

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 16TH DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP, THE HON. JUSTICE I. E. EKWO
JUDGE

SUIT NO: FHC/ABJ/CS/984/2019

BETWEEN:

THE ATTORNEY GENERAL OF RIVERS STATE PLAINTIFF

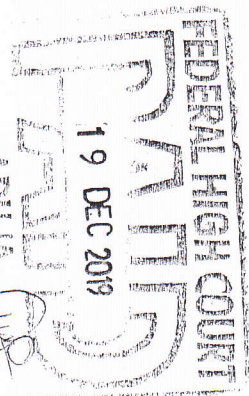
AND

NATIONAL BOUNDARY COMMISSION DEFENDANT

JUDGEMENT

The originating process in this case was issued on the application of the Plaintiff dated 15th August, 2019 for the determination of a sole question to wit:

Whether having regard to the provisions of section 3(a) of the National Boundary Commission Act, Cap N10, Laws of the Federation of Nigeria 2004 and the undertaking contained in the Defendant's letter dated 3/7/2002, the failure of the Defendant to rectify the erroneous interstate boundary between Rivers State and Bayelsa State as contained in the extant 11th Edition of the Nigerian Administrative Map constitutes a breach of the Defendant's statutory duty and a flagrant disobedience of the Order of the Supreme Court contained in its judgment delivered on 10/7/2012 in Suit No. SC.106/2009: Attorney General of



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Rivers State vs Attorney General of Bayelsa State and which has occasioned continuous denial of the Plaintiff of its constitutional right to be paid the 13% derivation funds accruing from the Soku Oil Fields/Wells located within Rivers State.

The Plaintiff seeks the following reliefs upon the determination of the sole question:

- (a) A declaration that the continued failure and/or refusal of the Defendant to rectify its admitted mistake in the 11th Edition of the Administrative Map of Nigeria since 2002 which erroneously showed San Bartholomew River instead of River Santa Barbara as the interstate boundary between the Plaintiff State and Bayelsa State constitutes a breach of its statutory duty and a flagrant disobedience of the Order of the Supreme Court contained in its judgment delivered on 10/7/2012 in Suit No. SC. 106/2009.
- (b) A declaration that the continued reliance on the said defective 11th Edition of the Administrative Map of Nigeria by other Government Agencies/Statutory bodies especially the Revenue Mobilisation, Allocation and Fiscal Commission and the Accountant General of the Federation in computation of the *revenue* accruable to the Plaintiff from the Federation Account has resulted in the continued unjust/unfair denial of allocation of derivation funds/money accruing from the Soku Oil Fields/Wells situate within the Rivers

State to the detriment of the Plaintiff.

- (c) An Order of mandamus or mandatory injunction compelling the Defendant to rectify forthwith in the 12th Edition of the Administrative Map of Nigeria the erroneous interstate boundary between Rivers State and Bayelsa State as contained in the extant 11th Edition of the Administrative Map of Nigeria.
- (d) An Order, pending the formality of compliance with the order of mandamus or mandatory injunction in (c) *above*, deeming the administrative boundary between Rivers and Bayelsa States to be River Santa Barbara in accordance with the admission of the Defendant as per its letter of 3/7/2002 and the definitive Orders of the Supreme Court entered and made on 10/7/2012.
- (e) An Order, upon the grant of the above reliefs, directing that notice of the decision of this Honourable Court be served on the Revenue Mobilisation, Allocation and Fiscal Commission and the Accountant General of the Federation.

The facts of the Plaintiff's case are to be gleaned from their 18-paragraphed affidavit deposed to on 22nd August, 2019. I consider the salient averments thereof to be found in paragraphs 4-17. Therein it is averred that in 1996, Bayelsa State was created out of the old Rivers State. The geographical entity known as Rivers State included Soku Oil Fields/Wells from which derivation funds were paid to Rivers State. Upon creation of Bayelsa State, the administrative structure or unit hitherto known as Brass Division

