

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH JULY, 2013. SC. 165/2004  
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-  
COOMASSIE, N. S. NGWUTA, M. U. PETER-ODILI,  
O. ARIWOOLA, JJSC**

CHIEF ELIJAH OMONIYI AJAYI ..... APPELLANT  
AND  
TOTAL NIGERIA PLC ..... RESPONDENT

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COURTS - Actions - Illegality - Need to note - Court must take cognizance of illegality it finds in the course of a matter - Even if such is not triable in the court - But in another tribunal (H1)

CONTRACTS - Illegal contract - Effect - Once a transaction is illegal - It is void and all things emanating from that transaction - Is a nullity (H2)

CONTRACTS - Illegal contract - Meaning - Contract is said to be illegal - If the consideration involves illegality - Or the intention of parties is illegal - Or contrary to public policy (H3)

CONTRACTS - Termination - Correctness of - As there is no illegality in the contract between the parties - CA rightly allowed respondent's appeal - By granting it relief in affirming the termination of the contract (H4)

APPEALS - Contract - Court - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided by illegality (H5)

LEGAL PRACTITIONERS - Submission of - Weight - Counsel's submission no matter how brilliant - Is not a substitute for credible evidence (H6)

**FACTS**

Before the High Court of Ekiti State, plaintiff/appellant com-

menced this action against defendant/respondent, seeking for a declaration that the termination of the dealership agreement arising from the management and control of one Total filling Station at Ifaki-Ekiti in Ekiti State, was unlawful with damages in the alternative and for the nullification of the Certificate of Occupancy issued to respondent on the leased property. Appellant's father Chief S. Ajayi (now deceased) had in the 1960, leased a plot of land to respondent for a term of 50 years subject to renewal. Pursuant to the lease agreement, respondent erected a Petrol Filling Station on the land and appointed appellant's father a dealer thereat under a Marketing Licence Agreement separate and independent of the lease agreement. However, after the death of appellant's father in 1964, respondent invited appellant to take over the Dealership of the Petrol Station under the same agreement his father was operating. The transaction went on until 1995 when respondent decided to enter into a fresh Dealership Agreement with appellant, which Agreement was executed between the parties. However, by its letter dated 26th November 1997, respondent terminated the Dealership Agreement it had entered into with appellant because of apparent unsatisfactory performance.

Meanwhile, respondent had fraudulently obtained a Certificate of Occupancy (C of O) in respect of the Petrol Station in its (respondent's) name. Upon the discovery of the conduct of respondent and upon the receipt of the letter of termination of the Dealership Agreement, appellant refused to surrender the Filling Station and thereafter filed action at the High Court. Respondent counter-claimed against appellant asking for surrender of the Station and payment of compensation. At the end of hearing, the court dismissed both appellant's claims and respondent's counter-claim upon holding that the Dealership Agreement operated by the parties was illegal. The court although in the same judgment, set aside the C of O obtained in the name of respondent for having been obtained unlawfully. Both parties were dissatisfied with the judgment. Hence, respondent filed the main appeal to the Court of Appeal, Ilorin Division, while appellant cross-appealed. Respondent's appeal was allowed in part, while appellant's cross-appeal was allowed in full. Appellant however was not satisfied with the aspect of the Court of Appeal judgment sustaining the termination of the Dealership Agree-

ment between the parties earlier declared illegal by the trial Court. Appellant therefore lodged appeal in Supreme Court, seeking to restore the judgment of the trial Court on the validity or otherwise of the termination of the Dealership Agreement between the parties.

### **ISSUES FOR DETERMINATION**

*“1. Whether the Appellant who entered into a Marketing License Agreement (exhibit A) in his own name but later, in the course of his performance of the said Agreement, wrote and accepted correspondence (exhibits D, D1, D2 and E in his late father’s name, without protest will not be deemed to have waived his right regarding his own name under the agreement as to be stopped from denying the effectiveness of a subsequent letter in his father’s name (exhibit C) terminating the agreement.*

*2. Whether the Court of Appeal was not right in holding that the trial Court’s nullification of Exhibits A and C for alleged illegality, misrepresentation and impersonation cannot be justified having regard to the fact that the pleadings and evidence of both parties were absolutely bereft of same.*

*3. Whether the Court of Appeal was not right to have granted the Respondents counter-claim having regard to the overwhelming evidence in support of same.”*

**HELD** (Unanimously dismissing the appeal per **MOHAMMED JSC**)

*Actions - Illegality - Need to note*

**1. The law is indeed well settled as argued by the Appellant and duly supported by the cases of Okoya v. Santilli (supra) and Sodipo v. Lemminkainen Oy. (supra) cited and relied upon by him, that where a Court of law in the course of a matter finds an illegality punishable under the law, even if not triable in that Court but in another Tribunal without prejudice to its referring the matter to that Tribunal, must take cognizance of the illegality.** (p. 3344 A)

*Illegal contract - Effect*

**2. In otherwords, the law is trite that once a transaction is**

**illegal, it is void and all things emanating from that transaction is a nullity.** (p. 3344 C)

*Illegal contract - Meaning*

**3. On the question of the alleged illegality of the contractual relationship between the parties, the law is well settled that a contract is said to be illegal if the consideration or the promise involves the doing of something illegal or contrary to public policy or if the intention of the parties in making the contract is illegal or contrary to public policy. In other words, an illegal contract is void and cannot be the foundation of any legal right and also all transactions emanating from it are void.** (p. 3346 A)

*D CONTRACTS - Termination - Correctness of*

**4. In the present case however, there, is no single attribute of any illegality in the contractual relationship between the parties leading to the termination of the same by the Respondent. In this respect the Court below was on very strong grounds in setting aside the judgment of the trial Court declaring the contract between the parties in Exhibit A void and in allowing the appeal of the Respondent by granting it relief in affirming the termination of the contract between the parties as contained in the letter of termination of the same in Exhibit C. Taking into consideration that the Appellant is not challenging the provisions of the Agreement between the parties Exhibit A which gives the parties to it the right to terminate it by one month's notice, the fact that the Respondent had taken steps under clause 1.1 to terminate the Agreement between the parties by giving the Appellant the required notice in the letter Exhibit C, (sic) the parties as having been effectively determined. This is because the Appellant having clearly failed to plead and lead credible evidence that the contractual relationship between him and the Respondent was affected by illegality, misrepresentation and impersonation, the Court below was quite right in granting all reliefs sought by the Respondent in its counter-claim. This last issue is also resolved against the Appellant.** (pp. 3346 B/3349 D)

