

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
IN THE MATTER OF DAGOTE FARMS LIMITED  
AND

IN THE MATTER OF THE COMPANIES AND ALLIED MATTERS ACT 2020

AND

IN THE MATTER OF AN APPLICATION FOR WINDING UP PURSUANT TO  
SECTIONS 401, 408, 409 AND 410 OF THE COMPANIES AND ALLIED  
MATTERS ACT CAP C.20 LFN 2020

2608  
SUIT NO: FHC/L/CP/...../2023

BETWEEN

PLEXUS COTTON LIMITED -

PETITIONER

AND

DANGOTE FARMS LIMITED -

RESPONDENT

PETITION

To His Lordship of the Federal High Court, the humble Petition of Plexus Cotton Limited, your Petitioner shows as follows:

**BACKGROUND INFORMATION ABOUT PARTIES TO THE PETITION**

1. Your Petitioner is a company registered in the United Kingdom with its address at 3rd floor, 14, Castle street, Liverpool L2 ONE, England 2548312
2. The Respondent, Dangote Farms Limited is a limited liability company registered under the Companies and Allied Matters Act 1990 with its current head office at 1, Alfred Rewane Road, Ikoyi, Lagos.
3. The nominal share capital of the Respondent is N4,500,000.00 divided into 4,500,000 ordinary shares of N1 each. The amount of the capital paid up or credited as paid is N4,500,000.00.

4. The Respondent's business objects include food production and processing and general agriculture in the Federal Republic of Nigeria as set out in its memorandum and articles of association.
5. The Petitioner sought and paid for the supply of a quantity of cotton from the respondent which supply contract the respondent breached and an arbitrable dispute was subsequently declared.
6. The dispute was arbitrated (which proceedings the respondent wilfully boycotted despite repeated invitations) before the arbitrators of Liverpool Cotton Association Limited who delivered an award in which they found the respondent liable for breach of its cotton supply contract with the petitioner in the sum of \$431,233.41 from June 22, 1998 with interest at the rate of 2% per annum over the New York Prime Interest rate, or as appropriate, the calculated average thereof.

#### **ESTABLISHMENT OF RESPONDENT'S INDEBTEDNESS**

7. The Respondent is, as of April 30, 2023, indebted to Your Petitioner in the sum of **\$2,307,922.03 (two million, three hundred and seven thousand, nine hundred and twenty-two U.S. Dollars, and 3 cents)** being the principal and interest accrued on the said award sum.
8. The respondent unsuccessfully challenged the award at the trial and appellate courts. Subsequent appeals by the respondent are in stasis as they are not being prosecuted diligently.
9. The High Court of Lagos State recognised the award given in England and which recognition the respondent brought Appeal No: CAL/987/2017 against. This appeal is also in stasis as the appellant has refused to take necessary steps to prosecute or advance same.
10. Your petitioner recently issued and served upon the respondent a demand notice for the said award with interest at the 2% rate awarded but the respondent failed to respond to or heed the demand in same.
11. Your Petitioner has given the Respondent a long period of time to liquidate its indebtedness and the statutory three (3) weeks have elapsed, yet the Respondent has neglected to respond, pay or satisfy the said sum.

12. The Petitioner has filed before this Honourable Court, a Petition for winding up of the Respondent herein for its failure to pay its debt owed to the Petitioner after same has become due and payable.

13. The Respondent's refusal to liquidate its aforesaid indebtedness to Your Petitioner has occasioned serious financial hardship and unnecessary expenses to Your Petitioner and ought to be wound up to prevent its future indebtedness to other commercial entities .

14. The Respondent has shown by its refusal that it is insolvent and unable to pay its debt owed to the Petitioner in the total sum of **\$2,281,998.92 (two million, three hundred and one thousand, eleven U.S. Dollars, and fifty four cents).**

15. The Respondent is, by its own admission, unable to pay its established debt to the Petitioner and the sum owed by the Respondent is increasing daily owing to the interest element, and in the circumstances it is just and equitable that the Respondent be wound-up. As of November 30, 2023, the sum had become \$2,452,695.44.

**Your Petitioner therefore humbly prays that:**

- a. Dangote Farms Limited be wound up by the Court under the provisions of the Companies and Allied Matters Act, 2020 for its inability to pay and satisfy its liquidated money sum owed by the Respondent to Your Petitioner and established by copies of the attached notices and orders of court.
- b. And such other orders that may be made in the circumstances as shall be just.

**Dated this 14<sup>th</sup> day of December, 2023**



**Olanlokun Omolodun**  
Petitioner's Solicitors  
**Jibola Ajitena Legal**

19A, Milverton Road, Ikoyi - Lagos



**FOR SERVICE ON:** The Respondent, at 1, Alfred Rewane Road, Ikoyi- Lagos.

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
IN THE MATTER OF DANGOTE FARMS LIMITED  
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2608  
SUIT NO: FHC/L/CP/...../2023

BETWEEN  
PLEXUS COTTON LIMITED ..... PETITIONER

AND

DANGOTE FARMS LIMITED ..... RESPONDENT

**AFFIDAVIT VERIFYING PETITION OF A LIMITED COMPANY**

I, Nicholas Peter Francis Earlam, adult, male, subject of the United Kingdom and resident at 3<sup>rd</sup> Floor, 14 Castle Street, Liverpool L2 0NE, United Kingdom do hereby make oath and state as follows:

1. I am a director and principal officer of Plexus Cotton Limited, the Petitioner in this matter
2. I have been concerned in this matter in such capacity and am duly authorised by the said petitioner to make this affidavit on its behalf
3. Such of the statements in the petition now produced and shown to me and marked with the letter A as relates to the acts and deeds of the said petitioner are true, and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true
4. I solemnly and sincerely declare that I make this solemn declaration conscientiously believing same to be true.

Nicholas P.F. Earlam

DEPONENT

BEFORE ME



ELAINE CLAYTON  
NOTARY PUBLIC



Elaine Clayton  
NOTARY PUBLIC  
Elaine Clayton  
Notary Public of England and Wales  
18 Vale Drive, New Brighton, Wallasey,  
Wirral CH45 1LY, England  
Tel: 447587174769  
Email: elaine@elaineclaytonnotary.co.uk  
Web: www.elaineclaytonnotary.co.uk

FOR SERVICE ON: The Respondent, at 1, Alfred Rewane Road, Ikoyi- Lagos.



OLITICS NIGERIA

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
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2608  
SUIT NO: FHC/L/CP/...../2023

BETWEEN  
PLEXUS COTTON LIMITED ..... PETITIONER

AND

DANGOTE FARMS LIMITED ..... RESPONDENT

**AFFIDAVIT OF NON-MULTIPLICITY OF ACTIONS**

I, **Ishola A. Ridwan**, adult, male, Nigerian citizen resident of 19a, Milverton Road, Ikoyi, Lagos do hereby make oath and state as follows:

1. I am a litigation officer in the law firm of Messrs Jibola Ajitena Legal, whose Jibola Ajitena, Esq is counsel to the petitioner in this suit.
2. I have the consent of the Petitioner and my employer to make this deposition on the petitioner's behalf from personal knowledge.
3. I state that no other action or petition brought by the petitioner herein against the respondent on the same subject matter exists to constitute multiplicity of actions within the meaning of the Order 5(2)(2)(d) of the Rules of this court.
4. I solemnly and sincerely declare that I make this solemn declaration conscientiously believing same to be true and by virtue of the provisions of the Oaths Act.

  
DEPONENT

Sworn at the Federal High Court Registry, Ikoyi this <sup>17<sup>th</sup></sup>.....day of December 2023

BEFORE ME

**NWAGWU C.N.N (MR)**  
**COMMISSIONER FOR OATHS**  
**FEDERAL HIGH COURT**  
**COMMISSIONER FOR OATHS**  
**LAGOS**

*lrb*

FOR SERVICE ON: The Respondent, at 1, Alfred Rewane Road, Ikoyi- Lagos.

FEDERAL HIGH COURT  
Cashier's Office  
Date .. *17/12/23*  
L A - S

POLITICS NIGERIA

FEDERAL REPUBLIC OF NIGERIA  
COMPANIES AND ALLIED MATTERS ACT, 2020  
COMPANIES LIMITED BY SHARES  
MEMORANDUM OF ASSOCIATION  
OF

DANGOTE FARMS LIMITED

- The name of the Company is: **DANGOTE FARMS LIMITED**
- The Registered office of the Company will be situated in Nigeria.
- The objects for which the Company is established are:
  - Food Production And Processing, General Agriculture
- The Company is a Private company limited by shares
- The liability of the members is Private company limited by shares
- The nominal share capital of the Company is ₦4,500,000.00 divided as follows:

THIS IS THE DOCUMENT MARKED **A**  
 IN PARAGRAPH **5** OF THE AFFIDAVIT OF  
 THE DEPONENT IN SUIT NO.....  
 SWORN AT THE **F.H.C.** COURT REGISTRY  
 THIS **19<sup>th</sup>** DAY OF **December** 20**23**  
 BEFORE **MR. NWAGWU**  
 COMMISSIONER FOR OATHS

**Total ORDINARY** ₦4,500,000.00 (FOUR MILLION FIVE HUNDRED THOUSAND NAIRA) divided into 4500000 of 1 each

We, the several persons whose names and addresses are subscribed hereunder, are desirous of being formed into a Company in pursuance of this Articles of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

SN	NAME AND ADDRESS OF SUBSCRIBER	NO. OF SHARES TAKEN BY EACH SUBSCRIBER
1	Name: DANGOTE ALHAJI SANI Address: 245, MURI OKUNOLA STREET, VICTORIA ISLAND, LAGOS	2,250,000
2	Name: DANTATA ALHAJI ABDU Address: 1, ALFRED REWANE ROAD, FALOMO- IKOYI, LAGOS	450,000

FEDERAL HIGH COURT  
 Cashier's Office  
 Date .....

Corporate Affairs Commission  
 Certified Extracts  
  
 A. G. ABUBAKAR  
 Registrar General  
 Oct 11, 2023



1/23, 3:45 PM

3	Name: DANGOTE MOHAMMED SANI Address: 245, MURI OKUNOLA STREET, VICTORIA ISLAND, LAGOS	1,350,000
4	Name: LAWAL KAITA ALHAJI ABDULKARIM Address: 1, ALFRED REWANE ROAD, FALOMO- IKOYI, LAGOS	225,000
5	Name: IBIYEMI PRINCE KOLA Address: 67, ADENIJI JONES AVENUE, IKEJA, LAGOS	225,000

Dated this 20 Day of December 19 82

Particulars of witness to the above signatures:

1. Name of Witness: HARUNA J.  
 Address of Witness: JABI, ABUJA, FCT.  
 Occupation of Witness: LEGAL PRACTITIONER

**FEDERAL REPUBLIC OF NIGERIA  
 COMPANIES AND ALLIED MATTERS ACT, 2020  
 COMPANIES LIMITED BY SHARES  
 ARTICLES OF ASSOCIATION  
 OF  
 DANGOTE FARMS LIMITED**

**INTERPRETATION AND LIMITATION OF LIABILITY**

**Defined terms**

Corporate Affairs Commission  
 Certified Extracts



*A. G. Abubakar*  
 A. G. ABUBAKAR  
 Registrar General  
 Oct 11, 2023

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1. —(1) In these articles. Unless the context requires otherwise -

“Act” means the Companies and Allied Matters Act, 2020 (CAMA)

“articles” has the meaning given in the Act;

“director” has the meaning given in the Act and includes any person occupying the position of director, by whatever name called;

“chairman” has the meaning given in article 12;

“chairman of the meeting” has the meaning given in article 39;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“electronic form” has the following meaning:

1. documents or information sent or supplied by electronic means for example by email or software by other means while in an electronic form (for example sending disk by post), and references to electronic copy shall have a corresponding meaning and a document or information is sent or supplied by electronic means if it is sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely transmitted, conveyed and received by wire, by radio, by optical means or by electromagnetic means; references to electronic means shall have a corresponding meaning;

2. a document or information authorized or requested to be sent or supplied in an electronic form must be sent or supplied in a form and by a means the sender or supplier reasonably considers will enable the recipient to read and retain a copy of it; and for this purpose, a document or information can be read only if it can be read with the naked eye, or to the extent that it connotes images (for example photographs, pictures, maps, plans or drawings) it can be seen with the naked eyes;

“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

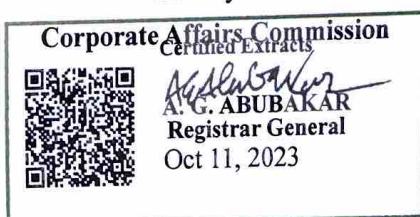
“hard copy form” means a document or information sent or supplied in hard copy form or in a paper copy or similar form capable of being read and a reference to hard copy has a corresponding meaning;

“holder” in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

“instrument” means a document in hard copy form;

“manager” in relation to disclosure of remuneration at annual general meeting includes any person by whatever name called occupying a position in senior management and who is vested with significant autonomy, discretion, and authority in the administration and management of the affairs of a company (whether in whole or in part);

“ordinary resolution” has the meaning given in section 258 (1) of the Act;



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“paid” means paid or credited as paid;

“participate”, in relation to a directors’ meeting, has the meaning given in article 10;

“proxy notice” has the meaning given in article 45;

“shareholder” means a person who is the holder of a share;

“shares” means shares in the company;

“special resolution” has the meaning given in section 258 (2) of the Act;

“subsidiary” has the meaning given in section 381 of the Act;

“transmittee” means a person becoming entitled to a share in consequence of the death or bankruptcy of a member and in accordance with section 179 of the Act; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the CAMA, 2020 as in force on the date when these articles become binding on the company.

### Liability of Members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## DIRECTORS

### Directors’ General Authority

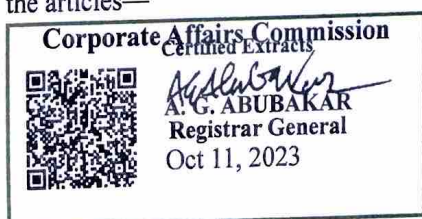
- Subject to the articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company

### Shareholders’ Reserve Power

- (1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

### Directors May Delegate

- (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—



- a. to such person or committee;
- b. by such means (including by power of attorney);
- c. to such an extent;
- d. in relation to such matters or territories; and
- e. on such terms and conditions;

as they think fit.

- (2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated
- (3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### Committees

- (1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- (2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

### DIRECTORS

#### Directors to Take Decisions Collectively

- (1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.
- (2) If—
  - a. the company only has one director, and
  - b. no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

#### Unanimous Decisions

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

#### Calling A Directors' Meeting



- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- (2) Notice of any directors' meeting must indicate—
  - a. its proposed date and time;
  - b. where it is to take place; and
  - c. if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (3) Notice of a directors' meeting must be given to each director.

### Participation in Directors' Meetings

- (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - a. the meeting has been called and takes place in accordance with the articles, and
  - b. they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- (3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### Quorum for Directors' Meetings

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings the quorum necessary for the transaction of the business of directors are two where there are not more than six directors, but where there are more than six directors, the quorum is one-third of the number of directors, and where the number of directors is not a multiple of three, then the quorum is one third to the nearest number.
- (3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—
  - a. to appoint further directors, or
  - b. to call a general meeting so as to enable the shareholders to appoint further directors.

### Chairing Directors' Meetings

- (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairman.
- (3) The directors may terminate the chairman's appointment at any time..
- (4) If the chairman is not participating in a directors' meeting within one hour of the time at which it was to start, the participating directors must appoint one of themselves to chair it.