was excised from old Rivers State and constituted into Bayelsa State; while Degema and the remaining Divisions became present Rivers State with both States having their boundary as River Santa Barbara. This was the position from time immemorial and was so reflected in several Administrative Maps of Nigeria including the 10th Edition. Sometime in 2002 when the Plaintiff noticed that the 11th Edition of the Administrative Map of Nigeria changed the natural boundary between it and Bayelsa State from River Santa Barbara to San Bartholomew River, the Plaintiff protested the change to the Defendant and the Surveyor-General of the Federation (Exhs. A, B and C). In response to the protest letters, the Defendant in its letter dated 3rd July, 2002 admitted its mistake in the 11th Edition of the Administrative Map of Nigeria which placed the boundary between Rivers and Bayelsa States at San Bartholomew River and undertook to correct same in its 12th Edition of the Administrative Map of Nigeria (Exh. D). When the Defendant failed to redress the mistake in spite of its undertaking to correct same, and, in spite of repeated demands by the Plaintiff to do so, the Plaintiff in 2009 instituted an action at the Supreme Court in its original jurisdiction in Suit No. SC.106/2009 - *Attorney General of Rivers State v. Attorney General of Bayelsa State and Attorney General of the Federation*. On 10th July, 2012 the Supreme Court of Nigeria in a unanimous held that based on the admission of the mistake made by the Defendant and its undertaking to rectify the error of the interstate boundary between Rivers State and Bayelsa State in its 12th Edition of the Administrative Map of Nigeria, the Plaintiff's suit was accordingly struck out but the Court made an order against the Defendant to

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wit:

"From the tone of this letter, the fixing of St. Bartholomew River as the boundary between the plaintiff and the 1st defendant is an error acknowledged by the National Boundary Commission which it has undertaken to correct. Consequently, it is the order of this court that the 2nd Defendant; the National Boundary Commission produces the 12th Edition of the Administrative Map of Nigeria expeditiously correcting all the alleged error in the 11th Edition."

It is then averred that the Order of the Supreme Court contained in the said judgement was delivered by Adekeye, JSC (as he then was) and is reported in *Attorney General of Rivers State v. Attorney General of Bayelsa State & Anor.* (2013) 3 NWLR (Pt. 1340) 123 at 167 paras D-E (Exh. E), and, the letter referred to by the Supreme Court in the judgement is to be found in Exh. D. Notwithstanding the Defendant's undertaking to rectify the error and the Order of the Supreme Court that it should do so expeditiously, the Defendant till date has failed and/or refused to amend the interstate boundary between the two States contained in its 11th Edition of the Administrative Map of Nigeria. The Defendant has recently been bandying a preliminary Administrative Map purportedly as the 12th Edition of the Administrative Map of Nigeria (Exh. F) which did not correct the anomaly complained of in the 11th Edition of the Administrative Map of Nigeria. When the Plaintiff became aware of Exh. F, the Plaintiff wrote a letter dated 19th July, 2019 (Exh. G) to the 1st Defendant complaining of the defects

contained therein and demanded a withdrawal of the said document from circulation and also demanded compliance with its undertaking and Order of the Supreme Court within 21 days which period has since elapsed without compliance by the 1st Defendant. Unless compelled by this Court the Defendant will not produce an authentic 12th Edition of the Administrative Map of Nigeria in compliance with its undertaking and the Order of the Supreme Court. Consequent upon the failure of the Defendant to correct the said anomaly, other Governmental Agencies/Departments/Statutory bodies have continued to rely upon the 11th Edition of the Administrative Map of Nigeria to unjustly/unfairly deny the Plaintiff State of its entitlement to be paid the derivative funds/money accruing from the Soku Oil Fields/Wells which said Oil Fields/Wells are situated within Rivers State. Unless this Court makes a deeming Order that the boundary between Rivers and Bayelsa States is the River Santa Barbara in accordance with the admission of the Defendant as per its letter of 3rd July, 2002 and the Orders of the Supreme Court thereto, pending the formality of compliance with the mandatory rectification Order sought in this Summons, other Governmental Agencies including, but not limited to the Revenue Mobilisation, Allocation and Fiscal Commission and the Accountant General of the Federation, will continue to deny the Plaintiff the derivative funds/money accruing from the Soku Oil Fields/Wells. al

