

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

BEFORE HIS LORDSHIP, HON. JUSTICE IKECHI GERALD NWENEKA

Date: Thursday, 15th May 2025

SUIT NO. NICN/LA/348/2021

BETWEEN

MR. OBIORA VICTOR EMEKA

...

CLAIMANT

AND

1. JAYA CONFECTIONERIES LTD]

...

DEFENDANTS

2. Q. MED DIAGNOSTIC SERVICES LTD]

JUDGMENT

1. The Claimant commenced this suit on 17th September 2021. By his amended complaint filed on 9th December 2021, the Claimant claimed against the Defendants jointly, severally or in the alternative for:
 - a. A declaration that the 1st Defendant's subjection of the Claimant to a compulsory food handlers/HIV test as a condition for resuming work with the Defendant is in violation of –
 - i. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and /or Article 12 of the Universal Declaration of Human Rights of 1948; and/or
 - ii. Sections 1[f], 8[1] and 9[1] of the HIV and AIDS [Anti-Discrimination] Act, 2014; and therefore, unconstitutional and unlawful.
 - b. A declaration that the 1st Defendant's oral revocation of the offer of employment made to the Claimant on the basis of his real or perceived HIV status is in violation of:
 - i. Section 42 of the Constitution of the Federal Republic of Nigeria 1999 [as amended]; and/or



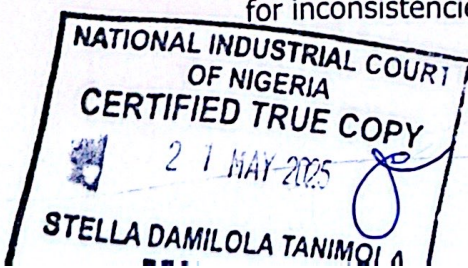
- ii. Section 14[5] of the HIV and AIDS [Anti-Discrimination] Act, 2014; and therefore, unconstitutional, discriminatory on the grounds of health status, and unlawful.
- c. A declaration that the 2nd Defendant's communication of the Claimant's HIV test result to the 1st Defendant and to Olukemi Anazodo is in violation of –
 - i. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and/or Article 12 of the Universal Declaration of Human Rights of 1948; and/or
 - ii. Section 13 of the HIV and AIDS [Anti-Discrimination] Act, 2014, and therefore, unconstitutional, unlawful and discriminatory on the grounds of health and an infringement of the right to privacy.
- d. A declaration that the 1st Defendant's oral revocation of the offer of employment to the Claimant is a wrongful breach of the contract between the Claimant and the 1st Defendant.
- e. An order for the award of ₦5,000,000.00 [five million naira] as general damages against the 1st Defendant for grossly violating the Claimant's fundamental rights by subjecting him to a compulsory food handlers/HIV test as a condition for resuming work with the 1st Defendant.
- f. An order for the award of ₦1,000,000.00 [one million naira] as general damages against the 2nd Defendant for violating the Claimant's fundamental rights by communicating the Claimant's HIV test results to the 1st Defendant and Olukemi Anazodo without the Claimant's consent.
- g. An order for the award of ₦5,000,000.00 [five million naira] as general damages against the 1st Defendant for the wrongful breach of the contract between the Claimant and the 1st Defendant, having induced the Claimant to disengage from his former employers.
- h. Interest on all the sums claimed in [e], [f] and [g] above at the rate of 22% per annum until the sum is liquidated.
- i. The cost of this action
- j. And for any further order[s] the Honourable Court may deem fit to make in the circumstances of this case.



2. Upon receiving the originating process, the 2nd Defendant entered an appearance and filed its statement of defence on 29th September 2021. Similarly, the 1st Defendant filed its conditional memorandum of appearance and statement of defence on 4th February 2022, to which the Claimant replied on 22nd February 2022. By an order made by the Court on 3rd June 2022, the Claimant amended his complaint to include the proper names of the 2nd Defendant. The trial commenced and was concluded on 1st November 2022. The Claimant testified to support his claims, tendered 14 exhibits, and was cross-examined. The 1st Defendant's witness and director, Olufunmilayo Chidera Anazodo, testified and was also cross-examined. The 2nd Defendant's witness and Business Manager, Vivian Nwofia, testified, tendered one exhibit, and was cross-examined. The matter was adjourned to 8th December 2022 for the adoption of final written addresses, then further adjourned to 20th March 2023, and subsequently to 26th March 2025. The parties exchanged their final written addresses, which their counsel adopted on 26th March 2025, and the case was set down for judgment.
3. A summary of the case based on the statement of facts is that the Claimant was offered a position as a Customer Service Representative by the 1st Defendant, which he needed to accept by 2nd August 2021. The Claimant accepted the job offer on 1st August 2021, and submitted his acceptance to the 1st Defendant on 2nd August 2021. Following this, he resigned from his position at Krispy Kreme. Upon accepting the offer, the 1st Defendant required the Claimant to complete a food handlers test at the 2nd Defendant's facility before starting work. In compliance with this requirement, the Claimant took the test on 4th August 2021, which included an HIV test that had not been previously mentioned. The test results were shared with the Claimant and Olukemi Anazodo without the Claimant's consent, leading to the revocation of his job offer. The Claimant asserts that he faced discrimination based on health grounds, a breach of contract, and unauthorised communication of his HIV status by the 1st Defendant, resulting in loss and damage. Consequently, he consulted his Solicitors, who, acting on his instructions, sent a letter dated 13th September 2021, to the Minister of Justice per Section 26[1] of the HIV and AIDS [Anti-Discrimination] Act. Before that, on 5th August 2021, the Claimant had emailed the 1st Defendant regarding the matter. The 1st and 2nd Defendants have contested the Claimant's assertions. The 2nd Defendant claims that the Claimant consented to the sharing of the test results with the 1st Defendant, while the 1st Defendant contends that the revocation of the Claimant's job offer was due to his failure on the food handlers' test.
4. Learned counsel for the 2nd Defendant raised two issues for determination in the final written address dated and filed on 18th November 2022:
 - a. Whether the 2nd Defendant's communication of the Claimant's test result to the 1st Defendant violates the Claimant's rights.



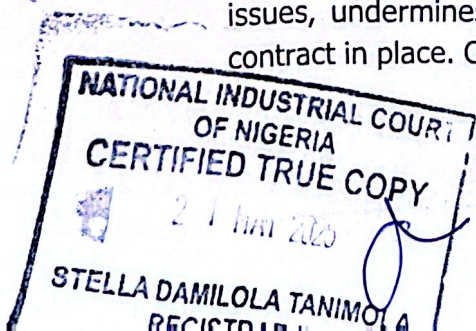
- b. Whether the 2nd Defendant is liable to an award of damages for violating the Claimant's fundamental rights.
5. Counsel answered the first issue negatively. Referencing Section 37 of the 1999 Constitution, learned counsel argued that while a citizen has a right to privacy, this right can be waived. In this case, the Claimant voluntarily consented to the 2nd Defendant forwarding the test results to the 1st Defendant. Therefore, the Claimant is estopped from contesting this matter, as established by the case of **Ariori & Ors v. Elemo & Ors [1983] ANLR 1**. Counsel further argued that, although Section 1[1] of the HIV and AIDS [Anti-Discrimination] Act, 2014 ["the Act"], provides for the protection of health and medical records, this right is also subject to waiver by consent. The Claimant's consent is evident in Exhibit D2A, which is permitted by Section 11[1] of the Act. Additionally, counsel pointed out that Section 9[5] of the Act states that medical testing is a condition precedent for employment. He argued that the 2nd Defendant did not violate the law by conducting a food handlers' test on the Claimant and forwarding the results solely to the 1st Defendant.
6. Learned counsel answered the second issue negatively and argued that the Claimant waived his right to privacy. Referring to the case of **Institute of Health v. Anyip [2011] 5 SC [Pt I] 54 at 72 & 73**, counsel argued that the measure of damages the Claimant is entitled to is ₦66,673.33, as stated in his offer letter, along with the earnings he would have received under the contract, rather than the ₦1,000,000.00 which he claims. Moreover, learned counsel contended that the Claimant is not entitled to any award of damages. Counsel further argued that the Claimant's assertion that the 2nd Defendant failed to provide him with counselling or recommend any confirmatory tests lacks substantial evidence, citing **Fajemirokun v. Commercial Bank [2009] 2-3 SC [Pt I] 26**. The Court was urged to take judicial notice that the National Agency for Food and Drug Administration and Control [NAFDAC], in accordance with its mandate under the enabling Act, has mandated Food Handlers' Tests for prospective workers in the food industry. Consequently, the Court was asked to dismiss the Claimant's case against the 2nd Defendant with substantial costs.
7. Learned counsel for the 1st Defendant also raised two issues for determination in the final written address dated and filed on 21st November 2022:
- a. Whether on the totality of the evidence before this Court and the state of law, the Claimant had made out any case to justify the claims and be entitled to the reliefs sought.
- b. Whether the testimony of the Claimant ought not to be disbelieved by this Court for inconsistencies and unreliability.