### Casting Vote

- (1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### Conflicts of interest

- (1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes..
- (2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.
- (3) This paragraph applies when—

- a. the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;
- b. the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- c. the director's conflict of interest arises from a permitted cause.

- (4) For the purposes of this article, the following are permitted causes—

- a. a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;
- b. subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and
- c. arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

- (5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

- (6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

- (7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### Records of Decisions to Be Kept



- The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### Directors' Discretion to Make Further Rules

- Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors

## DIRECTORS

### Methods of Appointing Directors

- (1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- a. by ordinary resolution, or
- b. by a decision of the directors in the case of casual vacancy

- (2) any of the personal representatives of the shareholders entitled to attend and vote at a general meeting shall apply to court for an order to convene a meeting of all the personal representatives to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, may do so.

### Termination of Director's Appointment

- A person ceases to be a director as soon as—
  - a. that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;
  - b. a bankruptcy order is made against that person;
  - c. a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - d. a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
  - e. by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
  - f. notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### Directors' Remuneration

- (1) Directors may undertake any services for the company that the directors decide.
- (2) Directors are entitled to such remuneration as the company determines—
  - a. for their services to the company as directors, and
  - b. for any other service which they undertake for the company.



(3) Subject to the articles, a director's remuneration may—

- a. take any form, and
- b. include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### Directors' Expenses

- The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—
  - a. meetings of directors or committees of directors,
  - b. general meetings, or
  - c. separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

### DIRECTORS

#### Appointment and Removal of Alternates

- (1) Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—

- a. exercise that director's powers, and
- b. carry out that director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(2) Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

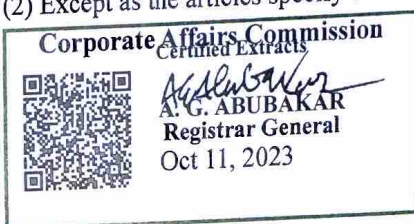
(3) The notice must—

- a. identify the proposed alternate, and
- b. in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

#### Rights and Responsibilities of Alternate Directors

- (1) An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

(2) Except as the articles specify otherwise, alternate directors—





- a. are deemed for all purposes to be directors;
- b. are liable for their own acts and omissions;
- c. are subject to the same restrictions as their appointors; and
- d. are not deemed to be agents of or for their appointors.

(3) A person who is an alternate director but not a director—

- a. may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and
- b. may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for such purposes.

(4) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

#### Termination of Alternate Directorship

• An alternate director's appointment as an alternate terminates—

- a. when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- b. on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
- c. on the death of the alternate's appointor; or
- d. when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

#### SHARES AND DISTRIBUTIONS

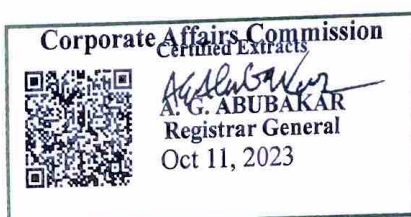
##### All Shares to Be Fully Issued

- (1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- (2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

##### Powers to Issue Different Classes of Share

- (1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- (2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, subject to such conditions as may be prescribed in the terms of issue or by the articles.

##### Company Not Bound by Less Than Absolute Interests



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- Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

### Share Certificates

- (1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- (2) Every certificate must specify—
  - a. in respect of how many shares, of what class, it is issued;
  - b. the nominal value of those shares;
  - c. that the shares are fully paid; and
  - d. any distinguishing numbers assigned to them.
- (3) No certificate may be issued in respect of shares of more than one class.
- (4) If more than one person holds a share, only one certificate may be issued in respect of it.
- (5) Certificates must—
  - a. have affixed to them the company's common seal, or
  - b. be otherwise executed as a deed.

### Replacement Share Certificates

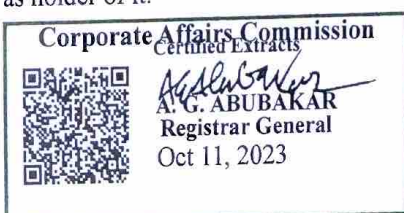
- (1) If a certificate issued in respect of a shareholder's shares is—
  - a. damaged or defaced, or
  - b. said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

- (2) A shareholder exercising the right to be issued with such a replacement certificate—
  - a. may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - b. must return the certificate which is to be replaced to the company if it is damaged or defaced; and
  - c. must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

### Share Transfers

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer which is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.



(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### Transmission of Shares

- (1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- (2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—
  - a. may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and
  - b. subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

### Exercise of Transmittees' Rights

- (1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- (3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

### Transmittees Bound by Prior Notices

- If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

### SHARES AND DISTRIBUTIONS

#### Company's lien over partly paid shares

- (1) The company has a lien ("the company's lien") over every share which is partly paid for any part of—
  - a. that share's nominal value, and
  - b. any premium at which it was issued,

which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.



(2) The company's lien over a share—

- a. takes priority over any third party's interest in that share, and
- b. extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

(3) The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

### Enforcement of the company's lien

(1) Subject to the provisions of this article, if—

- a. a lien enforcement notice has been given in respect of a share, and
- b. the person to whom the notice was given has failed to comply with it, the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice—

- a. may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;
- b. must specify the share concerned;
- c. must require payment of the sum payable within 14 days of the notice;
- d. must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
- e. must state the company's intention to sell the share if the notice is not complied with.

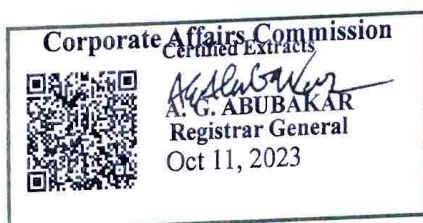
(3) Where shares are sold under this article—

- a. the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser, and
- b. the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

(4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—

- a. first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice,
- b. second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—



- a. is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share, and
- b. subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

**Call notices**

- (1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a member requiring the member to pay the company a specified sum of money (a "call") which is payable in respect of shares which that member holds at the date when the directors decide to send the call notice.
- (2) A call notice—
  - a. may not require a member to pay a call which exceeds the total sum unpaid on that member's shares (whether as to the share's nominal value or any amount payable to the company by way of premium);
  - b. must state when and how any call to which it relates it is to be paid; and
  - c. may permit or require the call to be paid by instalments.
- (3) A member must comply with the requirements of a call notice, but no member is obliged to pay any call before 14 days have passed since the notice was sent.
- (4) Before the company has received any call due under a call notice the directors may—
  - a. revoke it wholly or in part, or
  - b. specify a later time for payment than is specified in the notice, by a further notice in writing to the member in respect of whose shares the call is made.

**Liability to pay calls**

- (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.
- (2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—
  - a. to pay calls which are not the same, or
  - b. to pay calls at different times.

**When call notice need not be issued**

- (1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share (whether in respect of nominal value or premium)—
  - a. on allotment;
  - b. on the occurrence of a particular event; or
  - c. on a date fixed by or in accordance with the terms of issue.



(2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

#### Failure to comply with call notice: automatic consequences

- (1) If a person is liable to pay a call and fails to do so by the call payment date—
  - a. the directors may issue a notice of intended forfeiture to that person, and
  - b. until the call is paid, that person must pay the company interest on the call from the call payment date at the relevant rate.
- (2) For the purposes of this article—
  - a. the “call payment date” is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the “call payment date” is that later date;
  - b. the “relevant rate” is—
    - i. the rate fixed by the terms on which the share in respect of which the call is due was allotted;
    - ii. such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or
    - iii. if no rate is fixed in either of these ways, the prevailing interest rate as set by the Monetary Policy Committee of the Central Bank of Nigeria.
- (3) The directors may waive any obligation to pay interest on a call wholly or in part.

#### Notice of intended forfeiture

- A notice of intended forfeiture—
  - a. may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;
  - b. must be sent to the holder of that share or to a person entitled to it by reason of the holder’s death, bankruptcy or otherwise;
  - c. must require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice;
  - d. must state how the payment is to be made; and
  - e. must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

#### Directors’ power to forfeit shares

- If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.



## Effect of forfeiture

- (1) Subject to the articles, the forfeiture of a share extinguishes—
  - a. all interests in that share, and all claims and demands against the company in respect of it, and
  - b. all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.
- (2) Any share which is forfeited in accordance with the articles—
  - a. is deemed to have been forfeited when the directors decide that it is forfeited;
  - b. is deemed to be the property of the company; and
  - c. may be sold, re-allotted or otherwise disposed of as the directors think fit.
- (3) If a person's shares have been forfeited—
  - a. the company must send that person notice that forfeiture has occurred and record it in the register of members;
  - b. that person ceases to be a member in respect of those shares;
  - c. that person must surrender the certificate for the shares forfeited to the company for cancellation;
  - d. that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares provided that his liability ceases when the company receives payment in full of all money in respect of the shares; and
  - e. the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- (4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

## Procedure following forfeiture

- (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.
- (2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—
  - a. is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share, and
  - b. subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.
- (3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.
- (4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which—



- a. was, or would have become, payable, and
- b. had not, when that share was forfeited, been paid by that person in respect of that share,

but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.

**Surrender of shares**

- (1) A member may surrender any share to the company as a gift
- (2) The directors may accept the surrender of any such share.
- (3) The effect of surrender on a share is the same as the effect of forfeiture on that share.
- (4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

**SHARES AND DISTRIBUTIONS**

**Procedure for Declaring Dividends**

- (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- (6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. (7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

**Payment of Dividends and Other Distributions**

- (1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
  - a. transfer to a bank specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - b. sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - c. sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or





d. any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

- a. the holder of the share; or
- b. if the share has two or more joint holders, whichever of them is named first in the register of members; or
- c. if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

**No Interest on Distributions**

- The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—
  - a. the terms on which the share was issued, or
  - b. the provisions of another agreement between the holder of that share and the company.

**Unclaimed Distributions**

- (1) All dividends or other sums which are—
  - a. payable in respect of shares, and
  - b. unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company in accordance with the provisions of section 429 of the Act.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

- a. twelve years have passed from the date on which a dividend or other sum became due for payment, and
- b. the distribution recipient has not claimed it,


the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company and should be included in the report that should be submitted to the other shareholders of the company.

**Non-Cash Distributions**

- Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

**Waiver of Distributions**

Corporate Affairs Commission  
Certified Extracts



*A. G. Abubakar*  
A. G. ABUBAKAR  
Registrar General  
Oct 11, 2023

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• Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

- a. the share has more than one holder, or
- b. more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

## SHARES AND DISTRIBUTIONS

### Authority to Capitalise and Appropriation of Capitalised Sums

- (1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—
  - a. decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
  - b. appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.
- (2) Capitalised sums must be applied—
  - a. on behalf of the persons entitled, and
  - b. in the same proportions as a dividend would have been distributed to them.
- (3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (5) Subject to the articles the directors may—
  - a. apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
  - b. make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - c. authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## DECISION-MAKING BY SHAREHOLDERS

### Attendance and Speaking at General Meetings



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- (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - a. that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - b. that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

**Chairing General Meetings**

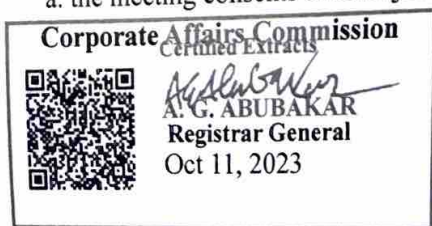
- (1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.
- (2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within five minutes of the time at which a meeting was due to start—
  - a. the directors present, or
  - b. (if no directors are present), the meeting, must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting
  - c. The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

**Attendance and Speaking by Directors and Non-Shareholders**

- (1) Directors may attend and speak at general meetings, whether or not they are shareholders.
- (2) The chairman of the meeting may permit other persons who are not—
  - a. shareholders of the company, or
  - b. otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

**Adjournment**

- (1) If the persons attending a general meeting within one hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- (2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—
  - a. the meeting consents to an adjournment, or



b. it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must—

- a. either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
- b. have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 30 days after it was adjourned, notice of the adjourned meeting and the business to be transacted shall be given as in the case of the original meeting.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

**DECISION-MAKING BY SHAREHOLDERS**

**Voting: General**

- A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles provided that in the case of an electronic meeting, voting may be done electronically or by count of voice concurrence.

**Errors and Disputes**

- (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- (2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

**Poll Votes**

- (1) A poll on a resolution may be demanded—
  - a. in advance of the general meeting where it is to be put to the vote, or
  - b. at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
  - a. the chairman of the meeting where he is a member or a proxy;
  - b. at least three members present in person or by proxy;
  - c. any member or members present in person or by proxy and representing at least one tenth of the total voting rights of all the members having the right to vote at the meeting;



d. any member or members in the company conferring a right to vote at the meeting having shares on which an aggregate sum has been paid up equal to at least one-tenth of the total sum paid up on all the shares conferring that right.

(3) A demand for a poll may be withdrawn if—

- a. the poll has not yet been taken, and
- b. the chairman of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### Content of Proxy Notices

- (1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—
  - a. states the name and address of the shareholder appointing the proxy;
  - b. identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
  - c. is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - d. is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—
  - a. allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
  - b. appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### Delivery of Proxy Notices

- (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

### Amendments to Resolutions



- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - a. notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and
  - b. the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
  - a. the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
  - b. the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

#### ADMINISTRATIVE ARRANGEMENTS

##### Means of Communication to be Used

- (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the CAMA, 2020 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
- (2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

##### Company Seals

- (1) Any common seal may only be used by the authority of the directors.
- (2) The directors may decide by what means and in what form any common seal is to be used.
- (3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- (4) For the purposes of this article, an authorised person is—
  - a. any director of the company;
  - b. the company secretary (if any); or
  - c. any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

##### No Right to Inspect Accounts and Other Records



- Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

### Provision for Employees On Cessation of Business

- The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

### Borrowing Powers

- The directors may exercise the powers of the company to borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debenture, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company.

### ADMINISTRATIVE ARRANGEMENTS

#### Indemnity

- (1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—
  - a. any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
  - b. any liability incurred by that director as an officer of the company or an associated company.
- (2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.
- (3) In this article—
  - a. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
  - b. a "relevant director" means any director or former director of the company or an associated company.

#### Insurance

- (1) The company may purchase and maintain insurance for the benefit of any relevant director in respect of any relevant loss .
- (2) In this article—
  - a. a "relevant director" means any director or former director of the company or an associated company,
  - b. a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or



any pension fund or employees' share scheme of the company or associated company, and c. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER SIGNATURE**

{{subscriber::name  
address  
occupation  
date}} & {{signature}}

**WITNESS**

{{witness::name  
address  
signature  
date}}

SN	NAME AND ADDRESS OF SUBSCRIBER	NO. OF SHARES TAKEN BY EACH SUBSCRIBER
1	Name: DANGOTE ALHAJI SANI Address: 245, MURI OKUNOLA STREET, VICTORIA ISLAND, LAGOS	2,250,000
2	Name: DANTATA ALHAJI ABDU Address: 1, ALFRED REWANE ROAD, FALOMO- IKOYI, LAGOS	450,000
3	Name: DANGOTE MOHAMMED SANI Address: 245, MURI OKUNOLA STREET, VICTORIA ISLAND, LAGOS	1,350,000
4	Name: LAWAL KAITA ALHAJI ABDULKARIM Address: 1, ALFRED REWANE ROAD, FALOMO- IKOYI, LAGOS	225,000
5	Name: IBIYEMI PRINCE KOLA Address: 67, ADENIJI JONES AVENUE, IKEJA, LAGOS	225,000

Dated this 20 Day of December 1982

Particulars of witness to the above signatures:





1. Name of Witness: HARUNA J.

Address of JABI, ABUJA, FCT.