In reaction, the Defendant filed a 14-paragraphed counter-affidavit deposed to on 12th November, 2019. I find the salient averments thereof in paragraphs 4-13. It is averred therein that there has been a lingering boundary dispute between the Plaintiffs' State

and Bayelsa State in which the Plaintiff's State claims River Santa Barbara as the boundary while Bayelsa State claims San Bartholomew River as the boundary. The Defendant has initiated several actions towards the resolution of the boundary dispute between the Plaintiffs State and Bayelsa State, and while the process of resolving the dispute was going on, the 11th Edition of the Administrative Map of Nigeria was produced in error because action on the boundary has not been concluded (Exh. A). The Defendant does not know exactly where the boundary between the Plaintiff's State and Bayelsa State is unless and until action is conclusive. A Joint Meeting of Officials convened on Wednesday 30th November, 2011 to receive and discuss the Joint Technical Report of November, 2007 and also chart a new road map towards fast-tracking the boundary dispute resolution process could not proceed due to a pending Court case at the instance of Plaintiff's State (Exh. B). Action on the boundary definition and delineation between the Plaintiff's State and Bayelsa State could not continue due largely to the fact that the Plaintiff's State withdrew from further deliberation during a Joint Meeting of Officials held on Wednesday 30th January, 2013 (Exh. C). The conclusion of the boundary dispute resolution can only be possible where all the stakeholders participate in the process. The Plaintiff's State refused to participate in the Joint Meeting of Officials recently convened on 24th - 26th September, 2019 aimed at resolving the boundary dispute. Even when it acknowledged receipt of letter of invitation from the Defendant, it took no step to reply to the letter showing why it could not participate in the meeting, and, the Joint Officials Meeting could not take place (Exh. D). The 12th Edition of the Administrative Map of Nigeria mentioned in paragraph

13 of the Plaintiff's Affidavit is Provisional Administrative Map and cannot be relied upon by any authority or person in view of the fact that action on the disputed boundary has not been concluded. The Defendant has a procedure of defining and delineating boundary which must be exhausted before taking a decision on any boundary line including that of the Plaintiff's State and Bayelsa State, and the request by the Plaintiff to compel the Defendant to produce an authentic 12th Edition of the Administrative Map of Nigeria is premature. The Defendant is not aware and does not know any agency of the government/statutory bodies that rely upon the 11th Edition of the Administrative Map of Nigeria neither does the Defendant know where the Soku Oil Field/Well or any other Oil Wells/Fields are located. The Defendant cannot unilaterally define and delineate any boundary as between states, communities and local government areas in Nigeria, the Plaintiff's State and Bayelsa State boundary inclusive, and to conclude work on the disputed boundary between the Plaintiff's State and Bayelsa state, stakeholders must resume resolution process.

The written address of the Plaintiff is predicated on the sole question formulated for determination. It is asserted therein that it is trite law that in the interpretation of statutes (including the Constitution) where the words are clear and unambiguous, the law compels the Courts to accord them their plain and ordinary meanings; reliance is placed on *Barbedos Ventures Ltd. v. First Bank of Nigeria Plc.* (2018) 4 NWLR (Pt. 1609) 241 at 286. It is then submitted that the relevant statutory provisions contained in S.3(a) of the National Boundary Commission, Cap. N10, LFN 2004

ought to be given their plain and ordinary meanings. By S. 3 of the Boundary Commission Act, it is the duty of the Defendant to determine and intervene in the boundary dispute between Rivers State and Bayelsa State and the proper placement of the Soku Oil Fields/Wells in the Administrative Map of Nigeria; reliance is placed on *Attorney General of Rivers State v. Attorney General of Bayelsa State (supra)*. Therefore when the Plaintiff protested the wrong placement of the boundary between Rivers State and Bayelsa State by the 1st Defendant at the River San Bartholomew instead of River Santa Barbara as contained in the 11th Edition of the Administrative Map of Nigeria, that is, Exhs. A, B and C. The Defendant admitted the error and undertook to correct the error in its 12th Edition of the Administrative Map of Nigeria (Exh. D). The Defendant having failed to do so, the Plaintiff sued in *Attorney General of Rivers State v. Attorney General of Bayelsa State (supra)* wherein the 1st Defendant maintained that it made an error in the 11th Edition of the Administrative Map of Nigeria and its undertaking to rectify same in the 12th Edition. The Court said the excuses given by the Defendant why it had not effected the correction and reflect same in the 12th Edition of the Administrative Map, were "lame excuses"; reliance is placed on *Attorney General of Rivers State v. Attorney General of Bayelsa State (supra)* at p. 154 paras C-E. At pp. 166 to 167 paras E-E of the judgement in the Law Report. The Defendant was ordered to produce the 12th Edition of the Administrative Map of Nigeria expeditiously correcting all the alleged errors in the 11th Edition. It is now more than 17 years when the Defendant in Exh. D to the supporting affidavit