8. In arguing issue one, referencing Section 131 of the Evidence Act, and the cases of **Chime v. Ezea [2010] 6 EPR 353 at 432** and **Ladoja v. Ajimobi [2016] LPELR-40658[SC] 59-60**, the learned counsel contends that it is well-established that in a claim for a declaration, such as in the present case, the burden of proof lies with the Claimant. The Claimant is required to provide credible evidence to support the reliefs sought, which he failed to do. Counsel argues that because the Claimant voluntarily submitted to the test as a condition for employment, he cannot contest this requirement. Parties are bound by their agreements, and it is not the Court's role to create a new contract for them. The cases of **CBN v. System Application Products [Nig] Ltd [2004] LPELR-5432[CA] 31-32** and **UBN v. B.U. Umeh & Sons [1996] 9 NWLR [Pt 426] 565 at 605** were cited in support. Referring to the National Agency for Food and Drug Administration Act and Section 9[5][1] of the HIV and AIDS [Anti-Discrimination] Act, counsel asserts that food handlers are mandated by law to conduct tests on prospective employees, making this requirement lawful. It was also argued that since the Claimant did not complain about discrimination in the workplace based on his status, which is the intent of the HIV and AIDS [Anti-Discrimination] Act, no violation occurred. Additionally, counsel submitted that voluntarily undergoing a test as a precondition for an employment contract did not infringe upon the Claimant's rights, citing the case of **Inyang v. Ebong [2002] 2 NWLR [Pt 751] 284 at 333-334** in support. In response to the Claimant's claim for damages due to breach of contract, the learned counsel submits that the Claimant must first prove the existence of an employment relationship with the 1st Defendant, and then a breach of that contract which is absent in this case, resting on the cases of **Yunusa Lawal v. APC [2019] 3 NWLR [Pt 1658] 86 at 105** and **MTN [Nig] Ltd v. C.C. Inv. Ltd [2015] 7 NWLR [Pt 1459] 465**. Moreover, referencing Exhibits 3 and 9, and the cases of **Abdulahi v. El-Rufai [2022] 1 NWLR [Pt 1811] 226**, **CBN v. Igwilllo [2007] 14 NWLR [Pt 1054] 433** and **Suberu v. A.I.S.L. Ltd [2007] 10 NWLR [Pt 1043] 612**, the learned counsel argued that a conditional offer, as presented in this suit, is unenforceable. Therefore, the Claimant's attempt to enforce the conditional offer must fail. Counsel submits that, based on **Morohunfolo v. Kwara Tech [1990] 4 NWLR [Pt 145] 525-526**, a Claimant alleging unlawful termination of employment must prove the existence of an employment relationship, the conditions of his employment, who can appoint and remove him, and that his employment can only be terminated by a person other than the Defendant, which the Claimant has failed to establish. Regarding damages, counsel argues, based on the cases of **Ihezukwu v. University of Jos [1990] 4 NWLR [Pt 146] 598** and **Akinfosile v. Mobil Oil Nig. Ltd [1969] 6 NSCC 376 at 380**, that in breach of employment contract, the measure of damages is what the Claimant would have earned for the notice period.



9. In addressing the second issue, and relying on the cases of **Ezemba v. Ibeneme [2004] 14 NWLR [Pt 894] 653** and **Agbaosi v. Imevbore [2014] 1 NWLR [Pt 1389] 602**, the learned counsel argues that the Claimant's evidence, specifically paragraphs 9 and 19[i] of his sworn statement, as well as his testimony during cross-examination, contains inconsistencies and omissions that undermine its reliability. The Claimant admitted during cross-examination that he was not forced to take the food handlers' test, but claimed in his sworn statement that he was not allowed to take an independent test and was required to undergo a compulsory food handlers' test. The counsel urged the Court to disregard the Claimant's evidence and to dismiss his claim.
10. Learned counsel for the Claimant nominated two issues for determination in the final written address dated 1st December 2022, but filed on 5th December 2022:
- Whether there was a valid contract between the claimant and the 1st Defendant, which was revoked by the 1st Defendant.
 - Whether the Claimant consented to the carrying out of any HIV test on him and for the result of the same to be communicated to any third party.
11. In addressing issue one, and referencing paragraphs 6 and 7 of the Claimant's sworn statement, the cases of **Tanarewa [Nig] Ltd v. Arzai [2005] 5 NWLR [Pt 919] 593 at 632**, **Agoma v. Guinness [Nig] Ltd [1995] 2 NWLR [Pt 380]**, and **Bilante Int Ltd v. NDIC [2011] 15 NWLR [Pt 1270] 429-430**, among others; counsel argued that the presence of the essential elements of a valid contract: offer, acceptance, and consideration, sufficiently proves the existence of a valid contract between the Claimant and the 1st Defendant. Counsel reviewed Exhibit 1 and argued, based on the authority of **Oghoyone v. Oghoyone [2010] 3 NWLR [Pt 1182] 564** and **Ojo v. ABT Associates Incorporated [2017] 9 NWLR [Pt 1570] 107**, that the formalities referred to in Exhibit 1 pertain to the Claimant's mode of acceptance as contained in the document. It was submitted that a document speaks for itself, and oral evidence is inadmissible to vary the contents of a document. Furthermore, counsel contended that the 1st Defendant misapplied the **CBN v. Igwilllo [supra]** case, because it insisted that Exhibit 1 is incomplete and that Exhibit 8 is part of the requisite formalities for a formal employment contract. Counsel pointed out that in **CBN v. Igwilllo [supra]**, the Court determined that when a contract is in writing, any agreement that seeks to alter it must also be in writing. Thus, since the 1st Defendant claimed that Exhibit 1 is not a valid contract, Exhibit 8 cannot be considered a written variation of Exhibit 1. In concluding his argument on issue one, counsel referenced DW1's testimony during cross-examination and argued that DW1's admission that the Claimant was an employee of the 1st Defendant, who was disengaged due to health issues, undermines the 1st Defendant's claim that there was no valid employment contract in place. On another note, counsel asserted that if the food handlers' test was



deemed a prerequisite for the 1st Defendant to establish a valid employment contract with the Claimant, such a precondition would violate Section 9 of the HIV and AIDS [Anti-Discrimination] Act. Counsel urged the Court to resolve this issue in favour of the Claimant.

12. Canvassing issue two, counsel concedes that since the Claimant consented to the food handlers test, it was established during cross-examination of DW2 that the Claimant never consented to an HIV/AIDS test and communication of same to a 3rd party. Counsel reviewed DW2's testimony under cross-examination and submits that having regard to the fact that DW2 was not the person that carried out the HIV counselling, was not there when it was offered and the counsellor was not called as a witness, her evidence is as best hearsay and inadmissible per Section 37 of the Evidence Act. Counsel urged the Court to discountenance DW2's testimony and hold that the Claimant was never counselled. Continuing, counsel further reviewed DW2's testimony under cross examination along with Exhibit D2A and submits that the 2nd Defendant in Exhibit D2A concealed the kind of test to be conducted on the Claimant in the guise of food handlers' test, otherwise, he would not have consented to HIV/AIDS test and communication of same to a third party. Referring to Section 10[1] and [2] of the HIV and AIDS [Anti-Discrimination] Act, counsel submits that the preconditions spelt out in the referenced section under which an HIV/AIDS test could be carried out were not complied with. Therefore, counsel urged the Court to resolve this issue in favour of the Claimant.
13. Counsel also responded to the 2nd Defendant's second issue for determination. Responding to the 2nd Defendant's submission that the measure of damages recoverable by the Claimant is the sum he ought to earn for the notice period, which is contained in Exhibit 1, counsel contends that there is no employment relationship between the Claimant and the 2nd Defendant or any allegation of unlawful termination. Thus, the issue of damages cannot arise. Counsel reproduced relief 6 and submits that the Claimant is entitled to general damages in the sum of ₦1,000,000.00 for breach of his constitutional rights by the 2nd Defendant by communicating the Claimant's HIV test results to third parties, which also amounts to a crime per Section 13[2] of the HIV and AIDS [Anti-Discrimination] Act which prescribes a fine of ₦1,000,000.00 for an institution. Thus, counsel submits that the Honourable Court is clothed with jurisdiction to award ₦1,000,000.00 as general damages, notwithstanding that this is a civil suit. It was further submitted that the Claimant's case against the 1st Defendant is based on the wrongful breach of the valid employment contract between them and violations of the Claimant's fundamental rights. The Claimant seeks damages for this wrongful breach of the employment contract. Additionally, the Claimant is pursuing general damages from the 1st Defendant for violating his fundamental rights. It is well-established in law that, in cases seeking the enforcement of fundamental rights, a proper order includes awarding general damages against a Defendant who has

