IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

BEFORE THEIR LORDSHIPS

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| Hon. Justice B. B. Kanyip | - | Presiding Judge |
| Hon. Justice O. A. Obaseki-Osaghae | - | Judge |
| Hon. Justice J. T. Agbadu-Fishim | - | Judge |

DATE: March 8, 2012 SUIT NO. NIC/LA/08/2010

BETWEEN

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| Nestoil Plc | - | Claimant |

AND

| | | |
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| National Union of Petroleum and Natural Gas Workers | - | Defendant |

REPRESENTATION

Uche V. Obi, and with him are Mr. J. Kulugh, Mrs. A. E. Iluyomade and S. C. Nwafor, for the claimant.
O. A. Nwachukwu, for the defendant.

JUDGMENT

The claimant in this suit commenced the action by a writ of summons together with a statement of facts, list of witnesses and list of documents to be relied on at the trial, all dated and filed on 19th March, 2010.

The claimant's claim against the defendant is for:

i. A declaration that workers of the claimant/applicant do not fall under the category of workers as stipulated under the 3rd Schedule of the Trade Unions Act, 2005 (as amended).
ii. A declaration that the claimant/applicant not being an oil producing or marketing company does not fall within the area of jurisdiction of the National Union of Petroleum and Natural Gas Workers (NUPENG) as stipulated under the Trade Unions Act, 2005 (as amended) and as such the claimant/applicant's workers cannot be registered with or affiliated to the respondent (NUPENG).
iii. A declaration that the majority of the workforce of the claimant/applicant has not opted for unionization with the respondent in this suit.
iv. AN ORDER of perpetual injunction restraining the respondent either by itself, its servants, agents, privies or whosoever or howsoever called upon from intimidating, harassing, threatening, compelling and cajoling the claimant/applicant and its workers or staff into joining their union and/or from obstructing, disrupting, picketing or otherwise causing a breach of peace or breakdown of law and order at the sites, offices or premises of the claimant/applicant located in Nigeria.
v. Cost of this action as may be assessed by this Court.

The defendant filed its defence to this suit on 4th May, 2010 via the statement of defence dated 28th April, 2010 along with a counterclaim. The defendant also with leave of court filed additional address with exhibit attached dated 12th July, 2011.

In reaction to the defendant's statement of defence and counterclaim, the claimant filed its reply and a defence to the counterclaim dated 11th May, 2010 but filed on 12th May, 2010. The claimant also filed a reply to the defendant's additional address as ordered by this court dated 2nd August, 2011.

A summary of the claimant's case is that the claimant is a company incorporated under the relevant laws of Nigeria with its Head office at Plot 1679, Karimu Kotun Street, Victoria Island, Lagos and has branches/sites in Port-Harcourt, Warri, Abuja and other parts of Nigeria. The claimant's company is licensed by the Department for Petroleum Resources (DPR) as an oil services company providing variegated services such as engineering, procurement and construction, which include installation and upgrade of onshore and offshore production pipelines, facilities and platforms. The said license which the DPR issues to the claimant every year is labeled Annexure 1 for year, 2009 and Annexure 6 for year, 2010 attached to the claimant's statement of facts and reply to the statement of defence respectively. To further establish that the claimant is an oil and gas services company, 11 copies of the leaflets of the claimant's activities are annexed as Annexure 2 to the statement of facts.

To the claimant, it "maintained leaning credence to the available documents before the Court that it is neither an oil nor gas exploration, prospecting or marketing Company and does not carry on the business of oil and gas or recognized by DPR as an oil and gas producing or marketing company despite the fact that the claimant company's name is easily misconceived by uninformed persons such as the defendant".

The claimant maintained that going by the clear and unambiguous provisions of the Trade Unions Act, 2005 (as amended), the 3rd Schedule, Part B, section 34(3) No. 12 Cap. T14, Laws of the Federation of Nigeria, 2004, the claimant company not being a petroleum or gas exploration or marketing company, its workers are not workers in oil well and natural gas well operations including prospecting, drilling, crude oil and natural gas pipelines; refining, distribution and marketing of natural gas and petroleum products including petrol filling stations, petroleum tanker drivers, and are thus not statutorily included. With that provision of the Trade Unions Act, the claimant had maintained that its workers are not covered by the jurisdiction of National Union of Petroleum and Natural Gas Workers (NUPENG), the defendant, and its employees cannot be forced or co-opted by the defendant to become members of its union or to be registered or recognized as such.

That it is pertinent to recall that on or about 7th January 2010, the defendant through its Port-Harcourt Branch office wrote a letter titled, "Formation of Union", asserting that it has formed a branch of its union in the claimant's company supposedly in accordance with the powers conferred on it by the Trade Unions Act and was merely notifying the management of the claimant's company. The said letter is Annexure 4 to the claimant's pleadings. The said letter was followed up by a letter of threat written by the defendant to the claimant and titled "Unfair Practices in your Company and 21 Day ultimatum," which letter is, Annexure 5 to the claimant's pleadings. According to the claimant company, its workers had never had any relationship with

the defendant and had neither recognized the purported formation of a branch of the defendant union in its company nor the purported appointments of its staff as officers of the union.

The said threats and move by the defendant to cause total disharmony and eventual disruption of the hitherto smooth flow of business activities and peaceful co-existence among the claimant and its workers with likelihood of resulting into a breakdown of its business activities, law and order, prompted the claimant to approach this court to seek appropriate judicial reliefs or remedies including an interpretation of the extant provisions of the Trade Unions Act.

The defendant's statement of defence dated 28th April 2010 was filed on 4th May, 2010 wherein it raised a counterclaim as follows:

> i. A declaration that the claimant's company is in the oil well and natural gas well operations and, therefore, its junior workers are within the jurisdictional scope of the membership of and free to join the defendant/counter-claimant union as enshrined in the Third Schedule Part B (13) of the Trade Unions Act Cap. T14 Volume 15, LFN 2004.
> ii. A declaration that the refusal of the claimant to recognize the unionization of its junior workers by the defendant/counter-claimant is illegal, unconstitutional, null and void.
> iii. A declaration that the purported redundancy and lock out of Progress Sunday and Samuel Ufuoma and refusing them entry into the premises and operation sites of the claimant to carry out their lawful duties/works as a result of their pro-union activities by the claimant is wrong and unlawful and that their employments have not been duly terminated and that they are still entitled to their monthly salaries as well as other benefits from the claimant as its employees pending the final determination of this case.
> iv. An order that all salaries and other benefits or entitlements owing and due the said Progress Sunday and Samuel Ufuoma from the month of February, 2010 to the date of final determination of this matter be calculated and paid to them forthwith.
> v. An award of N50,000,000.00 (Fifty Million Naira) general damages against the claimants for the violation of the rights of the counter-claimant and all its members especially Progress Sunday and Samuel Ufuoma who have been victimized by the claimant.

In its defence to the claimant's suit and in support of its counterclaim, the defendant contended that although the claimant was issued the permit in 2009 by the Department of Petroleum Resources (DPR) to operate as an oil industry service company, which services include engineering, procurement, construction services involving metal fabrications, installation, maintenance and upgrading of onshore and offshore production facilities and platforms, the said services are integral parts of oil well and natural gas well operations. The defendant relied on copies of documents printed from nestoilgroup.com, the claimant's website, as Annexure NUP 1 and 1A respectively.

The defendant further contended that, the claimant is a member of the Nestoil Group and that one of the members of the group is Gobowen Exploration and Production Ltd, a fully functional offshore oil and gas exploration and production company.

The defendant conceded that its jurisdictional scope is as circumscribed in the 3rd Schedule of the Trade Unions Act (as amended), but maintained that the claimant's business activities as an oil

services company come within what is described as oil well and natural gas well operations and its workers ought to be unionized by the defendant.

The defendant relied on the following documents while maintaining that the claimant's workers ought to be part of its union and are thus unionized:

(i) Annexure NUP 2 – A letter of 19th December, 2009 purporting to have been issued by the claimant's workers applying to be unionized by the defendant.

(ii) Annexure NUP 3 – A letter of 7th January, 2010, purporting to have been issued by the defendant unionizing the claimant's workers.

(iii) Annexure NUP 4 – A letter of 14th January, 2010 written by the defendant to the claimant.

(iv) Annexure NUP 5 – Letter of 21st January, 2010 purporting to be the defendant's protests over purported anti-union attitude of the claimant.

(v) Annexure NUP 6 – The letter of 8th March 2010 issued by the defendant and addressed to the claimant's Managing Director giving 21 days ultimatum to enforce purported pro-union activities without alleging any victimization of the claimant's workers by the claimant.

In its counterclaim against the claimant, the defendant asserted as follows:

(i) That as at February, 2010 when the claimant locked out and stopped Progress Sunday and Samuel Ufuoma from carrying out their duties, their monthly salaries were ₦55,000.00 (Fifty-Five Thousand Naira) and ₦68,000.00 (Sixty-Eight Thousand Naira) respectively.

(ii) That it is wrong and unlawful for the claimant to refuse to appreciate the constitutional rights of Progress Sunday, Samuel Ufuoma and its other workers/employees to join a trade union of their choice. The defendant/counter-claimant further stressed that it is wrong and unlawful for the claimant to refuse to recognize the unionization of its workers by the defendant after due notification.

In the claimant's reply and defence to counterclaim dated 11th May 2010 but filed on 12th May 2010, the claimant/defendant to counterclaim maintained that:

(i) The wide range of services rendered by the claimant to oil and natural gas companies (as an oil and gas services company) does not translate the claimant's services to form an integral part of oil well and natural gas well operations. The claimant relied on Annexure 6, which is the DPR permit No. R. 0579/2010 dated 10th March 2010 issued to the claimant.

