

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA,  
IN THE AWKA JUDICIAL DIVISION,  
HOLDEN AT AWKA.

BEFORE HIS LORDSHIP, HONOURABLE JUSTICE WAZIRI ABALI

DATE: 4<sup>th</sup> May, 2017.

SUIT NO.: NICN/EN/751/2014

BETWEEN:

1. SIR JOSEPH UBOGU  
2. PROFESSOR UVIE A. IGUN  
3. DEACON EMMANUEL O. EJIKO } - - - - - CLAIMANTS

AND

1. DELTA STATE UNIVERSITY, ABRAKA  
2. THE GOVERNING COUNCIL,  
DELTA STATE UNIVERSITY, ABRAKA  
3. THE VICE CHANCELLOR,  
DELTA STATE UNIVERSITY, ABRAKA } - - - - - DEFENDANTS

REPRESENTATION:

Albert Akpomudje, SAN - for the Claimants;  
Dr. G. O. Inikori - for the Defendants.

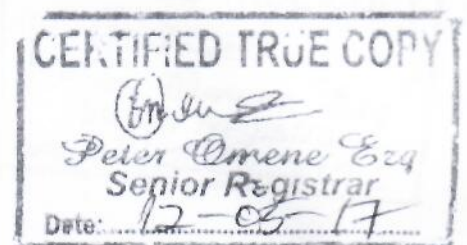


JUDGEMENT

By a General Form of Complaint dated the 24/06/2014 and amended via an Order of Court of 09/11/2015, the claimants claim against the defendants as follows:

1. A declaration that the salaries/pension package/entitlement applicable to the claimants is that which was discussed and approved by the 2<sup>nd</sup> defendant at the 47 Regular meeting of the 2<sup>nd</sup> defendant held sometime in 2003;
2. A declaration that the alleged White Paper Report of the Committee of Personnel Audit and Development of the Integrated and Automated Payroll and Personnel Information System for Staff of Delta State University did not set aside or affect the salary/pensions of the claimants in any way whatsoever based on the approved package of 2003;
3. A declaration that the defendants having implemented the said decision on the salaries/pension package/entitlements taken at the 2<sup>nd</sup> defendant's 47<sup>th</sup> regular meeting in 2003 and claimants upon their retirement having enjoyed the approved pension package for years, the defendants lacked the powers and competence to

- review the said package whereby they drastically reduced and removed some of the approved package aforesaid;
4. A declaration that the act of the defendant in slashing, altering or tampering with the approved pension benefits of claimants and reducing same drastically without any complaint, investigation, consultation, query or claimant being given the opportunity to be heard by the defendants was done with malice and with no semblance of legal justification, same amounts to breach of the claimants' fundamental rights to fair hearing as guaranteed under the 1999 Constitution and therefore null and void and of no effect whatsoever;
  5. An order of Court compelling the defendants to pay to the 1<sup>st</sup> claimant the sum of N10,395,616.25 (ten Million, Three Hundred and Ninety-Five Thousand, six Hundred and Sixteen Naira, Twenty-five Kobo) being the total outstanding pension due to the 1<sup>st</sup> claimant as at May, 2014 and subsequently at the monthly rate of N363, 468.89 (Three Hundred and Sixty-three Thousand, Four Hundred and Sixty-eight Naira, eighty-nine Kobo);
  6. An order of Court compelling the defendants to pay every other amount due to the 2<sup>nd</sup> and 3<sup>rd</sup> claimants to be calculated as per their accurate monthly pension/salaries which the defendants have deprived them in accordance with the 2003 salary package of the Delta State university;
  7. An order of perpetual injunction restraining the defendants by themselves, agents, privies and by whomsoever from reviewing, tampering, slashing, cutting and interfering in any manner whatsoever with the claimants' pension package/entitlement which was duly approved by the defendants sometime in 2003 and implemented in favour of claimants after they retired from the defendant;
  8. A mandatory order of this Honourable Court compelling the defendants to pay the balance of all arrears of claimants' unpaid pension entitlements which the defendant have illegally reduced against that approved in 2003 without legal justification from May 2010 till June 2014, when this suit was instituted and thereafter maintain the said 2003 approved pension package without any interruption whatsoever;
  9. Payment of 10% compound interest on the accumulated arrears of the unpaid pension, salary package of the claimants;
  10. Payment of N50, 000,000.00 (Fifty Million Naira) to the claimant jointly being general damages suffered by the claimants for the stress they have gone through in



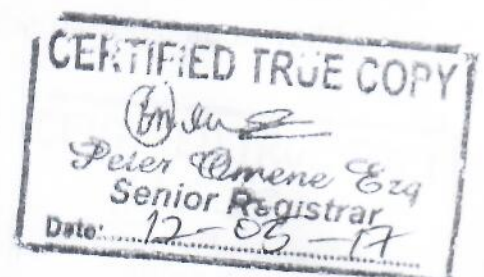
managing their families since 2010 with the inadequate pension package based on the illegal deduction and/or interference.