Witness: Occupation of Witness: LEGAL PRACTITIONER



POLITICS NIGERIA



The Liverpool Cotton Association, Limited

**ARBITRATION AWARD**

made under the Arbitration Act 1996 and any amendments to it  
by Members of the Liverpool Cotton Association, in respect of a dispute  
between

**DANGOTE GROUP OF COMPANIES  
LAGOS, NIGERIA**

AND

**PLEXUS COTTON LIMITED  
LIVERPOOL, ENGLAND**

1. It was reported that by a contract made on the 5<sup>th</sup> December, 1996 the firms mentioned on the first page of this award agreed to sell and buy a quantity of raw cotton. It was said that the first named firm were 'the Sellers' and the second named firm were 'the Buyers'. They are referred to as such throughout this award.
2. It was also stated to have been agreed in writing between the Sellers and the Buyers that all disputes relating to this contract would be resolved through arbitration in accordance with the bylaws of the Liverpool Cotton Association, Limited.
3. A dispute arose and was referred to us, namely A. N. THOMAS appointed by, or on behalf of, the Sellers to act as arbitrator; and R. JOHN ANDERSON appointed by, or on behalf of, the Buyers to act as arbitrator.



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4. *The Sellers contended that:*

Settlement of the dispute did not fall within the jurisdiction of the Liverpool Cotton Association Limited.

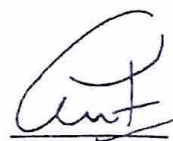
POLITICS NIGERIA





5. *The Buyers contended that:*

Since the Sellers had either failed or omitted to complete the performance the said contract in accordance with the terms and conditions stipulated therein, the unfulfilled balance thereof, should be closed out by being invoiced back in accordance with the Rules of The Liverpool Cotton Association, Limited, to which it was made specifically subject.





6. We duly considered the evidence and matters produced and laid before us and find the following facts:

AS TO THE JURISDICTION OF THE ARBITRATORS

1. We, the arbitrators, as a preliminary issue, have carefully considered the representations which have been made to us by the Sellers, which were to the effect that we lack jurisdiction to deal with the matters in dispute.

We, the arbitrators, hereby decide that we do indeed have proper jurisdiction and authority to act and to determine the matters in dispute having, inter alia, had specific regard, not only to the terms of the contract, but also to the complementary and supporting exchange of correspondence between the Buyers and the Sellers' London office which unequivocally and specifically acknowledges at paragraph (f) contained therein, that the agreement to buy and sell incorporates "LCA Rules and Arbitration". Moreover, the said correspondence stipulates the designated reference number of the contract against which some 2,250 tonnes were, in any event, actually shipped.

AS TO THE CONTRACT

2. The dispute arose from the contract dated 5<sup>th</sup> December, 1996 (No. 2418), which covered the purchase and sale of about 3,700 metric tons of Nigerian raw cotton.
3. The contract was reduced to writing on The Liverpool Cotton Association, Limited's International Shipment Contract Form No. 1.
4. The contract was made specifically subject to the By-laws and Rules of The Liverpool Cotton Association Limited and, inter alia, contained the following express conditions.

1. GROWTH AND QUALITY

Nigerian raw cotton, Middling.  
Staple 1.1/16".



2. MICRONAIRE

Minimum 3.5, Maximum -, NCL Control Limit.

3. QUANTITY

About 3,700 Metric Tons.  
Average weight of each bale: -  
Variation allowed -

4. PRICE AND TERMS

52.00 U.S. Cents per Pound.  
Free on Board Stowed Vessel Lagos.

5. WEIGHT BASIS

See Special Clauses.

6. REIMBURSEMENT

Letter of Credit payable at sight.

7. SHIPMENT

700 M.Tons December 96 / 1,000 M.Tons January 97 /  
1,000 M.Tons February 97 / 1,000 M.Tons March 97.

8. FREIGHT

Any variation in the current rate of - to be for Buyers account.

9. EXPORT DUTY/SUBSIDY

Included in the price basis of -  
Any variation at the time of shipment for Sellers account.

10. INSURANCE

In accordance with condition 5 (d) overleaf.



**11. WAR RISK**

At the rate of - %

Any variation at the time of shipment for Buyers account.

**12. SPECIAL CLAUSES**

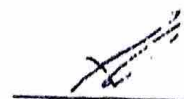
- 1) No guarantee cotton is free from polypropylene or seed.
- 2) Nett certified shipping weighs final by SGS. In case of weight loss at destination exceeding 0.5 percent, then Buyer has recourse on the Seller.
- 3) Sellers option to increase Jan/Feb/Mar shipments by total 1,000 MT.
- 4) Breakbulk or containerised shipment agreed.
- 5) Inspection of goods in Lagos by Buyers representative will be facilitated by Sellers.

**13. ARBITRATION**

- (a) All Quality disputes as defined by the Bylaws and Rules of The Liverpool Cotton Association, Limited, and
  - (b) All disputes other than Quality disputes touching or arising out of this contract
- shall be referred to Arbitration in accordance with the Bylaws and Rules of The Liverpool Cotton Association, Limited, and shall be resolved by the application of English Law.

**14. GENERAL**

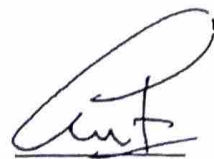
- (a) The conditions below form an integral part of this contract.
- (b) This contract incorporates the Bylaws and Rules of The Liverpool Cotton Association, Limited in force at the time when this contract was entered into.
- (c) The obtaining of an Arbitration Award shall be a condition precedent to the rights of either party to start legal proceedings in respect of any arbitrable dispute.
- (d) No deletions or amendments to this contract shall be valid unless agreed in writing by both parties.
- (e) This contract shall not be cancelled on any ground.





CONTRACT CONDITIONS

1. GROWTH and QUALITY. Cotton to be even running in quality.
2. MICRONAIRE. Any dispute, unless otherwise agreed, to be settled in accordance with Rules 352 and 353.
3. QUANTITY. High Density Compressed bales unless otherwise stated.
4. SHIPMENT
  - (a) The Seller shall obtain any necessary Export License to permit the shipment of the cotton covered by this Contract. The Seller shall notify the Buyer in good time the name of his Supervisor.
  - (b) Any import license shall be obtained by the Buyer and he shall inform the Seller before the first permitted date of shipment.
5. MARINE INSURANCE
  - a) Marine Insurance, for invoice amount plus 10% covering risk to mill or warehouse and including Country Damage and Marine War Risk, shall be provided by Seller at Lloyd's and/or with a First Class Insurance Company.
  - or b) Marine Insurance, for invoice amount plus 10% including Country Damage wherever incurred and Marine War Risk, shall be provided by Buyer at Lloyd's and/or with a First Class Insurance Company from Warehouse at Port of Shipment.
  - or c) Cotton shall be at Seller's risk until delivered into the custody of the ocean carrier or his agent.
  - or d) Cotton shall be at Seller's risk until loaded on board the ocean vessel.



In the case of (b) and (d) the Seller shall notify the Buyer of the vessel's name as soon as known.

In the case of (c) the Seller shall notify the Buyer of the vessel's name or date of Bill of Lading as soon as known.

Marine Insurance on any increase in value over and above the fixed price plus 10% shall be the responsibility of the Buyer.

## 6. QUALITY DIFFERENCES AND ARBITRATION

Liverpool Cotton Association official differences shall apply unless otherwise stated. There shall be no allowance to Seller but, should the cotton not be equal to the quality sold, it shall be taken with an allowance mutually agreed or settled by arbitration in Liverpool.

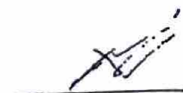
Application for Quality Arbitration shall be made to the Seller within 50 days from the date of arrival, or 60 days where fumigation is obligatory at Port of Discharge, and samples shall be despatched or consigned for despatch within 70 days and 80 days, respectively, from the Date of Arrival. An extension of these limits may be granted in accordance with the provisions of Rule 311. Each lot shall be considered a separate contract for the purpose of Arbitration.

## 7. OTHER TERMS AND CONDITIONS

### a) SHIPPING DOCUMENTS

Invoice with full particulars shall be rendered to the Buyer within two weeks of the date of the Bill of Lading. The following shall, as appropriate, comprise the shipping documents:

- (i) Full set of Clean On-Board/Port/Custody/Ocean Bills of Lading or other document of title to the order of the Buyer or to Seller's order and endorsed in blank;
- (ii) Marine and War Risk Insurance Policy or Certificate;
- (iii) Signed invoice in triplicate certified by the Seller, setting forth gross weight, amount of tare per bale and total net weight;



(b) WEIGHT

The cotton shall be invoiced provisionally on Shipping Weights. Final Settlement with mutual allowance for weight shall be made on Certified Gross Landing Weights, less allowance for tare when Net Landed Weights are stipulated. Adjustments of the Landing Weights shall be made for any bales landed in excess or short of the baleage stated on the Bill of Lading in accordance with the Rules.

(c) TARE

If on arrival of the Cotton the Buyer considers the tare allowance made by the Seller is inadequate, the Actual Tare shall be ascertained in accordance with the Rules. No sisal bagging shall be used.

(d) CLAIMS

Claims under Rule 248 for false packed, mixed packed or plated bales or for unmerchantable cotton, etc. shall be submitted within six months from the Date of Arrival. All claims (including Insurance claims) shall be settled in the country of destination (unless otherwise agreed) and in the currency of the contract.

(e) DAMAGE

In the event of cotton arriving in a country-damaged condition or having damage of a pre-shipment nature, then failing agreement between the parties as to proper allowance, settlement shall be made in accordance with Rule 209(b) or 210(c) whichever is applicable.

AS TO THE NATURE OF THE DISPUTE

5. The dispute is concerned with the Sellers' apparent inability to complete the performance of the contract in accordance with the terms and conditions stated therein.



AS TO THE CONDUCT OF THE PARTIES

6. Documentary evidence, principally in the form of fax messages exchanged between the Buyers and the Sellers has been placed before us and has been carefully considered.
7. The documentary evidence demonstrates, inter alia, that the Buyers made numerous representations to the Sellers regarding their apparent inability to ship the unfulfilled balance of the contract, amounting to 1,450 tonnes.
8. The said representations were to no avail, with the result that by a fax message dated 11<sup>th</sup> December, 1997, the Buyers advised the Sellers that since they had received no constructive reply from them, they now considered the Sellers to be in breach of contract. By the same fax message, the Buyers informed the Sellers that they had nominated Mr. R. J. Anderson to act as their arbitrator and requested the Sellers to appoint their own arbitrator within fourteen days, failing which an application would be made to the President of the Liverpool Cotton Association for the compulsory appointment of an arbitrator to act on the Sellers' behalf.
9. Since no constructive response was received from the Sellers, the Buyers were left with no alternative but to make such an application to the President of the Liverpool Cotton Association Limited on 29<sup>th</sup> December, 1997 for the compulsory appointment of an arbitrator to act on behalf of the Sellers under the provisions of Liverpool Cotton Association Bylaw 316(2).
10. By a fax and recorded delivery letter dated 30<sup>th</sup> December, 1997, the President of the Liverpool Cotton Association caused a notice to be served upon the Sellers to the effect that if the Sellers by 13<sup>th</sup> January, 1998 had failed to nominate their own arbitrator voluntarily, a compulsory appointment would be considered.
11. By a fax and recorded delivery letter dated 16<sup>th</sup> January, 1998, the President of the Liverpool Cotton Association Limited informed the Sellers that, in accordance with the powers vested in him under the provisions of Bylaw 316(2), he had appointed Mr. A. N. Thomas to act as arbitrator for the Sellers.

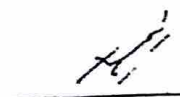
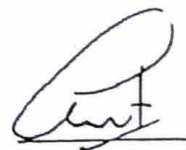
  

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12. The arbitrator so appointed on 16<sup>th</sup> January, 1998, sought the Sellers' written submissions in respect of the dispute by a fax and recorded delivery letter dated 20<sup>th</sup> January, 1998.
13. By a fax letter dated 27<sup>th</sup> January, 1998, the Sellers referred to the letter cited at paragraph (12) herein and, inter alia, stated that they had not agreed to LCA Arbitration and that they reserved the right to challenge the intended proceedings.
14. By a letter dated 29<sup>th</sup> January, 1998, the Sellers' nominated arbitrator acknowledged the fax letter cited at paragraph (13) herein and, inter alia, stated that the Sellers' comments had been noted but that if all copies of contracts and correspondence could be provided, the issue could be resolved.
15. By a letter dated 11<sup>th</sup> February, 1998, the Sellers' nominated arbitrator, inter alia, stated that he was unclear as to why the Sellers disputed the involvement of the Liverpool Cotton Association and he once again solicited their co-operation.
16. By a fax letter dated 18<sup>th</sup> February, 1998, the Sellers again reiterated that they had not agreed to LCA Arbitration.
17. By a fax and recorded delivery letter dated 13<sup>th</sup> May, 1998, the Sellers' appointed arbitrator, inter alia, referred to the Sellers' letters of 27<sup>th</sup> January and 18<sup>th</sup> February, in which they contended that the Liverpool Cotton Association had no jurisdiction to act in the matter. By the same letter, the Sellers' arbitrator informed the Sellers that he had reviewed all copies of the documentation and correspondence surrounding the dispute, in conjunction with the Buyers' arbitrator and that it was clear from such documentation that a total of 2,250 tons had been delivered under the contract and that there were ongoing negotiations by both parties surrounding the outstanding 1,450 tons. The Sellers' arbitrator, inter alia, therefore informed the Sellers that he considered that the Liverpool Cotton Association Limited Rules and Arbitration do apply to this dispute and that he was therefore proceeding with the Buyers' arbitrator to reach an agreement. The Sellers were also requested to inform their arbitrator if there was anything additional that they wished to advise.



18. Since no further response was received from the Sellers, we the arbitrators so appointed and/or nominated proceeded with the case and following a careful review of all the available evidence, determined that the date of breach of the said contract was 11<sup>th</sup> December, 1997.

AS TO THE SUBSISTING CONTRACTUAL LIABILITIES, RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES CONSEQUENT UPON THEIR INABILITY AMICABLY TO RECONCILE THE DIFFERENCES WHICH EXISTED BETWEEN THEM

19. The Sellers' contractual responsibility was to complete the performance of the contract in accordance with the terms and conditions stipulated therein.
20. The Sellers' omission or inability to satisfy their contractual responsibility as propounded at paragraph (19) herein, entitled the Buyers to seek to have the unfulfilled balance of the contract closed out by being invoiced back in accordance with the Bylaws and Rules of the Liverpool Cotton Association Limited, to which it was made specifically subject in accordance with the written agreement incorporated within the contract.
21. While it is not for us to apportion blame between the parties, it does fall to us to account for the said contract or unfulfilled parts thereof, in accordance with the Bylaws and Rules of The Liverpool Cotton Association Limited, to which it was made specifically subject.
22. At the date of the contract the authority for dealing with unfulfilled contracts or parts thereof was contained in Rules 239 and 240, which read as follows:-

Rule 239

If owing to any circumstances whatsoever, any contract has not been or is not to be performed it shall not be treated as cancelled, but shall be closed by being invoiced back to the seller in accordance with the Rules in force at the date of the contract.