(ii) The contention of the defendant that the claimant is in the same group with Gobowen Exploration and Production Limited and that the claimant is a member of the said Gobowen Exploration and Production Limited as a fully functional offshore oil and gas exploration and production company was debunked by the claimant to the effect that the claimant is a different, separate legal entity and not a shareholder in Gobowen Exploration and Production Limited, with each entity engaging in and rendering distinct operations in the oil and gas industry. The claimant relied on Forms CAC2 and CAC7 of Gobowen Exploration and Production Limited as Annexures 7(a) and 7(b) respectively. The Certificate of Incorporation of Gobowen Exploration and Production Limited is Annexure 8 to the claimant's reply to the statement of defence and defence to counterclaim which show that the claimant is not a subsidiary of Nestoil Plc.

(iii) The claimant/defendant to counterclaim maintained that its staff were specifically engaged and exclusively work for and get paid by the claimant. The letter of employment issued by the claimant to Sunday Progress and the offer of provisional engagement issued to Samuel Ufuoma are Annexures 9 and 10 respectively.
(iv) It is the claimant/defendant to counterclaim's position that Mr. Progress Sunday and Mrs. Samuel Ufuoma who were staff of the claimant/defendant to counterclaim both abandoned their work with the company; that the duo actually had unresolved issues with the company prior to the unprecedented undue interference of the defendant/counterclaimant with the internal affairs of the claimant/defendant to counterclaim.

The claimant/defendant to counterclaim relied on the following documents:

(i) Annexure 11, which is the Internal Memo of the claimant dated 2nd August 2009 issuing query to Mr. Sunday Progress.
(ii) Annexure 12, being the reply to the query by Mr. Progress Sunday.
(iii) Annexure 13, the memo of Saturday 12th December 2009 from Anselm Chukwu, the Senior Manager Human Resources of the claimant/defendant to the counter-claimant to Foluke Adewunmi with instruction to issue warning letter to Mr. Sunday Progress.
(iv) Annexure 14, which is the Internal Memo of 14th December 2009 from the claimant/defendant to counterclaim with the subject, "Warning Letter" to Mr. Sunday Progress.

The claimant/defendant to counterclaim also relied on the following:

(i) Annexure 15, the Letter of Samuel Ufuoma dated 30th April 2008.
(ii) Annexure 16, the Internal Memo of the claimant/defendant to counterclaim dated 30th April 2008 to Samuel Ufuoma.
(iii) Annexure 17, the Internal Memo of the claimant/defendant to counterclaim dated 2nd June 2009 issuing query to Mr. Samuel Ufuoma.
(iv) Annexure 18 is the letter of Mr. Samuel Ufuoma dated 5th June 2009, and
(v) Annexure 19 is the Internal Memo suspending Mr. Samuel Ufuoma from work.

The claimant's contention is that the defendant lacks the *locus standi* to counter-claim on behalf of the said Mr. Progress Sunday and Mr. Samuel Ufuoma, who are not parties to the instant suit, as this court lacks the jurisdiction to entertain, hear and determine same.

The claimant/defendant to counterclaim also maintained that, it is in a bid to arm-twist, blackmail and continue to interfere and intermeddle with the affairs of the claimant that the defendant has become desperate to stage-manage and use Mr. Sunday Progress and Mr. Samuel Ufuoma to present false claims under the head of a counter-claim against the claimant in this suit.

The claimant finally maintained that the counterclaim in this suit is frivolous, embarrassing, vexatious and constitutes an abuse of court process and ought to be dismissed by this court with substantial cost.

At the hearing of the substantive suit on 16th February 2011, both parties agreed to argue their case on record, thereby dispensing with calling oral testimonies. Parties were thereby ordered to file their respective written addresses.

In its written address dated and filed on the 12th April 2011, the claimant/defendant to counterclaim raised four issues for the determination of this suit:

> 1. Whether, from the documents before this court, the claimant which is licensed for and only renders construction services, installation and upgrade of onshore and offshore production facilities and platforms, including construction of oil pipelines as an oil industry services company fall within the category of companies whose employees must be registered with and/or affiliated to the defendant trade union going by the provisions of the 3rd Schedule, Part B, section 34 (3), of the Trade Unions Act Cap. T14 LFN 2004, on the jurisdictional scope of the defendant.
> 2. Whether, in the circumstances of this case and in view of the documents before this court, the claimant has recognizable legal rights worthy of protection by the Court with an order of perpetual injunction against the defendant and/or in terms of the reliefs sought.
> 3. Whether the defendant has the requisite *locus standi* and competence to raise a counterclaim on behalf of the third parties named in the counterclaim, and whether the counterclaim is not an abuse of court process in the circumstances.
> 4. Whether the claimant is entitled to the cost of this action, as may be assessed by the court.

Arguing issue one, the claimant submitted that the jurisdictional scope of the restructured trade unions is provided for in the 3rd Schedule, Part B, section 34 (3), of the Trade Unions Act Cap. T14 LFN 2004 as follows:

> 13. National Union of Petroleum and Natural Gas Workers. Workers in oil well and natural gas well operations including prospecting, drilling, crude oil and natural gas pipelines, refining, distribution and marketing of natural gas, extraction, oil and natural gas and petroleum products including petrol filling stations, petroleum tanker drivers <u>but excluding the construction of oil and gas pipelines</u> (underlining is the claimant's).

The claimant submitted that if the provision of the Trade Unions Act, as quoted above, is interpreted or construed in the light of the claimant's case and the case of the defendant before this court, it will not be difficult to reach a considered conclusion that the jurisdictional scope of the defendant to unionize workers as provided by law does not by any stretch of imagination cover workers engaged in rendering pipelines and construction services such as the claimant. That this kind of services was expressly excluded by the last phrase of item 13 of the 3rd Schedule aforesaid.

That the position of the law on interpretation and construction of clear and unambiguous words in a statute has not changed over the years and has been re-echoed in a plethora of judicial authorities including the case of *Ikpana v. RTPCN* [2006] 3 NWLR (Pt. 966) 106 at 128 D – F where it was held, *inter alia*, that:

> Where the clear, plain and unambiguous words of a statute or the Constitution are being interpreted by the Court, they should be given their natural, ordinary, grammatical and literal

> meaning. This is the recommended approach in ascertaining the intention of the legislature, statute or the Constitution. It is an act of violence to read into a statute or Constitution words that are absent from its express provision.

The claimant also cited the case of *Attorney General of Lagos State v. Attorney General of the Federation* [2004] 18 NWLR (Pt. 904) 1 at 132 E – F in support and this court's decision in *Natural Inland Waterways Authority v. Governing Council, ITF* [2009] 17 NLLR (Pt. 47) 143 at 156 D – E and 157 D – E on the same principles of law with regards to interpretation of statute, when this Court held, *inter alia*, that:

> The objective of any interpretation is to discover the intention of the law maker which can be deduced from the language used. The duty of the court when interpreting a statute is to interpret and to give adequate and a close as possible accurate and ordinary meaning to the words used. The Court cannot supply or add to any omission in the provision, as a court cannot legislate but whose duty is to interpret. The court cannot import into a statute what is not there or intended.

The claimant also cited *Olawo v. Abole* [1993] SCNJ (Pt. 1) 1 and *Emah v. Okadoje* [1993] 12 SCNJ 54 at 71.

The claimant further submitted that the defendant's defence in this case and the documents being relied upon by it are reminiscent of constraining and coaxing this court into reading into the provisions of the relevant statute, a different or additional meaning so as to construe the same to strangely suit the defendant's purpose. That such approach is contrary to both statute and case law, as argued hereinabove.

That in *Asuza & anor v. Ajewole & ors* [2009] 14 NLLR (Pt. 39) 434 at 459, it was held by this court *inter alia*, on when the interpretative jurisdiction of this court can be invoked, that it is the originating processes of the claimant that disclose the claim for interpretation before this court can assume its interpretative jurisdiction.

Furthermore, that in this case the fundamental issue this court is called upon to determine is the interpretation of the provisions of item 13 of the 3rd Schedule Part B to the Trade Unions Act Cap. T14 Volume 15 LFN 2004, as shown in the claims Nos. 1, 2 and 3 endorsed on the complaint of the claimant in this suit. That the other claims, Nos. 4 and 5 before the court, are corollary and consequential. The claimant, therefore, sought to invoke the interpretative jurisdiction of the Court in the circumstances.

Also, that a close look at the provisions of the relevant statute and content of the following documents in this suit, that is –

(i) The licence of DPR issued to the claimant for 2009 – Annexure 1.
(ii) The leaflets of the claimant's activities – Annexure 2.
(iii) Copies of documents printed from nestoilgroup.com, the claimant's website – Annexure NUP 1 and 1A respectively.
(iv) The DPR permit No. R 0579/2010 dated 10th March 2010 – Annexure 6, and

(v) Form CAC 2 and CAC 7 of Gobowen Exploration and Production Limited – Annexures 7(a) and 7(b) respectively;

will clearly show the legitimate business operations of the claimant, and the attempt to arbitrarily tie the claimant's construction and pipeline activities to Gobowen Exploration and Production Limited which is an independent legal entity not a legally known subsidiary of the claimant must fail as it lacks legal basis. That if indeed Gobowen Exploration and Production Limited is actually engaged in activities requiring its staff to be unionized by the defendant it was for the defendant to approach it directly, and not indirectly through any third party such as the claimant.