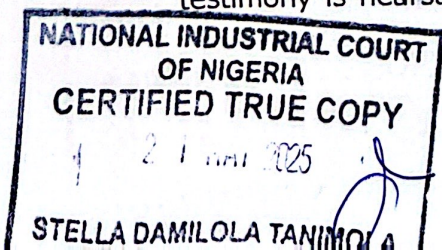


infringed upon the Claimant's rights. The Court was urged to hold so and grant all the reliefs sought.

14. In arguing the 1st Defendant's reply on points of law dated and filed on 12th December 2022, learned counsel submitted that the Claimant's contention in paragraphs 4.01 to 4.09 of his final written address is misconceived. It was also submitted that, given that the Claimant was informed via Exhibit 9 that the employment contract would be sent to him, and the need to take the food handlers' test, there is no valid contract of employment between the Claimant and the 1st Defendant since he failed to meet the pre-condition. Counsel argued that, according to the law, a contract contingent upon fulfilling a specific term does not exist until that term is met. This position is supported by cases such as **Nigercare Development Co. Ltd v. Adamawa State Water Board & Ors [2008] 2-3 SC [Pt II] 202** and **Best [Nig] Ltd v. Blackwood Hodge Nig Ltd & Anor [2011] LPELR-776[SC]**, among others. Therefore, counsel asserts that there is no valid contract if the condition precedent is not satisfied. Without a valid contract between the Claimant and the 1st Defendant, the issue of revocation cannot arise. The Court was urged to hold so.
15. Counsel argued that the Claimant's claims in paragraphs 4.09 to 4.10 are misguided and unfounded. Exhibit 9 confirms the 1st Defendant's statement in Exhibit 1 regarding the "few formalities" needed before the Claimant could commence, which includes taking a food handlers' test. Without fulfilling this, the Claimant could not resume work. Counsel urged the Court to dismiss the Claimant's case with substantial costs to the 1st Defendant. Counsel answered the Claimant's second issue affirmatively, but noted an erroneous claim that the Claimant was unaware of an HIV test being performed and that proper counselling was not provided. Counsel referred to DW2's testimony that her team offered counselling, which the Claimant mischaracterised as hearsay. Counsel submitted that the Claimant, who bears the burden of proof, failed to demonstrate he was unaware of the HIV test when he signed the consent form, as stated in Section 131[1] of the Evidence Act and **NUP v. INEC [2021] LPELR-58407[SC]**. Furthermore, counsel submitted that the Claimant had a duty to inquire about the tests but did not present evidence of seeking clarification. Finally, counsel contended that Olukemi Anazodo, who received the test results, is a director of the 1st Defendant and had the right to that information. Therefore, counsel urged the Court to reject the Claimant's submissions and dismiss the case, awarding substantial costs to the 1st Defendant.

Preliminary issue

16. The Claimant argued in paragraph 4.15 of his final written address that DW2's testimony is hearsay and inadmissible according to Section 37 of the Evidence Act.



This is because the witness did not personally witness the events to which she testified, and he urged the Court to disregard her evidence. The 2nd Defendant did not respond to this argument, and is deemed to concede the issue, as stated in **Sakati v. Bako & Anor [2015] 14 NWLR [Pt 1480] 531 at 563**. However, the 1st Defendant contended in paragraph 1.24 of the reply on points of law that DW2's evidence, given during cross-examination that her team conducted the counselling, is relevant and not hearsay.

17. Typically, witnesses are expected to provide firsthand evidence regarding the subject of their testimony. When a witness testifies about what someone else told him, it constitutes hearsay, which is inadmissible. According to Sections 37, 38, and 126 of the Evidence Act, hearsay evidence can only be used to inform the Court about what a witness heard from another and not to establish the truth of what was said. Furthermore, since a company is a juristic person, it can only act through its agents or employees, meaning any agent or employee can provide evidence to support any transaction entered into by the company. If the official providing testimony did not participate in the transaction on behalf of the company, his evidence is still relevant and admissible and will not be dismissed as hearsay. However, the fact that the official did not personally partake in the transaction may affect the weight given to the evidence in appropriate cases, as established in **Impact Solutions Limited & Anor v. International Breweries Plc [2018] 16 NWLR [Pt 1645] 377 at 400, 401; Ishola v. Societe Generale Bank [Nig.] Limited [1997] 2 NWLR [Pt 488] 405 at 424; Saleh v. Bank of the North Ltd [2006] 6 NWLR [Pt 976] 316 at 326-327; and Interdrill Nigeria Ltd & Anor v. United Bank for Africa Plc [2017] 13 NWLR [Pt 1581] 52 at 67, 69**.
18. I have considered the sworn statement of the 2nd Defendant's witness and her testimony during cross-examination. In her sworn statement, DW2 stated that she is the Business Manager of the 2nd Defendant, is familiar with the facts of this case, and asserts that the facts she provided are within her knowledge. She also testified that the Claimant signed the consent form and was properly counselled before the tests were carried out, following the standard practices of the 2nd Defendant, as detailed in paragraphs 5, 6, and 7 of her sworn statement. Therefore, her testimony during cross-examination, that her team provided counselling to the Claimant and that she was not present during the counselling, does not negate her evidence or render it hearsay. It may only affect the probative value of her testimony regarding the counselling conducted for the Claimant. In this circumstance, I hold that DW2's evidence is relevant, admissible, and not hearsay. The Claimant's objection is hereby overruled.

Issue for determination



19. I have considered the pleadings, evidence [both oral and documentary], and the submissions by the parties, and to my mind, the real issue for determination is whether the Claimant is entitled to judgment on his claims or any of them. It is the law that he who asserts must prove. The burden of proof is on the person who would lose if no evidence is given. Therefore, the burden of proof is on the Claimant who initiated this suit on a set of facts that he claims entitle him to judicial relief, and who must establish those facts to have a judgment in his favour. Only when the Claimant establishes a prima facie case does the burden shift to the Defendant to prove the defence. See Sections 131[1], 132, 133[1] and 136[1] of the Evidence Act, 2011, as amended ["the Evidence Act"], **Nsude & Ors v. Nichodemus & Ors [2025] 4 NWLR [Pt 1982] 253 at 280, Nwanne & Ors v. Okoli & Ors [2025] 2 NWLR [Pt 1976] 339 at 369, and Nduul v. Wayo & Ors [2018] LPELR-45151[SC] 51 – 53**. The burden of proof in civil cases is discharged on a balance of probabilities. See Section 134 of the Evidence Act.
20. The Claimant who seeks declaratory relief must establish his entitlement to the declaration by credible evidence and will succeed on the strength of his case, not on the weakness of the defence or admission by the Defendant. Since a declaratory relief involves the exercise of the Court's discretion, the Claimant must place sufficient materials before the Court to justify the grant of the declaration. See **Nduul v. Wayo & Ors [2018] 7 SC [Pt III] 164 at 213, U.T.C. Nigeria Plc v. Peters [2022] 18 NWLR [Pt 1862] 297 at 312, 313, and Osho v. Adeleye & Ors [2024] 8 NWLR [Pt 1941] 431 at 452**.