*Contract - Court - Findings - Correctness of*

**5. It is not in dispute that the issue of this illegality, misrepresentation and impersonation was neither raised by parties on pleadings let alone in evidence at the trial Court. The issue was only raised in the final address of the Appellant's Counsel at the trial Court which elevated the address of Counsel to the status of evidence and relied on it to give judgment for the Plaintiff now Appellant.** B

**The law is well settled that findings of the trial Court must be based on evidence supported by pleadings of the parties. Any piece of evidence not supported by pleadings must be discountenanced and completely disregarded for having become a non-issue in the case.** C

**For the foregoing reasons therefore, the finding of the Court below that the trial Court had no evidence before it supported by pleadings that the contractual relationship between the parties was voided by elements of illegality, misrepresentation and impersonation, was on firm ground and I accordingly uphold it in resolving the present issue.** (p. 3348 A/E) D E

*LEGAL PRACTITIONERS - Submission of - Weight*

**6. In this respect, a Counsel's submission, no matter how brilliant, is certainly not a substitute for credible evidence.** (p. 3348 D) F

### **REPRESENTATION**

C. N. Nwagbo Esq. with G. C. Ugwunweze; C. A. Ezugwu; M. C. Nwosu and I. L. Alege for the Appellant  
Chief Olusola Oke for 1st respondent with Chief A. O. Ajana and O. Akinyibo Esq. G

T. O. Busari Esq. for 2nd respondent with Messrs. Adeola Adedipe; A. A. Usman and P. Whyte (Miss)

P. M. B. Onyia Esq. for the 3<sup>rd</sup> respondent H

### **CASES REFERRED TO**

Oduntan v. Gen. Oil Ltd. (1995) 4 N.W.L.R. (pt. 387) 1

Sanusi v. Ayoola (1992) 9 N.W.L.R. (pt. 265) 275

- Okoya v. Santilli (1994) 4 N.W.L.R. (pt. 338) 526  
 Sodipo v. Lemminkainen Oy (No. 2) (1986) 1 N.W.L.R. (pt. 15) 220  
 Abcos Nig. Ltd v. Kango Wolf Power Tools Ltd (1987) 4 N.W.L.R. (pt. 57) 894  
 Onomade v. A.C.B. Ltd (1997) 1 N.W.L.R. (pt. 480) 123  
 B Eperokun v. University of Lagos (1986) 4 N.W.L.R. (pt. 34) 162  
 Bendel State v. The Federation (1982) 3 N.C.L.R. 1  
 Ogbonna v. A-G Imo State (1992) 1 N.W.L.R. (pt. 220) 697  
 Noibo v. Fikatoti & Anor. (1987) 3 W.L.R. (Pt. 52) 619  
 C Eze v. Okechukwu (2002) 18 N.W.L.R. (pt. 799) 348  
 Barrett Bros. (Taxix Ltd) v. Davies (1966) 1 W.L.R. 1334  
 Alao v. A.C.B. Ltd (1998) 3 NWLR (pt. 543) 339  
 Igah v. Amakiri (1976) 11 S.C. 1  
 Alli v. Ikusebiala (1985) 1 NWLR (pt. 4) 630

D

**STATUTE REFERRED TO**

Evidence Act Cap. 112 LFN 1990, s. 151

**LEAD JUDGMENT BY MOHAMMED JSC**

- E The Appellant in this appeal was the Plaintiff at the trial High Court of Justice Ekiti State sitting at Ijero - Ekiti where he filed an action against the Respondent and one other person as Defendants and claimed a number of reliefs arising from the management and control of the Total filling Station at Ifaki-Ekiti in Ekiti State.

- F The circumstances that gave rise to the dispute between the parties originated from Dealership and Lease Agreements between the father of the Appellant, now deceased, and the Respondent Company. The relationship started in 1960 when the Appellant's father Chief S. Ajayi leased a plot of land located at Ifaki Road junction, Ifaki-Ekiti to the Respondent for a term of 50 years subject to periodic revision which was to expire in the year 2010 subject to renewal. Pursuant to the relationship, the Respondent erected a Petrol Filling Station on the land and appointed the Appellant's father a dealer at the Filling Station under a Marketing Licence Agreement separate and independent of the Lease Agreement. However, in 1964 the Appellant's father Chief S. Ajayi died. Upon the death of the Appellant's father the Respondent on its own invited the Appellant to take over the Dealership of the Station under the same agreement

his father was operating with the Respondent. The business relationship between the parties continued until 1995 when the Respondent decided to enter into a fresh Dealership Agreement with the Appellant which Agreement was executed between the parties. However, by its letter dated 26th November, 1997, the Respondent decided to terminate the Dealership Agreement it had entered into with the Appellant because of apparent unsatisfactory performance. Meanwhile, in the course of business relationship with the Appellant since the death of his father in 1964, the Respondent undertook to obtain a Certificate of Occupancy in respect of the Filling Station it was occupying under the Lease Agreement due to expire in 2010, for the Appellant. Unfortunately, the Respondent obtained the Certificate of Occupancy in its own name. Thus, upon the discovery of the conduct of the Respondent and upon the receipt of the letter of termination of the Dealership Agreement, the Appellant refused to surrender the Filling Station and thereafter headed to the trial High Court of Justice of Ekiti State with an action claiming a number of reliefs against the Respondent as the Defendant in the action. The reliefs claimed by the Plaintiff/Appellant include a declaration that the termination of the Dealership Agreement was unlawful with damages in the alternative in addition to relief for the nullification of the Certificate of Occupancy issued to the Respondent on the leased property.

The Respondent/Defendant on its part counter-claiming against the appellant asking for surrender of the Filling Station and payment of compensation. At the conclusion of the hearing of the case, the learned trial Judge dismissed both the Appellant's claims and the Respondent's counter-claim upon holding that the Dealership Agreement operated by the parties was illegal though in the same judgment the trial Court also set aside the Certificate of Occupancy obtained in the name of the Respondent for having been obtained unlawfully.