Also that in *PERESSA v. SSACGOC* [2009] 14 NLLR (Pt. 39) 306 at 340 B – D, it was held by this court, on the issue of whether Precision, Electrical & Related Equipment Senior Staff Association (PERESA) can unionize workers in the telecommunication and communications industry, *inter alia*, that:

> A look at item 29 of Part B of the third schedule of the Trade Unions Act dealing with jurisdictional scope shows that PERESSA comes within the Steel and Engineering Workers Union of Nigeria. PERESSA does not deal with the provision of communications and telecommunication services. This means that it is wrong for PERESSA to unionize workers in companies that provide communication and telecommunication services.

That considering the highly illustrative decision of this court in the *PERESSA v. SSACGOC case* (*supra*) the facts situation and the principle of law established therein which formed the basis of the Court's conclusion is similar to the facts, circumstances and documentary evidence in this case before the court. That in the instant case, the defendant (NUPENG) "which has the restructured jurisdictional scope under the Trade Unions Act" to unionize workers in oil well and natural gas well operations including prospecting, drilling crude oil and natural gas pipelines, refining, distribution and marketing of natural gas and petroleum products including petrol filing stations, petroleum tanker drivers cannot be meant to cover or include workers of companies engaged in the construction of oil and gas pipelines and other ancillary services rendered to the oil and gas industry, when the provision of item 13 of Part B expressly exclude "construction of oil and gas pipelines" – which is the thrust of the claimant's services and operations.

The claimant further submitted that, like the general jurisdictional scope of any court of law within which it can adjudicate and exercise judicial powers, it is trite law that jurisdiction is sacrosanct; it cannot be acquiesced, compromised or stretched or expanded by anybody. That the defendant cannot in law, expand its jurisdictional scope under the restructured trade unions to cover and/or include workers in companies that render services to the oil and gas industry for the purposes of unionizing them by all means, particularly, the claimant company herein. That the defendant cannot even by consent of the workers of the claimant (as purported) confer jurisdiction on itself to unionize claimant's workers, citing *Esuku v. Keko* [1994] 4 NWLR (Pt. 340) 625 at 632 E – G.

On the issue of whether a worker can pick and choose which union to belong to, the claimant's submission is that the law is that, the right of a worker to decide which union to belong is not absolute but must be exercised within the limits of the Trade Unions Act Cap. T14 LFN 2004.

That the freedom to choose which union to belong is limited to the union empowered to operate within a clearly defined jurisdictional scope. That voluntarism must exist within and not outside all existing relevant laws and regulations, referring again to *PERESSA v. SSACGOC* (*supra*) at page 342 D – F and *NGSU v. ASCSN* [2004] 1 NLLR (Pt. 3) 429.

Also that a critical look at the content of Annexure 4, Annexure NUP 2, Annexure NUP 3, Annexure NUP 4 and Annexure NUP 5 will reveal that the actions of the defendant to have unionized the claimant's workers was actually desperate, unilateral and not within the scope of the jurisdictional provision of the Trade Unions Act and above all, contrary to the provisions of section 45(1)(a) and (b) of the 1999 Constitution.

The claimant on this issue finally submitted that with these weighty judicial authorities in support of its submissions, this court should resolve the issue in its favour.

On issue 2, the claimant submitted that it is trite law that a party to a proceeding whose legal rights are threatened or violated is entitled to legal protection of the same by way of an order or orders of injunction. That the grant of an order of perpetual injunction becomes appropriate in the circumstances where a party is successful at the end of the case and his established rights are thus protected once and for all by that order of perpetual injunction so as to avoid infringement or threatened invasion of those rights in future.

That the law is clear on the issue when an order of perpetual injunction, particularly, will be made by a court before which claims have been made by a party to a suit. That in the case of *Biyo v. Aku* [1996] 1 NWLR (Pt. 422) 1 at 42 E – F, it was held, inter alia that:

> When a party claims a relief of perpetual injunction, it is sufficient if the evidence led shows a right or interest the Court could protect by that order and an actual threatened or likely infringement or violation of that right or interest by the other party. In the instant case, the respondent having proved the existence of a concluded contract…was, therefore, properly granted the order of perpetual injunction.

Also in *Onabanjo v. Efunpitan* [1996] 7 NWLR (Pt. 463) 756 at 760 C – D, it was held, on the issue of the jurisdiction, that the court is clothed with the power to grant perpetual injunction in the following words:

> Broadly, two classes in which jurisdiction to order perpetual injunction will be ordered…are:
> (a) Where there would be an unreparable damage or if the act would be destructive where an injunction to restrain it is not ordered; and
> (b) Where a failure to exercise the jurisdiction would lead to multiplicity of suit.

To the claimant, from the facts, circumstances and documents before this court and the principles of law established in the judicial authorities cited and relied upon on this issue, this court can safely come to the irresistible conclusion that the claimant has established recognizable legal

rights and interest in the subject matter of this suit the threatened violation and infringement of which this court has the jurisdiction to issue an order of perpetual injunction to protect.

That a close look at the contents of the following documents will be sufficient proof to substantiate the argument and contention hereinabove.

(i) Annexure 1 and 6 attached to the statement of claim of the claimant.
(ii) Annexure 3 which is the staff conditions of service of the claimant.
(iii) Annexure 4 which is the letter of 7th January, 2010 written by the defendant to the claimant intimidating and coercing the claimant to accede to the formation of union by the defendant at the claimant's company.
(iv) Annexure 5 which is the letter of threat written by the defendant on 8th March, 2010 giving the claimant 21 days ultimatum to succumb to their unfounded pressure to unionize the claimant's workers by all means.
(v) Annexure NUP 1 and 1A respectively attached to the statement of defence and counterclaim of the defendant.
(vi) Annexure NUP 2, which is the letter of 19th December, 2009 wherein the defendant purported that the claimant's workers applied to be unionized by the defendant.

In the light of the foregoing argument and legal submissions the claimant urged the court to resolve this issue in the affirmative and indeed in its favour as that is the only potent way of giving effect to any determination that the defendant's jurisdiction does not cover the employers of the claimant.

On issue 3, the claimant submitted that the position of the law on the issue of *locus standi* of a claimant which transcends into the threshold matter of jurisdiction is quite clear. That the competence of a party to raise a counterclaim on behalf of strangers to a suit has no legal support. That in effect, the defendant/counter-claimant has usurped third party rights to decide whether or not to be part of the proceedings, and nowhere was it pleaded or exhibited that it was the lawful attorney of these third parties or obtained leave to sue in a representative capacity.

That the fundamental issue of *locus standi* is an issue of law which the court ought to firmly and decisively determine primarily once raised; otherwise the very foundation upon which the Court is to dispense justice in a matter would be faulty. That in *Ojukwu v. Ojukwu* [2001] FWLR (Pt. 41) 1948 at 1965 – 1967 D – E and 1973 it was held, *inter alia*:

> The expression 'locus standi' when used in connection with a court action, means a place of stand in a suit. It is usually used in connection with the Plaintiff who has commenced a suit, whether, in law, he can commence or prosecute the suit he has commenced….
>
> When a party's standing to sue is in issue in a case, the question is whether the person whose standing is in issue is a proper person to request an adjudication of an issue in the case.
>
> …A party has no locus standi in a controversy if he does not have sufficient interest in the subject matter or outcome of the

> controversy or if he has not suffered or does not stand to suffer some injury either by the enforcement or threatened exercise of some power, authority or right (underlining is the claimant's).

The claimant referred to *Adenuga v. Odumeru* [2002] 8 NWLR (Pt. 821) 163 at 184E where the Supreme Court of Nigeria held, *inter alia*, that:

> Locus standi denotes the legal capacity based upon sufficient interest in a subject-matter or outcome of the controversy or if he has not suffered or does not stand to suffer some injury either by the enforcement or threatened exercise of some power, authority or right.

The case of *Adesokan v. Adegorolu* [1997] 3 NWLR (Pt. 493) 261 was also cited by the claimant to further support this argument.

Further, that the appellate court in the case of *Elendu v. Ekwoba* [1995] 3 NWLR (Pt. 386) 704 at 740 E – G and 741A, *inter alia*, reiterated the principles governing the existence of *locus standi* in an action, as follows:

> In determining whether a person has *locus standi* or not, the following factors are guidelines:-
>
> (a) For a person to have locus standi in an action, he must be able to show that his civil rights and obligations have been or are in danger of being infringed.
>
> (b) The fact that a person may not succeed in an action does not have anything to do with whether or not he has a standing to sue.
>
> (c) Whether a person's civil rights and obligations have been affected depends on the particular fact of the case.
>
> (d) The court should not give an unduly restrictive interpretation to the expression *locus standi*.

The case of *A–G, Kaduna State v. Hassan* [1985] 2 NWLR (Pt. 8) 483 was also cited by the claimant in this regard.

To the claimant, a close look at the content of all the documents before this court has not revealed the *locus* or competence of the defendant to raise a counterclaim in this suit on behalf of third parties, Mr. Sunday Progress and Mr. Samuel Ufuoma, who were purported to have suffered victimization for alleged trade unionization (the allegation which could not be substantiated by the defendant in any manner whatsoever). Firstly, that the said Sunday Progress and Samuel Ufuoma are not parties to this suit and cannot claim the benefit or loss that may result from the case and, secondly, the defendant lacks the competence in law to have raised a counterclaim on behalf of third parties who are complete strangers as they are not parties to this proceedings.