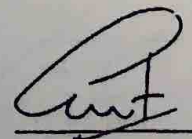
Rule 240

In all cases where a contract or part of a contract is to be closed by being invoiced back to the seller, the invoicing back price, unless agreed upon between the buyer and seller, shall be fixed by Arbitration, subject to Appeal. The invoicing back price shall be determined by the Arbitrators or, in the case of Appeal, the Technical Appeal Committee, by reference to the market value of the cotton in accordance with the Rules and/or such other factors as may be considered relevant for adequately compensating the parties.

23. It has long been the custom of Liverpool Cotton Association arbitrators to endeavour to discharge their responsibilities under the provisions of Rule 240 in such a way as to place the parties, in so far as it is possible, in the same financial position as that which they would have occupied had the contract been performed, bearing in mind any variation to the terms of such contract as may have been brought about by either written amendments or by the conduct of the parties and/or their accredited agents. This principle is universally recognised in the cotton trade.
24. The aforementioned principle is generally satisfied by accounting for unfulfilled contracts or parts thereof by reference to the free representative market value of the growth and quality of the cotton contracted for ruling on the date or dates when both parties knew or should have known that they could expect no further consideration from the other and in this instance, we deem that date to have been 11<sup>th</sup> December, 1997.
25. Since the Buyers had on or about 11<sup>th</sup> December, 1997, referred all matters in dispute to official arbitration in Liverpool, the closure of the contract by invoicing back at the market value on that date therefore conforms with the principles propounded in paragraphs (23) and (24) herein, with the result that:-

**WE HEREBY DECIDE AS FOLLOWS:-**


A total of 1,450 metric tons, or the equivalent of 3,196,670 lbs, being the unfulfilled balance of the contract, shall be closed out at the unit price of 65.00 U.S. Cents per lb., being our determination of the representative market value of the quality of the cotton contracted for (within the terms of the contract) on 11<sup>th</sup> December, 1997.



7. We hereby AWARD and DIRECT as follows:-

(a) AS TO THE MATTERS IN DISPUTE THAT,

1. The BUYERS shall invoice back to the SELLERS 1,450 metric tons, or the equivalent of 3,196,670 lbs., net, being the unfulfilled balance of the contract, at the unit price of 65.00 U.S. cents per lb., net.
2. The SELLERS shall, in consequence of the foregoing direction, pay to the BUYERS the sum of U.S. \$415,567.10 (Four hundred and fifteen thousand five hundred and sixty-seven point one zero dollars), being the difference between the contract value of the said 1,450 metric tons, or the equivalent of 3,196,670 lbs. net, and the market value on 11<sup>th</sup> December, 1997.
3. The SELLERS shall also pay to the BUYERS the sum of U.S. \$15,666.31 (Fifteen thousand six hundred and sixty-six point three one dollars), being interest on U.S. \$415,567.10 (Four hundred and fifteen thousand five hundred and sixty-seven point one zero dollars) at the rate of 8 (Eight) percent per annum from 11<sup>th</sup> December, 1997 to 1<sup>st</sup> June, 1998, the date of this our Award
4. The SELLERS shall also pay to the BUYERS interest on the sum of U.S. \$431,233.41 (Four hundred and thirty-one thousand two hundred and thirty-three point four one dollars), being the cumulative total of the amounts referred to in directions (2) and (3) herein at the rate of 2 (Two) percent per annum over the New York Prime Interest Rate or, as appropriate, the calculated average thereof, prevailing from 22<sup>nd</sup> June, 1998, until the date of payment of that sum to the BUYERS.



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## 8. AS TO THE COSTS OF THIS AWARD THAT

The BUYERS shall bear and pay £3,750.00 (Three thousand seven hundred and fifty pounds sterling) together with the Stamping Fee of £562.50 (five hundred and sixty-two point five zero pounds sterling) due from the SELLERS in accordance with the provisions of Bylaw 367(1), but shall recover the total amount of £4,312.50 (Four thousand three hundred and twelve point five zero pounds sterling) from the SELLERS.

9. The seat of this arbitration is in Liverpool, England and the award will be deemed to have been made and perfected, and to become effective and binding, in Liverpool on the First day of June, 1998, the day on which it is stamped by the Liverpool Cotton Association, Limited. As such, it must be treated as having been made in England regardless of where matters were decided, or where the award was signed, despatched or delivered to the firms in dispute. The law of England and Wales, especially the Arbitration Act 1996 and any amendments to it, govern our arbitration. The courts of England and Wales exercise jurisdiction over our arbitral process; no other court has jurisdiction over any part of the process.

10. NOTICE OF APPEAL against this award must be sent to the Secretary of the Liverpool Cotton Association, in accordance with Bylaw 307, to arrive on or before the Twenty-ninth day of June, 1998.

SIGNED by us, being Members of the Liverpool Cotton Association:

A. N. THOMAS



and

R. JOHN ANDERSON



Stamping Charge £562.50 (IEM, IEM(A), IM, IM(A), MRF, AM, RRBH, non-registered rate). To be paid by whichever firm is ordered to pay the fees and expenses of the arbitrators.



IN THE MATTER OF THE ARBITRATION ACT 1996  
 AND ANY AMENDMENTS TO IT  
 AND IN THE MATTER OF A COMPLETED ARBITRATION  
 BETWEEN  
 DANGOTE GROUP OF COMPANIES (SELLERS)  
 AND  
 PLEXUS COTTON LIMITED (BUYERS)

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Further to our Award of 1<sup>st</sup> June, 1998, we the undersigned arbitrators duly considered an application from Plexus Cotton Limited, under the provisions of Liverpool Cotton Association Bylaw No. 349, to

- 1) Make an additional Award in identical terms to the existing Award save that the Sellers be named "Dangote Farms Limited" instead of "Dangote Group of Companies" or
- 2) Correct the above Award by naming the Sellers as "Dangote Farms Limited" instead of "Dangote Group of Companies".

The application, and the written submissions in support thereof, were, to the best of our knowledge, on or about 26<sup>th</sup> June, 1998, communicated to Dangote Farms Limited, who were, by a fax message dated 2<sup>nd</sup> July, 1998, reminded of the terms of the application and were invited by their designated arbitrator to comment upon it by the 12<sup>th</sup> July, 1998. No reply was received by the stipulated deadline.

Having therefore studied the application and noted the submissions made in support thereof, we hereby accede to the request made of us by Plexus Cotton Limited and resolve to amend our Award as follows:-

That the name of "DANGOTE GROUP OF COMPANIES" be corrected to read "DANGOTE FARMS LIMITED".

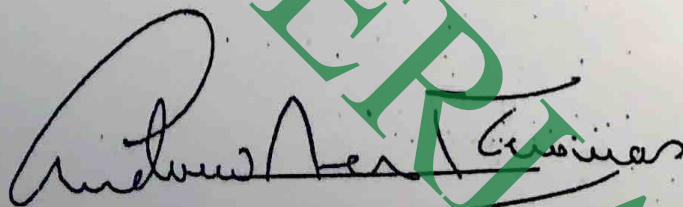
This correction is the only correction we make to our Award, the remaining terms and conditions of which remain unchanged.

In accordance with paragraph 6 of Bylaw 349, we allow either of the parties named in the original Award to appeal against this correction. Any notice of appeal must be sent to the Secretary of the Liverpool Cotton Association to arrive on or before the Fourth day of August, 1998. The corrected front page is attached herewith.

If no appeal is lodged against this correction within the period stipulated, the corrected Award shall be deemed to be the definitive Award in accordance with paragraph 5 of Bylaw 349.

SIGNED by us, being Members of the Liverpool Cotton Association, this Twenty-first day of July, 1998:

A. N. THOMAS



and

R. JOHN ANDERSON





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The Liverpool Cotton Association, Limited

**ARBITRATION AWARD**

made under the Arbitration Act 1996 and any amendments to it  
by Members of the Liverpool Cotton Association, in respect of a dispute  
between

**DANGOTE FARMS LIMITED,  
LAGOS, NIGERIA**

AND

**PLEXUS COTTON LIMITED  
LIVERPOOL, ENGLAND**

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

BEFORE HON. JUSTICE D. T. OKUWOBİ (MRS)

TODAY FRIDAY THE 27<sup>TH</sup> DAY OF FEBRUARY, 2015

SUIT NO: LD/3477/98

BETWEEN:

DANGOTE FARMS LIMITED )

CLAIMANT

AND

PLEXUS COTTON LIMITED )

DEFENDANT

JUDGMENT

This action was commenced by a writ of summons sealed on the 8<sup>th</sup> day of December, 1998. A statement of claim setting out the facts of the Claimants case dated 16<sup>th</sup> February, 2000 was filed. Upon the exchange of the pleadings the Defendant filed a statement of defence and Counter Claim dated 7<sup>th</sup> April, 2000 to which a Reply to statement of defence and Defence to Counter Claim dated 31<sup>st</sup> May, 2000 was filed.

The pleadings of the Claimant was amended and also the statement of defence and counter claim. A reply dated 6<sup>th</sup> February, 2004 was also filed.

Applying the rule of law that a statement of claim supercedes the writ and the previous pleading of a party the claims of the Claimant are discernable in the concluding paragraph of the Amended Statement of Claim dated 26<sup>th</sup> February, 2000 thus.

The Claimant seeks:

CERTIFIED TRUE COPY

- (1) A Declaration that the Arbitral Award made by the Liverpool Cotton Association Limited dated 1<sup>st</sup> June, 1998 was made without jurisdiction and in

contravention of the Plaintiffs right to fair hearing and is not registrable or capable of being recognized in Nigeria.

(2) An injunction restraining the Defendants their privies, servants, agents and otherwise howsoever from enforcing within Nigeria, in any manner howsoever the terms of the Award of the Liverpool Cotton Association Ltd.

The final pleading of the Defendant is the one titled Statement of Defence and Amended Counter Claim dated 7<sup>th</sup> February, 2012 amended during trial wherein the Defendant Counter Claim as follows:

(1) A declaration of this Honourable court, that the suit herein is incompetent on the ground that this Honourable Court lacks jurisdiction to entertain the case, alternatively.

(2) The recognition, registration and enforcement of the Arbitral Award dated June 01, 1998.

(3) Interest on the Award sum of \$431,233.41 at the rate of 8% from June 22, 1998 until final judgment and thereafter at the post judgment interest of 10% per annum until the judgment is finally liquidated.

At the trial the Claimant called one witness and tendered exhibit C1-C2. The defence also tendered evidence through a sole witness who tendered exhibits D1-D30 admitted through her.

The CW1 Mohammed Alhaji Bello the Deputy General Manager of the Claimant testified to the effect that, in December 1996 the parties had an initial agreement on the purchase and supply of 3,700 metric tons of Nigerian Raw Cotton. The transaction was undertaken through an exchange of correspondence and was to be governed by the ordinary laws of contract.

The transaction was initiated by a fax message of 5<sup>th</sup> December, 1996 but was comprised of other negotiated terms by the Defendants subsequent faxes including that of 14<sup>th</sup> February, 1997.

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The parties he alleged were not agreed on all terms proposed by the Defendant as the Claimant never agreed to settlement of any dispute by arbitration in accordance with LCA Rules of Arbitration. It never executed the International Shipping Contract form No 1 issued by Liverpool Cotton Association Ltd.

The Defendant ended up supplying 2,250 metric tons of Nigerian Raw Cotton due to non-confirmation by the defendant of the terms of the contract and terms as originally contemplated.

As at October 1997 when the Defendant opened further letters of credit for the supply of additional raw Cotton, the Claimant could not meet the supply as cotton which is a seasonal product was then not available.

The Claimant informed the Defendant of this constraint but rather than appreciate the Claimant's difficulty, the Defendant took it as breach of contract.

The Defendant is alleged to have unilaterally referred the dispute to Arbitration by the Liverpool Cotton Association in accordance with the rules of that Association.

The Claimant was not given an opportunity in the choice of Arbitration and the nomination of Arbitrators. The Claimant was not given the opportunity also to defend the claim made against it. The claimant got wind of the proceedings after it was almost completed.

The Liverpool Cotton Association Ltd imposed one N.A. Thomas to represent the Claimant who was never furnished with the points of claim filed before the Tribunal. Mr. Thomas acted without the claimants instruction or with due regard to the Claimants interest.

The Claimants Company Lawyer Mrs. Fola Sowemimo travelled to London in connection with the Arbitral proceedings but was not granted

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audience by the Tribunal. She was advised to pay £9,362 before an appeal against the award could be lodged, effectually barring the Claimant from access to justice.

The Arbitral panel was impartially constituted as an officer of the Defendant was the immediate past Chairman of the Liverpool Cotton Association and has a strong influence in directing the affairs of the panel. The Registration of the Defendants award and a threat of black listing the Claimant as a defaulter world-wide is a calculated attempt to damage the Claimants good will and reputation.

He prayed the court to restrain the defendant also on the ground that the claim was outside the 28 days time frame prescribed by Rule 202 of the LCA.

Rules Pitched against this is the evidence of DW1 Ann Adlington an officer in the office of the Defendant.

Her version was that on 5<sup>th</sup> December 1996 the parties entered into an agreement vide exhibit D1 and D2 with exhibit D3 the Liverpool Cotton Association Ltd International Shipment Contract form No 1 attached.

The contract she testified was for 3,700 metric tons of cotton to be supplied as follows, 700 metric tons in December 1996 and 1000 metric tons for January, February and March 1997 respectively.

The Claimant she stated accepted all terms of the contract through Blue Star Investments UK acting for the Claimant. This including dispute resolution by Arbitration in accordance with LCA Rules. Fax of Blue Star is exhibit D4. This was confirmed by the defendant in exhibit D5. They maintain that at no time did the Claimant challenge accuracy of the terms and conditions of the contract.



The Claimant delivered cotton to the Defendant under the agreed terms save for 1,450 metric tons subject matter of the Arbitration paid for as shown in exhibits D6 and D7.

She testified that due to delay of the Claimant it breached its contract by not supplying the 1,450 metric tons of raw cotton to the Defendant admitted by its exhibit D8(1). It was the failure on the part of the Claimant to meet its obligations under the contract that the Defendant suggested closure of the contract and that parties proceed to arbitration in exhibit D9. Exhibits C10 and C11 are documents of the Claimant in which it still made appeal to the Defendant for time to make additional supplies.

The Defendant who saw the Claimants failure to deliver on goods paid for regarded it a breach constituting a dispute which was referable to the Liverpool Cotton Association in pursuance of the agreement of the parties. The Defendant commenced the arbitration proceeding thus nominating one Anderson as its arbitrator and advised the Claimant to nominate its own arbitrator and failing which they would apply to the President of Liverpool Cotton Association in pursuance of the agreement of the parties to appoint an arbitrator for the Claimant.

The Defendant forwarded exhibit D12(1) a list of persons willing to act for the Claimant but the Claimant failed to instruct any of them to act that as arbitrator. The appointment had to be made of an arbitrator for the Claimant on an application made by the Defendant.

One Andrew N. Thomas was appointed for the Claimant to act as arbitrator. The claimant was alleged to have exchanged correspondence with Thomas and he was never at any point in time a staff of the Defendant.

The Claimant they asserted cannot deny knowledge of the arbitration proceedings going by documentary evidence tendered as exhibits D18-D30.

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The Claimant also filed an appeal against the award but refused to pay fees for the appeal.

The Defendant denied the allegation that the Claimants officer Mrs. Fola Sowemimo was denied audience at the arbitral proceedings. This was because at the time she arrived in the UK, the proceedings had closed.

In the final sum up of Counsel some issues have been identified as arising for determination. I will adopt issues of the Defendant and issue No 2 raised by the Claimant. The issues therefore for determination are as follows:

(1) Whether or not the claims of the Claimant are not an abuse of process of court

(2) Whether or not the Claimants claims in the Counter claim are validly constituted, if so whether the Claimant is entitled to relief sought.