Aggrieved by the judgment of the trial Court both parties headed to the Court of Appeal, Ilorin Division where the Respondent filed its appeal while the present Appellant filed a cross-appeal against the same judgment. At the end of the hearing of the appeal and the cross-appeal, the Court of Appeal allowed the Respondent's appeal in part while the Appellant's cross-appeal was allowed in full. Although the Respondent whose appeal was allowed in part was sat-

isified with the judgment of the Court of Appeal delivered on 8th December, 2003, the Appellant whose cross-appeal was allowed in full was still not satisfied with part of the judgment of the Court of Appeal sustaining the termination of the Dealership Agreement between the parties earlier declared illegal by the trial Court, had decided to proceed on a further appeal to this Court in an attempt to restore the judgment of the trial Court on the validity or otherwise of the termination of the Dealership Agreement between the parties.

In the Appellant's brief of argument the following 3 issues were distilled from the 4 grounds of appeal filed by the Appellant. These issues are -

*"A. Whether it is right or wrong to use the name of a dead man in contracts and whether the fact that both sides to the contract (sic) indulge in the act is a waiver which gives them immunity from sanctions of law in the circumstances.*

*B. Whether or not a letter of contract written not to the party to the contract but to a dead person does legally determine the contract.*

*C. Whether or not the lower Court was right in granting the counter-claim of the Defendant/Respondent when the conduct of the said Defendant/Respondent is unconscionable and in (sic) when in addition it engages in misrepresentation."*

Although the learned counsel to the Respondent also agreed with 3 issues for the determination of the appeal arising from the 4 grounds of appeal filed by the Appellant, the 3 issues in the Respondent's brief of argument were differently framed as follows:-

*"1. Whether the Appellant who entered into a Marketing License Agreement (exhibit A) in his own name but later, in the course of his performance of the said Agreement, wrote and accepted correspondence (exhibits D, D1, D2 and E in his late father's name, without protest will not be deemed to have waived his right regarding his own name under the agreement as to be stopped from denying the effectiveness of a subsequent letter in his father's name (exhibit C) terminating the agreement.*

*2. Whether the Court of Appeal was not right in holding that the trial Court's nullification of Exhibits A and C for alleged illegality, misrepresentation and impersonation cannot be justified having regard to the fact that the pleadings and evidence of both parties were*



*absolutely bereft of same.*

*3. Whether the Court of Appeal was not right to have granted the Respondents counter-claim having regard to the overwhelming evidence in support of same.”*

Looking at the Appellant’s issues A and B which are complain-  
ing on the use of a name of a dead person in a letter of termination B  
of contract without specifically referring to the name of Chief S. A.  
Ajayi, the Appellant’s father in whose name the letter of termination  
of Marketing License Agreement executed between the parties was  
written, the issues in my view do not arise from the grounds of ap- C  
peal particularly grounds 1 and 2 which were specifically directed  
against the Agreement Exhibit A and the letter of its termination Ex-  
hibit C. The law is trite that issues formulated for determination in an  
appeal must arise from the grounds of appeal. See *Oduntan v. Gen.*  
*Oil Ltd.* (1995) 4 N.W.L.R. (Pt.387) 1 at 16 and *Sanusi v. Ayoola D*  
(1992) 9 N.W.L.R. (Pt.265) 275 at 291. Issues A and B in the  
Appellant’s brief of argument having been framed at large, cannot  
be used in the determination of this appeal.

However, since all the 3 issues formulated in the Respondents  
brief of argument clearly arose from the 4 grounds of appeal filed by E  
the Appellant, the appeal is to be determined on those issues. In any  
case having regard to the evidence on record on the business rela-  
tionship between the parties, which is largely documentary, to me,  
the main issue for determination in this appeal has been effectively F  
captured in issue 1 in the Respondent’s brief of argument. In  
otherwords, once that issue as to whether the Marketing License Agree-  
ment between the parties Exhibit ‘A’ had been effectively terminated  
by the letter Exhibit C on taking into consideration the correspon-  
dence between the parties in Exhibits D, D1, D2 and E had been G  
resolved, the remaining issues 2 and 3 based on the effect of the  
same documents, would have been also resolved.

The question in Respondent’s issue number one is whether  
the Appellant who entered into the Marketing License Agreement,  
Exhibit A, in his own name but later, in the course of his performance H  
of the said agreement, wrote and accepted correspondence, Exhibits  
D, D1, D2 and E in his late father’s name, without protest, will now  
be deemed to have waived his right regarding his own name under  
the agreement as to be estopped from denying the effectiveness of

the subsequent letter in his father name, Exhibit C terminating the agreement.

The Appellant explained that after the death of his father who was the Respondent's Lessor in its Total Filling Station at Ifaki-Ekiti in Ekiti State, he entered into a new Marketing License Agreement with the Respondent in 1995 in Exhibit A. However, the Appellant pointed out that the operation of that agreement between the parties continued in the name of his deceased father, Chief S. A. Ajayi in Exhibits D, D1, D2 and E. That the Respondent's letter terminating the Marketing License Agreement was also addressed in the name of his deceased father Chief S. A. Ajayi instead of in his name Chief E. A. Ajayi. According to the Appellant this representation is wrong, dishonest and fraudulent but conceded that he did not plead fraud at the trial Court. All the same, the Appellant relied on a number of cases including *Okoya v. Santilli* (1994) 4 N.W.L.R. (pt.338) 526 at 290, *Sodipo v. Lemminkainen Oy* (No. 2) (1986) 1 N.W.L.R. (Pt.15) 220 at 232 and *Abcos Nigeria Limited v. Kango Wolf Power Tools Ltd* (1987) 4 N.W.L.R. (Pt. 57) 894 at 907, to argue that the operation of the agreement between the parties was illegal as found by the trial Court and that the illegality having been brought to the attention of the Court, the Court must take it into consideration notwithstanding the absence of pleadings.

On the question of whether or not the Appellant should not have been regarded as having waived his right to have been dealt with in his own name in the operation of the agreement, the Appellant had argued that the fact that both parties in this appeal had joined in participating in the improper operation or misrepresentation in the names of the real parties in the agreement, cannot be a waiver of the effect of the wrongness or illegality. The cases of *Onomade v. A.C.B. Limited*, (1997) 1 N.W.L.R. (Pt.480) 123 at 144, *Eperokun v. University of Lagos* (1986) 4 N.W.L.R. (pt. 34) 162 at 202 and *Bendel State v. The Federation* (1982) 3 N.C.L.R. 1 at 67, were relied upon by the Appellant who urged this Court to regard the wrongness perpetrated by both parties though not pleaded by the parties as enough to support the illegality in the transaction between the parties as found by the trial Court.