Furthermore, that the law recognizes a counterclaim as a separate action and the same can only be raised by a defendant against the claimant, if it is directly related to the principal claim. The case of *Tiamiyu v. Olaogun* [2008] 17 NWLR (Pt. 115) 66 at 93 – 94 H – A and the Supreme Court case of *A.G. Lagos State v. A.G. Federation* [2004] 18 NWLR (Pt. 904) 1 at 89 – 90 H – A were cited in support.

To the claimant, the law is that, it will be futile and, therefore, a nullity for a court to make an order affecting a person who is not a party before the court. In this case, reliefs 3, 4 and 5 sought in the counterclaim of the defendant are not grantable in law because the same are to affect the purported rights of third parties and in fact strangers to the suit, citing *A.G. Lagos State v. A.G. Federation* (*supra*) at pages 94 – 95.

On the issue of the raising of a counterclaim by the defendant on behalf of third parties to this suit, the claimant submitted that, the issue of abuse of court process fundamentally touches on the competence and jurisdiction of the court to entertain the court process in question, hear and determine the same in a case as the court cannot pronounce on rights or liabilities of persons who are not before it. The case of *Madukolu & ors v. Nkemdilim* [1962] NSCC Vol. 2 page 374 at 379 was cited in support of this submission.

Also that the decision of the appellate courts in *Opekun v. Sadiq* [2003] FWLR (Pt. 150) 1654 at 1661 B – C and *Saraki v. Kotoye* [1992] 9 NWLR (Pt. 246) 159 was to the effect that the following factors in a case will ground abuse of the process of the Court:

(i) That in bringing the action, the respondent has been vexed or that the action is frivolous;
(ii) By instituting the action, the plaintiff is wanting in *bona fide*; and
(iii) The respondents are embarrassed by the suit of the plaintiff (defendant, in this case).

That in the Supreme Court case of *CBN v. Ahmed* [2001] 11 NWLR (Pt. 724) 369 at 408, 409 A – G and 410 B – C, it was held, *inter alia*, that:

> Abuse of process of the Court is a term generally applied to a proceeding which is wanting in *bona fide* and is frivolous, vexatious, oppressive…abuse of legal procedure or improper use of legal process…to harass or irritate an adversary…abuse of the process may lie in both a proper or improper use of the judicial process in litigation….

The case of *Dapialong v. Dariye* [2007] 8 NWLR (Pt. 1036) 239 at 322 D – F was also cited.

Further, that considering the circumstances of this case, the raising of a counterclaim by the defendant on behalf of third parties deliberately, is *mala fide*, frivolous with a view to embarrass and vex the claimant. The same constitutes an abuse of court process and as such the court lacks the jurisdiction to entertain, adjudicate and determine same; and the said counterclaim ought to be struck out in its entirety. The cases of *Balonwu v. Obi* [2007] 5 NWLR (Pt. 1028) 488 at 531 C – E; *Kwara State INEC & ors v. PDP* [2006] 6 NWLR (Pt. 920) 25 at 51 – 52; and *A.G. Federation v. Guardian Newspapers Ltd* [2001] FWLR (Pt. 32) 87 at 141 – 142 and 166, were all cited to the court.

The claimant, in view of the foregoing arguments and legal submissions, urged the Court to resolve issue 3 in the negative.

On issue 4, the claimant submitted that, the law on the issue of award of cost by the trial court is to the effect that costs are awarded to a successful party in a suit before the court. That award of costs is discretionary and the exercise of this discretion is governed by a number of established principles.

That in *Ozigbu Eng. Co. Ltd v. Iwumadi* [2009] 16 NWLR (Pt. 1116) 4 at 72 – 73 H – C, it was held, *inter alia*, that:

> Costs follow events which form the basis of the award. Costs are, therefore, an automatic consequence of an event in the proceedings before the court which justifies or warrants the award of same to a party. Costs between parties in a case are given or awarded as a punishment on the party who pays them or given as a bonus to the party entitled to receive them.

Also, the cases of *NBCI v. Alfirjir (Nig.)* [1993] 4 NWLR (Pt. 287) 364; *Onabanjo v. Egwetuga* [1993] 4 NWLR (Pt. 288) 445 were cited by the claimant in support.

That cost should be appropriately assessed taking into account the various places the Court sat and the number of the sittings of the Court, processes filed and cost of legal representation.

Further, that in the instant case, the claimant's claims are clearly grantable in view of the facts, circumstances and documentary evidence before this court and the established principles of law guiding the award of costs. The claimant urged the court to award cost of this action, as may be discretionally assessed by the Court to the claimant in the circumstances.

Concluding, the claimant urged the court to enter judgment in respect of all the claims of the claimant as contained in the complaint and the statement of claim filed in this suit, and to dismiss in its entirety the counterclaim of the defendant.

The defendant's case as per its statement of defence and counterclaim dated 28th April 2010 but filed on the 4th day of May 2010 is that the claimant's business activities are in the oil well and natural gas well operations. That the Department of Petroleum Resources permit issued to the claimant was for the claimant to operate as an oil industry service company and to render construction services namely installation and upgrade of onshore and offshore production facilities and platforms. That the above services entail maintenance and repair construction works on crude oil and natural gas pipelines and flowlines on the onshore and offshore production facilities of the major oil and natural gas companies and are, therefore, integral parts of oil well and natural gas well operations. That the junior workers of the claimant are within the jurisdictional scope of the defendant as envisaged and provided for under the Third Schedule, Part B, No. 13, of the Trade Unions Act, T14 LFN 2004, Vol. 15.

The defendant also stated that the junior workers of the claimant in the exercise of their constitutional right applied in writing on the 19th day of December, 2009 to be its members and that after due investigation and consultations the said workers were unionized and the

unionization communicated to the claimant who vehemently refused to accept the same but embarked on threatening and victimization of the workers that are pro-unionist to the extent of unlawfully declaring Progress Sunday and Samuel Ufuoma redundant and locking them out of the premises of the claimant for the pro-union activities.

The defendant consequently counterclaimed against the claimant.

The defendant in its list of documents to be relied on dated 28th April 2010 but filed on 4th May 2010 attached the following documents as annexure:

i. Computer print-out from the claimant's website as Annexure Nup. 1.
ii. Application letter from the claimant's workers to the defendant on 19th December 2009 as Annexure Nup. 2.
iii. Defendant's letter dated 7th January 2010 as Annexure Nup. 3.
iv. Defendant's letter dated 14th January 2010 as Annexure Nup. 4.
v. Defendant's letter dated 7th January 2010 as Annexure Nup. 5.
vi. Defendant's letter dated 8th March 2010 as Annexure Nup. 6.

In its written address dated and filed on 14th June 2011, the defendant/counter-claimant raised the following issues for determination:

i. Whether from the statement of facts, statement of defence and all documents listed by both parties to be relied on and annexed and filed in this suit and upon interpretation of the provisions of the Third Schedule, Part B, item 13, of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 the claimant is not in the oil well and natural gas well operations entitling its junior workers to be within the jurisdictional scope of membership of the defendant/counter-claimant.
ii. If issue (i) above is answered in the affirmative, whether the defendant/counter-claimant, as a trade union recognized by law and is being sued for the trade unionism activities of its officers/members, has no sufficient and special interest or corresponding legal right on the subject matter which is adversely affected or threatened as to confer *locus standi* on the defendant/counter-claimant.
iii. Whether the defendant/counter-claimant is entitled to claim of general damages against the claimant for refusal to recognize the rights of the defendant to unionize its junior workers and for victimizing workers who voluntarily joined the union.

Arguing issue one, the defendant/counter-claimant submitted that the Third Schedule, Part B, item No. 13, of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 defined the area of jurisdiction of the defendant union as follows:

> Workers in oil well and natural gas well operations including prospecting, drilling, crude oil and natural gas pipelines. Refining, distribution and marketing of natural gas, extraction oil and natural gas and petroleum products including petrol filling station, petroleum tanker drivers, but excluding the construction of oil and gas pipelines (underlining is the defendant's).

That the claimant's counsel relying solely on the last underlined limb of the above passage wrongly contented and concluded that the workers of the claimant are excluded from being

members of the defendant. That from that last limb the workers specifically excluded are only those workers in the construction of oil and gas pipelines. That there are two different pipelines workers contemplated. The first set covers workers in crude oil and natural gas pipelines. That this set of workers carry out construction services like maintenance, upgrading, metal fabrication and installation works on the pipelines or flowlines with crude oil and natural gas running in them that are part of onshore and offshore production facilities and platforms and are among the workers in oil well and natural gas well operations within the jurisdictional membership scope of the defendant.

That the second set covers workers in the construction of oil and gas pipelines. It is worthy of note that the words "crude" and "natural" are conspicuously omitted in this later part of the above passage in qualifying the oil and gas pipelines that their construction workers are to be excluded from membership of the defendant union. It is trite law that legislatures do not use or omit to use words in legislation in vain. The defendant then submitted that this second set of workers by the clear omission of the words "crude" and "natural" from the oil and gas pipelines carry out basically only heavy construction of gas mains and pipelines projects. That these workers are obviously excluded from membership of the defendant union as they have their own union duly recognized by the Trade Unions Act.