On issue No 1, the main bone of contention between the parties is whether Dangote Farms Ltd not being the party to the arbitration agreement, whether it can apply to the court under Order 32 of the Arbitration and Conciliation Act Cap A18 LFN 2004 to request that the award ought not to be enforced and or recognized.

The CW1 the sole witness for the Claimant admitted in evidence that the award was made against Dangote Group of Companies but it was amended by the substitution of the Company Dangote Farms Ltd.

This admission by the Claimant was taken as giving more muscle to the issue that the present Claimant is not a proper party to present the claims before the court.

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Aside from the admission the documentary evidence D1, D2, D3 and D5 clearly show that Dangote Group of Companies was the party to which the offer in exhibit D1 was made. There is no suggestion that Dangote Farms Ltd was the claimant or party to the arbitration agreement.

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A person who was not a party to arbitration proceedings cannot seek to attack an award thereby reached. It is elementary principle of contract that only parties to the contract can question its validity. In the instant case the Claimant who is a stranger to the arbitration agreement in exhibit D1, D2 and D3 lacks the competence to challenge its validity. See *ONUKA VS NKA* (1995) 7NWLR Part 458 page 1 at 13 paragraph C.

The Claimant is not disputing the fact that it is not the party to the arbitration proceeding but argues that the award ought not to have been made at all. Section 32 of the Arbitration and Conciliation Act provides that any of the parties to an arbitration agreement may, request the court to refuse recognition or enforcement of the award.

It has been argued that the use of the word any of the parties can only be in relation to parties to the arbitration agreement. I find the interpretation given to the provision in consonance with the general principle that only a person who is a party to a contract that can sue on it. See *IKPEAZU VS AFRICAN CONTINENTAL BANK LTD* (1965) NWLR Page 374; *LSDPC VS NIGERIAN LAND AND SEA FOODS LTD* (1992) 5NWLR Part 244 page 653 at 669.

The legal basis of an arbitral submission is contractual, that is the agreement to arbitrate which crystalizes in the submission or points stated for decision of the arbitrator.

The Claimant in this suit presented facts in its pleadings and evidence led thereon, that it was not involved in any agreement to arbitrate under the ICA ARBITRATION RULES. It did not appoint an arbitrator to represent it at proceedings at the arbitral panel.

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So it did not have a fair hearing in the proceedings leading to the award sought to be recognized and enforced. The assertion made are some of the situation under the Act to attack the procurement of the award.

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I must therefore look into the merits of the grounds for which the recognition and enforcement of the award have been challenged as they come within Section 48(1) of the Act.

The first ground goes to the Claimant not entering into an arbitration agreement under the LCA Rules.

The Claimant is agreed that the contract for the sale was by fax of 5<sup>th</sup> December, 1996 exhibit D1. The parties share a common ground on this fact.

A look at the document which is the hanger form which I have assessed the testimony of the DW1, it shows clearly in item(f) that LCA Rules & Arbitration was a term of the contract. This also applies to exhibits D2 and D3 the Liverpool Association Ltd International Shipment Contract form No 1. K5

✓ The fax of 9<sup>th</sup> December, 1996 which signified the acceptance by Blue Star Investment UK Ltd, shows that the condition for Arbitration on LCA Rules was not objected to but, item H for which an amendment was sought on the clause in the increase on shipment for January, February and March by 100 metric ton. ✓

DW1's testimony that the Claimant did not dispute the agreement, that the arbitration with LCA Rules applicable is credible evidence. I have used the ✓ aforesaid documents in arriving at the conclusion that the agreement between the Claimant and Defendant was settled on the issue of arbitration.

It is settled law that documentary evidence is a veritable aid for assessing oral testimony see *WHYTE VS JACK* (1996) 2NLWR Part 431 page 407; *FASHANU VS ADEKOYA* (1974) 6SC Page 83. **CERTIFIED TRUE COPY**

✓ On the assertion made that the Claimant did not sign exhibit A. D3 shipment form No 1. There is clear evidence from the DW1 that the form was sent to the Claimant after the Defendant executed it. It was the Claimant that

held into the form and failed and neglected to execute it and or return it to the Defendant. This evidence was not faulted by the Claimant.

The DW1's evidence was firm and unshaken also on the fact that the transaction being a contract by fax messages, it was not necessary for the Claimant to have signed the document. It can be inferred from the conduct of the Claimant which performed obligation in furtherance of the contract of sale, that it consented to the transaction.

The evidence of the CW1 that the contract had been altered by other negotiated terms by the Defendants fax messages including that of 14<sup>th</sup> February, 1997 has not been established by credible evidence. The intention of the parties had been clearly expressed in exhibits D(1), D(2) D(3) and D(4).

I have no iota of doubt that the LCA Rules and Arbitration was the applicable law and form for resolution of any dispute in the contract No 2418.

I find therefore, all evidence before the court that the Claimant accepted the condition. A heavy weight made about the Claimant not having signed exhibit D3 has not however whittled down the probative value of the DW1 evidence. I accept the evidence of the DW1 that it was an accepted practice not to sign agreement made through fax. The term agreement in writing in Section 1 of the Act particularly Section 1(b) shall include an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams.

This provision requires a flexible and accommodating interpretation see ZAMBIA STEEL AND BUILDING SUPPLIES VS CLARK AND EARL (1986) 2 Lloyds Rep 225 where the English courts decided that an arbitration agreement concluded by oral acceptance of a written offer was sufficient.

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It appears that other forms of communication bringing about an arbitration agreement including electronic communication should in as much as they are written be sufficient.

Exhibits D1, D2, D3 are written. I find no merit in the argument that there was no arbitration agreement on the reason given. The document was not denied by the Claimant.

On the non-awareness of the arbitral proceedings, the CW1's evidence if pitched along side that of the DW1 the denial of the arbitral proceeding has been met with a whole load of credible evidence. DW1 testified on the delay caused in meeting up with the delivery of the cotton and the appeal made for more time as the product was seasonal.

Exhibit D8(1), D9, D10, D11, D12 have corroborated the evidence of DW1 that the Defendant gave notice of arbitration and forwarded exhibit D12 series sending a list and persons willing to act for the Claimant at arbitration.

It was when the Claimant failed that the Defendant applied to the President of the Liverpool Cotton Association under its rules and one A. Thomas of Ralli Brothers & Coney was appointed.

The information was sent to the Claimant by exhibit D13, D14, D15, exhibit D16 shows the response of the Claimant to the appointed arbitrator promising to challenge the proceedings in court and exhibit D18 and D19.

The fact and evidences of the Defendant out weight the mere assertion made by the Claimant that it had no knowledge of the arbitrator or that it was denied the right to appoint its own arbitrator.

I find as of fact, that the Claimant received notice and failed to state in the opposing statement, how it was prevented from presenting its case. It is only then that the procedure adopted can be said to have operated in a manner contrary to natural justice.

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The evidence that the composition of the arbitration authority was not in accordance with fair hearing. I find is a mere assertion taking account of the evidence of the DW1 that Mr. Thomas was never an employee of the Defendant. I prefer that version.

The Claimant who made the assertion ought to have supported it with more credible evidence which it did not produce in respect thereof.

In interpreting Sections 51 and 52 of the Arbitration and Conciliation Act the Court is enjoined to give the ordinary and simple grammatical meaning that is intended to be conveyed by the legislature most especially where the words used are straight forward and unambiguous the literal rule of interpretation by not addition or removing anything from the law is the standard required. See *SBN PLC VS CBN* (2009) 6NWLR Part 1137 page 237; *OWNERS OF MV ARABELAN NAIS* (2008) 11NWLR Part 1017 page 182.

The specific references to parties to an arbitration agreement under Sections 32 and 52 of the Act contemplates that any of them may be dissatisfied with the award and can attack the award.

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The Claimant that has not contested the fact that it was not the party to the arbitration agreement cannot claim the benefit of Section 52 of the Act. It is wrong for a party who has benefited from an agreement to turn round to attempt to avoid the contract. The proposition that a person will not be allowed to benefit from his own wrong will apply in the instant case.

In other words equity will not permit a party to benefit from his wrong. See *ADEDEJI VS NATIONAL BANK OF NIGERIA LTD* (1989) NWLR Part 96 page 212; *NDIC VS NIGERIA LNG LTD* (2000) 4NWLR Part 653 page 494 at 506 -507 paragraphs H-D, where the Supreme Court decided that only a person who is a party to an arbitration agreement that can take the benefit of an arbitration clause.

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The claims therefore made in the concluding paragraph of the amended statement of claim dated 26<sup>th</sup> February, 2000 to the effect that the Arbitration award was made without jurisdiction and is in violating of the Claimants rights and is not capable of being recognized or enforced in Nigeria lacks merit.

The Claim and the injunctive reliefs are unproven and are accordingly hereby dismissed.

The next issue going to whether or not the claims in the counter claim are validly constituted and if so is the Defendant entitled to the reliefs sought?

The procedural formalities for an enforcement in an International Arbitration are stated in Section 51 of the Arbitration and Conciliation Act. The provision provides as follows:

- (1) An arbitral award shall irrespective of the country in which it is made, be recognized as binding and subject to this Section and Section 32 of this Act, shall upon application in writing to the court, be enforced by the Court.
- (2) A party relying on an award or applying for its enforcement shall supply:
  - (a) The duly authenticated original award or a duly certified copy thereof;
  - (b) The original arbitration agreement or a duly certified copy thereof;
- © Where the award or arbitration agreement is not made in English language, a duly certified translation thereof into English language.

It is against words of this provision that the Court raised *suo motu* the issue of the validity of the claims now made in the suit for recognition and enforcement and interest. In the address of Learned Counsel for the Defendant Counter Claimant, he submitted that Section 31(1) of the Act makes written arbitral award binding between the parties.

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A party relying on an award must seek leave of court. He submitted that the permission of court can be by an action in court or by an application. He contended that they had complied with the provision of the law in Section 31



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of the Act. The arbitration agreement and award are in evidence. He relied on TULIP NIG LTD VS NOLEGGIOE TRANSPORT MARITIME S.A.S (2011) 4NWLR Prt 1237 page 25 at 288 – 289 paragraph G-A; TRIANA LTD VS UNIVERSAL BANK PLC (2009) 12NWLR Part 1154 page 313 at 341-342 paragraph H-A; CONTINENTAL SALES LTD VS SHIPPING INC (2013) 4NWLR Part 1342 page 67 at 88 paragraphs C-F.

The Claimant Counsel addressed the court that an arbitral award is an affirmation that the matter was settled at arbitration. The determination is final at that forum where issues had been raised and determined so it cannot be re-opened in the counter claim citing RAZPAL GAZI CONSTRUCTION CO LTD VS FEDERAL CAPITAL DEVELOPMENT AUTHORITY (2001) 10NWLR Part 722 page 559 at 569 paragraph C-F, 574 paragraph F-H.

sb

He urged the court to discountenance claim on interests as the award was conclusive judgment upon all matters referred.

The procedure set out herein before under Section 51 of the Act implies that an application to enforce an award must be made by an originating motion see Section 7 of Arbitration, Application Rules 2009 see also KANO STATE OIL AND ALLIED PRODUCTS VS KOFA TRADING CO LTD (1996) 3NWLR Part 436 page 244; LAHAN VS A.G. WESTERN REGION (1963) 2SCNIR Page 41 where it was decided that where a statutory provision is made for making a claim, it ought to be pursued in making it.

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The requirements as set out in Section 51 and 31 of the Act ought to have been complied within the presentation of the claims in the counter claim for the recognition and enforcement of the award. The provision of Section 51 is applicable to the claim see FGN VS ZEBRA ENERGY LTD (2002) 18NWLR Part 798 page 162 at 200-201 paragraphs H-A.

The ordinary and natural meaning of the words used in Section 51 has the import that an irrespective of the country in which it is made, the award be recognize as binding. The authorities cited by the Defendant has not been of much help on the form of the application as they all made reference to applications made to the court.

The present action in the counter claim is a cross action, separate, independent of the main claim.

A Defendant Counter claiming has the onus to plead and prove his counter claim. The quantum of proof appropriate to be attained in order to give judgment on a counter claim in favour of the Defendant must be the type required of the Plaintiff in every civil suit, the proof based on preponderance of evidence. See MARINDEX TRUST LTD VS N.I.M.B LTD (2001) 10NWLR Part 721 page 321 at 388 - 389 paragraph E.

The parties are expected to join issues. In the state of the law, can the Defendant Counter Claimant re-open the case already decided and leading to the making of an award and seeking interest which the arbitral panel never gave? My answer to that poser is a definitive No.

This court has no jurisdiction to hear evidence and re-litigate on issues already settled in the award and or grant other reliefs. The action in the counter claim is not properly constituted.

In the circumstance the action is hereby struck out for want of competence.

The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award. The court has no other business with the award except where it is expressly provided for in the Act.

This means that there is no further need for the declaration No 1 sought in the counter claim.

A court has no jurisdiction to award interest on an arbitral award or to otherwise interfere with the award. The Counter claim now found incompetent is hereby struck out.

This is the judgment of the court.

*(Signature)*  
Hon. Justice D.T. Okuwobi (Mrs)

Judge

27<sup>th</sup> February, 2015

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Parties absent

Mr. Akin Adewopo Counsel for the Claimant

Miss. Amaka Anigala Counsel for the Defendant.

No order on cost.

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*file 23/3/15*  
R. O. OLOWOPO  
COMMISSIONER FOR OATHS



*15* *11/02/15* *2020* *14/02/15* *3/02/15*

POLITICS NIGERIA

**IN THE COURT OF APPEAL  
LAGOS JUDICIAL DIVISION**

**HOLDEN AT LAGOS**

**ON FRIDAY THE 16<sup>TH</sup> DAY OF NOVEMBER 2018**

**BEFORE THEIR LORDSHIPS:**

**TOM SHAIBU YAKUBU** -

**IOBELE ABRAHAM GEORGEWILL** -

**ABIMBOLA OSARAGUE OBASEKI - ADEJUMO** -

**JUSTICE, COURT OF APPEAL**

**JUSTICE, COURT OF APPEAL**

**JUSTICE, COURT OF APPEAL**

**APPEAL NO: CA/L/1133/2015**

**BETWEEN:**

**DANGOTE FARMS LIMITED** -

**APPELLANT**

**AND**

**PLEXUX COTTON LIMITED** -

**RESPONDENT**

**JUDGMENT**

**(DELIVERED BY IOBELE ABRAHAM GEORGEWILL JCA):**

This is an appeal against the Judgment of the High Court of Lagos State, Ikeja Judicial Division; Coram: D. O. Okuwobi J., in Suit No: ID/3477/1998: Plexus Cotton Limited V. Dangote Farms Limited delivered on 27/2/2015, in which the claims of the Respondent as Claimant were granted against the Appellant as Defendant

The Appellant was dissatisfied with the judgment of the Court below and had appealed to this Court vide a notice of appeal filed on 2/3/2015 on four grounds at pages 493 - 495 of the record of appeal. The record of appeal was transmitted to this Court on 12/11/2015 but deemed duly transmitted on 17/11/2016. The Appellant's brief was settled by Fola Sowemimo Esq., and filed on 30/11/2016. The Respondent's brief was settled by Olanlokun Omolodun Esq., and filed on 1/3/2017 but was deemed properly filed on 24/10/2017. The Appellant's reply brief was settled by Akin Adewopo Esq., and filed on 9/10/2018 but was deemed on 15/10/2018.