The case of the claimants, as distilled from their amended statement of facts, is that on 17/01/2003, at the 47<sup>th</sup> meeting of the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant on behalf of the defendants took the decision to approve and implement various remuneration for both serving and retired principal officers of the 1<sup>st</sup> defendant and members of Council. And that the said salary/pension package took effect from February 2003. Claimants contended that thereafter they meritoriously served the defendants and retired in line with the approved pension package, and the University Law. It is claimants contention that serving members of the 2<sup>nd</sup> defendant are till date enjoying the said Governing Council-approved package of February 2003. Claimants contended that the 1<sup>st</sup> claimant enjoyed the said new package from 2005 to April 2010 when the present administration of the University lead by the 3<sup>rd</sup> defendant slashed the 1<sup>st</sup> claimant's monthly pension. While the 2<sup>nd</sup> and 3<sup>rd</sup> claimants contended that they only enjoyed the said package in 2005 through 2006, 2007, 2008 and 2009. It was also the claimants' contention that the defendants never consulted, queried, questioned, investigated, summoned or given any opportunity to be heard, before unilaterally deciding to slash the approved retirement benefits of the claimants, while those of them still in the Governing Council and serving officers still enjoy their own package jointly approved at the aforementioned 47<sup>th</sup> regular meeting of the Governing Council of the 1<sup>st</sup> defendant.

The defendants duly entered their defence by filing their defence processes. The contention of the defendants is that the said salary/pension package approved at the 47<sup>th</sup> regular meeting of the 2<sup>nd</sup> defendant and through which the claimants claim was implemented by the defendants without seeking and obtaining the consent of the Visitor of the university, the executive Governor of Delta State. They contended that the said package was abolished in April 2010 following its reversal at the 74<sup>th</sup> regular meeting of the 2<sup>nd</sup> defendant and because it was rejected by the visitor of the 1<sup>st</sup> defendant.

At the trial, parties led evidence along the line of their respective pleading by adopting their witnesses' depositions on Oath. At the close of trial, parties filed their respective final written addresses in compliance with the Rules of this Court.

In his address, defendants' counsel raised two (2) issues for determination, as follows:



I. Whether the reversal by the 2<sup>nd</sup> defendant of its previous approval of the special remuneration package for principal officers of the 1<sup>st</sup> defendant can be adjudged to be valid and *ultra vires*;

II. Whether the claimants are entitled to the reliefs sought.

In addressing issue No. I, counsel submitted that the 2<sup>nd</sup> defendant has the inherent powers to reverse itself on its earlier decision when it sees the need to do so and whenever it does so, such reversal is valid and not *ultra vires*. Counsel maintained that the said special remuneration package for principal Officers was implemented by the defendants without referring same to the Visitor for approval in contravention of financial regulation existing in Delta State University Law.

Counsel contended that by section 8 of the Delta State University Law, the powers of the 2<sup>nd</sup> defendant are subject to the provision of the law relating to the Visitor. Counsel maintained that the powers of 2<sup>nd</sup> defendant in financial matters are subordinate to the Visitor. Counsel contended that following the Exhibit DW A1C (Government White Paper dated 12<sup>th</sup> Nov., 2010), recommendation 9 (iv), the University Governing Council was advised to limit itself to the formulation of policies and programmes and general administration of the University, while salary matters should be referred to the Visitor.

Counsel also referred to section 49 of the Delta State University Law, and contended that the Visitor is superior to the 2<sup>nd</sup> defendant as far as financial obligations of the University is concerned. Citing a plethora of cases, counsel maintained that 2<sup>nd</sup> defendant rightly reversed itself on the approved special remuneration package.

On issue No. II, counsel submitted since the Visitor, who is responsible for the payment of salary and pension of members of staff of the 1<sup>st</sup> defendant has validly rejected the Principal Officers special Remuneration; and the 2<sup>nd</sup> defendant had taken future step to reverse itself on the decision, then the claimant cannot be heard claiming through the said reversed package or contending that the reversal was *ultra vires*. Counsel maintained that that being the case, the court should hold that the claimant is not entitled to the reliefs they claimed in this suit.