The defendant agreed with the claimant's counsel's contention and the case-law authorities that where the words used in a statute are direct and straight-forward and unambiguous, the construction of those words must be on the ordinary plain meaning of the words; but contended that it is also an acceptable canon of interpretation of statute for the courts not to accord ordinary, grammatical and literal meaning to words where to do so will result in ambiguity or absurdity. The Court was referred to *Fashogbon v. Adeogun* [2007] All FWLR (Pt. 396) 661 at 666, Ratio 10. Further, that the literal rule interpretation of the content and context of the aforesaid Third Schedule, Part B, item 13, of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 though still supportive of the claims and case of the defendant will definitely not bring to light and the fore the real intendment of the legislators.

The defendant further contended that a particular provision of a statute is not read in isolation. That for the Court to fully appreciate, understand and discover the true intention of the legislators in enacting the said provision or section of the Trade Unions Act in respect of who actually are those excluded workers in the construction of oil and gas pipelines, recourse will be had to other provisions of the same Trade Unions Act. The Court was then referred to the cases of *Olaiya Kupolati & anor v. Olusola Oke* [2009] All FWLR (Pt 486) 1858 at 1877 – 1879, Ratios 12 – 16 and *SEC v. Kasunmu* [2009] All FWLR (Pt. 475) 1684 at 1691, Ratio 8**.**

The Court was also referred to the provision of the same Third Schedule, Part B, item 9, of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 that defines the area of jurisdiction of another trade union named National Union of Civil Engineering, Construction, Furniture and Wood Workers in the following words:

> Workers in construction…<u>Heavy construction of such projects as gas mains and pipelines</u>….

That workers in heavy construction of gas mains and pipelines as provided in the Third Schedule, Part B, item 9 of the Trade Unions Act are the same as the workers in the construction

of oil and gas pipelines that are excluded from membership of the defendant union in the Third Schedule, Part B, item 13 of the Trade Unions Act. These excluded workers in the heavy construction of gas mains and pipelines, put differently in the construction of oil and gas pipelines are different and distinguishable from the workers in *crude oil and natural gas pipelines* in oil well and natural gas well *operations* as contemplated in the first limb of the Third Schedule, Part B, item 13 of the Trade Unions Act.

Also, that it is apparent from the areas of jurisdiction of the respective unions mentioned in the Third Schedule, Part B, items 9 and 13 of the Trade Unions Act that the workers excluded from being members of the defendant union are those workers in the heavy construction of gas mains and pipelines or in the construction of oil and gas pipelines. That the gas mains and oil pipelines constructions whose workers are excluded from membership of the defendant are heavy constructions and laying of new pipelines and not crude oil and natural gas pipelines which can only be upgraded and maintained as envisaged or contemplated in the first limb of the Third Schedule, Part B, item 13. That the difference in the pipelines is that the crude oil and natural gas pipelines which is part of oil well and natural gas well operations have crude oil and natural gas running or flowing in them and are onshore and offshore production facilities that are subject to construction services of maintenance, upgrade, metal fabrication and installations as permitted in the Department of Petroleum Resources Permits granted to the claimant.

That having exhaustively and painstakingly drawn the distinction between workers contemplated in the Third Schedule, Part B, items 9 and 13 respectively, the defendant referred to the Department of Petroleum Resources Permits filed by the claimant in this action. The first one dated 13th May 2009 was for construction services, namely, installation and upgrade of onshore and offshore production facilities and platforms. The second one dated 10th March 2010 was also for construction services, specifically for installation and upgrade of onshore and offshore production facilities and platforms. That the specific services mentioned in the said DPR Permits have nothing to do with heavy construction of gas mains and pipelines nor the construction of oil and gas pipelines but have a lot more to do with crude oil and natural gas pipelines that are integral parts of oil well and natural gas well operations contemplated in Third Schedule, Part B, item 13 and urged this court to so hold.

The defendant also referred the Court to the claimant's Annexure 2 at its paragraph 6 where the claimant stated its service coverage areas and Annexures Nup 1 and submitted that services listed therein have a lot to do with oil well and natural gas well operations than merely construction of oil and gas pipelines or heavy construction of gas mains and pipelines. That the claimant has in the said paragraph 6 of its Annexure 2 admitted thus:

> Our strength is derived from providing a complete project package i.e. from initial planning through design, procurement, construction and installation of new oil process facilities; start up, operations and maintenance to perhaps outage/shutdown.

The defendant then urged the court to hold on the basis of all the foregoing that the claimant company is in the oil well and natural gas well operations and its workers are within the jurisdictional scope of the defendant/counter-claimant in accordance with the provisions of the Third Schedule, Part B, item 13 of the Trade Unions Act.

To the defendant, the word "operation" has been defined in the *Oxford Advanced Learner's Dictionary*, 6th Edition to mean: "An organized activity that involves several people doing

different things" or "A business or company involving many parts" or "The activity or work done in an area of business or industry." That from the foregoing meanings of the word operation, it is obvious that the word operations as used in the provisions of the Third Schedule, Part B, item 13 of the Trade Unions Act entails business or company involving many parts, and that is the case in the oil well and natural gas well operations industry. That the maintenance, metal fabrication, installation and upgrading of onshore and offshore production facilities and platforms are some of the many parts of the business of oil well and natural gas well operations industry. The defendant submitted that maintenance, metal fabrication, installation and upgrading of onshore and offshore production facilities and platforms are some of the many parts of the business of oil well and natural gas well operations and urge the court to so hold.

To the defendant, according to *Black's Law Dictionary*, 8th Edition the verb "include" means "To contain as a part of something. The participle "including" typically indicates a partial list." That from this *Black's Law Dictionary* definitions the word "including" as used in the first limb or sentence of the provisions of the Third Schedule, Part B, item 13 of the Trade Unions Act is not limited to workers in prospecting, drilling, crude oil and natural gas pipelines operations but also extends to those workers carrying out maintenance, metal fabrication, installation and upgrading operations on the crude oil and natural gas pipeline which are all onshore and offshore production facilities and platforms in the oil well and natural gas well operations industry. The Court was referred to *FRN v. Fani Kayode* [2010] All FWLR (Part 534) 181 at 185 Ratio 3 where the Court of Appeal held thus: "When the word "include" is used in a document, it has the effect of extending the scope of the concept covered by the terms." That this decision further lends credence and buttresses the contentions and submissions to the effect that the claimant company is in the oil well and natural gas well operations and, therefore, its junior workers are within the jurisdictional scope of membership of and free to join the defendant/counter-claimant union by all means of interpretation of the Third Schedule, Part B, item 13, of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15. The defendant then urged the court to so hold and resolve issue (i) in favour of the defendant/counter-claimant.

On issue ii, the defendant submitted that for the Court to determine whether or not the defendant/counter-claimant has *locus standi* to counterclaim in this suit the pleadings of the defendant namely the statement of defence and counterclaim filed will be considered to see if the defendant has shown sufficient and special interest in the subject-matter of the suit. The Court was referred *to Ojukwu v. Ojukwu* [2009] All FWLR (Pt. 463) 1243 at 1249 – 1253. That paragraph 18 of the counterclaim incorporated the averments in the statement of defence into the counterclaim. Also that by the averments in paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 19 and 20 of the statement of defence and counterclaim filed by the defendant that the defendant has sufficient and special interest in the subject-matter of this suit and thus has *locus standi* to the counterclaim in same.

The defendant also submitted that section 40 of the 1999 Constitution guarantees every person's right to assemble freely and associate with other persons to form or belong to any trade union or any other association for the protection of his interest. That section 54 of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 defines member of a trade union to mean a person normally engaged in trade or industry which the trade union represents and a person either elected or appointed by a trade union to represent workers' interest. Also that once a worker reasonably believes that he is normally engaged in the trade or industry which a trade union represents and

voluntarily exercise his constitutional right to join and become a member of that trade union it is incumbent on that trade union to protect the said worker's interest.

Furthermore, the defendant contended that the workers of the claimant have enough reasons to believe and boldly too that they are persons normally engaged in the trade or industry which the defendant trade union represents before applying to the defendant on 19th December 2009 vide Annexure Nup. 2 to unionize them by forming a branch in the claimant's company. That the defendant did all that is required of her under the law by means of several letters written and visits made by her officers to the claimant to amicably get the claimant to accept and respect its workers decision of joining the defendant union but to no avail. That Annexure Nup. 3, Annexure Nup. 4 and Annexure Nup. 5 are several letters written to the claimant by the defendant urging the claimant to accept the unionization of its workers. That the claimant never replied to any of those letters but rather resorted to victimization and intimidation of the workers for joining the defendant union hence the 21 days ultimatum letter of 8th March, 2010 issued by the defendant in Annexure Nup. 6 that triggered off this suit. It is the contention of the defendant that it has a corresponding right to counterclaim in this suit either for itself on her right to gain membership from the workers of the claimant who as has been argued are engaged in the trade or industry which the defendant represents. That the defendant also has legal right to counterclaim for the protection of the interest of its members who are victimized by loss of their employments like Mr. Promise Sunday and Mr. Samuel Ufuoma for trade union activities or many others intimidated from freely expressing themselves and exercising their rights to form or belong to the trade union.

The defendant also submitted that Mr. Promise Sunday, Mr. Samuel Ufuoma and many others whose names cannot be exposed in this suit for fear or risk of losing their employments with the claimant are not mere third parties as alleged by the claimant but duly recognized unionized members of the defendant and are potential witnesses of the defendant as could be seen from the List of Witnesses filed by the defendant in this suit. That the defendant was not only definite about their positions in paragraph 10(v) and (vi) of the statement of defence and paragraph 4 of the 21 days ultimatum letter dated 8th March 2010 issued by the defendant in Annexure Nup. 6 to the claimant but demanded their reinstatement therein.