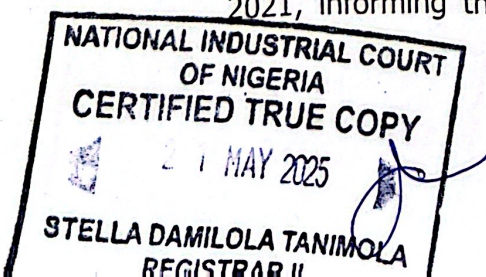
Summary of evidence

21. The Claimant sought 10 reliefs, testified in proof of his claims and tendered 14 exhibits marked Exhibits 1 to 14. These are the offer letter, the Claimant's email accepting the offer and accompanying certificate of authentication, the Claimant's Solicitors' letter to the Honourable Minister of Justice dated 13th September 2021 in compliance with Section 26[1] of the HIV and AIDS [Anti-Discrimination] Act, the Claimant's letter of confirmation of employment by Bridge Gap Consults Limited dated 21st May 2021, the WhatsApp chat between the 1st Defendant's representative and the Claimant on 6th and 7th July 2021 scheduling interview for the Claimant with accompanying certificate of authentication, the 1st Defendant's email of 30th July 2021 offering the Claimant the job with accompanying certificate of authentication, WhatsApp chat between the 1st Defendant's representative and the Claimant on 7th and 30th July and 2nd August 2021 on the offer of appointment with accompanying certificate of authentication, the Claimant's email resignation from Krispy Kreme dated 2nd August 2021 with accompanying certificate of authentication, WhatsApp chat between the Claimant and the 1st Defendant's representative on 2nd and 3rd August 2021 on the Claimant's concerns and the food handlers' test with the certificate of authentication, WhatsApp



chat between the 1st Defendant's representative and the Claimant on Wednesday, 4th August 2021 on the food handlers' test and the result with the certificate of authentication, the 2nd Defendant's report of the medical test conducted on the Claimant, the 2nd Defendant's email to the 1st Defendant forwarding the test results, and the 1st Defendant forwarding email to the Claimant with the certificate of authentication, call logs of 7th July 2021, and 4th August 2021 with the certificate of authentication, the Claimant's email of 5th August 2021 to the 1st Defendant with the certificate of authentication, and the 1st Defendant's email of 5th July 2021 inviting the Claimant for an interview on 6th July 2021 with the certificate of authentication.

22. The Claimant's evidence indicates that he served as an Assistant Restaurant Manager at Chicken Republic, first at the Agbani Road branch in Enugu and then at the Ilupeju branch in Lagos, from 2017 to 2019. He also worked as a shift supervisor for six months at Krispy Kreme, a well-known doughnut and coffee shop on Victoria Island, Lagos. He resigned from that position in anticipation of starting a new job with the 1st Defendant. In July 2021, he applied for a job through an advertisement posted on Instagram by the 1st Defendant and was later shortlisted for an interview, which took place on 7th July 2021. During the interview, he disclosed his current employment at Krispy Kreme. Following this, the 1st Defendant congratulated him via email and sent a WhatsApp message on 30th July 2021, offering him the position of Customer Service Representative. He was required to accept this offer by 2nd August 2021. After signing the offer on 1st August 2021, he emailed it to the 1st Defendant on 2nd August 2021, following the prescribed acceptance method. On the same day, he resigned from Krispy Kreme via email. On 2nd August 2021, the 1st Defendant instructed him through a WhatsApp message to complete a food handlers' test at the facility of the 2nd Defendant before starting his new role. He was not allowed to have the test done at a medical laboratory of his choice. On 3rd August 2021, he received another WhatsApp reminder about this requirement. Following the 1st Defendant's request, he completed the food handlers' test on 4th August 2021, at the 2nd Defendant's facility, which included an HIV test. The 2nd Defendant did not provide him with any counselling regarding the HIV test, either before or after it was conducted. On the same day, he was informed via WhatsApp that the 2nd Defendant had sent the test result to the 1st Defendant, who then shared it with him and one Olukemi Anazodo. The result was positive for HIV; however, neither Defendant recommended that he undergo a second confirmatory HIV test. At 10:54 p.m. on 4th August 2021, the 1st Defendant called him to inform him that it had decided to unilaterally terminate his employment due to his HIV status, which was contrary to his formal employment contract. He stated that he has suffered significant loss and damage as a result of the discrimination he faced from the 1st Defendant, the breach of contract, and the 2nd Defendant's disclosure of his HIV status to the 1st Defendant. After his employment was wrongfully terminated on the grounds of his HIV status, he sent an email to the 1st Defendant on 5th August 2021, informing them that they had violated the law and pleading with them to



reconsider their decision, but to no avail. Subsequently, his Solicitors sent a letter on 13th September 2021, to the Honourable Minister of Justice in compliance with Section 26[1] of the HIV and AIDS [Anti-Discrimination] Act. He is claiming the reliefs against the Defendants as outlined in the statement of facts.

23. During cross-examination by the 1st Defendant, the Claimant admitted that he swore an oath and stated that he is not very active on social media. He applied for the position by submitting a copy of his CV and was interviewed based on that CV. The CV was admitted in evidence as Exhibit D1. However, he noted that the CV did not accurately reflect his situation at the time. He admitted that he omitted his previous employment at Krispy Kreme Doughnuts from his CV, stating that he did this intentionally. He also admitted to telling the interviewer that he was currently unemployed. Referring to Exhibit 1, he confirmed that he had asked questions about the job. He stated that he had already received the job offer and had accepted it. He did not refuse to take the food handlers test and was not coerced into visiting the 2nd Defendant for it. He affirmed his employment at Krispy Kreme but could not produce his employment letter at that moment. He sent Exhibit 7 on 2nd August 2021; the same date he was supposed to sign his acceptance with the 1st Defendant. He insisted that he was expected to sign and return the confirmation of employment letter on that date. When Exhibit 3 was shown to him, he admitted that it did not indicate his employment with Krispy Kreme. The witness admitted that Exhibit 3 is dated 21st May 2021, and he signed it on 21st September 2021. When shown paragraph 2 of his statement of facts, he admitted that he does not know about the other offices of the 1st Defendant. He insisted that he had not lied. The witness also admitted that he knew the test results would be sent to the 1st Defendant, but he could not remember the names of those who interviewed him. When told that Funmi and Kemi Anazodo interviewed him, he insisted that he could not recall their first names. The witness confirmed that he had worked for two companies involved in food handling and understands that the government and NAFDAC regulate the industry.

24. During cross-examination by the 2nd Defendant, the Claimant confirmed that he is 29 years old and holds a Bachelor of Science degree. He stated that he voluntarily approached the 2nd Defendant to take the food handlers' test. He was given a form to sign, but confirmed that he was not compelled to do so. The witness could recognise the two forms: the first one bears his signature, while the second does not. The first form was admitted as Exhibit D2A. The witness acknowledged that he knew the result of the food handlers' test would be sent to the 1st Defendant, and he agreed to this. The witness admitted that, as per Exhibit 8, he was informed that the 1st Defendant would cover the cost of the test. However, he does not know whether they actually paid for it because he did not pay for it himself. When asked to tell the Court the way the 2nd Defendant discriminated against him, the witness said the 2nd Defendant discriminated against him by failing to inform him about the requirement for an HIV



test. He noted that he had previously taken food handlers' tests and that an HIV test was not included among them. The witness insisted that Hepatitis testing is also not part of the food handlers' test, but he is aware that Hepatitis B, C, and HIV can be transmitted.