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undertook to correct the boundary error in the 12th Edition of the Administrative Map of Nigeria and more than 7 years since the Supreme Court ordered the Defendant to produce the 12th Edition of the Administrative Map of Nigeria and correct the error in the 11th Edition "expeditiously". The Defendant is yet to produce the 12th Edition of the Administrative Map of Nigeria and effect the correction it admitted it made in the 11th Edition of the Map concerning the proper interstate boundary between the Plaintiff State and Bayelsa State. The failure of the Defendant to produce the 12th Edition of the Administrative Map of Nigeria constitutes a breach of its statutory duty and also constitutes a flagrant disobedience of the Order of the Supreme Court and it is trite law that orders of Court are meant to be obeyed, and must be obeyed; reliance is placed on *Chemiron International Ltd. v. Stabilini Visinoni Ltd.* (2018) 17 NWLR (Pt. 1647) 62 at 83, *Ezim v. Menakaya* (2018) 9 NWLR (Pt. 1623) 113 at 136, and, *APC v. Karfi* (2018) 6 NWLR (Pt. 1616) 479 at 519.

The failure of the Defendant to so comply has continued to rob the Plaintiff State of its entitlement to be paid the derivative funds/money accruing from the Soku Oil Fields/Wells which are situated within the Rivers State. The Plaintiff State is being denied this entitlement because other government agencies/departments/statutory bodies such as the Revenue Mobilization, Allocation and Fiscal Commission, and, the Accountant General of the Federation are still relying on the defective 11th Edition of the Administrative Map of Nigeria in determining the derivative revenue accruable to the Plaintiff State. Therefore, it will be in the interest

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of justice to make a deeming Order that the boundary between Rivers State and Bayelsa State is the River Santa Barbara in accordance with the Defendant's admission in its letter of 3rd July, 2002 and the Order of the Supreme Court pending when the Defendant will comply with the production of the 12th Edition of the Map in line with S. 287(1) of the 1999 Constitution. This Court is constitutionally vested with the power to enforce the Order of the Supreme Court contained in its judgement delivered on 10th July, 2012. By the provisions of S.14(1) & 2 of the Federal High Court Act, Cap F12 LFN 2004 (hereinafter the FHCA), this Court has the powers to make an Order of mandamus or mandatory injunction requiring any act to be done and such power may be exercised notwithstanding that the Order is made against an officer or authority of the Federation as such; reliance is placed on *Ohakim v. Agbaso* (2010) 19 NWLR (Pt. 1226) 172 at 228, and, *Associated Discount House Ltd. v. The Hon. Minister of the Federal Capital Territory* (2013) 8 NWLR (Pt. 1357) 493 at 509. It is posited that in the context of the facts of this case, all the Plaintiff seeks in this case is an Order compelling the Defendant, who has shown no respect for the Court of law and who has shown clearly the "shirking of its statutory responsibilities" to perform its statutory duty as claimed in this action. In conclusion, this Court is urged to answer the sole question for determination in the affirmative and grant the reliefs sought. al

In the written address of the Defendant, a sole question is formulated for determination to wit:

Whether this action is competent in view of the fact that it centers on and seeks order of Mandamus or Mandatory

injunction against the Defendant?

It is their argument that by Order 34 Rule 3 (1) and (2) of the FHCCPR 2019 an application for an order of mandamus, prohibition or certiorari; or an injunction restraining a person from acting in any office in which he is not entitled to act, shall be made by an application for judicial review in accordance with the provision of this Order. The application for judicial review shall not be made unless the leave of the Court has been obtained, and, the application for leave shall be made *ex parte* to the Judge and shall be supported by a statement setting out the name and description of the applicant, the relief sought and the ground on which it is sought, an affidavit verifying the fact relied on, and, a written address in support of the application for leave. Non-compliance with the provisions of Order 34 of the FHCCPR 2019 by the Plaintiff renders this action incompetent, and as such has divested this Court the jurisdiction to entertain this suit; reliance is placed on *Dr. Gabriel Olusoga Onagoruwa & Anor. v. IGP & 5 Ors.* (1991) 5 NWLR (Pt.193) 593 at 639, and, *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341. It is submitted that Court Rules when made are applicable and binding on all authorities and persons they relate to, they are not mere flowers to decorate the statute book. It must be obeyed and the repeated use of the word "shall" throughout the provision of Order 34 is an affirmation that compliance with the provisions of the Rules of the Order is mandatory and not optional. Accordingly, this Court is urged to resolve this question in favour of the Defendant and strike out this suit. ol