That by section 25 of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, on registration be recognized in accordance with the provisions of this Act, be entitled to recognition by the employer. Further, that the defendant is not only a creation of statute but also a registered one empowered to have her members voluntarily from workers in oil well and natural well operations in accordance with the provisions of the law has *locus* to sue for declaration of her rights to access such members from against any employer's interference with such rights and for the protection of interest or rights of its members who are or were employees of the hostile employers. The defendant urged this court to hold that the defendant/counter-claimant has *locus standi* and that the counterclaim is well founded and is not an abuse of court process.

On issue iii, the defendant contended that general damages have been defined as those damages which the law implies in every violation of a legal right. That it is the loss which flows naturally from the act of the defendant and its quantum need not be pleaded or proved as it is generally

presumed by law, citing *Niko Engineering Limited v. Akinsina* [2005] All FWLR (Pt. 284) 292 at 292, Ratio 9.

The defendant submitted and urged this court to hold that the workers of the claimant are within the jurisdictional scope of membership of the defendant/counter-claimant by virtue of the provisions of Trade Unions Act and that the admitted refusal of the claimant to recognize its said workers rights to form or belong to the membership of the defendant and the right of the defendant to form a branch of her union in the claimant company is a violation of the legal right of the defendant/counter-claimant and contrary to the spirit and intendment of the Trade Unions Act and the Constitution of the Federal Republic of Nigeria thus entitling the defendant/counter-claimant to general damages as counterclaimed.

With respect to issue 4 raised by the claimant as to whether the claimant is entitled to the cost of this action, as may be assessed by this court, the defendant urged this court to discountenance all the contentions and submissions of the claimant on the issue but to rather award cost against the claimant for this frivolous and vexatious suit by entering judgment in favour of the defendant/counter-claimant.

Concluding, the defendant maintained that the claimant is in oil well and natural gas well operations and its workers are within the jurisdictional scope of the defendant/counter-claimant's membership. That it was wrong and unlawful of the claimant to vehemently refuse to recognize the defendant/counter-claimant in spite of several letters of the defendant/counter-claimant to the claimant on the facts of a branch of her union having been formed in the claimant company; that the defendant/counter-claimant has *locus standi* to counterclaim in this suit and, therefore, urged the court to dismiss the claims of the claimant in its entirety and to find and enter judgment in favour of the defendant/counter-claimant.

The claimant reacted on points of law to the defendant's reply written address.

The claimant/defendant to counterclaim responded that in the instant case, this court is called upon to invoke its interpretative jurisdiction on whether the jurisdictional scope of the defendant as clearly defined by the provisions of the Third Schedule, Part B, item 13, of the Trade Unions Act Cap. T14 LFN 2004 for the purposes of trade unionization covers workers of the claimant.

That contrary to the submission of the defendant in its feeble attempt to persuade this court to accept its self-conceived interpretation/construction of that statutory provision, it was held in the case of *SEC v. Prof. A. B. Kasumu* [2009] 10 NWLR (Pt. 1150) 509 at 537 C – H, *inter alia*, as follows:

> In a construction of a statutory provision, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. The principle is based on the expression "urius est exclusion alterius" that is, the expression of one thing is the exclusion of another. In other words, the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication with regard to the same issue. Furthermore, in order to interpret an Act or section of an

> Act, it is necessary to read the entire provisions of the Act or section of it…(underlining is the claimant's).

Also, in *Orji v. Ugochukwu* [2009] 14 NWLR (Pt. 1161) 207 at 291 E – G**,** it was held, *inter alia*, that:

> In interpreting the Constitution or a statute, specific mention of names or items means the exclusion of others not mentioned and/or that the several items will not include the specific items. This principle of interpretation is encapsulated in the latin maxim, "generalia specialibus non derogant." Equally relevant is the latin maxim, "expression urius est exclusion alterius," inclusion urius est exclusion alterius" and "enumeration unumeratio urius est exclusion alterius" meaning in essence that the express inclusion of one thing is the exclusion of another…(underlining is the claimant's).

That it is against the background of the foregoing decisions of the appellate courts that the defendant's effort to sever that provision of the Trade Unions Act into two (2) and construe the same in a swerved and incongruous manner has only remained misconceived and most unhelpful.

Further, that the law is settled on matters of interpretation of statutes; the law does not permit the importation of words into a statute, which words are not used.

It is only where the words of a statute are manifestly ambiguous that the court has a duty to give them a meaning that will resonate with common sense, order and system, so as to make them realistically operative; that this is not the case with the instant suit. The court was referred to *Dimegwu v. Ogunere* [2008] 17 NWLR (Pt. 1116) 358 at 383 B – F and F – G where it was held that:

> The actual words used in a statute ought to be accorded their literal, grammatical or ordinary meaning devoid of sentiment, decoration or quibble. Invariably, a court has an obligation to give effect to such words used in a statute that appears to be plain and unambiguous. Thus, the primary concern of the court is to ascertain the intention of the law makers. This doctrine is hinged on the belief that a court has no business reading into a statute words, which are not used therein…(underlining is the claimant's).

That the cases of *Fashogbon v. Adeogun* (*supra*); *Olaiya Kupolate v. Olusola Oke* (*supra*) and *FRN v. Fani Kayode* (*supra*) cited and relied upon by the defendant/counter-claimant are not only inappropriate and inapplicable to the case of the defendant/counter-claimant, but quite unhelpful to it, and urged the court to discountenance all arguments and submission based on the said authorities.

On *locus standi*, the claimant responded that for a party to possess the necessary capacity to institute proceedings in a court of law, such a party must show that he is affected or likely to be

affected or aggrieved by the proceedings in that such, citing the case of *Tabiowo v. Disu* [2008] 7 NWLR (Pt. 1089) 533 at 544 G – H.

That considering the authority of *Tabiowo v. Disu* (*supra*) that in the instant case, throughout the statement of defence and the statement of claim in support of its counterclaim, the defendant/counter-claimant failed to show that it has any established legal right, or sufficiency of interest in the subject matter of its claims/reliefs being sought in its counterclaim. There has been no iota of such cognizable legal right, the protection of which the defendant is seeking and which could have given it (defendant) the legal capacity to raise a counterclaim as it did in this suit. That the defendant is a union, and not the individuals on whose behalf it is making a counter-claim; neither has the defendant pleaded or exhibited any power of attorney donated to it by those individuals for whom it is counter-claiming. That worse still those individuals are not parties to the proceedings.

Again, the extent to which issues concerning Progress Sunday and Samuel Ufuoma as ex-staff of the claimant will affect the defendant as a trade union has not been established. That there is no shred of evidence to establish that the said Progress Sunday and Samuel Ufuoma, as members of staff of the claimant, had duly become registered members of the defendant trade union at its purported branch at the claimant company, and no evidence to show that the defendant union has been duly established and is functional at the claimant company. That in the case of *Nnorom v. Nwauzor & ors* [2008] 12 NLLR (Pt. 32) 236 at 243 C – F and 250 G – H, this court held, *inter alia,* on the issue of *locus standi,* as follows:

> A member of the Nigeria Union of Pensioners must pay his check-off dues with proof of remittances…and belong to a branch of the union. In the instant case, the court could not ascertain from the evidence that the applicant belongs to a branch of the union or that remittances…were actually made…Where individual members of affiliated unions are aggrieved…the right of complaint must be pursued through or in conjunction with the sponsoring affiliated unions…(underlining is the claimant's).

Further, that in the instant case, contrary to the decision in *Nnorom v. Nwanuzor & ors's case* (*supra*), the defendant/counter-claimant has woefully failed to establish that Progress Sunday and Samuel Ufuoma are registered members of its union with evidence of paying dues to the union such that they could sue through the defendant union (as they have done so by way of counter-claim).

The claimant, therefore, urged this court to hold in the circumstances that the case of *Ojukwu v. Ojukwu* (*supra*) and sections 54 and 25 of the Trade Unions Act Cap. T14 LFN 2004, Vol. 15 cited and relied upon by the defendant/counter-claimant is recognizable and inapplicable to the issue being argued, and that same should be discountenanced. The claimant then urged the court to hold that the defendant/counter claimant has no legally recognizable interest in the subject matter of its claims/reliefs being sought in its counterclaim having failed to establish its legal rights the protection of which it seeks by way of counterclaim.

On the issue of general damages, that in the case of *UBA Plc v. Ogundokun* [2009] 6 NWLR (Pt. 1138) 450 at 489 B – F and 490 E – F it was held, *inter alia*, as follows:

> Damages are the pecuniary compensation of award given by process of law to a person who suffered loss or injury whether to his person or property (through the unlawful act or omission of another…damages flows generally from the defendant's wrongful act or omission hence they are implied by law…(underlining is the claimant's).

Also, in *ASESA v. Ekwenem* [2009] 13 NWLR (Pt. 1158) 410 at 434 E – F and 439 C – D, the Supreme Court of Nigeria held as follows:

> Damages means the pecuniary compensation obtainable by a successful party in an action for a wrong which is either a tort or a breach of contract…An award of damages, either special or general, is not made as a matter of course or on speculations or sentiment but on sound solid legal principles. In other words, it is not made out of sympathy borne out of extraneous considerations but rather on legal evidence of probative value adduced proof of an actionable wrong or injury…(underlining is the claimant's).

The claimant submitted, on the basis of the authorities cited and relied upon, that in this case the defendant/counter claimant has failed to show and establish that it has suffered loss or injury to its person or property as a union, for which it is entitled to compensation.

