

**IN THE COREN ENGINEERING DISCIPLINARY TRIBUNAL**  
**HOLDEN IN ABUJA**

ON ..... THE ..... DAY OF ....., 2021

BEFORE THE PANEL:

- |                                                                                                                             |                       |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1) ENGR. ALI. A. RABIU, FNSE, F. ASCE<br><i>(President of Council for the Regulation of Engineering in Nigeria - COREN)</i> | CHAIRMAN              |
| 2) ENGR. BABAGANA MOHAMMED FNSE                                                                                             | MEMBER                |
| 3) ENGR. TECH. AHMAD, MUHAMMED YABAGI, FNATE                                                                                | MEMBER                |
| 4) ENGR. TANKO GYANG, ENGN. CRAFTSMAN, FNAEC                                                                                | MEMBER                |
| 5) ENGR. PROF. SADIQ Z. ABUBAKAR, FNSE                                                                                      | MEMBER                |
| 6) ENGR. MRS. MARGARET OGUNTALA, FNSE                                                                                       | MEMBER                |
| 7) ENGR. DR. FELICIA AGUBATA, FNSE                                                                                          | MEMBER                |
| 8) ENGR. CYRIL O. ONYENEKE, MNSE                                                                                            | MEMBER                |
| 9) ENGR. NASIRU A. DANTATA, MNSE                                                                                            | MEMBER                |
| 10) ENGR. ADEKUNLE MOKUOLU, FNSE                                                                                            | MEMBER                |
| 11) ENGR. FELIX O. EBUZOEME, MNSE                                                                                           | MEMBER                |
| 12) ENGR. PROF. JOSEPH O. ODIGURE, MNSE                                                                                     | SECRETARY/TO TRIBUNAL |
| 13) PRINCE L.O. FAGBEMI, IAN, FCIArb (UK)                                                                                   | ASSESSOR              |

**CHARGE NO.: EDT/ABJ/COREN/1/2021**

**BETWEEN**

**THE COUNCIL FOR THE REGULATION OF  
ENGINEERING IN NIGERIA (COREN)**

- **COMPLAINANT**

**AND**

**ENGR. MATTHEW KAYODE AJIBADE**

- **RESPONDENT**

## JUDGMENT

### (DELIVERED BY ENGR. ALI. A. RABIU, FNSE. F. ASCE, PRESIDENT OF COUNCIL FOR THE REGULATION OF ENGINEERING IN NIGERIA, CHAIRMAN COREN ENGINEERING DISCIPLINARY TRIBUNAL)

The Respondent in this charge, Engr. Matthew Kayode Ajibade (Civil Engineer) (hereinafter referred to as "the Respondent"), was arraigned before this tribunal by the Council for the Regulation of Engineering in Nigeria (hereinafter referred to as "the Complainant") on a three (3) counts charge which are set out below:

#### **"COUNT ONE (1)**

That you Engr. Matthew Kayode Ajibade on or about the 5<sup>th</sup> day of July, 2019 in Uyo Silo Complex Akwa-Ibom State, within the jurisdiction of this Engineering Measures at Uyo Silo Complex, Akwa-Ibom State using your design that was not subjected to checks and approvals by superior officers/Engineers, when you reasonably and professionally ought to have known that the said act is unprofessional to wit (professional misconduct) and thereby committed Professional Misconduct contrary to Rules 2.1.2(a) of the Engineers' Code of Conduct (Revised Edition 2017) and section 18 of the Engineers (Registration, etc.) (Amendment) Act, 2018 and punishable under the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017).

#### **COUNT TWO (2)**

That you Engr. Matthew Kayode Ajibade on or about the 5<sup>th</sup> of July, 2019 in Uyo Silo Complex, Akwa-Ibom State, within the Jurisdiction of this Engineering Disciplinary Tribunal, did knowingly rely on verbal instructions from the contractor, Zitts & Lords Limited without approved construction documents, carried out on the construction of the Ravin Control Measures at Uyo Silo Complex, Akwa Ibom State when you reasonably and professionally ought to have known that the said act is unprofessional to wit, professional misconduct and thereby committed Professional Misconduct contrary to Rules 2.1.1(a), 2.1.2.(b), 2.1.2.(c), 2.1.2.(d) of the Engineers' Code of Conduct (Revised Edition 2017) and Section 18 of the Engineers (Registration, etc.) (Amendment) Act, 2018 and punishable under Section 16 of the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017).

#### **COUNT THREE (3)**

That you, Engr. Matthew Kayode Ajibade on or about 5<sup>th</sup> July, 2019 in Uyo Silo Complex, Akwa-Ibom State, within the Jurisdiction of the Engineering Tribunal, did knowingly embark on the sale of Laterite belonging to your employer, Zitts & Lords Limited without authorization and approval when you reasonably and professionally ought to have known that the said act is unprofessional to wit (professional misconduct) and thereby committed Professional Misconduct. Contrary to Rules 2.5(d)(e) and (f) of the Engineers' Code of Conduct (Revised Edition 2017) and section 18 of Engineers (Registration, etc.) (AMENDMENT) Act, 2018 and punishable under section 16 of the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017).

Upon arraignment on the 24<sup>th</sup> march 2021, the Respondent pleaded not guilty to the three counts and at the trial the complainant called 2 (two) witnesses and tendered documents in proof of the three counts. Furthermore, the Defendant gave evidence in his Defence

Evidence of the complainant's witness

PW1 - Keinde Ogundipe

The evidence of PW1 is that the Respondent, Matthew Ajibade, was employed as a civil engineer and one of the project engineers at Zitts & Lords Limited, to supervise and implement the project that was awarded to the company by the Federal Ministry of Agriculture, Abuja. That the project was a ravine-control project, which meant that it was an erosion-control project against the erosion that was threatening some Federal Government Silo facilities in Uyo.

That upon the award of the contract, a Consultant from the Federal Ministry of Agriculture and Rural Development provided the company with a drawing to aid in the execution of the project as it is the practice. PW1 narrated how the Respondent as the engineer on site, represented to the Company that he could not follow that drawing as the drawing provided by the Ministry of Agriculture, Abuja was not practicable and so he came up with his own drawing. He further narrated how the respondent then proceeded to execute the project using his drawing without obtaining any written approval from the Federal Ministry of Agriculture, Abuja for the use of his design, as it is the standard procedure. That upon the completion of the work, using the Respondent's design, the fence and drainage had a lot of cracks and the retaining wall collapsed. That instead of finding a way of remedying the said error, he put up a letter of resignation thereby leaving the Company to take care of the problem he had caused.

