Pt.365) 438, (2007) 9 NLWR (Pt. 1038) 66. *Akinkunmi v. Sadiq* (2001) 2 NWLR (Pt. 696) pg.101. *F.B.N. v. Associated Motors Co. (Nig.) Ltd.* (1998) 10 NWLR (Pt. 570) pg.441. *Obiefuna v. Okoye* (1964) 1 All NLR 96."

Upon keen perusal of the Writ and the averments in the Statement of Claim of the Claimants, I found in paragraph 34 therein that the Claimants received a letter dated 28<sup>th</sup> July, 2020 informing them that they have not been selected. By either prudence or jurisprudence, it cannot be denied that this is when their cause of action arose. Now, by the endorsement on the Writ, this action was commenced on 3<sup>rd</sup> November, 2020. A simple arithmetic of calculation from 28<sup>th</sup> July, 2020 - 3<sup>rd</sup> November, 2020 would reveal that more than three months had elapsed between the date of cause of action and the date of commencement of this suit. Now, having noted the date when the cause of action accrued, and the date of commencement of the suit as indicated in the Statement of Claim, the period of time prescribed for bringing an action must be ascertained from the statute in question which is S. 2 (a) of the POPA, 2004. The critical issue on time bar or statute bar is

that irrespective of anything that happened in-between the time the cause of action arose and the time of filing the action, time does not stop to run; see *UTA French Airlines v. Williams* (2000) 14 NWLR (Pt. 687) 271 at 280, *John Eboigbe v. N.N.P.C.* (1994) 5 NWLR (Pt. 347) 649 at 660, and, *S.P.D.C.N. Ltd. v. Ejebu* (2011) 17 NWLR (Pt. 1276) 324 at 342. Therefore, any other action between the Claimants and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot discount the time within which the Claimants ought to have commenced this action. I find that this action is statute barred by virtue of S. 2 (a) of the POPA, 2004 and I so hold.

On the argument as to whether this action is statute barred pursuant to the provisions of S. 54 (6) and (7) of the PPA. A proper reading of the provision would reveal that it is aimed at judicial review of the act of the 3<sup>rd</sup> Defendant. This provision would have been relevant if the Claimants came to this Court by way of judicial review of the decision of the 3<sup>rd</sup> Defendant. The mode of commencement of this case is by Writ of Summons and not Judicial Review envisaged by the entire S. 54 of the PPA 2007. Therefore, I find that the provision of S. 54 (6) and (7) of the PPA does not apply to this case and I so hold. I make an order discountenancing this leg of submission.

The second ground of objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is that it is the PPP Advisories Consortium that has the legal right or the *locus standi* to approach the Court and not the Claimants in this matter and, PPP Advisories Consortium is not a party in this case. Therefore, the Claimants can only ventilate any perceived grievances through the PPP Advisories Consortium. The reaction of the Claimants is that by virtue of Order 9

(26) (1) and (2), (27) and (28) Of the FHCCPR 2019, there is an exemption to the rule that only a firm or partnership and individual carrying on business can sue and be sued under the registered business name. The Claimants/Respondents have the *locus* to sue and be sued and the name consortium was only used to describe a union and nothing more as the Claimants/Respondents did not submit the proposal in the name of PPP Advisories Consortium but in the name of PPP Advisories and same was signed on behalf of PPP Advisories. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants argument that the Claimants/Respondents are not privy to the bid and cannot commence any action is totally misconceived because the 1<sup>st</sup> - 3<sup>rd</sup> Claimants came together by a joint venture as required by the RfP and submitted their proposal for the contract and reference is made to the Claimants' joint venture agreement as frontloaded in the Statement of Claim. The argument of the Claimants in my view is that an unregistered being can sue *eo nomine*. Before proceeding, I have noted that the Claimants/Respondents pleaded the corporate status of the 1<sup>st</sup> Claimant in paragraph 1 of the Statement of Claim. They have also pleaded the corporate status of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants/Respondents in paragraphs 2 and 3 respectively. The law is that where the legal personality of a corporate person is challenged, the answer is to provide the certificate of incorporation of such legal person. This means that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants/Respondents being corporate persons must establish their corporate personalities by exhibiting their respective

certificates of incorporation first; see *Socio-Political Research Dev. v. Min., F.C.T.* (supra) at 346 it was stated that:

"The juristic personality of a Plaintiff is *sine qua non* to the Plaintiff's capacity to institute and maintain a legal action in Court See: *Madukolu v. Nkemdilim* (1962) Vol. ANLR (Pt. 2) 581; (1962) 2 SCNLR 341. Where the legal capacity of the Plaintiff is being questioned, it goes to the jurisdiction of the Court and the Court must ascertain that the Plaintiff has the capacity to sue before it can proceed to hear the matter. The issue can be raised for the first time in the appellate Court. See: *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622; *Onyema v. Oputa* (1987) 3 NWLR (Pt. 60) 259. Once the juristic personality of an artificial person is raised, the party in question can discharge the burden only by producing the Certificate of Incorporation. See: *Ataguba & Company Ltd. v. Gura Nigeria Limited* (2005) 8 NWLR (Pt. 927) 429."

As stated above, such can be done by tendering the certificate of incorporation; see also *Apostolic Church, Ilesha v A.G. (Midwest)* (1972) 4 S.C. 150 or certified true copy of certificate of incorporation; see *G. & T. Invest. Ltd. v. Witt & Bush Ltd.* (2011) 8 NWLR (Pt. 1250) 500, and, *Ekweozor v. Reg. Trustees, S.A.C.N.* (2014) 16 NWLR (Pt. 1434) 433. The certificates of registration of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Claimants were not frontloaded in the Statement of Claim neither were they tendered in the Counter-Affidavit of the Claimants/Respondents in response to the

Preliminary Objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Proof of incorporation or registration of an entity cannot be made by bare averment in the origination process. As it is, there is nothing before this Court to establish that any of the Claimants/Respondents is a registered or incorporated person pursuant to the provisions of the CAMA, 2020. Apart from that, I can see that the 2<sup>nd</sup> Claimant/Respondent is suing as Civil Society Legislative Advocacy Center (CISLAC) and it is claimed that the 2<sup>nd</sup> Claimant/Respondent is a registered Civil Society Organization with the CAC. If this is true, then the 2<sup>nd</sup> Claimant/Respondent ought to sue in its corporate name as provided for in S. 830 (1) of the CAMA 2020.

Now, the effect of registration and certificate under Part F CAMA is stated in S. 830 (1) of the CAMA 2020 as follows:

S. 830 (1) From the date of registration the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have-

- (a) perpetual succession;
- (b) a common seal if they so wish;
- (c) power to sue and be sued in its corporate name and as such trustees;
- (d) subject to section 836 of this part of the Act to hold and acquire, and transfer, assign or otherwise dispose of any property or interest herein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without

incorporation, hold or acquire, transfer, assign or otherwise dispose of same for the purposes of such community, body or association of persons.

It is provided in S. 825 (1) (a) of CAMA 2020 that the name of the proposed corporate body must contain the words 'Incorporated Trustees of ...' Therefore, the prefix 'Incorporated Trustees of ...' is mandatory under the CAMA both during the application for registration of the association and post-incorporation. It is therefore a mandatory part of the name of the association. It is obvious that the 2<sup>nd</sup> Claimant/Respondent by suing as Civil Society Legislative Advocacy Center (CISLAC) is not suing in the name by which it was registered under the CAMA. Therefore, the entity suing as 2<sup>nd</sup> Claimant/Respondent does not exist in law. Such entity has no *locus standi* to initiate a suit in this Court and I so hold.

The next issue in this objection is the legal personality of the PPP Advisory Consortium. It must be understood that in the jurisprudence of company law, the word 'consortium' is synonymous to the word 'group' and 'holding'. By using the phrase 'consortium', the Claimants meant to be understood as entering the bidding process as a group of corporate legal beings made of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants. The use of the phrase 'PPP Advisory consortium' presupposes that the 'holding' entity is a legal entity. On the other hand, it also presupposes that the entities that form PPP Advisory Consortium are also legal beings. I have noted that on the copy of the Claimants' Technical and Financial Proposals pleaded and tendered in this case, it is conspicuously stated thereon 'Proposal by PPP Advisories Consortium.' The question