In his argument in support of this issue, learned Counsel to the Respondent pointed out that the Marketing License Agreement was

signed by the Appellant in his own name, E. O. Ajayi which gave him the right under the law to be communicated in his own name under the agreement. However, learned counsel observed that in the course of the performance of his duties under the contract, the Appellant had received letters Exhibits D, D1 and D2 from the Respondent addressed as S. A. Ajayi, his late father's name and in response the Appellant wrote Exhibit E in his said late father's name to the Respondent. In terminating the agreement however, the Respondent addressed the letter of termination, Exhibit C to the Appellant as Chief S. Ajayi, the name of his late father. Learned Counsel to the Respondent therefore argued that the Appellant himself having admitted under cross-examination at page 58 lines 52 - 55 of the record of having been addressed as Chief S. Ajayi by the Respondent and he in turn responded in the same name of his late father Chief S. A. Ajayi, the Appellant can be deemed to have waived his right to be referred to or addressed strictly and only as Chief E. O. Ajayi in relation to the agreement Exhibit A which he executed in his own name. The cases relied upon by the Respondent in support of this argument on waiver include *Ogbonna v. Attorney-General Imo State* (1992) 1 N.W.L.R. (Pt.220) 697, *Noibo v. Fikatoti & Anor.* (1987) 3 W.L.R. (Pt. 52) 619, *Eze v. Okechukwu* (2002) 18 N.W.L.R. (Pt.799) 348 at 367 and *Barrett Bros. (Taxix Ltd) v. Davies* (1966) 1 W.L.R. 1334 at 1339. It was further submitted for the Respondent on the question of waiver that the Appellant is also estopped by virtue of Section 151 of the Evidence Act, CAP 112 Laws of the Federation of Nigeria 1990, from insisting on his right. The cases of *Ondo State University v. Folayan* (1994) 7 N.W.L.R. (Pt.354) 1 at 25 and *Joe Igah & Ors. v. Amakiri & Ors.* (1976) 11 S.C. 1 at 12, were cited in support of the argument on the application of estoppel by the learned Counsel who further relied on the oral evidence of the Appellant at pages 45 and 61 of the record confirming his identification in the letter Exhibit C, in urging this Court to resolve this issue in favour of the Respondent and dismiss this appeal.

In the resolution of this issue I have observed from the record that all the Appellant is aiming to achieve in this appeal is to actualize the decision of the trial Court in his favour as Plaintiff as contained in the judgment of that Court at page 123 of the record where the learned trial judge conclude thus:-

*“From the analysis above in the claim of the plaintiff, I hold that the termination of the Marketing License Agreement between the plaintiff and the 1st Defendant is null and void by reason of the misrepresentation and impersonation between the parties.”*

**The law is indeed well settled as argued by the Appellant and duly supported by the cases of *Okoya v. Santilli (supra)* and *Sodipo v. Lemminkainen Oy. (supra)* cited and relied upon by him, that where a Court of law in the course of a matter finds an illegality punishable under the law, even if not triable in that Court but in another Tribunal without prejudice to its referring the matter to that Tribunal, must take cognizance of the illegality. In other words, the law is trite that once a transaction is illegal, it is void and all things emanating from that transaction is a nullity.**

What has to be determined in the present case is whether the transaction in the Marketing License Agreement entered into between the Appellant and the Respondent which the Appellant executed in his own name in 1995 in Exhibit A and which the Respondent decided to terminate in 1997 by its letter of termination addressed to Mr. S. Ajayi in Exhibit C, was illegal as claimed by the Appellant.

Let me emphasise here and now that the facts and circumstances surrounding the business transaction or relationship between the parties in this appeal are not at all in dispute. The Marketing License Agreement governing the running or operating the Respondent’s Filling Station at Ifaki-Ekiti was originally between the Respondent and the Appellant’s father. On the death of the Appellant’s father in 1964, the Respondent allowed the Appellant to continue to operate the same Filling Station until 1995 when the Respondent executed a new Marketing License Agreement with the Appellant who executed the same in his own name. By a letter dated 26th November, 1997, the Respondent decided to terminate the Marketing License Agreement between the parties. That letter addressed to “Mr. S. Ajayi, Total Filling Station Ifaki,” was received by the Appellant and was in evidence as Exhibit C. I honestly cannot see anything illegal on the face of that letter Exhibit C giving the notice of the termination of the Marketing License Agreement between the parties in this appeal. In any case the Appellant in his own evidence under cross-examination at page 58 of the record said:

*“Total wrote a letter to me as Chief S. A. Ajayi. The letter was in respect of my trading account with them. I wrote a reply back to Total Nig. Plc. as Chief S. Ajayi.”*

The Appellant had also described the letter of termination of the Marketing License Agreement Exhibit C as his own in the following words at page 45 of the record thus:-

*“My letter of termination is not justified. I am not happy about the termination.”*

The fact that the letter of termination Exhibit C was directed at the Appellant and was meant to terminate the contractual relationship with the Respondent, was not at all ambiguous to the Appellant who admitted at page 61 of the record in the following words when he said -

*“I am the only Mr. Ajayi transacting business with Total Nigeria Plc. I came to Court because of the letter of termination issued to me which is exhibit C.”*

It is quite clear from the evidence on record that although the letter of termination of the agreement between the parties was addressed to Mr. S. Ajayi, even the Appellant himself had not stated in very clear language at the trial Court that his own identity as the other contracting party in the management of the business in the Total Filling Station at Ifaki-Ekiti, was in doubt. Where then I may ask, is the illegal transaction between the parties in Exhibit C? The answer is definitely in the negative.

Furthermore, it is also quite clear from the record that Exhibit E is one of the letters written by the Appellant in the course of his contractual dealings with the Respondent which the Appellant signed as Chief S. Ajayi on 13th June, 1997 before the present cause of action that landed the parties in Court arose. There is therefore very clear evidence on record having regard to the letters exchanged between the parties particularly Exhibits D, D1, D2 and E that Chief S. Ajayi and Mr. E. O. Ajayi were used interchangeably by the parties to refer to the Appellant, Mr. E. O. Ajayi. In other words, as far as the Marketing License Agreement Exhibit A and the Respondent's letter of Notice terminating the agreement Exhibit C are concerned, Chief S. Ajayi and Mr. E. O. Ajayi are one and the same person engaged in the management of the affairs of the Total Filling Station at Ifaki-Ekiti which was the subject of dispute between the parties in this appeal.