PW1 further narrated how the company acquired a land of 15,000 sqm on lease for the purpose of providing basic laterite material needed for the project work and how the respondent sold laterite belonging to the Company generated from the borrow-pit on the site of the project to the community without seeking nor obtaining the consent and/or permission of the company. The Respondent failed to account for the sale of the laterite and when the company confronted the Respondent with this development and determined the worth of the laterite that was sold at **₦800,000.00 (Eight hundred thousand Naira)** they (The company and the Respondent) agreed to deduct **₦50,000.00 (Fifty Thousand Naira)** from his monthly salary in restitution of the laterite he had sold without the consent of his employer. That the arrangement reached by the company and the Respondent ~~of deducting fifty thousand naira from the monthly salary of the respondent~~ ~~and the Respondent~~ ~~agreed to deduct fifty thousand naira from his monthly salary~~ ~~the Respondent tendered his resignation from the employment of Zitts & Lords Limited. He has since then refused to pay any more money than the initial ₦50,000.00 mentioned above.~~

PW1 concluded by stating how Respondent's employers brought a petition against him to the Council for The Regulation of Engineering in Nigeria (COREN) – the Complainant herein, for professional misconduct and negligence resulting in the loss of **₦13,370,300.00 (Thirteen Million, three hundred and seventy thousand, three hundred naira)** being the cost of the remedial work done on the project which collapsed upon completion by the Respondent as well as the unauthorized sale of the laterite on site.

PW1 tendered the employment letter given to the Respondent marked as Exhibit No1, the Federal Government of Nigeria drawing/design of Ravine control dated July 2015 marked as **Exhibit No. 2**, the drawing/ design which the Respondent came up with marked as **Exhibit No. 3**, the initial lease agreement with the community and the addendum in respect of a piece of land covering 15, 000 sqms marked as **Exhibit Nos. 4 and 4A**, a petition to COREN dated 2<sup>nd</sup> July 2019 marked as **Exhibit No. 5**, the contract Agreement between the Federal Ministry of agriculture Conda & I international Limited marked as **Exhibit No. 6**, an Email containing the resignation letter of the Respondent together the certificate of compliance marked as **Exhibit Nos. 7 and 7A** respectively, an Email containing the information with respect to the issue of laterite and the certificate of compliance marked as **Exhibit Nos. 8 and 8A**, respectively.

During cross- examination, PW1 stated that Respondent was allowed to interface with his employer but with a supervisor. That an email of 28<sup>th</sup> February, 2009 was addressed to the ministry of Agriculture and Rural development and he was copied. He also confirmed that there existed an email containing the proposed working drawing for the ravine project and same was copied to him and he was told by the Respondent that the company did not only orally approve the said proposed working drawing Respondent had come up with but also gave him necessary facilities to carry out the project as per the said working drawings and the Company was paid upon completion of the project. He later concluded by stating that he was made to make a restitution of the Sum of ₦300,000.00 with respect to the laterite he sold without authorization but he only paid ₦50,000.00 and that if he had completed the payment of the said sum, no petition would have been brought against him.

PW2- Engr. Proff S.J Mallo

The evidence of PW2 is that he is the Chairman of the investigating panel appointed by COREN by virtue of Sect 15(3) of the Engineers Amended Act 2018. That in July, 2019 the Council presented a petition from Zitts and Lords Limited regarding a complaint containing to issues to wit- (1) the professional negligence of the Respondent and (2) the Respondent's act of selling laterite without any authorization. Both parties were invited and each of the parties produced oral and written evidence. After a thorough and dispassionate appraisal of the evidence of both parties, the findings of the panel were that;

- 1) The redesign of the Ravine project was never approved by the Ministry of Agriculture;
- 2) Respondent turned himself to be the designer and the checker of the design which is not a standard engineering practice; and
- 3) Respondent engaged in the sale of his company's product without approval of his employers. That based on the said findings, it was concluded that a prima facie case had been established against the Respondent

PW2 also tendered a petition from Zitts and Lords dated 2<sup>nd</sup> July, 2019 marked as **Exhibit No. 9**, Design from Federal Ministry of Agriculture and Rural Development dated July, 2018 marked as **Exhibit No. 10**, Planned view of the Ravine design draw and checked by the Respondent dated February, 2019 marked as **Exhibit No. 11**, email sent on the 25<sup>th</sup> September, 2019 from Respondent marked as **Exhibit No 12**, contact award letter from Federal Ministry of Agriculture and Rural Development to Conda and International limited dated 12<sup>th</sup> September, 2018 marked as **Exhibit No. 13**; email from Respondent sent on the 26<sup>th</sup> September, 2019 from Respondent marked as **Exhibit No. 14**, offer of provisional employment as a civil engineering addressed to Respondent marked as **Exhibit No. 15**; a cross section Ravine with the Number 2H written on top marked exhibit no 16; email from Respondent dated 21<sup>st</sup> December, 2018 marked Exhibit NO 17; Handwritten notes dated 3<sup>rd</sup> of May, 2019 marked as **Exhibit No. 18**; proceedings of COREN investigating Panel signed by PW2 Marked 19; and COREN report of Engineering investigation Panel (EIP) dated 4<sup>th</sup> September 2020 marked as Exhibit No 20.

During cross examination, PW2 was taken through their recommendation and he confirmed that it was not within their power to ascertain the financial loss being claimed by the company. That no document known as a certificate of investigation was shown to him during investigation and that if same had been shown to him, their conclusion would not have been different. He concluded by confirming the evidence of Respondent before them during investigation to the effect that the Company gave oral approval to him to come up with a new design and that the design was submitted to the Ministry of agriculture and Rural development and same was validated

**Evidence of the Respondent (Mr Kehinde Ogundipe)**

The evidence of the Respondent is that the allegations contained in the charge against him are untrue and incorrect. That the idea of coming up with a new design was not his but that of Mr. Kalu Uche who was also the internal consultant of the Company. That upon the request by the Ministry of Agric engineer- Engr Sylvanus Okw... that respect was forwarded to the company and PW1 was copied being the chief Operating Officer. That he came up with the said drawing and the drawing was approved in writing. That he was called by the PW1 that written approval was obtained by the company- Zitts and lords Nigeria limited itself. Following this, he was instructed to commence operation on the site, using the new approval. That to

buttress this assertion, a week after then a team of supervising engineers from the Federal Ministry of Agriculture visited the site to check the work being done. The Respondent also confirmed selling the said laterite but stated that the proceeds therefrom were used in settling the communal issues which prevented them from progressing in executing the project. That in spite the explanation to the Company, the sum of **₦50,000.00** was deducted from his salary two times.