here is whether PPP Advisories Consortium who tendered the proposal is a legal entity. The submission of the Claimants appears to be that since the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants are corporate beings (which claim they have not substantiated), then PPP Advisories Consortium being made up of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants are by that virtue a corporate being. It is pertinent to state that when it comes to exercising the rights and powers of a corporate being like the power to sue and be sued, only the beings who are registered or incorporated can do so. No Rule of Court or act of persons whether natural or corporate can confer the power to sue and be sued on anybody unless such person is either incorporated pursuant to the provisions of the CAMA 2020 or is created by statute as such. Now, irrespective of the act of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants by executing Joint Venture Agreement (tendered as Exhs. PW1- A114 – A115) by which PPP Advisories Consortium emerged as the 'holding' being of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants, PPP Advisories Consortium had no corporate status that would endow it with the capacity to present itself or be presented as capable of exercising any of the attributes of a legal entity. What the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants needed to do was simply at the conclusion of their Joint Venture Agreement, to have registered PPP Advisories Consortium with the CAC. It appears this was taken for granted and such omission has now proved fatal. I find that PPP Advisories Consortium not being an incorporated being is incapable of exercising the attributes of a Legal being to the extent that it would act as 'holding' company for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>

Claimants. I also find that PPP Advisories Consortium lacked the capacity to make proposal for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the first place and I so hold.

I have read the averments in the affidavit in support of the Preliminary Objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and I have noted the averments in paragraphs 36, 37, 38, 39, 40, 41, 42 and 43 thereof. I also have perused the averments in the counter-affidavit of the Claimants to see where the above stated averments of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are effectively traversed, and I find none. This means the averments in paragraphs 36, 37, 38, 39, 40, 41, 42 and 43 of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants of the affidavit in support of their Preliminary Objection are not controverted. The law on such situation is that affidavit evidence which is not challenged or controverted howsoever, is deemed admitted and can be relied upon by a Court; see *Registered Trustees, National Association of Community Health Practitioners of (Nig.) v. Medical and Health Workers Union of (Nig.)* (2008) All FWLR (Pt. 412) 1013, *Henry Stephen Engineering Ltd v. Yakubu (Nig.) Ltd* (2009) 10 NWLR (Pt. 1149) 416, *Tukur v. Uba* (2012) All FWLR (Pt. 652) 1624, and, *CBN v. Edet* (2015) All FWLR (Pt. 768) 879 at 897. I find that the PPP Advisories Consortium had no legal standing to engage in the bidding process and was rightly disqualified by the Defendants. By this opinion, the second leg of the objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants succeeds. I make an Order dismissing this case on the ground that PPP Advisories Consortium who tendered the Claimants' Technical and Financial Proposals pleaded and tendered in this case, is not a legal entity. On the other hand, it is

to be stated that PPP Advisories Consortium does not and cannot have a legal personality to be reckoned by this Court being that it is formed by entities which have not been established to have juristic personality. Finally, I have to say that a Joint Venture Agreement cannot be used to create a legal entity, the being created by such Joint Venture is registered in accordance with the law. Again, it must be stated that the Rules of Court do not confer legal personality, therefore, the Claimants/Respondents' learned Counsel's reliance on Order 9 (26) (1) and (2), (27) and (28) Of the FHCCPR 2019, is of no moment. The case of the Claimants/Respondents is also struck out on this ground.

The objection of the 3<sup>rd</sup> Defendant which is brought pursuant to section 14 (1) of the PPA, Order 29 of the FHCCPR 2019 and under the inherent jurisdiction of this Court is that this suit is not competent on the ground that the Claimants failed to serve a pre-action notice on the 2<sup>nd</sup> Defendant as required by S. 14 (1) of the PPA. A sole issue is formulated for determination in this respect to wit:

*Whether this Honourable Court can hear and/or entertain the Plaintiff/Respondent's suit having regard to the failure of the Plaintiffs/Respondents to serve the mandatory pre-action notice on the 3<sup>rd</sup> Defendant/Applicant as required by section 14 (1) of the Public Procurement Act, 2007?*

It is their submission that S. 14 (1) of the PPA, 2007 provides *inter alia*:

Subject to the provisions of this Act, no suit shall be commenced against the Bureau before the expiration of 30

days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending Plaintiff or his agent; and the notice shall clearly and explicitly state:

- a) The cause of action;
- b) The particulars of the claim;
- c) The name and address of legal practitioner of the intending Plaintiff; and
- d) The relief being sought.