I have noted the argument of the Plaintiff in their Reply on Point of Law wherein it is stated that the claim of the Plaintiff

relating to mandatory injunction or order of mandamus is made under a purely private law setting or ordinary claim and not under the procedure of judicial review under Order 34 of the FHCCPR 2019; reliance is placed on *Ohakim v. Agbaso (supra)*. It is also submitted that under S. 14(1) and (2) of the FHCA this Court is vested with power to make order mandamus requiring any act to be done. The exercise of this power is not restricted only to claims brought by way of judicial review procedure. This Court is urged to discountenance the argument of the Defendant.

I have to say that the response of the Defendant to the case of the Plaintiff in their written address is quite a procedural novelty in my opinion. It is a very rare form of defence and perhaps procedurally extraordinary if I may say. This is because the averments in the counter-affidavit appears to constitute what I may consider as the defence of the Defendant. The written address attached to the counter-affidavit elucidates nothing concerning the averments in the counter-affidavit but addresses what is apparently an objection to the competence of the suit of the Plaintiff. This is done by formulating a sole issue to be determined by the Court on whether this action is competent in view of the fact that it centers on and seeks order of mandamus or mandatory injunction against the Defendant? Their argument thereon is that by Order 34 Rule 3 (1) and (2) of the FHCCPR 2019 an application for an order of mandamus, prohibition or certiorari or an injunction restraining a person from acting in any office in which he is not entitled to act, shall be made by an application for judicial review in accordance with the provision. It is contended therein that the application for judicial

review shall not be made unless the leave of the Court has been obtained, and, the application for leave shall be made *ex parte* to the Judge and shall be supported by a statement setting out the name and description of the applicant, the relief sought and the ground on which it is sought, an affidavit verifying the fact relied on, and, a written address in support of the application for leave. It is their conclusion that non-compliance with the provision of Order 34 of the FHCCPR 2019 by the Plaintiff renders this action incompetent, and as such has divested this Court the jurisdiction to entertain this suit.

By and large the written address of the Defendant constitute a preliminary objection on the competence of the case of the Plaintiff. Now, where a competence of a suit is being challenged, it is Order 16 of the FHCCPR 2019 that applies. It is stated therein thus:

- Order 16 (1) – There shall be no demurrer allowed.
- (2) (1) – A party shall be entitled to raise by his pleading any point of law, and any point of law so raised shall be disposed of by the Judge who tries the cause at or after the trial.
- (2) A point of law so raised may, by consent of the Parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before trial.

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4. The Court or a Judge in Chambers may

order any pleading to be struck out on the grounds that it discloses no cause of action or defence being shown by the pleadings to be frivolous or vexatious, and may also order the action to be stayed or dismissed, or judgement to be entered accordingly, as may be just.

5. An action or proceeding shall not be open to objection on the ground that a merely declaratory judgement or order is sought thereby, and the Court may make binding declaration of right whether any consequential relief is or could be claimed or not.

It is elementary in our law that pleadings in a case of this nature is the depositions and averments in an affidavit in support of an originating summons are like the averments contained in the statement of claim or pleadings in support of a general writ of summons in an action commenced by such writ of summons; see *Ports and Cargo Handlings Services Company Ltd. & Ors. v. Migfo Nig. Ltd. & Anor.* (2012) 18 NWLR (Pt.1333) 555 at 609. The counter-affidavit on the other hand serve as statement of defence. Therefore, the affidavits are the pleadings for the case; see *N.N.P.C. & Ors. v. Famfa Oil Ltd.* (2012) 17 NWLR (Pt.1328) 148 at 189, and, *Uwazuruonye v. Governor of Imo State & Ors.* (2013) 8 NWLR (Pt.1355) 28 at 50. al

The requirement in Order 16 2(1) of the FHCCPR 2019 is that the Defendant ought to have raised the point of law that challenges