During cross-examination the Respondent confirmed that he was meant to be a site engineer but he authored and designed Exhibit 3 and same was the one applied for the project. He also confirmed that he was not engaged as a consultant for that project but Ralafe Integrated company limited were the design consultants for the project. Respondent further confirmed that the column for the approval was blank but the column for approval in Exhibit 2 was filled. That the proceedings of the Panel was sent to him. That the evidence given during panel investigation is not different from his testimony before the tribunal. However, when confronted with pages of the proceeding of the investigation panel contradicting his testimony before the tribunal regarding the issue of approval of the drawing applied in executive the project in question, the Respondent denied making same. He also confirmed that by Exhibit 8 he had a prior knowledge of the deductions of the sum of **₦50, 000** from his salary

Respondent also tendered an email message together with the certificate of compliance marked as **Exhibit No. 21** and an engineering personnel declaration dated 3<sup>rd</sup> January 2017 marked as **Exhibit No. 22 and 23** respectively.

#### **ISSUES FOR DETERMINATION**

Upon the trial which was concluded on the 19<sup>th</sup> day of May, 2021, parties were ordered by the Tribunal to file their respective final addresses. The Respondent filed his Final Address dated the 28<sup>th</sup> day of May, 2021 and in response, the Complainant filed its Final Address. The Respondent also filed a Reply on Points of law.

In the respondent final address, counsel for the Respondent F. R. Onoja, Esq formulated these two issues for determination:

- 1) As a preliminary point, whether the allegation stated in each of the three counts preferred against the Respondent in the charge disclose any offence known to law particularly Rules 2.1.2 (a) of the Engineers code of conduct (revised edition 2017) and Section 18 of Engineer (Registration etc.) (Amendment) Act 2018 and Rule 3.0 of the engineers' code of conduct (Revised Edition 2017) thereby making these charges liable to be quashed by this Honourable tribunal
- 2) In the alternative whether the complaint has any substance whatsoever and should not be dismissed accordingly.

In the final address of the complainant on the other hand A.A. Osara, Esq posed only one issue for determination to wit:

Whether the prosecution established the case of professional misconduct against the Respondent

From the evidence before the court and the submissions of both learned counsel the tribunal is of the opinion that the two issues call for the determination in this matter are;

- 1) whether the allegation stated in each of the three counts preferred against the Respondent in the charge disclose any offence known to law particularly Rules 2.1.2 (a) of the Engineers code of conduct (revised edition 2017) and Section 18 of Engineer (Registration etc.) (Amendment) Act 2018 and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017) thereby making these charges liable to be quashed by this Honourable tribunal; and
- 2) Whether the prosecution established the case of professional misconduct against the Respondent

### ISSUE ONE

The Respondent in its final address raised a Preliminary objection to the validity of the charge and urge the Tribunal to quash same. In support of its argument in urging the Court to dismiss the charge, the Respondent painstakingly reproduced the provisions of Rules 2.1.2(a) of the Engineers' Code of Conduct (Revised Edition 2017) and Section 18 of the Engineers (Registration etc.) (Amendment) Act, 2018 and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017) under which the Respondent was charged, spanning through pages 9 – 14 of his final address and argued further that the charges with which he is charged are not specifically provided for, also further arguing that the situation raises a constitutional issue, calling for resolution the provisions of Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which is to the effect that a person cannot be placed on trial for an offence or conduct that is not clearly written out in law. The Respondent cited the cases of **AOKO V. FAGBEMI (1961) 1 ALL NLR 400**; **OKAFOR V. LAGOS STATE GOVERNMENT & ANOR (2017) 4 NWLR (PT. 1556), P. 436**; **ASAKE V. NIGERIAN ARMY COUNCIL & ANOR (2007) 1 NWLR (Pt. 1015) 428**.

The Respondent concluded by arguing that the Respondent has not committed any offence known to law and cannot be tried for any such offence and he subsequently urged the Honourable Tribunal to dismiss the charges and quash the entire proceedings against the Respondent.

He argued the court should find that the preliminary objection should have been raised either before or soon after the charges were read to the Respondent. He stated that where an accused person pleads not guilty to a charge, he will be deemed to have put himself upon his trial. He stated that any objection to a defective charge must be taken immediately after the charge has been read to

the accused person and not any time after. In this regard, the Complainant cited the case of **MUMINI V. FRN (2018) LPELR - 43904; HARKA V. FRN (2018) LPELR - 44453 (CA)**.

In response to the Respondent's objection, the Complainant argued that the said objection was misconceived and urged the Tribunal to discountenance it. Complainant submitted further that the objection of the Respondent is an afterthought and that it was designed to avoid responsibility of his unethical and improper behavior. The Complainant also stressed the fact that the Tribunal's jurisdiction is not one of strict criminal nature but at best a quasi-criminal proceeding as it is a disciplinary Tribunal. Complainant also emphasized on the fact that matters before a disciplinary are not bound by the legal technicalities or the strict provisions of the Criminal Procedure Act and the Administration of Criminal Justice Act and the Criminal Code. He stated further that the rules that are obtainable in a disciplinary Tribunal are not the same as a formal criminal trial, also cited authorities to the effect that charges before a disciplinary tribunal are not the same as a formal charge before a criminal court. He cited the cases of **DENLOYE V. MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY COMMITTEE (1968) LPELR-25526(SC); OKIKE V. LPDC (2005) 15 NWLR (Pt. 949) P. 471; NDUKWE V. LPDC (2007) LPELR - 1978 (SC); MEDICAL AND DENTAL PRACTITIONERS' DISCIPLINARY TRIBUNAL V. OKONKWO (2001) LPELR - 1856 (SC)**.

This is a question of law and by virtue of the provisions of Section 4(1) & (2) of the Second Schedule of Engineers' (Registration etc.) (Amendment) Act, 2018 of which provides for such questions to be referred to the appointed legal assessor. We referred the issue to the legal assessor of the Tribunal who has provided us with a legal opinion on the above submissions of the parties before us. I hereby read the said legal opinion on the question of law accordingly. It is as follows:

**Introduction:**

*Pursuant to section 4(1) and (2) of the 2<sup>nd</sup> Schedule to the Engineers Registration, Etc Act, CAP E11, 2004 (as amended), my legal opinion has been sought by the tribunal on the question of law regarding the competence of the 3-count charge as presently constituted against ENGR. MATTHEW KAYODE AJIBADE.*

*The following represents my legal opinion on the issue.*

**Legal Opinion**

*The charge against the Respondent stated thus:*

**COUNT ONE**

*That you Engr. Matthew Kayode Ajibade on or about the 5th day of July, 2019 in Uyo Silo Complex Akwa-Ibom State, within the jurisdiction of this Engineering Measures at Uyo Silo Complex, Akwa-Ibom State using your design that was not subjected to checks and approvals by*



superior officers/Engineers, when you reasonably and professionally ought to have known that the said act is unprofessional to wit (professional misconduct) and thereby committed Professional Misconduct contrary to Rules 2.1.2(a) of the Engineers' Code of Conduct (Revised Edition 2017) and section 18 of the Engineers (Registration, etc.) (Amendment) Act, 2018 and punishable under the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017).