It is argued that before a Court can exercise its judicial powers in a suit, the Court must ensure that all conditions precedent to exercising its jurisdiction have been fulfilled; reliance is placed on *A.-G., Lagos State v. Dosumu* (1989) 3 NWLR (Pt. 111), 552 at 566-567, and, *Mobil Producing (Nig) Unltd. v. LASEPA* (2002) 18 NWLR (Pt. 798) 1, and, *Feed & Food Farms (Nig) Ltd v. NNPC* (2009) LPELR -1274 (SC) Pp. 28-30, paras. A-B.

It is their conclusion that the failure of the Claimants/Respondents to comply with the provisions of S. 14 (1) of the PPA, 2007, is not only fatal to the suit as conceived and constituted but robs this Court of the requisite jurisdiction to hear and/ or adjudicate on this matter. This Court is urged to decline jurisdiction to entertain this suit and strike out same for failure of the Claimants/Respondents to issue pre-action notice on the 3<sup>rd</sup> Defendant/Applicant as envisaged in S. 14 of the PPA, 2007.

In reaction, the Claimants/Respondents have raised two issues for determination by the Court to wit:

- i. Whether or not the Claimants'/Respondents'* al

letter dated 28<sup>th</sup> August, 2020 served on the 3<sup>rd</sup> Defendant qualify as pre-action notice going by the provision of section 14 (1) (a)-(d) of Public Procurement Act Cap. P44 LFN.

ii. Whether the provisions of Section 14 (1) and Section 54 (6) (7) of the Public Procurement Act are not in conflict with each other?

It is posited that the Claimants/Respondents' letter dated the 28<sup>th</sup> August 2020, served on the 3<sup>rd</sup> Defendant/Applicant, had the effect of legal notification or information as required by the provision of the relevant statute governing the subject matter in dispute before this Court. A cursory look at the said letter shows that the wordings or information contained therein suffices to qualify same as pre-action notice as required by law; reliance is placed on *Dominic E. Ntiero v. Nigerian Ports Authority* (2008) LPELR-2073(SC), *Eze v. Okechukwu & Ors* (2002) LPELR-1194(SC). This Court is urged to so hold.

The submission on issue two is that the provisions of Ss. 14 (1) and 54 (6) (7) of The PPA, 2007 are in conflict with each other. Whereas S. 14 (1) of the Act, requires service of pre-action notice on the 3<sup>rd</sup> Defendant/Applicant, S. 54 (6) and (7) of the same Act provides thus:

S. 54 (6) - The bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any. e

S 54 (7) - Where the Bureau fails to render its decision within the stipulated time, or bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the Federal High Court within thirty days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the bureau to deliver a decision.

It is then posited that if the Claimants/Respondents, had waited till after the 21 days as required by S. 54 (6) of the Act, before serving a Pre-action Notice on the 3<sup>rd</sup> Defendant/Applicant as provided by S. 14 (1) of the Act which should last for a period of 30 days before the Claimants/Respondents can institute an action the Claimants/Respondents would have been out of time to institute this action before this Court going by the provision of S. 54 (7) of the PPA, 2007. If the Claimants/Respondents had complied with Ss. 14 (1) and 54 (7) of the PPA, 2007 the Claimants/Respondents ought to have filed the suit before this Court on 6<sup>th</sup> November, 2020 and would have been statute barred. Therefore, S. 14 (1) of PPA is conflict with S. 54(6) and (7) of the public procurement Act and this Court is urged to so hold and discountenance the 3<sup>rd</sup> Defendant's/Applicants' Notice of Preliminary Objection as being frivolous, vexatious, and an attempt to clog the wheels of Justice.