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the competence of the Plaintiff in their pleading which is their counter-affidavit. Therefore in the Rules of Procedure of this Court, the proper process to raise any point of law challenging the competence of a suit is the pleading. I have perused the said counter-affidavit over and over to see where the issue of the competence of the case of the Plaintiff is raised and found none. Raising such issue in the written address of Counsel is not the same thing as raising same in the Pleading as required by the Rules of this Court. Written address of Counsel for the avoidance of doubt is not the Pleading or even part of the pleading of the case. In my view, the method or process used by the Defendant in challenging the case of the Plaintiff is not in compliance with a mandatory provision Order 16 2(1) of the FHCCPR 2019. It is on these grounds that I make an order dismissing the issues raised and argued in the written address of the learned Counsel for the Defendant for being defective, incompetent and invalid. On the other hand, I think the reply of the Plaintiff has addressed the objection of the Defendant that mandatory injunction or order of mandamus can be made under private law setting or ordinary claim and not under the procedure of judicial review under Order 34 of the FHCCPR 2019; see *Ohakim v. Agbaso (supra)*. I am inclined to accept the position of the Plaintiff that under S. 14(1) and (2) of the FHCA this Court is vested with power to make order mandamus requiring any act to be done. The exercise of this power is not restricted only to claims brought by way of judicial review procedure. What the Plaintiff seeks in this action are declaratory orders and consequential orders. By Order 16 Rule 5 of the FHCCPR 2019, it is expressly stated that an action or proceeding shall not be open to

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objection on the ground that a merely declaratory judgement or order is sought thereby, and the Court may make binding declaration of right whether any consequential relief is or could be claimed or not. Again, I make an order dismissing the objection of the Defendant for lacking in merit.

On the substantive issue, this is a clear case where the Plaintiff is coming to Court because the Defendant has failed after 7 (seven) years of the Supreme Court's decision in Suit No. SC.106/2009 - *Attorney General of Rivers State v. Attorney General of Bayelsa State and Attorney General of the Federation* in 2009 delivered on 10th July, 2012 and reported as *Attorney General of Rivers State v. Attorney General of Bayelsa State & Anor.* (2013) 3 NWLR (Pt. 1340) 123. The essence of the suit was for the Defendant to reflect the boundary between Rivers state and Bayelsa State as River Santa Barbara which had been the position from time immemorial and had been so reflected in several Administrative Maps of Nigeria including the 10th Edition. Within this boundary is geographical entity known as Soku Oil Fields/Wells from which derivation funds were paid to Rivers State. It was when the Defendant changed the boundary in the 11th Edition of the Administrative Maps of Nigeria between Rivers State and Bayelsa State from River Santa Barbara to San Bartholomew River that the Plaintiff protested the change to the Defendant and the Surveyor-General of the Federation per Exhs. A, B and C. The Defendant admitted the error per Exh. D and undertook to correct same in its 12th Edition of the Administrative Map of Nigeria but never did. In Suit No. SC.106/2009 - *Attorney General of Rivers State v. Attorney General of Bayelsa State and Attorney General of the*

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Federation (supra) the Supreme Court entered a unanimous decision based on the admission of the mistake made by the Defendant and its undertaking to rectify the error of the interstate boundary between Rivers State and Bayelsa State in its 12th Edition of the Administrative Map of Nigeria. Upon Judgement being entered, the Defendant was ordered (as the 2nd Defendant in that case) to produce the 12th Edition of the Administrative Map of Nigeria expeditiously correcting the alleged error in the 11th Edition. The Defendant recently published a preliminary Administrative Map tendered as Exh. F purportedly as the 12th Edition of the Administrative Map of Nigeria which did not correct the anomaly complained of in the 11th Edition of the Administrative Map of Nigeria. The letter of complain of the Plaintiff on the issue is Exh. G dated 19th July, 2019. It is the case of the Plaintiff that the consequence of the failure of the Defendant to correct the said anomaly is that other Governmental Agencies/Departments/Statutory bodies have continued to rely upon the 11th Edition of the Administrative Map of Nigeria to unjustly/unfairly deny the Plaintiff State of its entitlement to be paid the derivative funds/money accruing from the Soku Oil Fields/Wells which said Oil Fields/Wells are situated within Rivers State.