**COUNT TWO (2)**

That you Engr. Matthew Kayode Ajibade on or about the 5th of July, 2019 in Uyo Silo Complex, Akwa-Ibom State, within the Jurisdiction of this Engineering Disciplinary Tribunal, did knowingly rely on verbal instructions from the contractor, Zitts & Lords Limited without approved construction documents, carried out on the construction of the Ravin Control Measures at Uyo Silo Complex, Akwa Ibom State when you reasonably and professionally ought to have known that the said act is unprofessional to wit, professional misconduct and thereby committed Professional Misconduct contrary to Rules 2.1.1(a), 2.1.2.(b), 2.1.2.(c), 2.1.2.(d) of the Engineers' Code of Conduct (Revised Edition 2017) and Section 18 of the Engineers (Registration, etc.) (Amendment) Act, 2018 and punishable under Section 16 of the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017).

**COUNT THREE (3)**

That you, Engr. Matthew Kayode Ajibade on or about 5th July, 2019 in Uyo Silo Complex, Akwa-Ibom State, within the Jurisdiction of the Engineering Tribunal, did knowingly embark on the sale of Laterite belonging to your employer, Zitts & Lords Limited without authorization and approval when you reasonably and Professionally ought to have known that the said act is unprofessional to wit (professional misconduct) and thereby committed Professional Misconduct Contrary to Rules 2.5(d)(e) and (f) of the Engineers' Code of Conduct (Revised Edition 2017) and section 18 of Engineers (Registration, etc.) (AMENDMENT) Act, 2018 and punishable under section 16 of the same Act and Rule 3.0 of the Engineers' Code of Conduct (Revised Edition 2017)".

As can be seen, from the 3 counts, and by way of summary:

Count 1 alleges that, Respondent while working on a construction project used a design prepared by him, which was not subjected to checks and approvals by Superior officers/Engineers, thereby breaching Rules 2.12(a) of the Engineers' Code of Conduct, 2017, Section 18 of Engineers Registration Act, 2018 and Rule 3.0 of Engineers' Code of Conduct, 2017. It also alleges that, such act amounted to professional misconduct.

Count 2 alleges that Respondent while undertaking the construction work relied on verbal instructions from the contractors without approved construction documents, which action amounts to misconduct contrary to Rules 2.1.2(a),

2.1.2(b), 2.12(c), 2.12(d) of Engineers' Code of Conduct, Section 18 of Engineers Registration Act; as well as Rule 3.0 of Engineers' Code of Conduct.

Count 3 alleges that, while undertaking the construction project, Respondent without authority/permission of his employer sold laterite belonging to the employer which action amounts to professional misconduct contrary to Rules 2.5(d)(e) and (f) of the Engineers' Code of Conduct, Section 18 of the Engineers Registration Act as well as Rule 3.0 of the Engineers' Code of Conduct.

The Respondent in his final address raised a preliminary point of objection to the effect that the counts preferred against him, particularly the laws under which the counts are preferred are unknown to law.

Respondent cited in aid of his objection Section 36(12) of the 1999 Constitution to the effect that, no one can be tried for an offence not created by law. Reliance was placed on several judicial authorities including AOKO vs. FAGBEMI (1961) 1 ALL NLR 400; ASAKE vs. NIGERIAN ARMY COUNCIL (2007) 1 NWLR (PT. 1015) 428; AND OKAFOR vs. LAGOS STATE GOVERNMENT & ANOR (2017) 4 NWLR (PT. 1556) PAGE 436, PARAS D – H.

In reacting to the objection, complainant contended that, it is too late in the day to raise such an objection at the address stage. That Respondent had waived his right to object, having pleaded not guilty to the charge. Reliance was placed on several judicial authorities, including NDUKWE vs. LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE (2017) 5 NWLR (PT. PART 1026) PAGE 1 @ PAGES 26 - 28; DANTOYE vs. MEDICAL & DENTAL PRACTITIONERS DISCIPLINARY COMMITTEE (1968) LPELR – 25526 (SC); MEDICAL & DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL vs. OKONKWO (2001) LPELR – 1856 (SC); AND OKIKE vs. LPDC (2005) LPELR – 2450 (SC)

Without wasting time, one can safely state that the position taken by the complainant and the authorities cited to deflate the raising of the objection cannot avail him, and are untenable. The authorities relied on were decided under specific provisions of the Criminal Procedure Act (otherwise known as "C.P.A") or Administration of Criminal Justice Act (otherwise known as "ACJA") (each of) which specifically provides for the time to raise certain types of objections. The CPA or ACJA are not applicable to the instant objection.

At any rate, given the nature of the objection of the Respondent which has the effect of challenging jurisdiction, it can never be too late to raise the objection. An objection to jurisdiction is always a live issue and is not waivable. See: TAWAKALITU V. F.R.N. (2011) 9 WRN.

Granted that, Section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) refers to criminal proceedings, which the

Complainant argued will not be of relevance before a disciplinary panel which is merely an administrative panel, the fact remains that, a person (and this includes the Respondent in this case) is entitled to fair hearing by virtue of Section 36 of the 1999 Constitution. Fair hearing also connotes fair trial. Under the rule of fair hearing or fair trial, a person cannot be damnified for an act which is not recognized as reprehensible under the law. See: CHIEF OLABODE GEORGE V. FRN (2014) 5 NWLR (PT. 1399) page 120 @ 21 – 22, where the Supreme Court held thus:

*"It is also of moment to quote section 36(12) of the 1999 constitution. It provides as follows:*

*'Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law: and in this subsection a written law refers to an Act of the National Assembly or a Law of a state, any subsidiary legislation or instrument under the provision of a law'.*

*It is clear from the reproduced portion of Exhibit P3, as above, that it contains guideline which forbids splitting of contracts by any officer. It stipulates that breach of same shall be met with disciplinary action. This may be in form of administrative action against an officer who breaches the rules. Disobeying exhibit P3 is not made an offence by any Act of the National Assembly or law of a State House of Assembly or even the contents of exhibit P3 itself. Even the, disobedience of exhibit P3 is nowhere penalized in a written law. Any conduct that must be sanctioned must be expressly stated in a written law to wit: an Act by the National Assembly. That is what section 36(12) of the 1999 Constitution provides. Such conduct should not be left to conjecture. As well, it cannot be inferred by the court. It occurs to me that section 203 of the Criminal Code is not in tune with the dictate of section 36(12) of the 1999 Constitution. That being the position, the charges filed under section 203 of the said Code ostensibly for splitting contract in disobedience of lawful order by constituted authority cannot stand. I maintained the same stance when faced with a similar scenario in ASAKE V. NIGERIAN ARMY COUNCIL (2007) ALL FWLR (PT.396) 731 AT 746 –747, (2007) 1 NWLR (PT. 1015) 408. With due sense of purpose and humility. I stand by it." Underlining for emphasis by me)*