That the claim/relief of damages by the defendant in its counterclaim has undoubtedly shown that the same is not borne out of any injury to the person or loss suffered by the defendant as a direct consequence of the action or inaction of the claimant/defendant to counterclaim but to some third parties who are strangers to the proceedings. The claimant urged this court to dismiss the counterclaim and enter judgment in its favour.

The defendant/counter-claimant with the leave of this court filed an additional final written address dated the 12th July 2011 and attached the Certified True Copy of the Memorandum and Articles of Association (MEMART) of the claimant company. The crux of the said final written address is to establish by attaching the MEMART of the claimant that the claimant is in the business of oil well and natural gas well operations thereby entitling its junior workers to be within the jurisdictional scope of membership of the defendant.

The defendant submitted that the Certified True Copy of the Memorandum and Articles of Association of the claimant company attached strongly support the first issue raised by the defendant in its final written address to the effect that the claimant company is in the business of oil well and natural gas well operations entitling its junior workers to be within the jurisdictional scope of the defendant.

The defendant referred the court to paragraph 3(1) to (12) of the object clause of the Memorandum of Association of the claimant at pages 1 and 2 of the said Annexure NUP. 1B and urged this court to hold and declare that the contents and context of those sub-paragraphs of the

aforesaid document are in total agreement with its previous submissions on this issue. That the claimant cannot deny the obvious fact and truth that it is actually in the oil well and natural gas well operations and, therefore, its junior workers are within the jurisdictional scope of the defendant and are free to and rightly joined the defendant union.

The defendant, therefore, urged this court to hold that the vehement refusal of the claimant to recognize the unionization of its junior workers is illegal, unconstitutional, null and void and amount to a denial and breach of the legal and constitutional rights of the defendant members who are employees of the claimant and should be compensated by award of damages against the claimant.

In a reply to the additional final written address, the claimant distilled a sole issue which it considers fit for determination by this court i.e. whether the claimant as a company must do or is taken to be doing all businesses or objects contained in its Memorandum and Articles of Association for the purpose of unionization of its staff under the Trade Unions Act.

The claimant submitted that the reason for having objects in a company is to enable the company carry out activities which otherwise it would have no authority to do. That objects are often drawn widely, making them enabling provisions and not provisions which the company is required to carry out.

That the objects clause in the Memorandum and Articles of Association of the claimant company set out the lawful activities the claimant company MAY carry out and not activities the claimant company MUST carry out; therefore, the claimant company is not under any obligation to carry out all the activities listed as objects in its Memorandum and Articles of Association. This means that even though the objects clause of the Memorandum and Articles of the claimant company authorizes it to carry out oil and natural gas well operations, it is not an affirmation or evidence that the claimant company actually carries out oil and natural gas production and well operations at the material time.

The court was referred to J. O. Orojo's *Company Law & Practice in Nigeria*, 3rd Edition at page 60 where the learned author said –

> The objects clause of a company simply sets out the business or objects which the company may lawfully carry out and not business or objects the company must carry out.

As such the company is at liberty to carry on any business within the object clause, but the company is under no obligation to do so. This means that although certain business and objects exist in the Memorandum and Articles of Association, it does not mean that the company is doing all of them. It is, therefore, a matter of evidence to show at any point in time which business or object a company is pursuing.

That in support of these principles, the Supreme Court in *National Investment & Property Company Limited v. Thomson Org. Ltd & ors* [1969-1970] Vol. 6 NSCC 161 at 166, para. 40 held as follows:

> Objects are often drawn very widely, and here are 19 objects in paragraph 3 in the Memorandum of Association, so as to

> give the company a power to do anything which it is likely to need to do in the view of those creating it. In other words objects are enabling provisions and not provisions which a company is required to carry out. Accordingly just as a company does not have to carry out every object with which it is empowered, so equally it does not have to continue to carry out an object if its Board of Directors considers it is not in the interest of the company to do so.

Also, that the Supreme Court re-echoed this principles in *Edokpolo & Co. v. Sem-Edo Wire Ind. Ltd. & ors* [1984] Vol. 15 NSCC 553 at 555 Ratios 4 and 5 in the following words:

> That the object clauses are no more than a list of the objects of the company may lawfully carry out. They are certainly not objects that the company must execute. The inclusion of the terms of an agreement in the Memorandum of Association of a company is an indication of a strong desire by the contracting shareholders that the proposed company after its incorporation should execute the terms of the agreement so included. This can be taken together with the acts of the new company after it had been incorporated in determining whether a new contract has come into existence. The memorandum is only binding on the company in the sense that it cannot repudiate the object clauses but not in the sense that the company must carry out a particular object clause.

Also Sasegbon's *Law of Nigeria*, 1st Edition, Vol. 3 page 738 para 2142 posited as follows:

> In other words objects are enabling provisions, not provisions which a company is required to carry out. If the activity of the company does not fall within an object it is *ultra vires*, but an activity permitted by the objects may, not must, be carried out. Accordingly, just as a company does not have to carry out every object with which it is empowered, so equally it does not have to continue to carry out an object if its board of directors considers it is not in the interest of the company to do so. If it were otherwise it would mean that every time a company had began to carry out an object it would have to call a general meeting if circumstances changed and it did not wish to pursue the object.

The claimant, therefore, submitted that the reliance of the defendant on the enabling provisions of the defendants Memorandum and Articles of Association as a basis of insisting that the defendant is an oil and gas producer or well operator and so on, and thus falls within its jurisdictional scope to unionize the claimant's staff is misconceived. That the fact remains that the claimant is not presently involved in such businesses as it had consistently maintained (despite the fact that there is such enabling provisions in its Memorandum of Association, which is largely drawn and includes other forms of businesses such as catering, hostelling, transportation, shipping, printing, farming and tobacco).

Further, that if the defendant's contention is allowed, it would mean that all other unions dealing with other aspects of businesses covered in the enabling provisions will also seek to unionize the claimant's staff (despite the fact that the claimant is not yet involved in such businesses). This would be absurd and defeat the spirit and intent of the jurisdictional scope for trade unions under the enabling Act.

The claimant urged the Court to reject the strange and unsubstantiated arguments of the defendant and to hold in line with documents before this court and the position of the law that, the claimant is not yet involved in those lines of businesses that would make its staff fall within the jurisdictional scope of the defendant under the Third Schedule, Part B, item 13 of the Trade Unions Act, and consequently that its staff should not and cannot be unionized on that basis by the defendant. Again that the types of business which the claimant is licensed to operate by the Department of Petroleum Resources (DPR) can be seen from the Permit of 2010 annexed as Annexure 6 to the claimant's reply and defence to counterclaim, amongst other documentary evidence placed before the court.

The claimant then submitted that the defendant has failed to satisfy this court on the twin conditions required to unionize the claimant's employees namely:

> (1) That its union possesses the statutory jurisdictional scope to unionize employees of the claimant under the extant 3rd Schedule of Part B, item 13 of the Trade Unions Act Cap. T14 LFN Vol. 15 2004, considering the nature of the business carried on by the claimant.
> (2) That the affected employees of the claimant have agreed and expressed their interest to join the defendant's union.

That in its attempt to satisfy this second condition, the defendant exhibited and relied on Annexure NUP 2 being a letter dated 19th December 2009 said to be written by the "entire workers" of the claimant requesting to be unionized by the Rivers State Zonal Council of the defendant. That this purported letter was however not signed by any identifiable person. To make it worse, no name of the signatory was stated, neither was the list of staff at whose instance it was issued attached as expressed on the letter. The position of the law is that such anonymous document should be disregard as worthless and incompetent, and the least probative value be attached to it.

That in *Dantiye v. Kanya* [2009] 4 NWLR (Pt. 1130) 13 at 39 F – G, it was held as follows:

> I need to emphasize here that a signature by an unknown person on behalf of another is an incompetent signature.

Similarly, the Supreme Court in *Abdulhamid Ojo v. Primate E. O. Adejobi & ors* [1978] 3 SC 47 at 52 held as follows:

> The court cannot in any event, *ex-debito justitae*, ignore a situation in which the foundations of a claim to a proprietary legal interest are based on a worthless, unsigned and inadmissible document.

Again, the Supreme Court in the notorious case of *Okafor v. Nweke* [2007] 10 NWLR (Pt. 1043) 521 at 533 G – H pronounced as incompetent a court process signed in the name of a law firm instead of a legal practitioner, and had same struck out.

The claimant, therefore, urged the court to declare as incompetent, irregular and worthless the said Annexure NUP 2 because it was signed by an unnamed or unidentifiable person purporting to bind the "entire workers" of the claimant. The said document lacks legitimacy to bind the entire workers of the claimant in terms of their voluntary acceptance to be unionized by the defendant.

Concluding, the claimant submitted that the object clause in the Memorandum and Articles of Association of the claimant no doubt sets out what businesses the claimant may lawfully do, nevertheless, it does not mean that the claimant actually carries on those businesses at all material times. The claimant then urged the Court to discountenance the arguments and submissions of the defendant and resolve this issue in the negative and in favour of the claimant, and to further hold that the defendant lacks the statutory jurisdictional competence or consent of the employees' of the claimant to unionize the claimant's workers.

We have carefully considered the processes and submissions of the parties including the exhibits front loaded by the parties. To our minds there are only two issues for determination in this suit, namely –

> (i) Whether the claimant has sufficient interest in the jurisdictional scope of the defendant union as to warrant bringing this action to court.
> (ii) Whether the defendant has the *locus standi* and competence to raise a counter claim on behalf of its members when sued for trade union activities of its members.