The response of the Claimants/Respondents on the

objection of the 3<sup>rd</sup> Defendant/Applicant that this case is not competent on the ground that the Claimants/Respondents did not issue pre-action notice on the 3<sup>rd</sup> Defendant/Applicant as provided for in S. 14 (1) of the PPA, 2007 is in my opinion, puzzling and intriguing. This is so because on one hand, the Claimants /Respondents are urging this Court to interpret their letter of 28<sup>th</sup> August, 2020 as constituting a pre-action notice. On the other hand, the Claimants/Respondents have admitted that since the provisions of S. 14.(1) of the PPA, 2007 is in conflict with the provisions of S. 54 (6) and (7) of the same Act, it was impossible for them to issue a pre-action notice.

To resolve the issue whether or not the letter of 28<sup>th</sup> August 2020 is or can qualify as pre-action notice, I have taken a look at the letter. It is titled thus:

"Complaint and Request for Administrative Review of the Wrongful Decision of the Ministry of Justice Tenders Board Regarding the Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement for the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets and Failure of its Accounting Officer to Determine Our Complaint dated 4<sup>th</sup> August, 2020 and Submitted on 5<sup>th</sup> August 2020."

I have also read through this letter to see if it makes any reference to S. 14 (1) of the PPA, 2007 and I found no such reference.

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JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G.F., MINISTER OF JUSTICE & 2 ORS SUIT NO: FHC/ABJ/CS/1449/2020

26/11/21

It is my opinion, that the Claimants/Respondents' letter of 28<sup>th</sup> August 2020 is not a pre-action notice pursuant to S. 14 (1) of the PPA, 2007 and I have no magic to make the letter appear as or signify a pre-action notice as required by S. 14 (1) of the PPA, 2007. I believe that S. 14 (1) of the PPA, 2007 is unambiguous and the law is that where such is the case, the Court must ascribe plain and natural meaning to such provision; see *Braithwaite v. S.T.B. (Nig.) Ltd.* (2012) 9 NWLR (Pt. 1305) 304 at 319-320 where it was stated that:

"It is a cardinal principle of interpretation of statutes that where the provisions or words of a statutes or document are clear and unambiguous, the courts are enjoined to give them their ordinary grammatical meaning. In other words, such words should be given their literal interpretation unless it would lead to absurdity or is inconsistent with other provisions of the statute as a whole. It is trite that a court of law should stop where the statute stops in the exercise of its interpretative jurisdiction. See *Federal Republic of Nigeria v. Osahon* (2006) 5 NWLR (Pt. 973) 361; *Unipetrol Nigeria Plc v. E.S.B.I.R.* (2006) 8 NWLR (Pt. 983) 624; *Attorney-General of Bayelsa State v. Attorney-General of Rivers State* (2006) 18 NWLR (Pt. 1012) 596."

The trite position of the law on the manner of compliance with statutory provisions of the law has not shifted. This position was stated in *CRUTECH v. Obetan* (2011) 15 NWLR (Pt. 1271) 588 at 608 as follows:

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JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G.F., MINISTER OF JUSTICE & 2 ORS SUIT NO: FHC/ABJ/CS/1449/2020

26/11/21

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"It is the law that where a statute provides for a particular method of doing something or performing a duty which has been regularized by the statute, that method and no other, must be the one to be adopted. See *C.C.B. (Nig.) Plc v. Attorney-General Anambra State* (1992) 8 NWLR (Pt. 261) 528. Thus, if a law requires the fulfillment of a pre-condition before a particular act or action, substantive or procedural is to be done or taken, non fulfillment of the pre-condition or compliance therewith will be prejudicial to the defaulting party. See *Aina v. Jinadu* (1992) 4 NWLR (Pt. 233) 91."

The position that if the Claimants/Respondents had complied with S. 14 (1) and S. 54(7) of the PPA, 2007 the Claimants/Respondents ought to have filed the suit before this Court on 6<sup>th</sup> November 2020 and would have been statute barred, is of no moment. This position only goes to confirm that the Claimants/Respondents did not serve the 3<sup>rd</sup> Defendant a pre-action notice as required by S. 14 (1) of the PPA, 2007. The position of the law on non-compliance of this nature is that the action is incompetent and ought to be struck out; see *City Eng. (Nig.) Ltd v. N.A.A.* (1999) 11 NWLR (Pt. 625) 6 where it was stated that:

"A statutory condition which prescribes for service of a written notice before the institution or commencement of a particular court action must be strictly complied with and failure by a plaintiff to serve such notice renders the action ineffective and liable to fail."