I have perused the reaction of the Defendant in the averments in their counter-affidavit. I have noted the following:

First, none of the averments in the Defendant's counter-affidavit has controverted the case of the Plaintiff paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the affidavit in support of the originating summons. The position of the law is that the uncontroverted averments are to be deemed as admitted. When it

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comes to admission, the law is clear. It was stated in *Adeboye v. Baje* (2016) All FWLR (Pt. 845) 79 at 120 (Para. E- G) that:

"It is trite law that an admission by a party against his own interest is at best the most appropriate evidence in favour of his opponent. In *Atobatele Ali v. UBA* (2014) LPELR – 22635, this Court, per Augie JCA; 39, B – E held:

"It is presumed that no man would declare anything against himself unless it was true. See *Eigbe v. Nigerian Union of Teachers* (2008) 5 NWLR (Pt. 1081) 604. Thus, a party is entitled to rely on his opponent's admission as an admission against interest to defeat his opponent's claim. See *Ipinlaye II v. Olutokun* (1996) 6 NWLR (Pt. 453) 148 SC..."

It was also stated in *Chukwu & Ors. v. Akpelu* (2013) LPELR – 21864 (SC) where the Supreme Court that:

"The established principle of law is well founded and settled that facts admitted need no proof. See the case of *Narinder Trust Ltd. v. N.I.C.M.B. Ltd.* (2001) FWLR 1546 at 1558 and *Nwankwo v. Nwankwo* (1995) 5 NWLR (Pt. 894) 158. This Court had also held in the case of *Olufusoye & Ors. v. Olorunfemi* (1989) 1 NWLR (Pt. 95) 26 that an admitted fact is no longer a fact in issue. The same principle was enunciated in *Bunge v. Governor Rivers State* (2006) 12 NWLR (Pt. 995) 573 where it was held at page 600 that:

"When a fact is pleaded by the Plaintiff and admitted by the Defendant, evidence on the admitted fact is

irrelevant and unnecessary. There is no dispute on a fact which is admitted."

Secondly, the averments in the counter-affidavit of the Defendant is that it initiated several actions towards the resolution of the boundary dispute between the Plaintiff's State and Bayelsa State, and while the process of resolving the dispute was going on, the 11th Edition of the Administrative Map of Nigeria was produced in error because action on the boundary has not been concluded (Exh. A). The Defendant does not know exactly where the boundary between the Plaintiff's State and Bayelsa State is unless and until action is conclusive. This can be found in paragraphs 4, 5, and 6 of their counter-affidavit. These averments are far too feeble to answer the case of the Plaintiff. In our law, where in a counter-affidavit a respondent makes some feeble and shallow averments in denial of specific facts in an affidavit such averments are mere general denials which are ineffective as challenge to serious averments against him; see *Govt., Ekiti State v. Ojo* (2006) 17 NWLR (Pt.1007) 95 at 129.

Thirdly, I have studied Exhs. A which is the 11th Edition of the Administrative Map of Nigeria. Exhs. B and C are the complaints of the Plaintiff concerning Exh. A. Exh. D contains the admission of error of the Defendant on Exh. A which was also tendered at the Supreme Court and relied upon in the judgement in Exh. E. Then, Exh. F is the Administrative Map of Nigeria 12th Edition showing that the Defendant has not corrected the error which it admitted before the Supreme Court. And Exh. G is the Plaintiff's demand for the withdrawal of the 11th and 12th Editions of the Administrative Map of Nigeria. I have also looked at the Exh. A of the Defendant dated July, 2019 which is a Brief

on Bayelsa/Rivers Interstate Boundary. Exh. B is a communique issued at the end of the Joint meeting of officials on Bayelsa/Rivers Interstate Boundary held on 30th November, 2011. Exh. C is a communique issued at the end of the Joint meeting of officials on Bayelsa/Rivers Interstate Boundary held on 30th January, 2013. Exh. D is titled: " Joint Meetings of Officials on Bayelsa/Rivers Interstate Boundaries, holding at Port Harcourt, Rivers State from 24th - 26th September, 2019." I am unable to see how these documentary evidence of the Defendant has controverted the case of the Plaintiff. The Defendant had no business convening meetings on Bayelsa/Rivers Interstate Boundary after the Supreme Court had entered judgement on the case. Such meetings in my view seem to elevate the officials of the Defendant above the verdict of the Supreme and this ought to be condemned and I make an order condemning it. Furthermore, Exhs. A, B and C of the Defendant are bereft of any probative value as they do not represent any sense of forthrightness on the part of the Defendant to comply with judgement of the Supreme Court.