25. Olufunmilayo Chidera Anazodo, a witness and director for the 1st Defendant, testified that she is an employee of the 1st Defendant and was the person who interviewed the Claimant. She stated that during the interview, the Claimant informed the 1st Defendant's human resources personnel that he had been applying for jobs for some time and that the pay he was offered was acceptable. According to the witness, the Claimant also mentioned that he previously worked for Chicken Republic in Enugu State but became unemployed when that outlet was shut down. Although Chicken Republic had promised him another job, they did not follow up. The Claimant also revealed that he had worked in a clothing store, which closed because his former employer struggled to manage her personal life and business, leaving him jobless. The Claimant was shortlisted for an interview with the 1st Defendant, which took place on 7th July 2021. The witness denied that the Claimant had disclosed being gainfully employed by Krispy Kreme or any other organisation. Instead, she asserted that the Claimant had communicated his ongoing job search to the 1st Defendant and was willing to accept a pay lower than what he claimed was his last salary. Weeks after the interview, the 1st Defendant sent out offer letters to four potential candidates for the customer care position. One candidate declined the offer, citing low pay. However, the Claimant and another candidate accepted the conditional offer letter. The witness stated that the message sent to the Claimant was generic and that he understood it was conditional, subject to the food handlers' test results. At that stage, there was no formal contract; it was a conditional offer. The witness alleged that the Claimant was dishonest regarding his resume and accused him of fabricating the email he sent to Krispy Kreme. She insisted that the Claimant knew the food handlers' test was part of the terms and conditions clearly outlined in the 1st Defendant's policy. This information was communicated to the Claimant and other candidates during the interview and was also reiterated in a text message sent on 9th August 2021, at 5:50 pm. The witness emphasised that, having worked in the food processing industry, the Claimant should have known that it is a regulatory requirement for food handlers to undergo this test at least once a year. She maintained that the Claimant willingly submitted himself for the food handlers' test at the 2nd Defendant's medical facility, which was authorised by the 1st Defendant, without any objections. This was evident from a text message dated 3rd August 2021, and he did not seek to carry out the test at any other facility. During the interview, the 1st Defendant explained in detail the reasons for the food handlers' test requirement for any intending employee. The Claimant willingly submitted to the test without raising any objections. The witness stated that the 2nd Defendant was obligated to send the results to the 1st Defendant since the test was ordered by and intended for the use of the 1st Defendant. She insisted that the 1st



Defendant never shared the medical report with any third party, as the Claimant knew the identity and role of Olukemi Anazodo, who conducted the interview and manages the company. Upon receiving the results on 4th August 2021, the 1st Defendant communicated the outcome to the Claimant and explained over the phone that they would not offer him the employment contract. This decision was based on the fact that the customer care representative also handles food and kitchen equipment. The representative noted that the Claimant informed her he had been aware of his HIV status for about four years and that it had not prevented him from working at Chicken Republic. Despite this, the Claimant insisted on being employed and threatened to sue the 1st Defendant if he was not hired. The witness clarified that there was never a formal contract of employment with the Claimant that could be terminated. She pointed out that the Claimant knew he would not receive the contract if he did not meet the food handlers' test requirements. Even without admitting that a formal contract was terminated, the witness asserted that the 1st Defendant did not violate any laws, as it complied with the terms and conditions of employment, NAFDAC regulations and those of the Lagos State Ministry of Health. The witness described the Claimant as a gold digger, dishonest, and a blackmailer, claiming he was using his HIV status to intimidate and extort a small start-up company like theirs. The witness emphasised that the Claimant knew that the 1st Defendant was a small start-up operated by fresh graduates from their parents' house, and stated that his claim was motivated by greed and blackmail. The witness further stated that the Claimant's HIV status did not influence the decision not to hire him, as both directors were trained in the USA but were concerned about the Claimant's rude and uncouth behaviour, and his deliberate concealment of his HIV status. The witness stated that the emails and the alleged letter to the minister were intended to intimidate and coerce the 1st Defendant into offering the Claimant employment. The witness insists that the Claimant is not entitled to the reliefs he seeks, and prays the Court to dismiss the suit, claiming it is vexatious, baseless, malicious, and a frivolous attempt to extort money.

26. During cross-examination by the Claimant's counsel, the witness was shown paragraph 4 of her deposition and read it aloud. She stated that the Claimant mentioned the fact during his interview. When confronted with the fact that she denied paragraph 4 of the statement of facts in paragraph 5 of her sworn statement, the witness admitted it was an error. The witness confirmed she swore the statement in Court. Upon reviewing Exhibit 1, the witness admitted that it does not state that the offer of employment is conditional and subject to a food handler's test. The witness also admitted that the Claimant was offered a position in customer service. She was shown paragraphs 28 and 30 of her sworn statement and read them, and claimed to have a basic understanding of HIV-related issues. When asked if the functions of customer service include sharing needles, she explained that at Jaya Confectioneries, their customer care representative handles sharp objects for baking because they are a small business, and everyone is involved. However, this was not mentioned in the offer letter.



The witness stated she was uncertain if she could contract HIV by eating food prepared by someone with the virus, and she admitted she had never heard of the ARV drug before. When asked if she offered it to the Claimant, the witness responded that she did not know about it. She explained that the purpose of the regular health test is to determine the employee's health status. If the health status indicates that an employee does not pass the test, the company deliberates on the matter and communicates the results to the individual. She confirmed paragraph 20 of her deposition, stating that they terminated the Claimant's appointment because he did not pass the food handler's test.

27. Vivian Nwofia, the witness and business manager for the 2nd Defendant, testified that the correct name of the 2nd Defendant is Q. Med Diagnostic Services Ltd, not Qmed Diagnostic Ltd. On 4th August 2021, the Claimant visited the 2nd Defendant's laboratory in Surulere at the request of Jaya Cravings for medical examinations and tests. The Claimant was properly attended to. Before the medical examinations and tests began, the Claimant signed a consent form dated 4th August 2021, which included his medical history and consent for the examinations, tests, and for the results to be sent to Jaya Cravings. Per the 2nd Defendant's policy, the Claimant was appropriately counselled before the tests were conducted. Following the signed consent form and the Claimant's approval, the results were released to Jaya Cravings, which had paid for the tests. Therefore, the 2nd Defendant cannot be held responsible for communicating this information to a third party by Jaya Cravings. The Claimant tested positive for HIV I & II screening. Based on this test result, the 2nd Defendant recommended a confirmatory test, adhering to standard procedures and international best practices, and advised Jaya Cravings to send the Claimant back for this confirmatory test. However, the Claimant did not return to the 2nd Defendant for guidance regarding the recommended follow-up test. His statements in this suit suggest that he knew of his HIV positive status and did not need any further confirmation. Additionally, Ms. Nwofia stated that the 2nd Defendant conducted the medical examination and screening tests on the Claimant professionally before, during, and after the tests. Consequently, the 2nd Defendant cannot be held responsible for the Claimant's predicament, as it had nothing to do with his employment or termination. The witness mentioned that the 2nd Defendant would raise a preliminary objection to this suit based on lack of jurisdiction, misjoinder, and misnomer. The Claimant's claims are unfounded and without merit, and he is not entitled to the reliefs sought. She prayed the Court to dismiss the suit with substantial costs. She tendered one exhibit marked Exhibit D2B, and identified Exhibits 10 and D2A as the test result and the Claimant's consent form. During cross-examination by the Claimant, she stated that she is a business manager and not a licensed medical practitioner. She clarified that she did not provide any medical counselling herself; rather, it was her team that did so. She emphasised that HIV counselling is meant to be conducted with the utmost confidentiality. Although she was not present during the counselling sessions, she



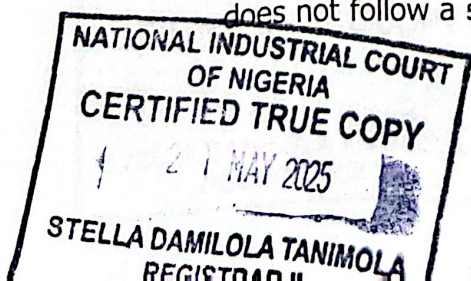
affirmed that maintaining confidentiality is standard practice. She has served as the business manager for the 2nd Defendant for six years. She denied that, during that time, it was the 2nd Defendant's practice to conduct all known medical tests for anyone who came to the laboratory; instead, the tests must be specific to the individual's needs. When shown Exhibit D2A, she admitted that there is no evidence that the Claimant consented to the HIV test.

Evaluation of evidence

28. I have reviewed the oral and documentary evidence presented by the parties. The Claimant seeks damages from the 1st Defendant for violating his fundamental rights by requiring him to undergo a compulsory food handler/HIV test. He also claims damages for discrimination and breach of contract against the 1st Defendant. He seeks damages from the 2nd Defendant for violating his fundamental rights by disclosing his HIV test results to the 1st Defendant. The Claimant tendered 14 exhibits in support of his claims. It is undisputed that the 1st Defendant offered employment to the Claimant, which he accepted. Additionally, it is acknowledged that the Claimant underwent a test conducted by the 2nd Defendant at the 1st Defendant's instance. However, there are several points of contention:
1. Whether the offer created an employment relationship between the Claimant and the 1st Defendant;
 2. Whether the 1st Defendant breached the Claimant's fundamental rights by mandating the HIV test as a condition for resuming work;
 3. Whether the revocation of the offer based on the Claimant's HIV status was lawful;
 4. Whether the 2nd Defendant breached the Claimant's fundamental rights by communicating the test results to the 1st Defendant.