***On the question of the alleged illegality of the contractual relationship between the parties, the law is well settled that a contract is said to be illegal if the consideration or the promise involves the doing of something illegal or contrary to public policy or if the intention of the parties in making the contract is illegal or contrary to public policy. In otherwords, an illegal contract is void and cannot be the foundation of any legal right and also all transactions emanating from it are void.***  
 See Sodipo v. Lemminkainen Oy (No.1) (1985) 2 NWLR (Pt.8) 547 and Alao v. A.C.B. Ltd (1998) 3 NWLR (Pt. 543) 339 at 346. ***In the present case however, there, is no single attribute of any illegality in the contractual relationship between the parties leading to the termination of the same by the Respondent. In this respect the Court below was on very strong grounds in setting aside the judgment of the trial Court declaring the contract between the parties in Exhibit A void and in allowing the appeal of the Respondent by granting it relief in affirming the termination of the contract between the parties as contained in the letter of termination of the same in Exhibit C.***

In any case the Appellant having received letters Exhibits D, D1 and D2 from the Respondent in the name of his late father S. A. Ajayi without any protest and in response having written the letter Exhibit E to the Respondent and signed the letter in the name of his late father S. A. Ajayi, I agree with the Court below that the Appellant was deemed to have waived his right to insist on being addressed strictly as E. O. Ajayi. See Ogbonna v. Attorney General Imo State (1992) 1 N.W.L.R. (pt. 220) 647 at 691. In the same vein, by his conduct in stepping into the shoes of his father by addressing himself in the name of his late father, the Appellant is estopped by virtue of Section 151 of the Evidence Act CAP 112 Laws of Federation 1990, applicable at the time of the transaction between the parties, from insisting that the letter of termination of the agreement between the parties Exhibit C was not in his own name. See Joe Igah & Ors. v. Amakiri & Ors (1976) 11 S.C. 1 at 12. For the foregoing reasons this first issue is resolved against the Appellant.

The 2nd issue is whether the Court of Appeal was not right in holding that the trial Court's nullification of Exhibits A and C for alleged illegality, misrepresentation and impersonation cannot be jus-

tified having regard to the fact that the pleadings and evidence of both parties were absolutely bereft of same. Learned Counsel to the Appellant pointed out that since the Agreement between the parties Exhibit A was executed between the Appellant and the Respondent, the revocation letter Exhibit C made in the name of the deceased father of the Appellant cannot have the effect of terminating the agree- B  
ment between the parties having regard to section 132 of the Evi-  
dence Act by which no oral or external evidence can be allowed to  
interpret the contents of a regard to Section written document. The  
cases of *Alli v. Ikusebiala* (1985) 1 NWLR (Pt. 4) 630 at 640 and  
*Olanlege v. Afro Continental (Nig.) Ltd.* (1990) 7 NWLR (pt. 458) C  
29 at 40 were relied upon to say that the name of S. A. Ajayi on the  
termination letter Exhibit C cannot be explained to refer to the E. O.  
Ajayi the actual party to the agreement thereby making Exhibit C  
illegal and therefore incapable of terminating the Agreement in Ex- D  
hibit A.

In response to the arguments of the Appellant on the 2nd issue, the learned Counsel to the Respondent traced the background of the decision of the trial Court which declared the Agreement between the parties exhibit A and the letter of termination of that agree- E  
ment Exhibit C as illegal, null and void because the parties had engaged in misrepresentation and impersonation in acting against public policy by showing a dead person was engaged in contract. Learned Counsel pointed out that the findings of the trial Court imputing illegality, misrepresentation and impersonation to the Agreement be- F  
tween the parties have been found to be baseless by the Court below as the parties did not make their cases on pleadings and evidence touching on any illegality, misrepresentation or impersonation. Learned Counsel again found reliance on the cases of *Sodipo v. Lemminkainen Oy* (No.1) (supra) and *George & Ors. v. Dominion Flour Mills Ltd.* (1963) All N.L.R. 71 to say that the Court below was right in setting aside the decision of the trial Court because there was no element of illegality, misrepresentation or impersonation in the contractual relationship between the parties. H

It is significant to note on this issue that this entire argument of the learned Counsel to the Appellant in support of this issue is predicated on the claim of Counsel that the Respondent's letter of notice terminating the Marketing License Agreement between the Appel-

lant and the Respondent Exhibit A, was illegal as it was not issued in the name of the Appellant.

***It is not in dispute that the issue of this illegality, misrepresentation and impersonation was neither raised by parties on pleadings let alone in evidence at the trial Court. The issue was only raised in the final address of the Appellant's Counsel at the trial Court which elevated the address of Counsel to the status of evidence and relied on it to give judgment for the Plaintiff now Appellant.***

***The law is well settled that findings of the trial Court must be based on evidence supported by pleadings of the parties. Any piece of evidence not supported by pleadings must be discountenanced and completely disregarded for having become a non-issue in the case.*** See Total Nigeria Ltd. v. Nwako D (1978) 5 S.C. 1.

***In this respect, a Counsel's submission, no matter how brilliant, is certainly not a substitute for credible evidence.*** See Oduda v. Coker (1981) 5 S.C. 197, Niger Construction Ltd. v. Okugbeni (1987) 4 N.W.L.R. (Pt. 67) 787 and Odubeko v. Fowler E (1993) 7 N.W.L.R. (Pt.308) 637 at 555. ***For the foregoing reasons therefore, the finding of the Court below that the trial Court had no evidence before it supported by pleadings that the contractual relationship between the parties was voided by elements of illegality, misrepresentation and impersonation, was on firm ground and I accordingly uphold it in resolving the present issue.***

The 3rd issue is whether the Court of Appeal was right in granting the Respondent's counter-claim. In support of this issue, learned G Counsel to the Appellant merely relied on the arguments submitted in support of the 1st and 2nd issues already determined. All the learned Counsel re-iterated is that having regard to the fact that the contractual relationship between the parties was tainted with illegality, misrepresentation and impersonation, the Respondent's counter-claim H predicated on the agreement Exhibit A and the letter of termination exhibit C, ought not to have been granted by the Court of Appeal and that on that account, this issue should be resolved in favour of the Appellant.