*Although the Respondent has contended that the 3 allegations against him are not cognisable as reprehensible conducts, hence the charge must be quashed, I am of the view that the position taken by the Respondent is not totally correct. Although, no law has yet codified the conducts alleged in counts 1 and 2 as being reprehensible, same cannot be said of count 3.*

*The Complainant has not been able to show that, the allegations levelled against the Respondent are expressly and specifically provided for in law. He has,*

however, decided to use professional misconduct as a "blanket concept" to cover the alleged act of the Respondent. Section 22 of the Engineers Registration Act, 2004 (as amended in 2018) gives specific scope to the concept of professional misconduct for an Engineer. That scope cannot be extended or left at the whims and caprices of the Disciplinary Body for Engineers. The definition of professional misconduct which is provided/given in section 22 must be interpreted *contra proferentem*, that is, interpreted in such a way as to resolve any ambiguity against the maker of it or whoever seeks to rely on it. The *contra proferentem* rule, also known as "interpretation against the draftsman", is a doctrine of contractual interpretation which provides that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interest of the party who provided the wording, in this case, the Complainant. That being the situation, it is not difficult to appreciate that the specific allegations levelled against the Respondent in counts 1 and 2 cannot be accommodated within the scope of professional misconduct envisaged in Section 22 of the Engineers Registration Act, aforesaid.

I must say that in coming to this conclusion, I am not oblivious of item (a) of the scope of professional misconduct under Section 22 of the law which provides:

"(a) Deliberately fails to follow the standards of conduct and practice of engineering profession set by the council."

This now takes to or compels me to ask:

"What then are the "standards of conduct and practice set by the council"? The answer I believe is to be found in the Engineers' Code of Conduct. Painstakingly looking at the code of conduct, I have no difficulty in saying that, there is no provision that clearly matches or covers the allegations in Counts 1 and 2 in the said code. What is more, no other evidence or regulation or document exists establishing "standards of conduct and practice of engineering profession set by the council".

Furthermore, before an act of the Respondent can be adjudged as amounting to misconduct, such an act must be a reprehensible action frown against within the ambit of what the law specifically pigeon-holes as 'misconduct'. By the specific manner in which "professional misconduct" has been defined, recourse to decided authorities as to the scope of misconduct in any other profession will be irrelevant. This is because section 22 of the Engineering Registration Act, 2004 (as amended 2018) is couched in every restrictive term which does not allow an incursion or journey into any other law or regulation except that which it has specifically mentioned.

From the totality of the above, therefore, it is my view that for as long as the complainant fails to show that there is a law, regulation or code of conduct which provides that:

- i) Where a junior Engineer prepares a drawing, same must be vetted or approved by a senior engineer;
- ii) Oral instruction cannot be relied upon by an Engineer to a project; or that he cannot rely on his employer's oral confirmation of approval of engineering drawing/design.

In the circumstance, it will be very difficult for Counts 1 and 2 to stand against the Respondent.

Accordingly, it is advised that, counts 1 and 2 are incompetent, and should be struck out.

### COUNT 3

The allegation here is that of unlawful sale of laterite material which belongs to the employer of Respondent. Section 22 of the Engineers Registration Act, 2004 (as amended in 2018) provides for the scope of misconduct and it can be used to accommodate "standards of conduct and practice of Engineering profession set by the council". The Code of Conduct for Engineers is one of the standards envisaged.

In paragraph 2.5(e) of Engineers' Code of Conduct, an Engineer is mandatorily required to discharge his duties to his client or employers with utmost truthfulness. Where an Engineer acts contrary to this standard, it will be unethical and professional misconduct. Allegation of a breach of this duty in any manner can be conveniently accommodated under this head as a professional misconduct.

If there is evidence that Respondent sold laterites belonging to his employer without the permission or authority of the employer that would qualify as professional misconduct under the Act and the code. This will clearly amount to, or constitute an act unbecoming of a professional engineer. It will, therefore, qualify as a misconduct. It is, therefore, advised that this count is therefore competent and valid. What is left is for the tribunal to consider the evidence before it and come to a decision whether the complainant has proved the count.

This tribunal can competently look into the complaint of professional misconduct and decide same on the merit. In my humble view, there is no allegation of commission of criminal offence, disclosed against the Respondent in count 3 of the charge, as presently constituted, that would warrant a denial of same in that regard by the Respondent. This clearly marks the distinction between this case and the cases of GARBA vs. UNIMAID (1986) 1 NWLR (PT. 18) 550 @ 207; FCSC vs. LADOYE (1989) 2 NWLR (PT. 106) 652 @ 679; DENLO (2000) 12 MEDICAL & DENTAL PRACTITIONER DISCIPLINARY COMMITTEE (1986) 1 ALL NLR 306; SOFEKUN vs. AKINYEMI (1980) 5 - 7 SC 1, where the common feature and the golden thread in those cases, is that there is an allegation of commission of criminal offences expressed in the charge, which has been denied by the accused.

In any event, assuming without conceding that the count as couched disclosed the commission of an offence or crime, the correct position of the law is as postulated by the Supreme Court, confronted with a similar scenario and argument in *EZE vs. SPRING BANK PLC* (2011) 12 SC (PT. 1) 173 @ PAGE 196 – 197, thus:

*"The complaint of the Appellant in the present issue is that what the court below termed as breaches committed by the Appellant are in fact criminal allegation of forgery and foreign exchange malpractices for which the Appellant ought to have been charged to court and prosecuted before proceeding with his dismissal. Unfortunately for the Appellant, this is not the present position of the law governing disputes between master and servant in the interpretation of contracts of employment. The correct position of the law is stated by this court in the case of FRANCIS C. ARINZE V. FIRST BANK OF NIGERIA LTD. (2004) 5 S. C. (PT. 1) 160; (2004) 12 NWLR (PT. 888) 663 at 673 where Belgore, JSC., later CJN., said:*

*'This is a simple case of employee and employer not covered by statutory rules as in Federal Civil Service Commission & Ors. V. J. O. LAOYE (1989) 4 S. C. (PT. II) 1; (1989) 2 NWLR (PT. 106) 652 or GARBA V. UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (PT. 18) 550. The latter case has had many irrelevant references as holding that once a crime is detected the employer cannot dismiss an employee unless he is tried and convicted first. This is unfortunately an erroneous interpretation of that judgment. In statutory employment, as in private employment, the employer can dismiss in all cases of gross misconduct. In this case, the Appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he in fact was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital which never took place; he in this instance forged a doctor's certificate. I find no merit in this appeal.'*

*Applying this decision to which I am no doubt bound, to the present case which is virtually on all fours with the present case where the Appellant was also dismissed for gross-misconduct arising from his gross violation of the foreign exchange regulation to remit foreign exchange abroad to his wife, I am of the view that it was necessary for the Respondent to have waited for the prosecution of the Appellant for the criminal offences disclosed in his various part of gross-misconduct before taking steps to discipline him by proceeding to dismissal. In other words, it is no longer the law that where an commits act of gross-misconduct against his employer which acts also disclose criminal offences under any law, the employer has to wait for the outcome of the prosecution of the employee for such criminal offences before proceeding to discipline the employee under the contract of service or employment."*

The above decision clearly settles it, that it is no longer the law that where an act of gross misconduct also discloses criminal offence(s) under any law, the panel has to wait for the outcome of the prosecution of same before proceeding to discipline such an individual.