Existence of employment relationship

29. The first question that should agitate the Court is whether there was an employment relationship between the Claimant and the 1st Defendant. While the Claimant asserts that there was a contract of employment between him and the 1st Defendant, which the 1st Defendant wrongfully terminated, the 1st Defendant contends that there was only a conditional offer, subject to the food handlers' test result, which did not mature into a contract because the Claimant failed the test. This is referenced in paragraphs 4 to 13 of the Claimant's sworn statement, and paragraphs 10, 11, 12, 14, 23 to 26 of the 1st Defendant's witness statement on oath. Generally, an employment contract does not follow a specific format; it can be oral, written, or a combination of both. It



may also be inferred from the conduct of the parties involved. This is supported by the cases of **Iyere v. Bendel Feed and Flour Mill Ltd [2008] 7-12 SC 151 at 163** and **Shena Security Co. Ltd v. Afropak [Nig] Ltd & Ors [2008] 4-5 SC [Pt 11] 117 at 128.**

30. As to what will amount to a contract, the Supreme Court, in **Bilante International Limited v. NDIC [2011] 15 NWLR [Pt 1270] 407 at 423**, held that a contract is an agreement between two or more parties that establishes an obligation to do or refrain from doing a specific action. The essential elements of a contract include competent parties, a subject matter, legal consideration, mutual agreement, and mutual obligations. For a binding contract to exist, there must be a meeting of the minds, known as consensus ad idem. This mutual consent is related to the concepts of offer and acceptance. An offer is a party's expression of readiness to enter into a contract under specified terms. If the offeree accepts the offer, it results in a binding contract. A contract is formed when the offeree indicates his intention to accept the offer. The offeree must follow that procedure if there is a designated method for accepting the offer. Acceptance must align with the terms of the offer. If the acceptance alters the terms of the offer, it may be considered a counter-offer rather than an acceptance, which would constitute a rejection of the original offer and nullify it, preventing any possibility of future acceptance. See also **Waymaker Properties Limited v. Zaiyanu Janyau & Ors [2021] LPELR-54481[CA] 31 - 34.**
31. The Claimant tendered Exhibits 1 and 5 to support his assertion of an employment relationship. Exhibit 5 is the 1st Defendant's email of Friday, 30th July 2021, forwarding the offer of employment. It is titled "Congratulations on your offer". It reads:

"Dear Victor,

Attached below is your offer letter.

JAYA

Exhibit 1 consists of the offer letter, and the Claimant's acceptance email. The offer letter reads:

"Dear Obiora Victor,

Jaya's Cravings is excited to bring you on board as our Customer Service Representative.



We're just a few formalities away from getting down to work. Please take the time to review our formal offer. It includes important details about your compensation and the terms and conditions of your anticipated employment with Jaya.

Jaya is offering a full-time position for you as Customer Service Representative, reporting to the Office Supervisor, starting on August 9th, 2021, at Banana Island Estate, Ikoyi. Expected hours of work are 8am – 6pm, Monday to Sunday. You will be given 2 days off each week.

In this position, Jaya is offering to start you at a pay rate of N66,673.33 as your net pay per month [pay after tax of 7%]. You will be paid on a monthly basis. You will also be receiving N3,326.67 for transportation monthly.

Please, indicate your agreement with these terms and accept this offer by signing and dating this agreement on or before Monday, 2nd August.

Sincerely,

Jaya"

32. On 2nd August 2021, the Claimant wrote:

"Dear Jaya

I write this letter to accept your job offer. Thank you for the opportunity. I'll be resuming on the date stated in the letter.

Looking forward to working with you.

Regards

Obiora Victor"

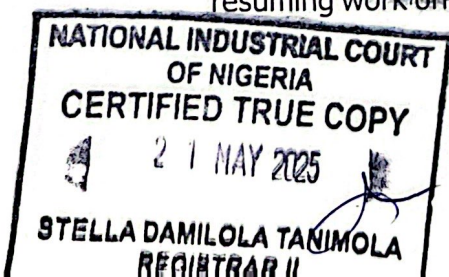
33. Manifestly, there is a definite offer and an unqualified acceptance. The terms of the offer are clear. Contrary to the 1st Defendant's witness evidence in paragraphs 10 to 12 of her sworn statement, the offer letter was not conditional or made subject to anything else. The issue of "the message sent to the Claimant was generic and was known to the Claimant to be conditional and subject to the food handler's test result" does not arise. The job interview was conducted on 7th July 2021. See paragraph 8 of the 1st Defendant's witness evidence, and Exhibits 4 and 6. The offer letter was written on 30th July 2021, 23 days after the interview. See Exhibits 1 and 6. If terms were agreed with the Claimant during the interview, they should have been incorporated



into the offer letter. They were not. Nothing in the offer letter indicates that the food handler's test was a term of the contract or a condition precedent to the contract. In the 1st Defendant's WhatsApp message of 30th July 2021, they wrote: "Good evening, I'd just like to say Congratulations. You have been chosen to be a part of the Jaya Team. An email has been sent to your account. Please look through it to see our offer. Let me know if you have any questions. Thank you." The issue of food handlers' tests only arose on 2nd August 2021 in the 1st Defendant's WhatsApp response to the Claimant's message. The 1st Defendant wrote: "Good morning, Victor. No, there isn't a pension allowance. Yes, there is a leave allowance. Yes, you can. You will be sent a contract that has all this information contained inside. We will require you to do a food handler's test before you resume on Monday. This is the address: Q-Med 3 Adeniran Ogunsanya Street, Surulere. Please go either on Tuesday or Wednesday so that the result can come out before you start on Monday." See Exhibit 8. Again, even though the 1st Defendant introduced the food handler's test on 2nd August 2021, it still did not make it a condition precedent to the contract. In the concluding sentence of that message, the 1st Defendant merely requested the Claimant to "Please go either on Tuesday or Wednesday so that the result can come out before you start on Monday." The phrase used is "before you start on Monday". It did not say "without the test result you cannot start", or "the outcome of the test is a condition for your employment". The essential elements of a contract: competent parties, a subject matter, legal consideration, mutual agreement, and mutual obligations, are present. There are competent parties. The subject matter is identified, and the Claimant was employed as the 1st Defendant's Customer Service Representative. The consideration is ₦66,673.33 net monthly salary and ₦3,326.67 monthly transport allowance for the Claimant's services. There was mutuality. The 1st Defendant's offer is specific, and the Claimant's acceptance is unequivocal. As held by the Supreme Court in **Bilante International Limited v. NDIC** [supra], for a binding contract to exist, there must be a meeting of the minds, known as consensus ad idem. This mutual consent is the offer and acceptance. An offer is a party's expression of readiness to enter into a contract under specified terms. If the offeree accepts the offer, it results in a binding contract. In my respectful view, the mutual consent exists, and I find a binding employment contract between the Claimant and the 1st Defendant. I also find that the food handler's test was not a term of the employment contract. It was a condition subsequent to the employment contract, and therefore, incapable of vitiating it.

Mandatory HIV test as a precondition for resuming work

34. I found in the preceding paragraph that the food handler's test was not included in the employment contract; rather, it was a requirement introduced after the contract had been finalised. The question now is whether the 1st Defendant's directive to the Claimant to undergo a food handler's test, which included an HIV/AIDS test, before resuming work on 9th August 2021, constituted a breach of the Claimant's fundamental



rights. In paragraphs 9 and 10 of his sworn statement, the Claimant testified that on 2nd August 2021, the 1st Defendant informed him via WhatsApp that he must undergo a food handler's test at the 2nd Defendant's facility before resuming work. He noted that he was not allowed to conduct the test at an independent facility. The Claimant also stated that the 1st Defendant sent him a reminder via another WhatsApp message on 3rd August 2021. In response to the 1st Defendant's demand, the Claimant took the test on 4th August 2021, at the 2nd Defendant's facility, which included an HIV test. However, the 2nd Defendant did not provide HIV counselling before or after the test. The Claimant tendered the WhatsApp messages as Exhibit 8. In the WhatsApp message dated 2nd August 2021, which responded to the Claimant's notification of acceptance of the job offer, among others, the 1st Defendant wrote, "We will require you to do a food handlers' test before you resume on Monday." On Tuesday, 3rd August 2021, the 1st Defendant wrote again, "Good evening, Victor. I'd need a response concerning getting the food handlers' test. You will need to do it tomorrow so we can get the results before Monday." The Claimant replied, "Okay. I'll try [to] make it tomorrow. I'd give you update if I do make it. Thanks." The witness for the 1st Defendant stated that the Claimant willingly submitted to the food handler's test at the 2nd Defendant's medical facility, as noted in paragraph 16 of the witness's sworn statement. During cross-examination by the 1st Defendant, the Claimant admitted that he was not forced to take the food handler's test. The 1st Defendant argued in paragraphs 4.05 to 4.08 of the final written address that, having volunteered to take the food handler's test as a condition for employment, the Claimant could no longer challenge that condition.