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ABUJA

26/11/21

The action of the Claimants/Respondents fails on the ground that they did not serve pre-action notice on the 3<sup>rd</sup> Defendant as prescribed by S. 14 (1) of the PPA, 2007. I make an Order striking out this case against the 3<sup>rd</sup> Defendant.

Upon my ruling on the Preliminary Objections of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and 3<sup>rd</sup> Defendant respectively, I will still proceed to determine the substantive matter. The essence of this venture is to see whether irrespective of the decision of this Court on the Preliminary Objections, the Claimants have proved the substantive case upon preponderance of evidence required in civil cases.

In this respect, the Claimants have formulated six questions for determination to wit:

1. *Whether from the evidence before this Honourable Court, the Claimants have established their claim to wit; that they prequalified for the technical and financial bid opening exercise for the Monitoring of the implementation of the Tripartite Agreement for the Sharing, Transfer, Disposition, Repatriation, and Management of Certain Forfeited Assets as required by the Request for Proposal (RFP).*
2. *Whether the Claimants have satisfied the requirement of a consulting firm as contained in the Request for Proposal (RFP).*
3. *Whether the procurement panel is bound to abide by the specific procurement method of 'Quality and Cost Based Selection (QCBS)' method as indicated by in the*

*Special Instructions to clients contained in the RfP in the selection of the preferred bidder and based on the QCBS method, whether the claimant is the firm that achieved the highest combined technical and financial score among the four prequalified bidders and should have been invited for negotiation.*

4. *Whether having regard to the Public Procurement Act, 2001 and the Request for Proposal (RFP), the decision of the procurement pane is subject to the approval of a foreign partner.*
5. *Whether the replacement of the Claimants with Foundation for Public-Private Partnership in Nigeria (FPPPN) who did not prequalify at the Technical bid evaluation stage by the Defendants is legal or lawful.*
6. *Whether the disqualification of the Claimants by the Defendants in the bidding process is legal and lawful, having regard to the circumstance of the case.*

It can be seen from the six questions formulated for determination by this Court that the entire substratum of this case is rested on documentary evidence. In line with our law, the onus is on the Claimants (Plaintiffs) to prove their case by preponderance of evidence and the burden of proof does not shift. There is a plethora of judicial authorities on this. Let me quote extensively what the Court said in *Odum v. Chibueze* (2016) All FWLR (Pt. 848) 714 at 742 - 743 to wit:

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FEDERAL HIGH COURT  
ABUJA

26/11/21

"Now, one of the most firmly established principle of legal adjudication is that in a civil suit, the person who asserts a fact has the primary burden of proving the assertion. This is explained by the maxim "*ei qui affirmat non ei qui negat incumbit probatio*" which means the burden of proof lies on one who alleges, and not on him who denies – *Arum v. Nwobodo* (2004) 9 NWLR (Pt. 878) 411, (2005) All FWLR (Pt. 246) 1231; *Olaleye v. Trustees of ECWA* (2011) All FWLR (Pt. 565) 297, (2011) 2 NWLR (Pt. 1230) 1; *Imonkhe v. Unity Bank Plc.* (2011) All FWLR (Pt. 586) 423; (2011) NWLR (Pt. 1262) 624. In other words, the onus of proof of an issue rests upon the party whether claimant or Defendant who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the state of the pleadings as it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleading place it and never shifting in any circumstance whatever. In deciding what party asserts the affirmative, regard must be had to the substance of the issue, and not merely to its grammatical form which the pleader can frequently vary at will. The true meaning of the rule is that where a given allegation whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him – *Elemo v. Omolade* (1968) NMLR 359; *Fashanu v. Adekoya* (1974) 6 SC 83; *Atane v. Amu* (1974) 10 SC 237; *Kate Enterprises Ltd v. Daewoo (Nig.) Ltd* (1985) 2 NWLR (Pt. 5)

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ABUJA

JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G.F., MINISTER OF JUSTICE & 2 ORS SUAT NO: FHC/ABJ/CS/1449/2020

116 and *Ogboru v. Uduaghan* (2011) All FWLR (Pt. 577) 650, (2011) 2 NWLR (Pt. 1232) 538."