Furthermore, still assuming without conceding that the count discloses a criminal offence, it has also been held by the Apex Court that, where from the evidence before the panel, the Respondent admitted committing the offence, the panel can legitimately infer same. It is important to distinguish between a finding to be made on an allegation of criminal offences from a finding on an admission of the commission of criminal offences. Whereas the former involves a trial, the latter does not. An administrative body which acts on the admission of guilt by the accused has not tried the accused, has not violated the provision of the constitution, and cannot be said to have usurped the constitutional jurisdiction of the court. See: DANGTOE vs. C.S.C. PLATEAU STATE (2001) 9 NWLR (PT. 717) 132 @ 158.

All the decisions cited and relied upon by the Respondent herein in contending that count 3 should be put before the National Industrial Court for adjudication, before taking any disciplinary action arising from the complaint alleged against him, have not, and did not consider, nor decide a situation where the administrative body has proceeded to exercise its jurisdiction to impose sanctions where the person accused has admitted the commission of the offence. In this wise, the case of NDUKWE vs. LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE (2017) 5 NWLR (PT. PART 1026) PAGE 1 @ PAGES 26 - 28, is apt. It was held in that case, that:

"Now, granted that I am wrong in holding that the complaint against the appellant does not charge him with the commission of the offence of stealing by conversion, which I very much doubt, can it still be said that the matter ought first to have been referred to and settled by a court of competent jurisdiction before disciplinary proceedings can be commenced against the appellant? The relevant law is as settled by this court in the case of Dongtoe V. C.S.C Plateau State (2001) 9 NWLR (PT. 717) 132 at 159 per KARIBI – WHYTE, JSC, inter alia as follows:

"The contention of the appellants is that even on the facts respondents should have waited for the criminal prosecution of the appellant before taking any disciplinary action arising from the criminal offences alleged against him. The decisions of F.C.S.C V. Laoye (supra); Garba V. University of Maiduguri (supra) UNITHMA V. NDC (1994) 8 NWLR (PT. 363) 376 were cited and relied upon. These are decisions where the allegations of the commission of criminal offences have been denied and disputed. In such cases the burden rests on the accuser to prove the commission of the alleged criminal offences beyond reasonable doubt. This burden can only be discharged by a court established

by law and constitutionally vested with powers to exercise criminal jurisdiction. The decisions have not considered and have not decided the situation where its jurisdiction to impose sanctions where the person accused has admitted the commission of criminal offences.

It cannot be disputed that where there is an admission of the commission of the criminal offences alleged the question of establishing the burden on the accuser to establish the commission of the offence does not arise.

Accordingly, the question of violating the rights of the accused is not an issue. It seems to me preposterous to suggest that the administrative body should stay the exercise of its disciplinary jurisdiction over a person who had admitted the commission of the criminal offences. The inevitable inference is that criminal prosecution should be pursued thereafter before the disciplinary proceedings should be taken. I do not think the provision of the law and the effective administration contemplates or admits the exercise of such circuitous route to the discipline of admitted wrongdoings. It is established law that after a plea of guilty by the accused before the court exercising jurisdiction in respect of criminal offences, the court must formally proceed to conviction without calling upon the accuser to prove the commission of the offence by establishing the burden of proof required by law-

See S.218 of the Criminal Procedure Act. See also *R v. Wilson* (1959) SCNLR 462; (1959) 4 FSC 175. This is because the admission of guilt on the part of the accused had satisfied the required burden of proof'.

In the instant case there is nothing precluding the respondents from resorting to the relevant necessary administrative machinery and of imposing the appropriate applicable sanctions after the admission of the appellant of the commission of the offences of conspiracy and theft alleged against him had been established." Emphases supplied.

The above decision of this court clearly establishes the principle that where a charge of complaint against a person before an administrative tribunal or body doubles as a crime under the criminal code and the person accused has admitted committing the offence or offences the administrative tribunal or body has the jurisdiction to proceed to sanction the erring officer without transferring the matter for trial. The determination before a court of competent jurisdiction because the admission of guilt discharges the burden of proof placed by law on the accuser. This clearly is an exception to the general rule that where an allegation against a person before an administrative tribunal is also an offence under the criminal code, the administrative tribunal cannot hear



the complaint except the criminal aspect of same has been heard and determined by a court of competent jurisdiction as decided by this court in a number of cases including Garba v. University of Maiduguri supra, e.t.c". (Underlining for emphasis by me)

*In all, therefore, I am of the view and I advise that, as presently constituted;*

- a) *Counts 1 and 2 are incompetent and should be struck out; and*
- b) *Count 3 is valid."*

Looking at the opinion and/or advice of the Legal Assessor to the Tribunal, we are of the view that it is sound and acceptable to the Tribunal. we hereby accept same.

Consequently, we adopt the opinion of the Legal Assessor and on the strength of it, we hold that Counts 1 and 2 of the Charge are incompetent and are hereby struck out. However, count 3 of the Charge is competent and subsists and we now proceed to consider issue 2 set out above. In determining issue 2, we shall concern ourselves with Count 3 of the charge, Counts 1 and 2 having been struck out.

## **ISSUE 2**

*Whether the prosecution established the case of professional misconduct against the Respondent*

The learned defence counsel argued that the Respondent did not deny the allegation as contained in count 3 of the charge. He, however, explained that the laterite was sold in the best interest of his employer. Thus, Respondent should not be made liable for exercising good judgment for the benefit of his employer. He further posited that the sale of the laterite without the company's authorization is a matter for internal discipline of an erring staff and that the discipline was duly carried out by the company by deducting the sum of **₦100,000.00** from his salary over a two-months period. Counsel has argued that, charging the Respondent on this count amounts to bad faith. In support of his argument, learned defence counsel relied on the case of **OKEZIE V. CHAIRMAN MEDICAL AND DENTAL PRACTITIONERS' DISCIPLINARY TRIBUNAL (2010) 11 NWLR (Pt. 1206) 436 Para H.**

On the part of the Complainant's counsel, he argued that although Respondent pleaded not guilty to this charge, he nevertheless at trial admitted that he took and sold the lateritic materials of his employer without their authorization, permission and approval. On this score, he referred us to the case of **DERIBA V. STATE (2016) 11 F&LR 10948**.