Fourthly, the Defendant upon having not denied that there has been a Supreme Court judgement with specific and express orders in Suit No. SC.106/2009 - *Attorney General of Rivers State v. Attorney General of Bayelsa State and Attorney General of the Federation (supra)* is making attempts in the averments in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 of their counter-affidavit which to me amounts to giving reasons which it has failed to comply with the order of the Supreme Court after 7 (seven) years. The averment in paragraph 13 that the Defendant cannot unilaterally define and delineate any boundary as between states, communities and local government

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areas in Nigeria (the Plaintiff's State and Bayelsa State boundary inclusive), and, to conclude work on the disputed boundary between the Plaintiff's State and Bayelsa state, stakeholders must resume resolution process, is in my opinion an attempt to negotiate and negate the authority in the judgement of the Supreme Court if not an express indication that it does not intend to comply with the terms of the judgement. I must state that the function of the Defendant in S. 3(a) of the National Boundary Commission referred to by the Plaintiff, which is to deal with, determine and intervene in any boundary dispute that may arise between Nigeria and any of her neighbours or between any two States of the Federation, with a view to settling such dispute, especially between the Plaintiff and Bayelsa State with respect to River Santa Barbara has been settled in Suit No. SC.106/2009 - *Attorney General of Rivers State v. Attorney General of Bayelsa State and Attorney General of the Federation (supra)*. All the Defendant needed or needs to do was to comply with the judgement. The law in S. 287(1) of the 1999 Constitution (as amended) as rightly stated by the Plaintiff is that the decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court, and, this Court will do no less.

I therefore, answer the sole issue of the Plaintiff in the affirmative.

I have already answered the sole question of the Defendant upon dismissal of the issue raised in their written address.

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Accordingly, judgement of this Court is hereby entered on the following terms:

- (a) A declaration is hereby made that the continued failure and/or refusal of the Defendant to rectify its admitted mistake in the 11th Edition of the Administrative Map of Nigeria since 2002 which erroneously showed San Bartholomew River instead of River Santa Barbara as the interstate boundary between the Plaintiff State and Bayelsa State constitutes a breach of its statutory duty and a flagrant disobedience of the Order of the Supreme Court contained in its judgement delivered on 10th July, 2012 in Suit No. SC. 106/2009.
- (b) A declaration is hereby made that the continued reliance on the said defective 11th Edition of the Administrative Map of Nigeria by other *Government* Agencies/Statutory bodies especially the Revenue Mobilisation, Allocation and Fiscal Commission and the Accountant General of the Federation in computation of the *revenue* accruable to the Plaintiff from the Federation Account has resulted in the continued unjust/unfair denial of allocation of derivation funds/money accruing from the Soku Oil Fields/Wells situate within the Rivers State to the detriment of the Plaintiff. al
- (c) An Order is hereby made compelling the Defendant to rectify forthwith in the 12th Edition of the

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Administrative Map of Nigeria the erroneous interstate boundary between Rivers State and Bayelsa State as contained in the extant 11th Edition of the Administrative Map of Nigeria.

- (d) An Order is hereby made pending the formality of compliance with the order above deeming the administrative boundary between Rivers and Bayelsa States to be River Santa Barbara in accordance with the admission of the Defendant as per its letter of 3rd July, 2002 and the definitive Orders of the Supreme Court entered and made on 10th July, 2012.
- (e) An Order is hereby made directing that notice of the decision of this Honourable Court be served on the Revenue Mobilization, Allocation and Fiscal Commission and the Accountant-General of the Federation.

This is the judgement of this Court.



I. E. Ekwo
Judge

16/12/2019

L. E. Nwosu, SAN, (with A. O. Okeaya-Inneh, SAN, O. J. Onoja, SAN, Messrs M. A. Ebute, Anthony Ayaogu, George Ibrahim, Z. A. Nwosu and Dapo Agboola) for the Plaintiff.

The Processes filed by Nwaji Ikechukwu, Esq., (Chief Legal Officer) for the Defendant was adopted.

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