See also *Braimah v. Abasi* (1998) 13 NWLR (Pt. 581) 167, *Alhaji Otaru & Sons Ltd. v. Idris* (1999) 6 NWLR (Pt. 606) 330, and, *Agbakoba v. INEC* (2008) 18 NWLR (Pt. 1119) 489 at 548.

It is therefore settled that the Claimants' (Plaintiffs') case must succeed on the merit and not on the failure of the defence; see *Onyia v. Onyia* (2012) 3 NWLR (Pt. 1286) 182 at 799 where it was stated that:

"It is settled law that a plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. The onus of proof does not shift to a defendant until it has been satisfied by a plaintiff with reliable and credible evidence. See *Kaiyaoja v. Egunla* (1975) 12 SC 55; *Ibori v. Agbi* (2004) All FWLR (Pt.202) 1799; (2004) 6 NWLR (Pt.868) 78 and *Adeniran v. Alao* (2002) FWLR (Pt.90) 1285; (2001) 18 NWLR (Pt.745) 361."

To determine the questions put forth by the Claimants, they called three witnesses, that is PW1 who adopted his Witness Statement on Oath and tendered Exhs. PW1-A1 – A529. PW2 did not tender any documentary exhibit. PW3 who was a subpoenaed Witness tendered Exhs. PW3 – A1 – A14. I can see that the Claimants are relying on the testimonies of these witnesses and particularly:

- i. Exhs. PW1-A1-A58 (titled – Agreement Among the Government of the Federal Republic of Nigeria and The Bailiwick of Jersey And The Government of the United

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25/11/21

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States of America Regarding the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets),

- ii. Exhs. PW1-A59 – A107 (titled – Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets),
- iii. Exhs. PW1- A116 – A493 (titled – Technical Proposal to Provide Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets),
- iv. Exhs. PW1 – A494 – A501 (titled – Financial Proposal to Provide Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets).

When these documents were tendered in evidence, the Court did Order that issue of admissibility and probative value of the documents tendered will be addressed at the conclusion of trial.

Exhs. PW1- A1-A58 is a public document which the Claimants claim is the foundation for the Request for Proposal (RfP) which regulated the bidding process. Being a public document, it ought to have been certified for the Court to ascertain its authenticity and the veracity of its origin. This was not done. Exhs. PW1- A1-A58 is not

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A B U J A  
26/11/21

admissible, and no probative value can be ascribed to this document by this Court. It is hereby expunged from the record.

Exhs. PW1-A59 – A107 (titled – Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets) is one of the documents that the Claimants claim they submitted to the 3<sup>rd</sup> Defendant as part of the bidding process. There is no evidence *ex facie* these documents that the Claimants submitted same. If the Claimants actually submitted these documents to the 3<sup>rd</sup> Defendant, the proper copy to tender in this proceeding would be the certified true copy of what was actually submitted to the 3<sup>rd</sup> Defendant or acknowledged copy thereof. Exhs. PW1-A59 – A107 is not admissible in evidence and no probative value can be ascribed to this document by this Court. It is hereby expunged from the record.

Exhs. PW1- A116 – A493 (titled – Technical Proposal to Provide Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets), is another bundle of documents that the Claimants claim they submitted to the 3<sup>rd</sup> Defendant as part of the bidding process. There is no evidence *ex facie* these documents that the Claimants submitted same. If the Claimants actually submitted these documents to the 3<sup>rd</sup> Defendant, the proper copy to tender in this proceeding would be the certified true copy of what was actually submitted to the 3<sup>rd</sup> Defendant or acknowledged copy thereof. Exhs. PW1- A116 – A493

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**ABUJA**  
26/11/21

not admissible in evidence and no probative value can be ascribed to this document by this Court. It is hereby expunged from the record.