He also referred us to the case of **Exhibit 8** - the email "Laterite scandal" dated 8<sup>th</sup> May, 2019 from Engineer Matthew Ajibode to Zitts and Lords Limited. He therefore urged the tribunal to not only discountenance the storyline of the Respondent regarding the reasons for the sale of the lateritic materials for being an afterthought but to also hold that the action of the

Respondent constitutes professional misconduct as defined under Section 22 of Engineers (Registration, etc.) (Amendment) Act, 2018.

## **RESOLUTION OF ISSUE 2**

It is pertinent to state that the offence as regards count three before this tribunal bothers on the issue of professional misconduct which was anchored on;

- a) ***The sale of laterite belonging to Zitts & Lords Limited without authorization and approval.***

In this third count, it is undisputed that the Respondent sold Laterite belonging to his employer, Zitts & Lords Limited without authorization and approval. In an attachment to Exhibit 5, the Respondent admitted to the fact that he was involved in the sale of laterite and black soil and what he did was to include therein his reasons for doing so.

***Barr. F.R. Onoja: Let's go to the third and the final Count. You were accused of selling laterite without authorisation and approval. Can you explain what happened?***

***Engr. M.K. Ajibade: Okay, thank you, Sir. On the issue of the laterite, let me lay the background of the scenario. My employer procured a burrowed pit within the community and unfortunately, the procurement was done with a wrong faction of the community which...***

***Barr. F.R. Onoja: Pause. Your employer procured a burrowed pit from a wrong faction of the community, now, continue.***

***Engr. M.K. Ajibade: Another faction of the community arose and said that the sold land belonged to them and it started riot several times. I made recommendations on how to resolve it as an Engineer on site. One of the recommendations I made was that a community liaising officer- a C.L.O should be appointed who would be liaising between the company and the community. But my company jettisoned it because of the payment that they needed to pay the C.L.O because from my past experience, and from my little experience, other projects I have done, I realised that C.L.O. is quite important when you have a community issue. You just have to be paying the guy a token and he will be liaising to take care of the issues we may be having. Sent a mail in respect to that but no attention was given. After that there were other crises within the community where I was being threatened with traditional injunctions, if I may describe it even without its real meaning, cannot risk my life if I don't know the meaning. They put a palm tree, across both road way to the site and the road way to the burrowed pit, several times saying that if we are not going to pay another money to the aggrieved party then, nobody will enter the burrowed pit. It got money they detained the other party in police***

station and after detention, they claimed that they had spent five hundred thousand (N500,000.00) on Police matter.

*Barr. F.R. Onoja: Pause, then go ahead.*

*Engr. M.K. Ajibade: All these claims were communicated to the office through Mr. Kehinde Ogundipe that this is the claim that the community people are laying. When we were not responding, it became a court case the case is still in court up to now in Ibionu village over there. Whenever we had any issue of such nature, since the company is not applying the fact of using the C.L.O, they do engage Dr. Peter who is the State Director of Ministry of Agriculture to intervene for them.*

*Barr. F.R. Onoja: Pause, then go ahead.*

*Engr. M.K. Ajibade: We had meetings several times with the village EXCO coordinated by the State Director. On this particular scenario where they were making a demand of five hundred thousand naira (N500,000.00) and the company is not ready for it, I was serious about the work; and rain was affecting the work as well. When the State Director intervened and there were complaints that Engineer is too stiff for them, my colleagues; I was not the only one the project, I had two other surveyors working with me, they were making agitations that I was too stiff for them. Earlier before then, they had been calling that Engineer, give us little laterite but I would reply that I can't do that for it was not my property. I can't give them any laterite. And they raised it in the meeting, when the State Director was the one coordinating the meeting that Engineer is one of the causes of the riot over this project. And these are the requests they have been making and I will be turning it down. I said yes, I cannot do that but he said emphatically but on this particular day, the site had been stalled for more than two weeks and rain was falling. They said that if they must allow us access to the site, we must make provision for those people that were being detained in the Police Station. The they spent five hundred thousand naira (N500,000.00).*

*Barr. F.R. Onoja: Go ahead, address it frontally, someone intervened and then what happened?*

*Engr. M.K. Ajibade: Then, the State Director stated that though this is not something that you have easy, but if this one will solve the crisis then, if you have excess materials and you have some black soil, which is not useful for the project, if the community is in need of it and that will bring peace to the community, then, he advised that we can take part of that in order to settle the aggrieved party of the community. But in this case, that was my advice, it is not*

everything-that is his own advice now. But my own emphasis had being that I can't do it without informing the company. His own advice-this is the one I am interpreting was that this is an excess material and black material-a waste material. I can use it to settle the community I yielded to his advice because he had been intervening for them to resolve the matter in the community. And truthfully speaking, just within a week, I used the money to settle the community. Anytime the community youth came to site to cause violence, I calmed them down and they allowed us to return to the site on that basis. My company was not aware of how and why they were able to agree for us to return to the site. One of our colleagues is still working with them. If there is any ambiguity with that, they can easily confirm from him if I am telling the truth or not. And that was how we were able to return on site. Along the line, my company release and they were angry. And they called me; I never denied it when they called me. I now told my Managing Director this is the reason behind it; I never issued the money for my own personal sake. And it was just within a week and he was very angry and I told him these are the issues I have; often times, I go to court, leave the site and go to court to go and attend to court matters outside. I just thought that this may be one of the ways to make the work easier for me because the Lawyer who is a Barrister in Abuja never showed up. I was the one still going to court to attend to the court cases. So, it was on that basis I agreed and when they were angry, I said these are the reasons and the Managing Director reasoned with me and he allowed me to continue work...

#### CROSS EXAMINATION

**Barr. A.A. Osara:** 14<sup>th</sup> of May, 2019. Now, let's go to the question of your sale of sand. You admitted before the Panel that you sold the earth materials without or you did not have the approval of your employers to do so.

**Engr. M.K. Ajibade:** Yes, Sir.

Furthermore, by **Exhibit 8**, the Respondent also stated that the sale of the laterite by him was unauthorized and unjustified.

I therefore find the said admission reliable and hold that the Complainant has been able to establish that the Respondent sold laterite belonging to his employer without the authorization of his employer. In fact, the Respondent admitted the fact that facts admitted need no further proof. See; **BAALO V. FRN (2016) 13 NWLR (Pt. 1530) P. 400; OFFOR & ANOR. V. THE STATE (2012) 18 NWLR (Pt. 1333) P. 421; NWACHUKWU V. THE STATE (2002) 7 SC**

Thus, in my opinion, the questions that comes to mind is:

- 1) Does the sale of laterite belonging to his employer by the Respondent without the authorization of his employer amount to Professional Misconduct?