35. However, the question remains: did the Claimant truly "willingly" agree to undergo the food handler's test? According to Vocabulary.com, "a willingness to act often implies that the person has made a conscious decision and is not being coerced." Furthermore, it states, "if there is no evidence of pressure, threats, or manipulation, it suggests the action was taken of their own free will." Upon reviewing the WhatsApp messages of 2nd and 3rd August 2021, I find that the Claimant did experience pressure to undertake the food handler's test. The messages show the pressure, indicating that the Claimant had no choice. Thus, the Claimant cannot be considered to have voluntarily taken the food handler's test as a condition of employment, nor can it be said that he did so willingly to establish an estoppel against him.
36. Section 9[1] of the HIV and AIDS [Anti-Discrimination] Act, 2014, provides that no employer, institution, body or individual shall require an HIV test as a precondition to an offer of employment, access to public or private services or opportunities, except where it is shown, on the certification of two competent medical authorities [working independently] to the Court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others. The provision is very clear. An individual can only be subjected to an HIV test if it is demonstrated, with certification from two



qualified medical authorities, that not taking the test poses a clear and immediate risk of HIV transmission to others. Having reviewed the 1st Defendant's evidence, it is apparent that there is no evidence that the Claimant's requirement to take an HIV test was based on any perceived danger to others. Additionally, no certification from two competent medical authorities was presented to the Court. The 1st Defendant's witness stated in paragraph 14 of her sworn statement that the Claimant was aware that the food handler's test was part of the conditions stipulated in the 1st Defendant's company policy, which was communicated to the Claimant during the interview and by text message on 9th August 2021. Even though the 1st Defendant pleaded the text message, the text message and the company policy were not tendered to substantiate this claim. Furthermore, the 1st Defendant's witness stated in paragraph 27 of her sworn statement that the 1st Defendant acted per the terms and conditions of employment, NAFDAC and the Lagos State Ministry of Health regulations. The 1st Defendant argued in paragraphs 4.11 and 4.12 of the final written address that there is a contrasting duty imposed by statute and regulations on food handlers for the compulsory testing of workers who handle food, and referred to the NAFDAC Act and the Guidelines made thereunder. The 1st Defendant also referred to Section 9[5] of the HIV and AIDS [Anti-Discrimination] Act, and submitted that the requirement to carry out a fitness test is lawful. Conversely, the Claimant argued that he consented to the food handler's test but did not consent to an HIV/AIDS test. The 2nd Defendant's witness admitted during cross-examination that the consent form which the Claimant signed did not specify that the Claimant consented to an HIV/AIDS test. This raises the question of whether the food handler's test includes an HIV/AIDS test. Under cross-examination, the Claimant revealed that he had previously undergone a food handler's test, which did not include an HIV test.

37. The evidence indicates that the Claimant's issue is not with the food handler's test, but that he was not informed beforehand that it included an HIV/AIDS test. After reviewing the NAFDAC guidelines for micro-scale enterprises related to food on the NAFDAC website, I observe that food handlers' certificates/medical fitness certificates for production staff include sputum tests, stool tests, urinary tests, Widal tests, Hepatitis B tests, and chest X-rays. An HIV/AIDS test is not included, discrediting the 1st Defendant's evidence and submission that it had a legal duty to do so. Furthermore, the 1st Defendant referred to Section 9[5] of the HIV and AIDS [Anti-Discrimination] Act, which states that nothing in subsection [1] of this section shall prevent the medical testing of persons for fitness for work and any other responsibility as a precondition for an offer of employment and any other responsibility as provided in any existing law. One such provision is Section 8[1] of the Labour Act, which provides that "Every worker who enters into a contract shall be medically examined by a registered medical practitioner at the expense of the employer." While pre-employment tests are permissible under the law, where the test includes an HIV/AIDS test, then the employer must comply with Section 9[1] and [4] of the HIV and AIDS [Anti-Discrimination] Act,



which require certification from two qualified medical authorities, that not taking the test poses a clear and immediate risk of HIV transmission to others, and obtain the informed and full consent of the person concerned, under the national guidelines on confidentiality and counselling:-

38. As demonstrated in this judgment, the situation in this case differs significantly. The necessary certification and the Claimant's "informed and full consent" were not obtained. Chapter 8, Paragraph [a] on page 35 of the National Guidelines for HIV Counselling and Testing, 2011, specified that "HIV tests must be provided when requested or indicated, following the 3Cs principle of counselling, confidentiality, and consent." Paragraph [b] on the same page defines "informed consent" as the intentional permission granted by a client to a healthcare provider to carry out the proposed HIV test procedures. This permission should be based on a thorough understanding of the advantages, risks, potential consequences, and implications of an HIV test result, whether positive or negative. The client should also be able to consider how a positive diagnosis might affect their personal and professional life. Additionally, it is emphasised that HIV testing must be voluntary, allowing clients to make informed decisions regarding the acceptance of an HIV test. The procedure should be clearly explained to the client, and informed consent must be obtained to ensure that testing occurs without coercion. Unfortunately, none of these stipulations were adhered to. The 2nd Defendant's witness testified in paragraphs 4 to 7 of her sworn statement that the Claimant visited the 2nd Defendant's facility on 4th August 2021, at the request of the 1st Defendant for a medical examination and tests. Before the examination, the Claimant signed a consent form, provided his medical history in another form, and received appropriate counselling before the test. The 2nd Defendant tendered Exhibits D2A, the consent form, and D2B, the Claimant's medical history.
39. The Claimant wrote on the pre-printed consent form, "I, Obiora Victor, hereby give my consent to the conduct of medical examination and tests and for the results thereof to be forwarded to JAYA CRAVINGS." No documentary evidence supports the 2nd Defendant's testimony that appropriate counselling was done before the test. The nature of the counselling provided is unclear from the 2nd Defendant's witness testimony. In a similar case, the issue of the employee's consent was considered. I said, "Any employment-based medical test must respect the human rights of the employee. HIV testing without the informed consent of the employee is a serious human rights violation and undermines the dignity of the employee. It is not enough to give the employee or patient a form to fill and sign. Accordingly, I hold that giving the Claimant a form to fill and sign does not constitute pre-test counselling or receipt of her informed consent. In addition, the submission of her samples to the laboratory is not evidence of such consent or voluntariness of the test." See the unreported case of **Adewunmi Akinola v. Ocean Marine Solutions Ltd**, Suit No. NICN/LA/410/2019, the judgment was delivered on 25th October 2021, paragraph 37,



pages 27 – 28. This conclusion applies equally in this case. There was no justification for subjecting the Claimant to an HIV/AIDS test. Even when it was decided to carry out the test, the Claimant's informed consent was not obtained per the National Guidelines for HIV Counselling and Testing, 2011. Therefore, I find that while requiring the Claimant to take a food handler's test is lawful, mandating an HIV/AIDS test without his informed consent is unlawful.