In considering the issues at hand, a word or two may be necessary at this stage. In the first place, both counsel to parties in their respective submissions showed little appreciation of the intricate labour issues involved in this matter. In consequence, both counsel ended up with pretty verbose and irrelevant materials that were of little help. Even the appreciation of especially the judicial authorities within the context of the issues at hand was poor. For instance, the claimant's reliance on this Court's decision in *Nnorom v. Nwauzor & ors* [2008] 12 NLLR (Pt. 32) 236 was taken out of context. The issue in that case was whether the applicant could contest election into an NLC office without the sponsorship of his union, the Nigerian Union of Pensioners. The Court had to interpret the constitution of NLC to know who can contest. So the decision in that case was essentially based on the facts of that case. The issue in that case is at variance with what is before this court in the instant case.

Secondly, without having to go far, the claimant erroneously submitted that a trade union has no *locus standi* to sue on behalf of its members where the members' employments have been terminated. This Court has over time recognized the right of unions to sue on behalf of their members; but whether the union can sue by activating the original jurisdiction of this Court remains the question.

Thirdly, the principles of 'opting in' and 'opting out', which all these years apply in our labour law were not appreciated by especially the claimant's counsel – hence his argument that the employees of the claimant must agree and express their interest before they can join the

defendant's union. As far as our law is concerned, junior staff are deemed to be members of a union until they *individually* and *in writing* opt not to be; while senior staff are deemed not to be members until they *individually* and *in writing* opt to be. This means that *if* in truth the defendant is the proper union to unionize junior staff of the defendant, the question of them having to agree and express their interest before they can join the defendant's union will not arise. All that will be required of them is that if they do not want to be members, they can opt out. See generally the cases of *CAC v. AUPCTRE* [2004] 1 NLLR (Pt. ) 1, *Mix & Bake v. NUFBTE* 2004 1 NLLR (Pt. 2) 247, *TIB Plc v. NUBIFIE* [2008] 10, NLLR (Pt. 27) 322 and *Mgt. of Tuyil Nig. Ltd v. NULFRIL & NMPE* [2009] 14 NLLR (Pt. 37) 109, which establish that the law is that registration is deemed, recognition automatic and deduction of check-off dues compulsory, being based on mere eligibility to be a member of the union in question. All of this, therefore, raises the pertinent question of the *locus standi* of the claimant to come to court. In other words, if it lies with, and so is the right of, the employee to opt in or opt out of a union (depending on the status of the employee in question), does an employer have the right, interest or standing to come to court raising issues of jurisdictional scope before this Court?

In *ASCSN v. INEC and 2 ors* [2006] 5 NLLR (Pt. 11) 75 at 89, the issue was whether an employer *must* be a party to an action regarding jurisdictional and recognition disputes before the decision of this Court in that regard can be enforced on the said employer. This Court held that in questions of jurisdictional scope between unions and recognition disputes, an employer is often a passive party and so may not necessarily be a party to the suit; yet the outcome of the suit may be enforceable against the employer. The Court of Appeal affirmed the position of this Court describing it as impeccable with nothing upon which the Court of Appeal can pick a quarrel against. See *Independent National Electoral Commission (INEC) v. Association of Senior Civil Servants of Nigeria and anor* unreported Suit No. CA/A/154/05 delivered on November 19, 2007. The ratio in *ASCSN v. INEC and 2 ors* was subsequently applied by this Court in *ACSN v. National Orientation Agency and ors* unreported Suit No. NIC/9M/2003 delivered on September 27, 2007.

An employer has no right or interest in asking an employee to either join a particular union or not to join a union. In other words, an employer has no right whatsoever to interfere in union matters. In the case of *NASU v. Vice Chancellor, University of Agriculture, Abeokuta* unreported Suit No. NIC/LA/15/2011 the judgment of which was delivered on February 21, 2012, this Court stated as follows –

> The right to trade unionism is a fundamental right of workers entrenched in the Constitution. The right is so important that employers are enjoined not to interfere with its exercise in any way. An employer cannot compel workers to join a particular union; or form a union for the workers; or determine how a union is run or administered. The fundamental nature of the worker's right here was succinctly captured by His Lordship Akpabio, JCA when delivering the lead judgment in *Panya Anigboro v. Sea Trucks Nigeria Ltd* [1995] 6 NWLR (Pt. 299) 35 at 62 in the following words –
>
> > …it becomes crystal clear that the right to form or join any…trade union is exclusively that of the individual citizen and not that of the employer. His employer has no business forming a trade union let alone compelling his workers to join it. It was therefore a violation of or breach of…our Constitution for the defendant to insist that the plaintiff and his co-workers should join the Nigerian Union of Seamen and Water Transport Workers instead of the National Union of

> Petroleum and Natural Gas Workers (NUPENG). And to go further and dismiss them summarily for refusing to carry out the order virtually amounted to aggravating a bad situation or adding insult to injury, which must be redressed.

> *A fortiori*, I must state that no employer is permitted to interfere, no matter how minutely it may be, in the internal running and management of a trade union. That is the exclusive preserve of members of the trade union itself. This statement of principle accords with section 40 of the 1999 Constitution, as amended, and the International Labour Organisation (ILO) jurisprudence regarding the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), which establishes the right of workers' and employers' organisations "to organize their administration and activities and to formulate their programmes" (Article 3) and recognizes the aims of such organisations as "furthering and defending the interests of workers and employers" (Article 10). This freedom entails a number of principles, which have been laid down over time and which (according to the trio of B. Gernigon, A. Odero and H. Guido – 'Freedom of Association' in *International Labour Standards: A Global Approach, 75th anniversary of the Committee of Experts on the Application of Conventions and Recommendations*, First Edition 2002 at pp. 27 – 40) include the following: right of workers and employers, without distinction whatsoever, to establish and join organisations of their own choosing; right to establish organisations without previous authorization; right of workers and employers to establish and join organisations of their own choosing; free functioning of organisations in terms of right to draw up their constitutions and rules; right to elect representatives in full freedom; right of trade unions to organize their administration; right of organisations to organize their activities in full freedom and to formulate their programmes; right of workers' and employers' organisations to establish federations and confederations and to affiliate with international organisations of workers and employers; right against dissolution and suspension of organisations except through judicial procedure; protection against acts of anti-union discrimination; and adequate protection against acts of interference.

From these statements of principles, we hold that the claimant has no *locus standi*, and so is a busy body, regarding the question whether the defendant is the appropriate union to unionize its staff. The *locus* is with either the staff themselves or some other rival union that lays claim to jurisdictional mandate. The interest of the claimant regarding this question is passive and does not entitle it to come to court. Only two categories of persons have the locus to challenge the defendant in this regard. They are: a rival union challenging the jurisdictional mandate of the defendant over the staff of the claimant or the staff of the claimant indicating *individually* and *in writing* that they are opting out and so check-off dues should no longer be deducted.

The second issue is whether the defendant can counterclaim in the manner it did in this case. In other words, does this Court have original jurisdiction to entertain the counterclaim of the defendant? The rule is that where the original jurisdiction of this Court is activated in terms of the interpretation jurisdiction of the Court or *a fortiori* its jurisdiction on issues of strike, a counterclaim cannot be raised where issues that it relates to qualify as trade dispute. Here, the best course of action for the counterclaimant is to declare a trade dispute and exhaust the dispute resolution processes of Part I of the TDA before approaching this Court in its appellate

jurisdiction. This principle can be gleaned from this Court's decision in *Eleme Petrochemicals v. Dr Morah Emmanuel* [2009] 17 NLLR (Pt. 46) 81 at 106, which is as follows –

> The complaint of the defendant in the counterclaim is one connected with his employment or non-employment, which makes it a trade dispute within the meaning of section 48 of the TDA. This means that the process of mediation, conciliation and arbitration in Part I of the TDA ought to have been exhausted by the defendant before filing the counterclaim. See *Hotel & Personal Services Senior Staff Association v. Ikeja Hotel Plc & ors* (unreported) Suit No. NIC/39/2008 delivered on 2nd July 2009 and *Anthony Oyekanmi & Ors v. NITEL & Bureau of Public Enterprises* (unreported) Suit No. NIC/7/2008 delivered on July 15, 2008. The interpretation jurisdiction of this court cannot be used to adjudicate the trial issues raised in the counterclaim. See *Itodo v. Chevron Texaco* [2005] 2 NWLR (Pt. 5) 200 at 222 – 223 and *Hotel and Personal Services Senior Staff Association v. Tourist Company of Nig. Plc* (unreported) Suit No. NIC/14/2002 delivered on October 27, 2004. We find that the counterclaim has not been properly raised and, therefore, the defendant cannot maintain his action against the claimant. We, therefore, hold that this court lacks original jurisdiction to entertain the counterclaim. The counterclaim is hereby struck out.

For this reason, therefore, in the instant case, we hold that the counterclaim of the defendant is premature. The Court lacks original jurisdiction to entertain it. It is accordingly struck out.

In the circumstances of this case, therefore, we hold that the case of the claimant lacks merit and the counterclaim of the defendant cannot be entertained by this Court in its original jurisdiction since the counterclaim covers issues that qualify as a trade dispute. In consequence, the case is accordingly dismissed for want of competence and jurisdiction. We make no order as to cost.

Judgment is entered accordingly.

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Hon. Justice B. B. Kanyip
Presiding Judge

…… …..……
Hon. Justice O. A. Obaseki-Osaghae Hon. Justice J. T. Agbadu-Fishim
Judge Judge