For the Respondent, its learned Counsel explained that the



Respondent's counter-claim is contained in paragraph 31 relief (a) where the Respondent sought for a declaration that the Marketing License Agreement Exhibit A entered between the parties in 1995, had been lawfully determined by reason of non-renewal of that agreement. That the Appellant having been given one month's notice of the termination of the agreement as provided under clause 1.1 of the Agreement Exhibit A, the termination letter Exhibit C must be given its legal effect in terminating the Agreement between the parties. The cases relied upon in this respect include Mobil Oil Nigeria Limited v. Johnson (1961) 1 All NLR 102 at 103. B

The Respondent's counter-claim which the Court below granted in allowing the Respondent's appeal is contained at page 20 of the record of this appeal where the Respondent claimed under paragraph 30 reliefs (a) - (f). The main declaratory relief claimed in relief (a) reads C

*"A Declaration that the Marketing License Agreement dated 1995 Between the Plaintiff and 1st Defendant has lawfully determined by reasons of lawful non-renewal of the agreement."* D

**Taking into consideration that the Appellant is not challenging the provisions of the Agreement between the parties Exhibit A which gives the parties to it the right to terminate it by one month's notice, the fact that the Respondent had taken steps under clause 1.1 to terminate the Agreement between the parties by giving the Appellant the required notice in the letter Exhibit C, (sic) the parties as having been effectively determined. This is because the Appellant having clearly failed to plead and lead credible evidence that the contractual relationship between him and the Respondent was affected by illegality, misrepresentation and impersonation, the Court below was quite right in granting all reliefs sought by the Respondent in its counter-claim. This last issue is also resolved against the Appellant.** E F

In the final result, this appeal having failed, is hereby dismissed with N50,000.00 costs to the Respondent against the Appellant. G H

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### MUNTAKA-COOMASSIE JSC

I have had the privilege of reading in draft the lead judgment

just delivered by my learned brother Mahmud Mohammed, JSC and I agree that the appeal fails and deserves to be dismissed. I endorse the reasons and conclusion reached by my learned brother in dismissing the appeal. I too based on these reasons, dismiss this appeal. I endorse also the order as to costs.

B

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**NGWUTA JSC**

I had the privilege of reading in the draft the lead judgment just delivered by My Lord, Mohammed, JSC and I agree entirely with the reasoning and the conclusion reached.

If, as argued on behalf of the appellant who was the plaintiff at the trial Court, the agreement between the parties was illegal, then the old maxim, *exturpi causa non oritur actio* would apply to defeat the appellant's claim. He actively participated in the contract he described as illegal.

No Court will lend its aid to one who willingly participated in an illegal contract to enforce same. See *George v. Dominion Flours* (1963) All NLR 71 at 22; *Holman v. Johnson* (1775) COWP 341; *Nkwi v. Pankshin Local Government* (1987) NLSLR pt. (62)726.

In any case, what is the illegality in the transaction in which both parties adopted a particular name in their correspondences? There is no evidence of illegal promise or illegal consideration. See *Pam Bisbilder (Nig) Ltd v. First Bank of Nigeria Plc* (2000) 24 LRCN 109 at 122; *Onwuchekwa v. NDIC* (2002) 94 LRCN 332 of 239, 241 and 242.

The appellant accepted being addressed, and did address himself, as Chief S. Ajayi. At page 58 of the record, he said:

*"Total wrote a letter to me as Chief S. A. Ajayi. The letter was in respect of my trading account with them. I wrote a reply back to Total Nigeria Plc as Chief S. Ajayi."*

He accepted that Exhibit C terminated his license when he said at page 45 of the record:

*"My letter of termination is not justified.  
I am not happy about the termination."*

He knew that Exhibit C referred to him, and not his late father, as he said at page 61 of the record:

*"I am the only Mr. Ajayi transacting business with Total Nigeria*

*Plc. I come to Court because of the letter of termination issued to me which is Exhibit C."*

There is no evidence of misrepresentation nor is there evidence of illegality. Between the parties and between them and none parties, no one was deceived. Appellant consented to do business with the respondent with his name as changed, S. Ajayi. That by itself is no reason to set aside Exhibit C. B

For the above and the comprehensive reasoning in the lead Judgment, I also dismiss the appeal for want of merit with N50,000.00 costs to the Respondent against the appellant. C  
Appeal dismissed.

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### **PETER-ODILI JSC**

I am in total agreement with the judgment just delivered by my learned brother, Mahmud Mohammed, JSC. In support of the reasonings from which the decision was made, I shall make some comments. D

This suit originated from the High Court of Justice, Ijero-Ekiti, Ekiti State where the Appellant herein was plaintiff while the present Respondent was the 1st Defendant. E

Sometime in 1960, the father of the Appellant, Chief S. Ajayi now deceased, leased a parcel of land situate at Ifaki Road Junction, Ifaki-Ekiti to the Respondent for fifty years at an annual rent of 5 pounds (E5) which was subject to periodic revision. The lease was to expire in the year 2010 subject to renewal. The Respondent erected a Petrol Filling station on the land and appointed the Appellant's father as a dealer at the said station under a Marketing Licence Agreement separate from and independent of the Lease Agreement. In 1964, the father of the Appellant died and the Respondent called on the Appellant to take over the dealership of the said station under the agreement in which his father was appointed. In 1995, however, the Appellant entered into a fresh Marketing Licence Agreement i.e. Exhibit 'A' with the Respondent which agreement was terminated by the Respondent by a letter of 26th November, 1997 (i.e. Exhibit 'C'). F  
H

Aggrieved by the said termination, the Appellant instituted this suit against the Respondent at the High Court Ijero-Ekiti and sought among other reliefs for the setting aside of the termination of the

dealership. Pleadings were filed and exchanged and at the trial, the Appellant testified for himself and tendered three Exhibits - 'A', 'B' and 'C'. The defence called only one witness, Gbadebo S. Adesoke who was sued as 2nd Defendant along with the Respondent and tendered four exhibits, i.e. Exhibits D, D1, D2, and E. In the end, the trial judge nullified both the Marketing Licence Agreement (Exhibit 'A') and the letter of termination (Exhibit 'C') on the ground of illegality, impersonation and misrepresentation.

Dissatisfied with the judgment the Respondent appealed to the Court of Appeal, Ilorin and the Appellant cross-appealed on the ground that the trial court ought to have given judgment to the current appellant for the sum of N146,927.00 which the Respondent herein admitted to be the Appellant's Security Deposit in possession of the Respondent. The Court of Appeal allowed the appeal in part and also allowed the cross-appeal.

The Respondent was satisfied but the Appellant being dissatisfied has come before this Court on four grounds appeal.

At the hearing on 9th April, 2013, learned counsel for the Appellant adopted their Brief of Argument settled by A. O. Akande SAN and filed on 9/9/04. In the Brief, the Appellant had distilled three issues for determination, viz:

A. Whether it is right or wrong to use the name of a dead man in contracts and whether the fact that both sides to the contract indulge in the act is a waiver which gives them immunity from the sanctions of law and in the circumstances.