On claimants' part, counsel also raised two (2) issues for determination, as follows:

- i. Did the claimants prove their case to be entitled to judgement?
- ii. Did the defendant prove their defence to claimants' relief praying the Court to be entitled to be paid their retirement benefits based on the package approved by the 2<sup>nd</sup> defendant at its 47<sup>th</sup> regular meeting in 2003?



On the 1<sup>st</sup> issue, counsel contended that in defendants are bound by terms of the claimants' contract of employment particularly after the claimants must have retired from active service. Counsel maintained that the fact that the claimants are entitled to the said special pension package is pleaded in paragraph 17 and 18 of the amended statement of claim; which fact the defendants admitted in paragraph 11 of their amended statement of defence.

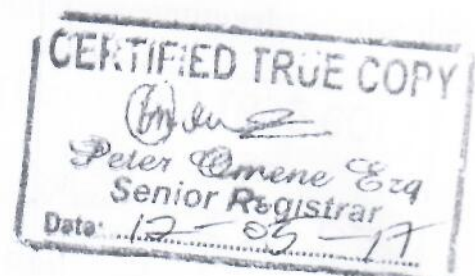
Counsel maintained that the approval given in exhibit DW A1C in 2003 formed the basis of the claimants' claim and calculation of same. He urged the court to hold that the claimant proved their case to be entitled to judgement.

On the 2<sup>nd</sup> issue, counsel submitted that the defendant failed to prove their defence to claimants' action. Counsel submitted that all the three arms of the defendants' defence were not proved. He mentioned these three arms to include:

1. That the approval given by the 2<sup>nd</sup> defendant at its 47<sup>th</sup> Regular Meeting for the Pension Package claimants' enjoyed for over five years was not approved by the Visitor;
2. The report of the Personnel audit and Development if Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University recommended stoppage of payment of the approved package in 2003 under which the claimants were being paid; and
3. That the 2<sup>nd</sup> defendant at its 74<sup>th</sup> Regular Meeting reversed itself on the matter decided that *status quo ante* be maintained.

Claimants insisted that it is not in the place of the University Visitor to approve the said 2003 package and as such same does not require the approval of the University visitor to be valid and effective.

It was also contended for the claimant that the Committee which laid the Report of the Personnel Audit and Development if Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University was not set up to review Governing Council approved package of 2003 and thus never recommended stoppage of payment of the approved package of 2003. Counsel highlighted the terms of reference of the said Committee did not, in any way, relate to the 2003 approved special package through which the claimants claim. Having noted that, counsel argued that the alleged reversal of the 2003 package by the 2<sup>nd</sup> defendant cannot stand.



Counsel went further to submit that a look at exhibit DW A2C shows that there is nowhere the 2<sup>nd</sup> defendant in its 74<sup>th</sup> regular meeting reversed the approved special package of its 47<sup>th</sup> regular meeting of 2003.

It was also contended for the claimant that the claimants were not given fair hearing before the decision was reached to tinker and slash their pension unilaterally by the defendants. On the whole, counsel urged the court to grant the claimants reliefs.

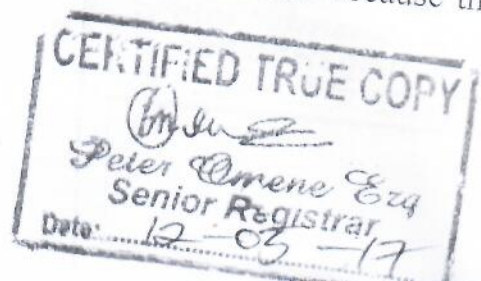
Defendants filed their reply on points of law, which I shall be referring to, where necessary in the course of this judgement.

I have studied and examined all the processes filed in this suit and considered the submission of counsel to claimant; I will proceed to addressing the issue raised by counsel.

The claim of the claimants is basically hinged on the special salary and pension package approved by the 2<sup>nd</sup> defendant in its 47<sup>th</sup> regular meeting. It was the claimants' grievance that the defendant eventually stopped complying with the said package thus slashing their respective pensions. The defendants are justifying the stoppage of the special package on the basis that:

1. The approval given by the 2<sup>nd</sup> defendant at its 47<sup>th</sup> Regular Meeting for the Pension Package claimants' enjoyed for over five years was not approved by the Visitor;
2. The report of the Personnel audit and Development if Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University recommended stoppage of payment of the approved package in 2003 under which the claimants were being paid; and
3. The 2<sup>nd</sup> defendant at its 74<sup>th</sup> Regular Meeting reversed itself on the matter decided that *status quo ante* be maintained.