CA/L/1133/15

23/11/18  
**MRS OKEKE C. E.**<sub>1</sub>  
**Sr Executive Officer**  
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**COURT OF APPEAL**  
**LAGOS**

IOBELE ABRAHAM GEORGEWILL, JCA

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At the hearing of the Appeal on 15/10/2018, Akin Adewopo Esq., learned counsel for the Appellant, adopted the Appellant's brief and Appellant's reply brief as his arguments and urged the Court to allow the appeal and set aside the judgment of the Court below and dismiss the claims of the Respondent. On his part, Olanlokun Omolodun Esq., learned counsel for the Respondent adopted the Respondent's brief as his arguments in opposition to the appeal and urged the Court to dismiss the appeal and affirm the judgment of the Court below.

The action before the Court below was commenced by means of a Writ of Summons filed on 8/12/1998. However, by an amended statement of claim filed on 26/2/2000, the Appellant as Claimant claimed against the Respondent as Defendant the following reliefs, to wit:

1. A Declaration that the Arbitral made by the Liverpool Cotton Association Limited dated 1/6/1998 was made without jurisdiction and in contravention of the Plaintiffs right to fair hearing and is not registrable or capable of being recognized in Nigeria
2. An injunction restraining the Defendant, its privies, servants, agents and otherwise howsoever from enforcing within Nigeria, in any manner howsoever, the terms of the Award of the Liverpool Cotton association Ltd.

In response, the Respondent by its amended statement of defense and counter claim filed on 7/2/2012 counter claimed against the Appellant for the following reliefs to wit:

1. A declaration of this Hon Court that the suit herein is incompetent on the ground that this Hon Court lacks jurisdiction to entertain the case,
2. Alternatively, the recognition, registration and enforcement of the Arbitral Award dated 1/6/1998.

GENERATED BY E-COURT

3. Interest on the Award sum of \$431,233.41 at rate of 8% from June 22, 1998 until final judgment and thereafter at the *post judgment* interest of 10% per annum until the judgment is finally liquidated.

### BRIEF STATEMENT OF FACTS

The gist of the case according to the Appellant, who was the Claimant before the Court below as can be gleaned from its amended pleadings and evidence, both oral and documentary as in the record of appeal was that in December 1996 the parties entered into an agreement for the purchase of cotton largely through exchange of faxes. In a fax of 6/12/1996, the Respondent ordered 3.7 metric tons of cotton and stipulated certain terms which it proposed enumerated the term that should govern the transaction which terms include the initial quantity to be shipped and the application of the LCA Rules and Arbitration to any dispute which may ensue. In a later fax of 10/12/1996, it reiterated the same terms and concluded with a final clause that "*Kindly reconfirm all the above now in order so we may issue the contract*".

However, no such confirmation was ever issued by the Appellant. The hard copies of Liverpool Cotton Association Contract Forms sent to the Appellant which embodied the terms of the contract, including the arbitration clause, were also not executed by the Appellant. Despite the non execution of the contract documents, the parties nonetheless proceeded with the transaction until a dispute ensued as to an alleged failure of the Appellant to supply some of the quantity ordered by the Respondent. The Respondent immediately commenced arbitral proceedings to which the Appellant refused to submit. Despite the Appellant's refusal to submit to arbitration, the Liverpool Cotton Association unilaterally appointed an arbitrator for the Appellant and the arbitral proceedings continued in the absence of the Appellant and concluded with the rendering of an Award on 1/6/1998.

The Award was initially made against Dangote Group of Companies, Lagos, Nigeria but on 21/7/1998, the Arbitrators unilaterally amended the Award by substituting Dangote

Farms Ltd as a party in place of Dangote Group of Companies but Dangote Farms Ltd. was never put on notice nor was the proceedings commenced de novo. The Appellant sought to appeal against the Award but the Arbitrators imposed a fee of £9,362.50 as a pre-condition for the entertaining of the appeal. Hence, the Appellant in frustration was compelled to institute an action at the High Court of Lagos State to challenge the Award, by seeking an order of Court not to recognize the Award in view of the procedural lapses and breach of its constitutional right to fair hearing, apart from the unmeritorious nature of the Respondent's claims. See pages 463 - 467 of the record of appeal.

On the other hand, the gist of the case according to the Respondent, who was the Defendant/Counter Claimant before the Court below as can be gleaned from its amended pleadings and evidence, both oral and documentary as in the record of appeal was that the Appellant is a Nigerian company who was engaged in December 1996 by the Respondent, an English company, to supply it with 3700 metric tons of Nigerian raw cotton in England, which contract was part performed with the supply of 2250 tons until sometime in 1997 when the Appellant defaulted upon being required to complete the supplies as contracted. When the default was declared, same was referred to arbitration in England whereupon the appellant failed to participate on grounds that it did not consent to the arbitration of any dispute under the supply contract and thereafter refused to participate in the said proceedings. With the Appellant's boycott, an arbitral award was made in favor of the Respondent. The Appellant then instituted the suit before the Court below to void the said award. In response, the Respondent counterclaimed for the recognition of the Arbitral Award. See pages 467 - 473, 474 - 475 and 476 - 477 of the record of appeal.

The parties filed and exchanged pleadings and the matter proceeded to trial. The Appellant as Claimant called one witness who testified as CW1, one Mohammed Alhaji and tendered several documents admitted in evidence as Exhibits C1 - 12 and closed its case. In defense the Respondent as Defendant also called one witness who testified as DW1, one Ann Adlington and tendered several documents admitted in evidence as

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Exhibits D1 - D30 and closed its case. The parties filed and exchanged written addresses, which were duly adopted and on 27/2/2015, the Court below delivered its judgment in which it dismissed the claims of the Appellants for lacking in merit while striking out the counter claim of the Respondent for being incompetent, hence the appeal to this Court by the Appellant. See pages 478 - 492 of the record of appeal.

**ISSUES FOR DETERMINATION**

In the Appellant's brief, three issues were distilled as arising for determination from the four grounds of appeal, namely:

1. Whether the learned trial judge was right in holding that the Appellant had by its conduct agreed to the term referring any dispute to arbitration, despite its refusal to execute a formal agreement Exhibit D?
2. Whether the arbitral proceedings were conducted in manner which is in consonance with the demands of our constitutional right to fair hearing?
3. Whether the judgment is consistent with the weight of evidence led?

In the Respondent's brief, three issues were also distilled as arising for determination in this appeal, namely:

1. Whether the arbitral award having been issued in respect of Appellant's dispute with the Respondent in England, the challenge to the arbitral award in this court is not incompetent?
2. Whether the appellant having elected to boycott the arbitral proceedings which resulted in an award the appellant is not estopped from challenging same?
3. Whether this appeal discloses any good and substantial grounds of appeal?

I have taken time to review the entirety of the pleadings and evidence, both oral and documentary as led by the parties as in the record of appeal. I have also taken time to consider the submissions of counsel in their respective briefs in the light of the findings

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of the Court below in the judgment appealed against and I am of the view that the issue arising for determination in this appeal are the three issues as distilled in the Appellant's brief, a consideration of which would, in my view, invariably involve a consideration of the surviving issues two and three as distilled in the Respondent's brief. However, I shall consider issues one and two together and resolve them in one fell swoop, while issue three shall be considered on its own.

**ISSUES ONE AND TWO TAKEN TOGETHER**

Whether the learned trial judge was right in holding that the Appellant had by its conduct agreed to the term referring any dispute to arbitration, despite its refusal to execute a formal agreement Exhibit D AND Whether the arbitral proceedings were conducted in manner which is in consonance with the demands of our constitutional right to fair hearing?

**APPELLANT'S COUNSEL SUBMISSIONS**

On issue one learned counsel for the Appellant had submitted that the finding of the Court below that the Appellant was bound by the terms stipulated in the faxes of 5<sup>th</sup> and 6<sup>th</sup> December 1996 referring all disputes to arbitration in Exhibits D11 and D2 was erroneous in that the Appellant's conduct rather underscores a rejection of the term stipulating for arbitration rather than an acceptance of the term and contended that the fact that the Respondent decided to deal with the Appellant after it had refused to execute contract Forms sent to it was an unequivocal indication that the term was expendable and not crucial to the transaction and urged the Court to hold that in law the concept of mental assent, which is ineffective, could not give rise to a contract. Counsel relied on *Orient Bank V. Bilante International* (1997) 8 NWLR (Pt. 515) 37 @ p. 100; *Nigerian National Supply Co. Ltd V. Agriccor Incorp of USA* (1994) 3 NWLR (Pt. 332) 339.

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It was further submitted that the Dangote Group of Companies never executed or returned the copies of International Shipment Contract Form No. 1 though none the less the parties continued with the transaction for the supply of cotton and contended that

Going by the evidence of the Respondent's sole witness DW1 coupled with the fact that the Appellant failed to execute and return the contract Form, the reasoning of the Court below that that the Appellant was bound by the terms of the contract it never executed runs contrary to the settled position of the law and urged the Court to hold that at best all that transpired between the parties were merely tentative as testified to by the Appellant's sole witness CW1 who was not even cross examined on that issue and which evidence was deemed admitted by the Respondent. Counsel relied on *Amadi V. Nwosu (1992) 5 NWLR (Pt. 241) 273; Daggash V. Bulama (2004) 14 NWLR (Pt. 892) 144.*

It was also submitted that the mere mention of the phrase "LCD Rules & Arbitration" is not enough to incorporate the Rules of the Liverpool Cotton Association into the contract by mere reference and contended that there was no evidence that the Appellant was familiar with the Association or with its Rules and urged the Court to hold that without clear words incorporating the Rules into the contract, the Appellant cannot be held to be bound by those Rules and the Respondent if it was not satisfied with the Appellant's not acceptance of those terms ought to have opted out of the contract but rather continued with the contract with the Appellant.

On issue two learned counsel for the Appellant had submitted that the actions of the Respondent in relation to the arbitral proceedings up to the Award were undertaken in bad faith and in breach of the Appellant's right to fair hearing in that apart from not being a party to the arbitration agreement from the onset, the Appellant was never served with any Points of Claim filed in the Arbitration by the Respondent but rather an arbitrator was unilaterally appointed for it by the Liverpool Cotton Association and contended that even the arbitration proceedings were commenced against Dangote Group of Companies, which is a different entity from Dangote Farms Ltd, the Appellant and urged the Court to

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hold that neither was the arbitrator independent from the Respondent nor was the unilateral substitution of the Appellant for the Dangote Group of Companies, an entry unknown to law, justified in law to render the Appellant liable on the award, which it was not a party to the arbitral proceedings, to the Respondent and over which an appeal by the Appellant was made conditional on the payment of exorbitant fees which effectively denied the Appellant access to any means of redress against the said award. Counsel referred to *Orojo & Ajomo on Law and Practice of Arbitration and Conciliation in Nigeria* @ pp. 130 - 135 and relied on *Nurses Association V. AG (1981) 11-12 SC L*.

It was further submitted that in law the true test in determining whether a process has been fair is not only whether the adjudicating Body arrived at a fair result but whether the Tribunal has dealt fairly and equally with the parties before it in arriving at its' result and contended that by law a Nigerian Court ought not to enforce an Award if the recognition or enforcement of the Award is against public policy of Nigeria and urged the Court to hold that Nigerian Courts do recognize and uphold the constitutional right of parties to fair hearing before any adjudicating Tribunal and to allow the appeal and set aside the judgment of the Court below and to refuse to enforce the award obtained in breach of the Appellant's right to fair hearing by granting the reliefs claimed by the Appellant against the Respondent. Counsel referred to *Section 36 of the Constitution of Nigeria 1999 (as amended); Section 52 (2) (b) of the Arbitration and Conciliation Act Cap A 18, Law of Federation 2004* and relied on *Isiyaku Mohammed V. Kano N.A (1968) 1 All NLR 424 @p. 426; Adene V. Dantumbo (1988) 4 NWLR (Pt. 88) 309 @p. 317*

**RESPONDENT'S COUNSEL SUBMISSIONS**

On his issue two, learned counsel for the Respondent, having abandoned his issue one that dealt with the issue of the competence of the Appellant's appeal, had submitted that in law whatever defects or grouse the Appellant had against the arbitral proceedings they were meant to have been canvassed before the arbitral tribunal but not choosing to keep quiet about same to await the result of the arbitration proceedings and contended that in

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the circumstances the Appellant must be held as having either waived its right to raise said objections or had abandoned same and is consequently estopped from raising same before this Court and urged the Court to hold that in law any party boycotting proceedings and not taking the necessary remedial steps as provided by law has no one to blame for any damage done to him as a result of such reckless conduct and to affirm the judgment of the Court below and dismiss the appeal for lacking in merit.

It was further submitted that on the face of the allegation of misconduct levied against the arbitrator by the Appellant the arbitrator deserved to be confronted by the Appellant with such an issue before the arbitral tribunal to afford him the opportunity to rebut same or have same confirmed but rather the Appellant preferred the style of laying such allegations before Court below in order to reopen for litigation decided issue regarding the said misconduct and urged the Court to hold that the Appellant can neither do so nor complain about the award having on its own failed to participate in the arbitral proceedings and is therefore, bound by its outcome. Counsel referred to *Section 169 of the Evidence Act 2011* and relied on *LSDPC V. Adoid/Stamm Int'l (Nig) Ltd (1994) 7 NWLR (Pt. 545) s. 169 of the Evidence Act, 2011 @ p. 564.*

It was also submitted that the entire proceedings initiated by the Appellant before the Court below merely intended to pervert the course of justice by a party who had slept on his right to complain and contended that such a proceeding amounts to an abuse of the process of the Court and urged the Court not allow the Appellant to abuse its process but rather to dismiss the appeal and affirm the judgment of the Court below validating the arbitration clause and that it was binding on the Appellant.

#### APPELLANT'S COUNSEL REPLY SUBMISSIONS

In his reply, learned counsel for the Appellant reiterated his earlier submissions and had submitted that the action of the appellant being mischaracterized as a boycott was rather simply an informed decision not to voluntarily submit to the jurisdiction of the Arbitration proceedings since the Appellant was not contractually bound by any

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arbitration having refused to execute the Forms which sought to commit it to an arbitration agreement clause and contended that the Appellant though not originally a party to the arbitral proceedings was unilaterally made one and was also denied access to appeal against the eventual award by the imposition of exorbitant fees and urged the Court to allow the appeal, set aside the judgment of the Court below and to grant the claims of the Appellant against the Respondent.

**RESOLUTION OF ISSUES ONE AND TWO**

My lord, issues one and two under consideration deal with the question whether there was a binding contract entered into between the parties and incorporating an arbitration clause binding on the Appellant?

The Appellant had vehemently contended and maintained it out rightly refused to accept any arbitration clause in the tentative agreements it had with the Respondent and was therefore not bound by it. It was also contended that the Appellant rightly refused to submit to the jurisdiction of the arbitrator, who at any rate was not independent of the Respondent and had acted in breach of the Appellant's right to fair hearing, and therefore the Appellant was not bound by the award.

On the other hand it was equally contended vehemently that the Appellant who had contracted with the Respondent through exchange of faxes accepted the terms incorporating arbitration and continued with the contract with the Respondent which it glaringly breached, which breached formed the subject matter of the arbitration and eventual award made against the Appellant by the arbitrator. It was also contended that the Appellant who had deliberately boycotted and or absented itself from participation at the arbitration is bound by the outcome of the arbitration and its right to fair hearing was never breached by the arbitrator as already correctly found by the Court below.