B. Whether or not a letter of the termination of contract written not to the party to the contract but to a dead person does legally determine the contract.

C. Whether or not the Lower court was right in granting the counter-claim of the defendant-respondent when the conduct of the said defendant-respondent is unconscionable and when in addition it engages in misrepresentation.

Learned counsel for the Respondent adopted the Brief of Argument settled by Solo I. Eghobamien and filed on the 11/10/04. He had therein formulated three issues for determination as follows:-

1. Whether the Appellant who entered into a Marketing Licence Agreement (Exhibit 'A') in his own name but later, in the course of his performance of the said agreement, wrote and accepted corre-

spondence (Exhibits D, D1, D2 and E) in his late father's name, without protest, will not be deemed to have waived his right regarding his own name under the agreement as to be stopped from denying the effectiveness of a subsequent letter in his father's name (Exhibit C) terminating the agreement.

2. Whether the Court of Appeal was not right in holding that the trial court's nullification of Exhibits 'A' and 'C' for alleged illegality, misrepresentation and impersonation cannot be justified having regard to the fact that the pleadings and evidence of both parties were absolutely bereft of same. B

3. Whether the Court of Appeal was not right to have granted the Respondent's counter-claim having regard to the over-whelming evidence in support of same. C

I shall make use of the issues as couched by the Appellant for ease of reference and flow:- D

**ISSUE A:**

Whether it is right or wrong to use the name of a dead man in contracts and whether the fact that both sides to the contract indulged in the act is a waiver which gives them immunity from the sanctions of law in the circumstances. E

Learned counsel for the Appellant stated that the facts showed that the father of plaintiff/appellant was a lessor to the defendant/respondent in respect of the land in question and that the father aforesaid died in 1964 with the Appellant obtain a Certificate of Occupancy over the land. That the Respondent went on to obtain the Certificate of Occupancy in its own name as represented by Exhibit 'B', an action which was dishonest since it was to supplant the Appellant as the owner of the land and keep appellant out and disentitle him as owner. F

That in 1995, both parties executed Exhibit 'A' which is a marketing Licence under which Respondent was to supply the appellant petroleum product for sale and the proceeds paid into an agreed account of the respondent which agreement was in the name of the appellant. He stated that Exhibit 'C', the letter terminating the marketing licence agreement between the parties was addressed to late S. Ajayi and not to the living E. O. Ajayi. That this representation was wrong, dishonest and fraudulent even though not pleaded by the plaintiff/appellant. G

H

Learned counsel for the Appellant said the court cannot shut its eyes against any act of fraud, dishonesty or misrepresentation. He cited *Okoya v. Santilli* (1994) 4 NWLR (pt.338) 256 at 290; *Sodipo v Oye* (1985) 1 NWLR (pt. 15) 220 at 232; *Abcos Nig. Limited v. Kango Wolf Power Tools Ltd* (1987) 4 NWLR (pt.67) 894 at 907 etc.

B For the Appellant was further submitted that the fact that the parties joined in participating in the wrong act and misrepresentation cannot be a waiver of the effect of the wrong act. He relied on *Onomade v A.C.B. Limited* (1997) 1 NWLR (pt.480) 123 at 144.

C Learned counsel for the Respondent submitted that by receiving the letters, Exhibits D, D1 and D2 in the name of his late father, S. Ajayi without protest and in writing letters like Exhibit 'E' in the same name, the Appellant waived his right to be addressed only as E. O. Ajayi under the agreement, Exhibit 'A' and cannot insist on such right.

D That Appellant is stopped, by virtue of Section 151 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria 1990. He referred to *Ogbonna v A.G. Imo State* (1992) 1 NWLR (pt. 220) 697; *Ondo State University v Folayan* (1994) 7 NWLR (pt.354) 1 at 25; *Joe Igah & Ors v Amakiri & Ors* (1976) 11 SC 1 etc.

E What can be gleaned from the position now being articulated by the Appellant are two contradictory positions which can be stated to be that in the donated right shown by Exhibit 'A', Appellant derived benefits in the contract between him and the respondent in which he went along in the name of his late father, Chief S. Ajayi

F receiving correspondences and made replies in the same name as evidenced by Exhibits D, D1, D2 and E. In the same vein, the termination of the contract was in the same name of his late father and is Exhibit 'C' which has brought about the protest by the Appellant

G crying foul and misrepresentation. It is therefore without question that the Appellant waived his right to be only addressed in his personal name, E. O. Ajayi under the agreement, Exhibit 'A'. Rather, all agreements between him and the respondent whether in the name of his late father, S. Ajayi or his own E. O. Ajayi remained valid, as it

H can be taken that any of the names could be used interchangeably between the Appellant and Respondent in the course of their dealings with regard to the contract between them. That is the principle on which the law of estoppel is hinged. I would herein quote Section 151 of the Evidence Act, Cap 112, Laws of the Federation of Nige-

ria, 1990, which provides thus:-

*“When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or such person’s representative in interest to deny the truth of that thing.”* B

From the above provision, it is clear that by the Appellant’s constitutive act of referring to himself as S. Ajayi (his late father’s name), he is deemed to have waived his right to be addressed strictly and solely as E. O. Ajayi under Exhibit ‘A’. He is not allowed to blow hot and cold or differently stated, to approbate and reprobate at the same time. What this situation amounts to, is that where as in this case a person who had put himself forward as Mr. E. O. Ajayi or Chief S. Ajayi and when for an advantage seeks to jump ship from either of those two names, then the law comes in to stop him and pin him to that which he had of his own volition earlier on put himself. D

I place reliance on the following cases:-

1) Ogbonna v A. G. Imo State (1992) 1 NWLR (pt.220) 697 at 691; E

2) Noibi v Fikaloti & Anor (1987) 3 NWLR (pt.52) 619;

3) Ondo State University v. Folayan (1994) 7 NWLR (Pt.354);

4) Joe Igah & Ors v Amakiri & Ors (1976) 11 SC 1 at 12;

5) Ude v Nwara (1993) 2 NWLR (pt.278) 638 at 662-663. F

It can safely be concluded that the issue herein raised is resolved against the Appellant as he cannot resile from the Agreement entered in the name of his father and which termination being in that same name is valid.

#### ISSUE B: G

Whether or not a letter of the termination of contract written not to the party to the contract but to a dead person does legally determine the contract.