From the provisions of the Delta State University Law, it is not true and I find nothing in it to suggest that such decision of the 2<sup>nd</sup> defendant requires the approval of the University Visitor before it becomes effective. In providing for the function of the 2<sup>nd</sup> defendant, the Law in section 8 (1) provided that the functions are subject to the provisions of the Law relating to the Visitor. This does not in any way suggest that the decisions, actions and functions of the 2<sup>nd</sup> defendant must be approved by the Visitor before they become effective. Thus, the defendant cannot be heard to contend that the said 2003 special salary and pension package was suspended/discontinued because the



Visitor failed to give approval. I consequently find and hold that the alleged non-approval of the said salary and pension package by the Visitor cannot be accepted as a basis for the stoppage of such.

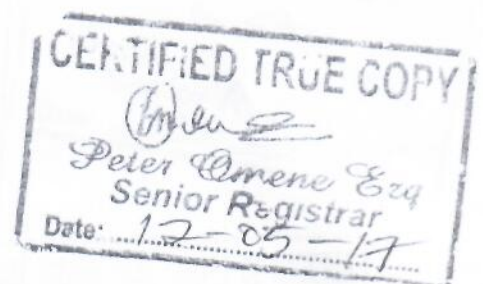
Defendants also attempted to justify the stoppage of the special salary and pension package of 2003 on the basis that the report of the Personnel Audit and Development if Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University recommended stoppage of payment of the approved package in 2003. Without much ado, I adopt the argument of learned counsel to the claimants to find and hold that no such recommendation is contained in the said Audit Report and as such, that Report cannot be for the stoppage of the claimants' pension as approved in 2003, even before they retired from service. Curiously, the said White Paper is exhibit DW A1C is dated 12<sup>th</sup> November, 2010, but the Pension Package of the claimant was reversed in April 2010. This clearly indicates that the said reversal precedes the issuance of the White Paper; hence the White Paper cannot by any stretch of imagination be accepted as the basis for the alleged reversal.

On the claim of the defendants that in the 74<sup>th</sup> regular meeting of the 2<sup>nd</sup> defendant, it reversed its decision in its 47<sup>th</sup> regular meeting in 2003, wherein it approved a special salary and pension package in contention. Here again, and as rightly contended by the learned counsel for the claimants, there is nothing in the said minutes of the 74<sup>th</sup> regular meeting of the 2<sup>nd</sup> defendant to show that there is a reversal of the special package of salary and pension approved in its 47<sup>th</sup> regular meeting of 2003.

Relying on the foregoing, I find and hold that the defendants have no justification to stop the said special package of salary and pension approved in the 2<sup>nd</sup> defendant's 47<sup>th</sup> regular meeting of 2003.

The defendants in their defence only tried to justify the stoppage of the implementation of the special package of salary and pension approved in the 2<sup>nd</sup> defendant's 47<sup>th</sup> regular meeting of 2003. The said justification having failed it follows that the claimants are entitled to their basic claims in this suit. I consequently make order as follows:

A declaration that the salaries/pension package/entitlement applicable to the claimants is that which was discussed and approved by the 2<sup>nd</sup> defendant at the 47 Regular meeting of the 2<sup>nd</sup> defendant held sometime in 2003;



A declaration that the alleged White Paper Report of the Committee of Personnel Audit and Development of the Integrated and Automated Payroll and Personnel Information System for Staff of Delta State University did not recommending the setting aside or affect the salary/pensions of the claimants in any way whatsoever based on the approved package of 2003;

An Order compelling the defendants to pay to the 1<sup>st</sup> claimant the sum of N10,395,616.25 (ten Million, Three Hundred and Ninety-Five Thousand, six Hundred and Sixteen Naira, Twenty-five Kobo) being the total outstanding pension due to the 1<sup>st</sup> claimant as at May, 2014 and subsequently at the monthly rate of N363, 468.89 (Three Hundred and Sixty-three Thousand, Four Hundred and Sixty-eight Naira, eighty-nine Kobo);

An Order compelling the defendants to pay every other amount due to the 2<sup>nd</sup> and 3<sup>rd</sup> claimants to be calculated as per their accurate monthly pension/salaries which the defendants have deprived them in accordance with the 2003 salary package of the Delta State university;

A mandatory Order compelling the defendants to pay the balance of all arrears of claimants' unpaid pension entitlements which the defendant have illegally reduced against that approved in 2003 without legal justification from May 2010 till the date of this judgement, and hereafter, maintain the said 2003 approved pension package without any interruption whatsoever.

Judgement is entered accordingly.

Hon. Justice Waziri Abali

Judge  
4/05/2017

CTK  
Official