What is professional misconduct?

The Black's Law Dictionary defines "misconduct" as a *dereliction of duty; unlawful or improper behavior*. In **UNIILORIN V. OLUWADARE (2003) 3 NWLR (Pt. 808) @ P.576, Paras. F - G**, the Court of Appeal defined "misconduct" as an unacceptable behaviour, especially by a professional person. What then constitutes an act of misconduct? An act that amounts to misconduct is an act of wilful disobedience to lawful and reasonable orders; misconduct of the master's business; neglect; incompetence and other conduct incompatible with or prejudicial to the master's business. See: **C.C.B. (NIG.) LTD. V. NWANKWO (1993) 4 NWLR (Pt.286); MAJA V. STOCCO (1968) 1 ALL NLR 141 @ 151 P. 171 - 172, PARAS. H - B**).

That said, professional misconduct is the dereliction of duty, unlawful and unacceptable behaviour of a professional, which is incompatible with the laid down rules expected of that professional. In **C.B.N. V. ARIBO (2018) 4 NWLR (Pt.1608) SC P. 167, Paras. C - E**, the Court of Appeal stated that;

*"What amounts to serious misconduct, where it is not specifically defined, depends on the facts of each case. Gross or serious misconduct has been described as conduct of such grave and weighty character as to undermine the relationship of confidence, which should exist between an employee and the employer."*

The offence of "Professional Misconduct" is defined under **Section 22 of the Engineers (Registration etc.) Amendment Act 2018** thus:

*"Professional Misconduct refers to when any person who is licensed under this Act:*

- a) *Deliberately fails to follow the standards of conduct and practice of engineering profession set by the Council;*
- b) *Commits gross negligence in the conduct of his professional duties;*
- c) *Allows another person to practice in his name where the person;*
  - i) *Is not a holder of a license;*
  - ii) *Is not in partnership with him*
  - iii) *Takes advantage of a client by abusing position of trust, expertise or authority;*

- iv) *Lack regards or concern for client needs or rights or*
  - v) *Shows incompetence or instability to render professional engineering service or works or*
- d) *Knowingly submits a land survey, valuation or environmental impact assessment document prepared by a person who is not licensed to prepare such documents under any written law in force.”*

The crux of the case of the Complainant is that the Respondent refused, failed and neglected to follow the laid down standard of conduct and practice as obtainable in the Engineering profession in that the Respondent sold laterite belonging to his Employer without authorization from the said employer.

Item (a) is relevant for the determination of this question. The standards of conduct and practice of engineering profession is provided for in the Engineers' Code of Conduct (Revised Edition 2017) and the act of the Respondent is tantamount to being dishonest and/or lacking truthfulness which conduct is prohibited under Article 2.5(e) of the Engineers' Code of Conduct (Revised Edition 2017) which provides thus;

*“An Engineer shall discharge his duties to his clients or employers with utmost truthfulness. Where need be, he shall present clearly, and in the most professional manner, the possible societal or environmental consequences of any engineering decision and judgments, and shall as well, provide professional recommendation as required.”*

I therefore find that the sale of laterite belonging to his employer by the Respondent amounts to failure of the Respondent to discharge his duty to his client and/or employer with utmost truthfulness. The evidence given by the Respondent regarding the reasons for his misconduct is unreliable. This is because no evidence as to whom he gave the money to. There is also no evidence as to how much he gave to whoever he claimed to have given the money. None of the alleged beneficiaries of the said money was called. In any event, the said piece of evidence amounts to appealing to sentiment of the tribunal. the Supreme Court has stated over and over that the court is for espousing the law and not a place for sentiment and that sentiment command no place in judicial adjudication. Where there is no right or the thing done is illegal, the purity of the motive or magnanimity of the act done will not alter the legal consequence. See: **EZEUGO vs. OHANYERE (1978) 6 – 7 SC 171; ONIAH vs. ONYIA (1989) 1 NWLR (PT. 99) 514; UDOSEN vs. STATE (2017) 4 NWLR (PT. 1023) 125.** We, therefore, hold that the said facts that the proceed of the laterite being sold by the Respondent was used in settling the community is not contemplated under the Engineers' Code of Conduct (Revised Edition 2017) and are accordingly discountenanced.

Therefore, on Count 3, we find that the sale of Laterite belonging to Zitts & Lords Limited was without authorization and approval of the Respondent's employer. It is

therefore a conduct not in conformity to the Engineering Code and standards, having breached Rules 2.5(d)(e) and (f) of the Engineers' Code of Conduct (Revised Edition 2017); Section 18 of Engineers (Registration, etc.) (AMENDMENT) Act, 2018; 22 of the Engineers (Registration etc.) Amendment Act 2018. We, therefore, find the Respondent – **Engineer Matthew Kayode Ajibade** – liable on/of the charge of professional misconduct contained in count 3 of the charge.

Having considered the circumstances of this case, we hereby order that **Engineer Matthew Kayode Ajibade** (as membership of the Respondent, Council for the Regulation of Engineering in Nigeria – COREN) be and is hereby suspended for a period of (12) twelve months with respect to Count 3. The sentence is to take effect from the date of this judgment.

The Registrar of Council for the Regulation of Engineering in Nigeria – COREN, is directed to carry out this decision.

.....  
**ENGR. ALI. A. RABIU, FNSE. F. ASCE,**  
(PRESIDENT OF COUNCIL FOR THE REGULATION OF ENGINEERING IN NIGERIA - COREN)  
**CHAIRMAN OF TRIBUNAL**

- 1) **ENGR. BABAGANA MOHAMMED FNSE (MEMBER)** 
- 2) **ENGR. TECH. AHMAD, MUHAMMED YABAGI, FNATE(MEMBER)** 
- 3) **ENGR. TANKO GYANG, ENGN. CRAFTSMAN, FNAEC (MEMBER)** 
- 4) **ENGR. PROF. SADIQ Z. ABUBAKAR, FNSE(MEMBER)** .....
- 5) **ENGR. MRS. MARGARET OGUNTALA, FNSE (MEMBER)** .....
- 6) **ENGR. DR. FELICIA AGUBATA, FNSE (MEMBER)** .....
- 7) **ENGR. CYRIL O. ONYENEKE, MNSE (MEMBER)** .....
- 8) **ENGR. NASIRU A. DANTATA, MNSE (MEMBER)** 
- 9) **ENGR. ADIKUNLE MOKUOLU, FNSE (MEMBER)** 
- 10) **ENGR. FELIX O. EBUZOEME, MNSE (MEMBER)** .....