It was submitted for the appellant that no oral or external evidence can be allowed to interpret the contents of a document and so S. Ajayi on Exhibit ‘C’ cannot be explained to be E. O. Ajayi, the licensee. Also, that both parties had been inter-changing S. Ajayi with Elijah Omoniyi Ajayi cannot be used as an exception or waiver under the law. He cited Alli v ikusibiala (1985) 1 NWLR (Pt.4) 630 at 640; H

Olanlege v Afro Court (Nig.) Ltd (1996) 7 NWLR (pt. 458) 29 at 40; Nasr v. Benvic (1968) 1 All NLR 274 at 295.

Also submitted for the appellant is that the wrongness and illegality of passing S. Ajayi (deceased) for E. O. Ajayi plaintiff/appellant (alive) is apparent on Exhibits C, D, D1, D2 and E. That since both parties are in pari delicto in the act of the misrepresentation, the court cannot help either of them and so Exhibit ‘C’ cannot determine Exhibit ‘A’ which subsists.

In response, learned counsel for the respondent stated that no single clause or term of Exhibit ‘A’ was found by the trial judge to be illegal and or shrouded in misrepresentation or impersonation. That ex-facie there was no illegality from the totality of the case as presented by the parties and so the court cannot speculate upon the incidence of illegality or pronounce upon it unless it was made a part of the case of either side. He referred to Sodipo v. Leminkainem Oy (No.1) (1985) 2 NWLR (pt. 8) 547 at 558; George v Dominion Flour Mills Ltd (1963) All NLR 71.

That there was no evidence on which the trial court made its finding on the illegality, rather, it was from counsel’s submission which is not allowed. He cited Akinrinade v. Lawal (1996) 2 NWLR (pt. 429) 218; Igwe v. A.I.C.E. (1994) 8 NWLR (Pt.363) 459; N.A.B. Ltd v. Felly Kene Nig. Ltd. (1995) 4 NWLR (Pt. 387) 100 at 111.

Also submitted for the respondent is that the finding of illegality cannot be anchored on public policy since the hallmark of that policy is not evident. He cited Okonkwo v Okagbue (1994) 9 NWLR (Pt. 368) 301.

The poser herein raised seems to me settled by the answer on issue One; however, for the fulfillment of righteousness, it may be necessary to comment on it. The trial court had declared Exhibits ‘A’ and ‘C’ fraught with illegality, impersonation and misrepresentation on the ground of being against public policy by showing that a dead man was in the contract. I am rather at one with the Court of Appeal which after reviewing the materials before it held that the finding of illegality and misrepresentation were not justified or backed by evidence. The Court below was of the view that the court of trial was influenced by the submissions of Appellant’s counsel which cannot be equated with evidence on which a court can act. Indeed, there is nothing on the face of the entire transaction from which illegality or



misrepresentation can be brought out and so the court of trial should have kept itself within the bounds of what was available and not go into speculative adjudication akin to a different case being determined than what the parties had submitted to. See Sodipo v. Leminkainem Oy (No.1) (1985) 2 NWLR (pt.8) 547 at 558; Akinrinade v Lawal (1996) 2 NWLR (pt.429) 218. B

Furthermore, in matters of public policy, this court had George & ors v Dominion Flour Mills Ltd (1963) All NLR 71 stated as follows:-

*“That where the contract is not ex-facie illegal and the question of illegality depends on the circumstances, as a general rule, the court will not entertain it unless it is raised by the pleadings.”* C

The Court of Appeal was right to have intervened setting aside that finding of the Court of trial on illegality grounded on public policy. See Okonkwo v Okagbue (1994) 9 NWLR (pt.368) 301.

The issue here is also resolved against the Appellant. D

#### ISSUE C:

Whether or not the Lower court was right in granting the counter-claim of the defendant/respondent when the conduct of the said defendant/respondent is unconscionable and when in addition it engages in misrepresentation. E

For the appellant was contended that both parties indulged in mutual deception and misrepresentation and so respondent's counter-claim ought not to have been granted by the Lower court. Also, that the Court of Appeal ought not to have held that Exhibit 'C' determined Exhibit 'A' when the exhibit was not directed to plaintiff/appellant who was a party to the agreement but to somebody not a party to the agreement and who had died long before the said agreement. F

In response, it was stated by learned counsel for respondent that Clause 1:1 of Exhibit 'A' is available to both contracting parties as a means of bringing the dealership to an end. That under clause 16:1 and 2, only the respondent, the marketing company can terminate the agreement using that clause when the dealer is in breach of any conditions contained in Clause 16:1. In terminating under this clause, the respondent must state a reason which must be located within clause 16:1 of Exhibit 'A' and a termination therein takes effect immediately. He cited Total Nigeria Plc v Chief A. N. Mortah (2002) 9 NWLR (Pt.773) 492 at 007 - 510, Rank Xerox Nigeria Limited v. Cantrex (Nig.) Limited (1995) 1 NWLR (pt.374) 703; Mobil Oil Ni- G H

geria Limited v Johnson (1961) 1 All NLR 102 at 103.

That the Court of Appeal was right in granting the respondents counter-claim in view of the failure of the appellant's case.

This issue on the Court of Appeal granting the counter-claim of the Respondent, it is to be said that the matter here is a follow up of the questions raised in the two earlier issues which have been favourably resolved in favour of the Respondent, the only thing that is left is granting of the counter-claim. This is so because the validity of Exhibit 'C' which terminated the contract agreement Exhibit 'A', it cannot be run away from that the counter-claim of the Respondent as defendant for the surrender by the Appellant of the Filling Station and the accounting and monetary compensation would be given effect to. As I have tried to put across, the Court of Appeal was correct in its interpretation of the whole gamut of the transaction between Appellant and Respondent including the documentary evidence. That situation would be incomplete without the matter of the counter-claim being resolved in favour of the Respondent since it flows from all that transpired.

From the foregoing and the well reasoned and articulated decision in the lead judgment, I dismiss this appeal and affirm the judgment of the Court of Appeal.

I abide by the consequential orders as made.

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F

### **ARIWOOLA JSC**

My learned brother, Mahmud Mohammed, JSC obliged me with the draft of the lead judgment just delivered. I am in total agreement with the very well articulated reasoning in the said lead judgment and the conclusion beautifully arrived thereat. I have nothing more to add. I adopt same as mine.

I also dismiss the appeal and will abide by the consequential orders including the order on costs.

H