Exhs. PW1 – A494 – A501 (titled – Financial Proposal to Provide Consultancy Service to Undertake the Monitoring of the Implementation of the Tripartite Agreement on the Sharing, Transfer, Disposition, Repatriation and Management of Certain Forfeited Assets), is another bundle of documents that the Claimants claim they submitted to the 3<sup>rd</sup> Defendant as part of the bidding process. There is no evidence *ex facie* these documents that the Claimants submitted same. If the Claimants actually submitted these documents to the 3<sup>rd</sup> Defendant, the proper copy to tender in this proceeding would be the certified true copy of what was actually submitted to the 3<sup>rd</sup> Defendant or acknowledged copy thereof. Exhs. PW1 – A494 – A501 is not admissible in evidence and no probative value can be ascribed to this document by this Court. It is hereby expunged from the record. It was stated in *Anyaoha v. Obioha* (2014) 6 NWLR (Pt. 1404) 445 at 476 that the law does not allow the admission of a photocopy of a public document which is not certified. The trial Court has a duty to expunge such document inadvertently admitted even if it was not objected to; see *Ojo v. Adejo* (supra) and, *Fasade v. Babalola* (2003) 11 NWLR (Pt.830) 26 at 46. Non-certification of public document is an infraction of Ss. 102, 103, 104 and 105 of the Evidence Act, 2011; see *West African Oil Field Services Ltd. v. Mr. Scott Gregory* (2019) LPELR-47292(CA), *Omimore v. Aregbesola & Ors.* (2015) 15 NWLR (Pt. 1482) 205 at 294, *Ndayako v. Mohammed* (2006) 17 NWLR (Pt. 1009) 676, *Tabik Investment Ltd. v. GTB*

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ABUJA

*Plc.* (2011) LPELR-3131(SC); (2011) 17 NWLR (Pt. 1276) 240, and, *Nwabuoku v. Onwordi* (2006) All FWLR (Pt. 331) 1236, 1251-1252.

It must be stated that Exhs. PW1-A1-A58, PW1-A59 – A107, PW1- A116 – A493, and, PW1 – A494 – A501 are the foundations of the Claimants' case. Without these documents, the Claimants' case fail irrecoverably and irretrievably. All other documents tendered by the Claimants in this case are rested on Exhs. PW1-A1-A58, PW1-A59 – A107, PW1- A116 – A493, and, PW1 – A494 – A501. This is a situation where the case of the Claimants was not handled with any sense of due diligence. Such failure is fatal to the case. The copious written address of the learned Counsel for the Claimants amounts to nought in the circumstance of this case. It is trite law that written address is not a replacement for evidence; see *Obidike v. State* (2014) 10 NWLR (Pt. 1414) 53 at 77 where it was stated that:

"Address by counsel should be tailored to be in line with the real evidence on record and not otherwise. This is more so; as addresses are designed to assist the court. No amount of brilliance in a fine speech can make up for lack evidence to prove and establish or else disprove and demolish points in issue. There is no need to make submission against the flow of evidence in a bid to procure underserved attention. See *Niger Construction Ltd. v. Okugbeni* (1987) 4 NWLR (Pt.67) 787 at 729; *Obodo v. Olomu & Anor.* (1987) 3 NWLR (Pt.59) 111 at 123."

See also *PAS & T.A. Ltd v. Babatunde* (2008) 8 NWLR (Pt. 1089) 267 at 296, *Akintunde v. Ojekere* (1971) NMLR 91, *Agi v. PDP* (2017) 17 NWLR <sup>al</sup>

JUDGEMENT IN PPP ADVISORIES & 2 ORS v. A.-G, F., MINISTER OF JUSTICE & 2 ORS SUIT NO: FHC/AB/CS/1449/2020

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26/11/21

(Pt. 1595) 386, *Olonade v. Sowemimo* (2014) 14 NWLR (Pt. 1428) 473, and, *Olufosoye v. Fakorede* (1993) 1 NWLR (Pt. 272) 747 at 783.

I have said that this Court is deciding this case upon its peculiar facts and circumstances. This type of action is such that must succeed on its own strength and not on the weakness or failure of the defence.

I can safely say at this point that I am unable to ascribe probative value to the documentary evidence in this case.

My finding therefore is that there is no credible evidence to support this case and it fails and I so hold.

I make an Order dismissing this case for lack of credible evidence.

This is the Judgement of this Court.



**I. E. Ekwo**

**Judge**

**19/11/2021**

D. H. Bwala, Esq., (with A. A. Abogede, Esq.) for the Claimants.

T. D. Agbe, Esq., (with Ibukun Okoosi, Esq.) for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Muhammadu Nuhu, Esq., (Principal State Counsel) for the 3<sup>rd</sup> Defendant.

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Priscilla N.A  
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