Now, what are the averments in the pleadings of the parties and the pieces of evidence as led by them before the Court below as in the printed record?

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In the amended statement of claim it was averred inter alia thus:

- 3 Sometime in 1996 the parties reached an initial agreement on the purchase and supply of about 3,700 metric tons of Nigerian raw cotton. The transaction was undertaken through an exchange of correspondence and was to be governed by the ordinary laws of contract.
- 4. The Plaintiff avers that pursuant to the tentative agreement reached with the Defendant they did in fact supply to the Defendant 2,250 metric tons of Nigerian raw cotton; the Agreement had to be performed in an ad hoc manner as a result of the prevarication of the Defendant on the terms of the transaction which militated against its complete performance as originally contemplated.
- 5. The Plaintiff avers that following a dispute arising from the inability to carry into effect the agreement for the supply as raw cotton as initially conceived by the parties, the Defendant unilaterally referred the dispute to Arbitration by the Liverpool Cotton Association in accordance with the rules of that Association.
- 6. The Plaintiff further avers that it was not allowed a say in the choice of Arbitration as the mode for the resolution of their disagreement and neither was it given a choice in the nomination of Arbitrators; worse still, it was not given sufficient opportunity to defend the claim made against it.
- 7. The Plaintiff states the reference of the dispute to arbitration was unilateral in that it never consented to and neither did it enter into Agreement stipulating that, any dispute between the parties should be referred to arbitration; further, it never agreed to the application of the Rules of the Liverpool Cotton Association to any arbitration that might be undertaken. The document which formed the basis of the Agreement between the parties was the fax of 5/12/1996.
- 9a. The Plaintiff avers that the company's lawyer, Mrs Fola Sowemimo traveled to London in connection with the arbitral proceedings in London, initiated by the Defendant, but was not granted audience by the Liverpool Cotton

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Association/Arbitrators. She was also requested to pay prohibitive sums of money before an appeal against the award could be entered. The Plaintiff shall at the trial rely on all relevant letters and documents.

10. The Plaintiff avers that both the defendant and the Liverpool Cotton Association acted without jurisdiction and in breach of the universally recognized right to a fair hearing, especially as the entire proceedings before the Arbitral Tribunal were one-sided, More disturbing still, its appeal against the Award was never entertained as the Association made it a condition precedent to the appeal that a substantial amount of money in foreign exchange be paid as a pre-condition for the appeal thereby effectively barring its access to justice. See pages 56 - 58 of the record of appeal.

In the amended statement of defense and counter claim it was averred inter alia thus:

4. In specific response to paragraph 3 of the Amended Statement of Claim the defendant admits that the parties herein concluded an agreement on December 05, 1996 and witnessed by fax reference MR/0512/1 Sent by the Defendant to the Plaintiff and repeated on the December 06, 1996 by a formal contract of the International shipment Contract For No.1 of the Liverpool Cotton Association Limited. Reliance shall be put on these fax messages at the trial to their full effect.

5. The Defendant shall contend at the trial of this matter that by a fax message dated December 1996 sent on behalf of the Blue Star Investments United Kingdom Limited to the Defendant, the Plaintiff expressly accepted all terms of the contract as set out in the Defendant's MR/05/2/1 including the term LCA Rules and Arbitration. The Defendant shall rely on the said letter to its full effect.

11. The Defendant avers that the only forum before which the Plaintiff could air such allegation contained in paragraph 4 of the statement of Claim is the Arbitration conducted under the auspices of the Liverpool Cotton Association in accordance with the contract agreement between the parties or in an English Court.

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18. In further response to paragraph 6 of the Amended Statement of claim, the defendant avers that the Contract Agreement exchanged by the parties incorporated the Liverpool Cotton Association Rules and Arbitration to which the Plaintiff did not object. The Defendant shall rely on the Agreement and the Liverpool Cotton Association Rules and Arbitration to its full effect of the trial of this matter.

26. The Defendant further avers that adequate opportunity was given to the plaintiff to put its case before the Arbitration which bends the rule to allow the Plaintiff its case and that the Plaintiff for mischievous reasons chose the bath of confrontation.

30. In further response to paragraph 8 of the Amended Statement of Claim, the Defendant avers that on July 02, 1997. Mr. Thomas wrote and asked the Plaintiff for comments on the Defendant's application but the Plaintiff ignored the request and failed, refused and neglected to comment. 30

31. The defendant in further specific response to paragraph 8 of the Amended Statement of claim avers that by letter dated January 20, 1998 sent by fax and recorded delivery, Mr. Thomas asked the Plaintiff to furnish him with any written evidence and other submissions it may wish to make by latest February 03, 1998, the Plaintiff in its reply of January 27, 1998 Sent to Mr. Thomas by fax, for from complaining that this would not give it sufficient opportunity to defend the claim mode against it, simply replied at they had not agreed to LCA Arbitration relying on alleged non-compliance 301(1) of LCA Rules and Arbitration and reserve the right to challenge Mr. Thomas' proceeding with the matter in the Courts.

36. The defendant avers that in specific denial of paragraph 9a of the amended statement of claim, the plaintiff's Company lawyer Mrs. Fola Sowemimo traveled to London after the arbitral proceedings had been concluded and as such could not have been granted audience.

37. In specific response to para.9 of the statement of claim, the defendant denies that the arbitration proceedings were one-sided rather the Defendant avers that it is the

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Plaintiff who has willingly declined to participate in the proceedings and thus cannot be heard to complain

59. Defendant states that in further response to paragraph 12 of the Amended statement of claim the Arbitration Award by the Liverpool Cotton Association limited is enforceable by execution in England.

**COUNTER CLAIM**

66. The Counter Claimant avers that through exchange of letter faxed on December 05, 1996 the parties entered into an agreement whereby the Plaintiff was to supply 3700 metric tons of Nigeria raw cotton to the Counter Claimant.

77. The counter Claimant avers that as at October 08, 1997 the Plaintiff did not protest that Liverpool Cotton Association would not have jurisdiction to deal with the matter.

78. The Counter Claimant avers that the Plaintiff on November 11, 1997 by a fax , message acknowledged liability by assuring that it would resume delivery to the counter Claimant by December 1997 which promise was never kept. The Counter claimant shall rely on the said letter to its full effect at the trial of this matter.

79. The counter Claimant avers that pursuant to the contract agreement between it e Plaintiff formally commenced arbitration process by holding the Plaintiff in :-r and formally nominating Mr. Anderson and at the same time asking the plaintiff to name their Arbitrator failing which a request would be made to the President of Liverpool Cotton Association in accordance with its Rules to nominate an Arbitrator on behalf of the Plaintiff.

81 That several letters were exchanged between the Plaintiff and the Arbitrator appointed on its behalf especially letters of January 29, February 11 and May 13, respectively which letters the Counter Claimant pleads. 81

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84 The Counter Claimant avers that despite repeated demands the Plaintiff has refused and neglected to pay in line of the award. See pages 61 - 71 of the record of appeal.

In the reply to amended statement of defense and defense to Counter Claim it was averred inter alia thus;

- 2. The Plaintiff again denies that it ever agreed to the application of the LCA" Rules and Arbitration" to the transaction between it and the defendant. The plaintiff at no time submitted to the jurisdiction of the arbitrator.
- 3. The Plaintiff further avers that to attest to his refusal to submit to the "LCA" Rules and Arbitration" it refused to sign the International -ping contract form No 1 issued by the Liverpool Cotton Association limited.
- 6. The plaintiff avers that the arbitration proceedings were undertaken without its consent and when its lawyer went to London to protest the proceedings by the arbitrators she was not granted audience by the arbitrators. By requesting for a deposit of about \$9,362, the Arbitrators had sought to hinder the prosecution of the appeal. See pages 73 - 74 of the record of appeal.

In proof of its claims, the Appellant called one witness and tendered several documents admitted in evidence as Exhibits C1 : C2. CW1, was one Mohammed Alhaji, he stated inter alia that in December 1996 the parties had an initial agreement on the purchase and supply of metric tons of Nigerian Raw Cotton, which transaction was undertaken by exchange of correspondence and was to be governed by the ordinary laws of contract. It was initiated by a fax message of 5/12/1996 but was comprised of other negotiated terms by the Respondent and subsequent faxes including that of 14/2/1997. The Appellant never agreed to settlement of any dispute by arbitration in accordance with LCA Rules of Arbitration and never executed the International Shipping Contract form No. 1 issued to it by Liverpool Cotton Association Ltd. The Appellant ended up supply of 2,250 metric

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ions of Nigerian Raw cotton due to non - confirmation by the Respondent of the terms of the contract and terms as originally contemplated. As at October 1997 when the Respondent opened further letters of credit the supply of additional raw Cotton, the Appellant claimant could not meet the supply as cotton which is a seasonal product was then not available and it informed the Respondent of this constraint but rather than appreciate this difficulty, the Respondent took it as breach of contract and unilaterally referred the dispute to arbitration by the Liverpool Cotton Association in accordance with the rules of the Association.

The Appellant was not given any opportunity in the choice of Arbitration and the nomination of Arbitrators and was also not given the opportunity to defend the claim made against it but it only got wind of the proceedings after it was almost completed. The Liverpool Cotton Association Ltd. imposed one N. A. Thomas to present the Appellant who was never furnished with points of claim filed before the Tribunal. Mr. Thomas acted without the Appellant's instruction or with due regard to its interest. It's lawyer, one Mrs. Fola Showemimo travelled to London in connection with the Arbitral proceedings but was not granted audience by the Tribunal and was advised to pay the sum of £9,362 before an appeal against the award could be lodged, effectively barring the Appellant from access to justice. The Arbitral panel was impartially constituted as an officer of the Appellant was the immediate past Chairman of the Liverpool Cotton Association and has a strong influence in directing the affairs of the Panel. The Registration of the Defendants award and the threat of black listing it as a defaulter world - wide is a calculated attempt to damage its good will and reputation. It prayed the Court to restrain the Respondent on the ground that the claim was made outside the 28 days time frame as prescribed by Rule 202. of the LCA Rules. CW1 was briefly cross examined. See pages 463 - 464 and 467 of the record of appeal.

In its defense, the Respondent also called one witness and tendered several documents admitted in evidence as Exhibits D1 - D30. DW1, was one Ann Adlington, she

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ated inter alia that on 5/12/1996 the parties entered into an agreement vide Exhibit D1 and D2 with Exhibit D3, the Liverpool Cotton Association Ltd International Shipment contract form No 1 attached. The contract was for the supply of 3,700 metric tons of cotton to be supplied as follows; 700 metric tons in December, and 1000 metric tons for January, February and March 1997. The Appellant accepted all terms of the contract by Exhibit D4 through Blue Star Investments UK acting for it, including the dispute resolution by Arbitration in accordance with LCA Rules, which was confirmed by the Respondent in Exhibit D5. The Appellant never at any time challenged the accuracy of the terms and conditions of the contract and proceeded to deliver cotton to the Respondent under the agreed terms save for 1,450 metric tons subject matter of the arbitration paid for as shown in Exhibits D6 and 07. However, due to delay of the Appellant, it breached its contract by not supplying the 1,450 metric tons of raw cotton as admitted in Exhibit D8 and in a consequence of the failure on the part of the Appellant to meet its obligations under the contract, the Respondent suggested closure of the contract and that parties proceed to arbitration as in Exhibit D9 while the Appellant made appeals for time to make the further supplies as in Exhibits C10 and C11.

The Respondent saw the Appellant's failure to deliver on goods paid for and regarded it a breach constituting a dispute which was referable to the Liverpool Cotton Association in pursuant of the agreement of the parties and thus commenced arbitration proceeding and nominating one Anderson as its arbitrator and advised the Appellant to nominate its own arbitrator and failing which they would apply to the President of the Liverpool Cotton Association in pursuance of the agreement of the parties to appoint an arbitrator for the Appellant and forward to it vide Exhibit D12 a list of persons willing to act for the Appellant but who failed to instruct any of them to act as arbitrator and the appointment had to be made of an arbitrator for it on an application made by the Respondent. One Andrew N. Thomas was thus appointed for the Appellant to act as arbitrator and with whom the Appellant exchanged some correspondences. Thomas was never at any point in time a staff of the Respondent and thus the Appellant cannot deny

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knowledge of the arbitration proceedings going by documentary evidence as in Exhibits D18 - D30, coupled with the appeal filed against the award by the Appellant, who refused to pay the fees for the appeal. The Appellant's lawyer was never denied audience at the arbitral proceedings as she arrived in the UK at a time when the arbitral proceedings had closed. DW1 was thoroughly cross examined. See pages 467 - 473, 474 - 475 and 476 - 477 of the record of appeal.

Now, it was on the strength of the above pieces of evidence, both oral and documentary, that the Court below in its judgment delivered on 27/2/2105 dismissed the claims of the Appellant for lacking in merit and struck out the counter claim of the Respondent for being incompetent.

My lords, for the depth of the review, analysis, findings and the statements of the law as contained in the judgment of the Court below, I shall, with my lords understanding, take the liberty to reproduce hereunder in great details the judgment of the Court below *inter alia* as follows:

“.....The DW1's evidence was firm and unshaken also on the fact transaction being a contract by fax messages, it was not necessary for the Claimant to have signed the document. It can be inferred from the conduct the Claimant which performed obligation in furtherance of the contract of sale that it consented to the transaction. The evidence of the CW1 that the contract had been altered by other negotiated terms by the Defendants fax messages including that of 14/2/1997 has not been established by credible evidence. The intention of the parties had been clearly expressed in Exhibits D1, D2, D3 and D4. I have no iota of doubt that the LC Rules and Arbitration was the applicable law and form for resolution of a dispute in the contract No 2418. I find there from, all evidence before the Court that the Claimant accepted the condition....I accept the evidence of the DW1 that it was an accepted practice not to sign agreement made through fax. The term agreement in writing in Section 1 of the Act particular Section 1 (b) shall include an arbitral clause in a contract or an arbitration agreement signed by the parties

or contained in an exchange of letters or telegrams. This provision requires a flexible and accommodating interpretation...It appears that other forms of communication bringing about an arbitration agreement including electronic communication should in as much as they are written be sufficient, Exhibits D1, D2, D3 are written...On the non - awareness of the arbitral proceedings, the CW1's evidence if pitched alongside that of the DW1 the denial of the arbitral proceeding has been met with a whole load of credible evidence...The fact and evidence of the Defendant out weight the mere assertion made by the Claimant that it had no knowledge of the arbitrator or that it was denied the right to appoint its own arbitrator. I find as of fact, that the Claimant received notice and failed to state in the opposing statement, how it was prevented from presenting its case....The evidence that the composition of the arbitration authority was not in accordance with fair hearing, I find is a mere assertion taking account of the evidence of the DW1 that Mr. Thomas was never an employee of the Defendant. I prefer that version. The Claimant who made the assertion ought to have supported it with more credible evidence which it did not produce in respect thereof...The proposition that a person will not be allowed to benefit from his own wrong will apply in the instant case....The claims therefore made in the concluding paragraph of the amended statement of claim dated 26/2/2000 to the effect that the Arbitration award was made without jurisdiction and is in violating of the Claimants rights and is not capable of being recognized or enforced in Nigeria lacks merit...The Claim and the injunctive reliefs are unproven and are accordingly hereby dismissed...This court has no jurisdiction to hear evidence and re-litigate on issues already settled in the award and or grant other reliefs. The action in the counter claim is not properly constituted. In the circumstance the action is struck out for want of competence..." See pages 478 - 492 of the record of appeal.

My lords, having calmly reviewed the totality of the averments in the amended pleadings of the parties and the evidence, both oral and documentary as led by them in the printed record, it does appear to me that there was credible evidence from the DW1 which the

GENERATED IN THE COURT

Court below rightly believed and coupled the contents of Exhibits D1, D2, D3 and D4, that the Appellant agreed with the Respondent for the sale of cotton and that the contract was by fax of 5/12/1996 as in Exhibit D1 and in conjunction with the fax of 6/12/1996, which signified the acceptance by Blue Star Investment UK Ltd, the parties are agreed that of all the terms of the agreement between as exchanged by fax between the parties, the Appellant expressly objected to item H, dealing with the quantity of cotton to be supplied in January, February and March of 1997 but made no objection to item F, providing for Arbitration under the LCA Rules.

Now, looking calmly at Exhibits D1, D2 and D3, the Liverpool Association Ltd International Form No 1, and using it to assess the veracity of the evidence of CW1 and DW1, it is clear and as rightly found as fact by the Court below that the item F therein dealing with reference of dispute to arbitration and the application of LCA Rules was a term of the contract entered into between the parties. In law, documentary evidence, which is the best evidence and preferable to oral evidence it often being first in time before oral evidence and not very susceptible to being made afterthought as oral evidence, whenever available in a trial is used as hangers on which to assess the veracity of oral evidence. See *Ashanu V. Adekoya (1974) 6 SC 83*. See also *Whyte V. Jack (1996) 2 NWLR (Pt. 431) 407*.

As to whether the Appellant signed or executed the Exhibit D3, there is clear and credible evidence by DW1 from which the Court below found as fact, and quite rightly too in my finding, that the form executed by the Respondent before it was sent to the Appellant, who held unto it and failed and or neglected to execute it. In the circumstances therefore, in which the accepted credible evidence was that the transaction between the parties being a contract by fax messages, it was not necessary for the Appellant to have signed it, it was safe and rational for the Court to have inferred, and quite rightly too in my view, that from the conduct the Appellant which proceeded to perform the obligation in furtherance of the contract of sale of cotton did consented to the terms of the transaction as clearly expressly stated in Exhibits D1, D2 D3 and D4.

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The evidence of DW1 on this vital issue of fact that it was an accepted practice not to sign agreements made through fax was credible and remained unchallenged and was therefore, good evidence on which a Court could act and make proper and appropriate findings of fact, as was rightly done by the Court below. It is thus very clear to me and I so find, as was also correctly found by the Court below, that the parties are ad idem that LCA Rules and Arbitration was the applicable law and the agreed form for the resolution of any dispute in their contract No 2418. There was therefore, in my finding a binding contract between the parties, the object of which contract the Appellant carried without any express rejection of the term item F, incorporating the arbitration clause. The Appellant thus lend itself out as having accepted same and thus is bound by the arbitration clause since having had the opportunity to object to any clause it only objected to clause H dealing with the increase in the quantity of shipment of cotton for January February and March by 1000 metric tons.

I cannot but agree with the apt and unassailable submissions by the Respondent's counsel that the original and appropriate quarter in law for the Appellant to raise whatever its objections either against the suitability or otherwise of the arbitrator or other of its perceived defects in the arbitral proceedings was before the arbitral tribunal, an opportunity which the Appellant simply flunked and threw out of the window on its whimsical view that it did not at any time accept any term incorporating arbitration in the tentative contract with the Respondent. Thus, having failed to seize the opportunity to do so the Appellant is in law deemed to have either waived its right to do so or had indeed abandoned its right to do and therefore, estopped from and cannot complain thereafter if the outcome of the arbitration it had neglected, boycotted and or failed to participate in is unfavorable to it. See Section 72(1) of the UK Arbitration Act and Section 169 of the Evidence Act 2011. See also *Ibezim V. Ndulue* 1992 1 NWLR (Pt. 216) 153; *Ukaegbu V. Ugoji* (1991) 6 NWLR (Pt. 196) 127 @ pp. 166 -167

In *LSDPC V. Adold/Stamm Int'l (Nig) Ltd* 1994 7 NWLR (Pt 545) 564, in circumstances somewhat similar to the circumstances in the instant appeal, the Supreme Court had held





May 23, 2023

The Managing Director  
**DANGOTE FARMS LIMITED**  
1, Alfred Rewane Road,  
Ikoyi, Lagos

Dear Sir,

**DEMAND NOTICE FOR JUDGEMENT AWARD SUM WITH ACCRUED INTEREST IN SUIT NO: LD/824GCM/15 - PLEXUS COTTON LTD VS. DANGOTE FARMS LIMITED**

We refer to the Cotton Supply Contract between your goodselves and Plexus Cotton Limited, and Suit No: LD/824GCM/15 between same parties (Hereinafter referred to as "the Suit").

Pursuant to the judgement award in the Suit, we hereby demand the payment of the judgement sum and accrued interest thereon in the total sum of \$2,281,998.92 (Two million, two hundred and eighty-one thousand, nine hundred and ninety-eight dollars and ninety-two cents) plus interest as at May 23, 2023.

**BACKGROUND**

- 1) Dangote Farms Limited entered into a Cotton Supply Contract with Plexus Cotton Limited for the supply of cotton to our Company ("the Contract"). Dangote failed, refused and neglected to meet its performance obligations under the Contract;
- 2) On June 1, 1998, following upon your breach under the Contract with us, the breach was the subject of arbitration in the United Kingdom, which resulted in an arbitral award made against Dangote Farms Limited in the principal sum of US\$415,567.10 and ancillary sum of US\$15, 666.31 being interest at the rate of 8% per annum from the date of default (December 11, 1997) until the date of judgement (June 1, 1998).

Consequently, the total judgment under the Suit was a cumulative sum of \$431,233.41, which became due and payable by your Company from the date of judgement.

The judgement also awarded default interest rate from June 22, 1998 until the date of full satisfaction of the award sum, at the rate of 2% per annum above the New York Prime Interest Rate, or as appropriate, the calculated average thereof;



- 3) Your subsequently instituted Suit No: LD/3477/98 in the Lagos High Court, Lagos, Nigeria in a bid to invalidate the said award under the Suit. However on February 7, 2015, judgment was delivered in Suit No: LD/3477/98, in favour of our Company, thereby validating the award under the UK Suit and dismissing your claim under the Lagos Suit No: LD/3477/98;
- 4) We subsequently successfully applied for an Order of Court for the registration of the arbitral award under the Suit, as well as an Order of Court for the enforcement of the arbitral award under the Suit in Nigeria;
- 5) On July 6, 2017 the honourable Court granted the application in the terms sought after taking arguments of counsel regarding same in proceedings penultimate to said date, and declare the arbitral award granted in the UK Court as enforceable against Dangote in Nigeria;
- 6) You sought to overrule the final judgment in Suit No: LD/3477/98 validating the arbitral award by instituting an appeal against the said suit, however, the Court of Appeal ruled against Dangote and disallowed the appeal through its judgement on November 16, 2018;
- 7) You subsequently appealed against the said judgment, through an appeal filed at the Supreme Court.

We note however that you have virtually abandoned the said appeal to the Supreme Court, as said appeal brief has not been filed more than 3 years since the appeal was entered.

#### **OUR DEMAND**

Kindly recall that the award sum in the UK Suit was made become payable immediately upon judgement, with interest accruing daily from the date of judgement until full payment by Dangote.

Please note that further to the application of the default interest award parameters in the Suit, which is the New York Prime Interest Rate as published by J.P. Morgan Chase & Co showing the historical rates from 1986 till the present day, it was determined that the accrued judgment award sum in the Suit as at 31<sup>st</sup> of March 2023 stands at \$2,281,998.92 (Two million, two hundred and eighty-one thousand, nine hundred and ninety-eight dollars and ninety-two cents).

Please find attached a printout of the interest rate publication used for the computation.

Accordingly, we hereby demand satisfaction of said award sum of \$2,281,998.92 (Two million, two hundred and eighty-one thousand, nine hundred and ninety-eight dollars and ninety-two cents) representing the arbitral ward sum as well as default interest accrued thereon from the date of judgement (June 1, 1998) until March 2023. Please note that default interest shall continue to accrue on the award sum of \$2,281,998.92 and all unpaid part thereof until the date of full and final liquidation of the judgement sum by you.



Kindly ensure that your cheque in sum of \$2,281,998.92 is delivered to the office of our Nigerian counsel, **Messrs. Jibola Ajitena Legal, 19A, Milverton road, Ikoyi-Lagos**, within 21 clear days of your receipt of this notice, failing which our solicitors shall commence winding up proceedings against your company.

This he shall do without further recourse to you.

Thank you.

Your sincerely,  
for: **PLEXUS COTTON LIMITED**

Name: Nicholas PF Earlam  
Authorized Signatory

cc. Ajibola Ajitena Esq  
Jibola Ajitena Legal  
No.19A, Milverton Road,  
Ikoyi, Lagos

PROCEEDINGS NIGERIA

award \$431,233.00	costs \$0.00	Total \$431,233.00
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Date NY prime changed	NY prime	No. of Days	interest @ 2%over	Interest on \$431,233.00
22/06/1998	8.5	100	10.50%	\$443,810.63
30/09/1998	8.25	16	10.25%	\$445,832.43
16/10/1998	8	33	10.00%	\$449,919.23
18/11/1998	7.75	225	9.75%	\$477,336.18
01/07/1999	8	55	10.00%	\$484,628.82
25/08/1999	8.25	84	10.25%	\$496,219.53
17/11/1999	8.5	78	10.50%	\$507,508.52
03/02/2000	8.75	48	10.75%	\$514,782.81
22/03/2000	9	56	11.00%	\$523,591.31
17/05/2000	9.5	32	11.50%	\$562,395.25
04/01/2001	9	28	11.00%	\$567,206.85
01/02/2001	8.5	48	10.50%	\$575,147.75
21/03/2001	8	29	10.00%	\$579,780.88
19/04/2001	7.5	27	9.50%	\$583,911.82
16/05/2001	7	43	9.00%	\$590,188.87
28/06/2001	6.75	55	8.75%	\$598,078.55
22/08/2001	6.5	27	8.50%	\$601,891.30
18/09/2001	6	15	8.00%	\$603,897.61
03/10/2001	5.5	35	7.50%	\$608,301.03
07/11/2001	5	35	7.00%	\$612,440.85
12/12/2001	4.75	562	6.75%	\$676,976.81
27/06/2003	4	369	6.00%	\$718,610.88
30/06/2004	4.25	41	6.25%	\$723,725.99
10/08/2004	4.5	42	6.50%	\$729,214.25
21/09/2004	4.75	50	6.75%	\$736,050.63
10/11/2004	5	34	7.00%	\$740,916.75
14/12/2004	5.25	50	7.25%	\$748,377.37
02/02/2005	5.5	48	7.50%	\$755,861.14
22/03/2005	5.75	42	7.75%	\$762,695.38
03/05/2005	6	58	8.00%	\$772,525.68
30/06/2005	6.25	40	8.25%	\$779,607.16
09/08/2005	6.5	42	8.50%	\$787,338.27
20/09/2005	6.75	42	8.75%	\$795,375.68
01/11/2005	7	42	9.00%	\$803,727.13
13/12/2005	7.25	49	9.25%	\$813,846.27
31/01/2006	7.5	56	9.50%	\$825,873.11
28/03/2006	7.75	43	9.75%	\$835,491.09
10/05/2006	8	50	10.00%	\$847,095.14
29/06/2006	8.25	446	10.25%	\$954,664.45
18/09/2007	7.75	43	9.75%	\$965,782.32

INGENIERIA

31/10/2007	7.5	41	9.50%	\$976,231.54	
11/12/2007	7.25	42	9.25%	\$986,766.71	
22/01/2008	6.5	8	8.50%	\$988,630.60	
30/01/2008	6	48	8.00%	\$999,176.00	
18/03/2008	5.25	43	7.25%	\$1,007,828.58	
30/04/2008	5	161	7.00%	\$1,039,379.22	
08/10/2008	4.5	69	6.50%	\$1,052,328.15	
16/12/2008	3.25	2557	5.25%	\$1,444,736.93	
17/12/2015	3.5	364	5.50%	\$1,525,080.36	
15/12/2016	3.75	91	5.75%	\$1,547,246.98	
16/03/2017	4	91	6.00%	\$1,570,713.55	
15/06/2017	4.25	182	6.25%	\$1,620,343.74	
14/12/2017	4.5	98	6.50%	\$1,649,014.82	
22/03/2018	4.75	84	6.75%	\$1,674,986.81	
14/06/2018	5	105	7.00%	\$1,709,184.45	
27/09/2018	5.25	84	7.25%	\$1,738,098.16	
20/12/2018	5.5	224	7.50%	\$1,819,209.40	
01/08/2019	5.25	49	7.25%	\$1,837,161.46	
19/09/2019	5	42	7.00%	\$1,852,164.95	
31/10/2019	4.75	125	6.75%	\$1,895,575.07	
04/03/2020	4.25	12	6.25%	\$1,899,524.18	
16/03/2020	3.25	731	5.25%	\$2,102,021.37	
17/03/2022	3.5	49	5.50%	\$2,117,757.34	
05/05/2022	4	42	6.00%	\$2,132,581.64	
16/06/2022	4.75	42	6.75%	\$2,149,375.72	
28/07/2022	5.5	56	7.50%	\$2,174,451.77	
22/09/2022	6.25	42	8.25%	\$2,195,380.87	
03/11/2022	7	42	9.00%	\$2,218,432.37	
15/12/2022	7.5	49	9.50%	\$2,247,117.93	
02/02/2023	7.75	49	9.75%	\$2,276,939.06	
					<b>Total indebtedness as at 30th of March 2023</b>
23/03/2023	8	7	10.00%	\$2,281,366.44	<b>Total Estimated Indebtedness @ 30th of April 2023 based on NY Prime lending rate of 8%</b>
30/04/2023	8	31	10.00%	\$2,301,011.54	

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### Summary

New Search



Waybill Number **2624158095**

Thursday, June 01, 2023 at 10:42

1 Pieces

Delivered:  
Get Signature Proof of  
Delivery

Origin Service Area:

LIVERPOOL - UK

Destination Service Area:

LAGOS - NIGERIA

Thursday, June 01, 2023

Location

Time

Pieces

14

Delivered

LAGOS - NIGERIA

10:42

1 Pieces

JD014600010926993240

POLITE NIGERIA

**☆ 2624166112**  
Ready to Ship  
Shipping Today

Shipment Date **May 30, 2023**  
Delivery Option **EXPRESS WORLDWIDE**  
Description **Documents - gen...**

Created By  
dhl@plexus-cotton.com

Ship From  
**Plexus Cotton Ltd**  
David Edwards  
Liverpool, United Kingdom

Ship To  
**Jibola Ajitena Legal**  
Ajibola Ajitena Esq  
IKOYI, Nigeria

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**☆ 2624158095**  
Ready to Ship  
Shipping Today

Shipment Date **May 30, 2023**  
Delivery Option **EXPRESS WORLDWIDE**  
Description **Documents - gen...**

Created By  
dhl@plexus-cotton.com

Ship From  
**Plexus Cotton Ltd**  
Matt Horner  
Liverpool, United Kingdom

Ship To  
**Dangote Farms Limited**  
Managing Director  
IKOYI, Nigeria

POLITESS NIGERIA

88

Your shipment 2624158095 was delivered on 01 June 2023 at 10.42

Signed

grace ogbole

Signature

Destination Service Area

LAGOS  
NIGERIA

Shipment Status

Delivered

Piece ID(s)

JD014600010926993240

POLITICS & NIGERIA