Disclosure of the Claimant's HIV positive status

40. The next question is whether the 2nd Defendant breached the Claimant's privacy rights by communicating his HIV positive status to the 1st Defendant. In paragraphs 11 to 13 of his sworn statement, the Claimant testified that the 1st Defendant informed him via a WhatsApp message on 4th August 2021 that the 2nd Defendant had sent the test result and that it had been sent to his email. He stated that the 1st Defendant forwarded the email with the test to him and one Olukemi Anazodo [olukemianazodo@gmail.com], as received from the 2nd Defendant. He also stated that the test results revealed that he is HIV positive, and neither Defendant recommended a second and confirmatory test. Based on the publication of his HIV status, the 1st Defendant called him on Wednesday, 4th August 2021, at 10.54 pm, informing him of their decision to terminate his employment contract because of his HIV status. The Claimant tendered Exhibits 9 to 13 to substantiate his evidence. Exhibit 9 is the 1st Defendant's WhatsApp message of Wednesday, 4th August 2021, notifying the Claimant of receipt of his test result, and that it had been sent to his email. Exhibit 10 is the test results, and shows that the Claimant was screened HIV 1 and HIV 11 positive. Exhibit 11 is a copy of the 1st Defendant's email forwarding the 2nd Defendant's email with the test results. Exhibit 12 is the call logs showing two telephone calls on 4th August 2021, the outgoing call at 10.48 pm and the incoming call at 10.54 pm. Exhibit 13 consists of the 1st Defendant's email of 4th August 2021 forwarding the 2nd Defendant's email with the test results to the 1st Defendant and olukemianazodo@gmail.com to the Claimant; and the Claimant's email of 5th August 2021 objecting to the termination of his employment based on the test result. The exhibits corroborate the Claimant's evidence that the 2nd Defendant shared his test results with the 1st Defendant and Olukemi Anazodo, the 1st Defendant forwarded the 2nd Defendant's email with the attached test results to him, and terminated his employment based on his HIV positive status.
41. The 1st Defendant's witness testified in paragraphs 18 to 22 of her sworn statement that the 2nd Defendant was obligated to send the test results to the 1st Defendant since it was ordered by and for the use of the 1st Defendant. The witness stated that the 1st Defendant did not share the medical report with any third party, the Claimant knows that Olukemi Anazodo interviewed him and manages the 1st Defendant. The witness admitted that the 1st Defendant forwarded the test results to the Claimant,



and called to notify him that it would not be going ahead "to offer him the contract of employment because the customer care representative also handles foods and knives." Furthermore, the witness testified that the Claimant informed the 1st Defendant's representative that he became aware of his HIV status about 4 years ago, and his status did not prevent him from working with Chicken Republic, insisted on being employed, or else he would sue the 1st Defendant. In his reply to the 1st Defendant's statement of defence, the Claimant denied knowing Olukemi Anazodo or her role in the 1st Defendant, and averred that Olukemi Anazodo is different from the 1st Defendant's witness who testified that she conducted the job interview. The Claimant also denied informing the 1st Defendant of his HIV status at any time. The Claimant's reply to the 1st Defendant's statement of defence was not accompanied by a witness deposition. I have carefully read the 1st Defendant's witness's testimony during cross-examination, and I cannot find any evidence elicited by the Claimant to support his pleadings in the reply to the statement of defence. Consequently, the reply to the 1st Defendant's statement of defence is deemed abandoned. See **Olusanya v. Osinleye [2013] 12 NWLR [Pt 1367] 148 at 168**. For the 2nd Defendant, the witness testified in paragraphs 5, 8 to 11 of her sworn statement that the test results were sent to the 1st Defendant in line with the Claimant's consent and approval, and it is not liable if the 1st Defendant communicated the test result to a third party. The witness stated that it recommended a confirmatory test, but the Claimant did not come back for the confirmatory test.

42. Beginning with the 2nd Defendant's evidence, Exhibit D2A is the consent form. It is written, "I, Obiora Victor, hereby give my consent to the conduct of medical examination and tests and for the results thereof to be forwarded to JAYA CRAVINGS." Firstly, the consent provided by the Claimant was specifically to forward the results to the 1st Defendant only. There was no authorisation to send the results to Olukemi Anazodo. Exhibits 11 and 13 indicate that the 2nd Defendant sent the test results to both the 1st Defendant and Olukemi Anazodo, contrary to the Claimant's explicit instructions. Whether Olukemi Anazodo is the manager of the 1st Defendant or had interviewed the Claimant is irrelevant in this context. Secondly, I found in this judgment that the 2nd Defendant did not obtain the Claimant's informed consent when deciding to conduct an HIV test, as per the National Guidelines for HIV Counselling and Testing, 2011. Merely providing the Claimant with a form to fill out and sign does not constitute adequate pre-test counselling or the receipt of informed consent. Therefore, while the Claimant did give consent to forward the results of the "medical examination and tests" to the 1st Defendant, he did not authorise the 2nd Defendant to disclose his HIV-positive result to the 1st Defendant or anyone else. The National Guidelines for HIV Counselling and Testing emphasise the importance of recognising all individuals' fundamental rights, dignity, and privacy. The guidelines stipulate that "All sites for HIV Counselling and Testing should not provide written HIV test results, as this may compromise patient confidentiality and lead to misuse of the results." Additionally, it



states that HIV test results should be disclosed only to the client in person. The results should only be disclosed to anyone else with the client's consent. Reference can be made to Chapter 8, paragraphs [a], [d], and [e] of the National Guidelines for HIV Counselling and Testing, 2011. Although the 2nd Defendant may not be an HIV counselling and testing centre, it is a service provider. It has a duty to maintain the confidentiality of the Claimant's HIV-positive status. It should not disclose this information to anyone without the Claimant's prior written consent, except as required by law. This duty aligns with the Claimant's constitutional right to privacy, as enshrined in Section 37 of the 1999 Constitution, which includes protecting medical information.

43. Additionally, Section 11[1] of the HIV and AIDS [Anti-Discrimination] Act states that no person shall disclose any information regarding an individual's HIV status without that individual's written consent, unless such disclosure is mandated by law. Section 13[1] of the Act affirms that all persons living with HIV or affected by AIDS have the right to the protection of their health and medical records. According to Section 13[2], violating this provision is punishable by a prison term of up to two years, a fine of ₦500,000 for individuals, and a fine of ₦1,000,000 for institutions, or both penalties. Based on the evidence presented, I find that the 2nd Defendant violated its legal obligation to the Claimant by unlawfully disclosing his HIV positive status to the 1st Defendant and Olukemi Anazodo. This action breached the provisions of the HIV and AIDS [Anti-Discrimination] Act. Furthermore, the 1st Defendant infringed upon the Claimant's constitutional right to privacy by circulating the 2nd Defendant's email.

Termination of the Claimant's employment contract based on his HIV status

44. The next issue is whether the 1st Defendant's termination of the Claimant's employment contract on account of his HIV positive status is lawful. The Claimant stated in paragraph 13 of his sworn statement that the 1st Defendant terminated his employment on 4th August 2021 through a phone call based on his HIV status. In contrast, the 1st Defendant asserted in paragraphs 23, 24, and 26 of its witness's sworn statement that there was never an employment contract that could be terminated. However, I found in this judgment that there was a binding employment contract between the Claimant and the 1st Defendant. Section 14[5] of the HIV and AIDS [Anti-Discrimination] Act prohibits the termination of an employment contract based on the employee's real or perceived HIV status. Therefore, I find as a fact that the termination of the Claimant's employment contract due to his HIV status is unlawful.
45. The 1st Defendant argued that the Claimant provided inconsistent testimonies regarding the food handler's test and his curriculum vitae, suggesting that he is not a truthful witness. The Court was urged not to assign any probative value to his evidence. I have reviewed the Claimant's evidence on these matters. While it is clear that the



Claimant did not request to take his test at an independent facility, the overall consistency of his testimony about the food handler's test remains intact. The Claimant's statement that he was not permitted to take his test at an independent facility does not undermine the credibility of his testimony. Additionally, his admission during cross-examination that he intentionally omitted information about his employment with Krispy Crème from his curriculum vitae will impact his claim for damages. Still, it does not diminish the probative value of his evidence. The 1st Defendant's submission is hereby discountenanced.

Thus, the sole issue for determination is resolved in favour of the Claimant.

Consideration of the reliefs

46. The first claim seeks a declaration that the 1st Defendant's subjection of the Claimant to a compulsory food handlers/HIV test as a condition for resuming work with the Defendant is in violation of –
- i. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and/or Article 12 of the Universal Declaration of Human Rights of 1948; and/or
 - ii. Sections 1[f], 8[1] and 9[1] of the HIV and AIDS [Anti-Discrimination] Act, 2014; and therefore, unconstitutional and unlawful.

The evidence indicates that the Claimant's issue is not with the food handler's test, but that he was not informed beforehand that it included an HIV/AIDS test. I found that while requiring the Claimant to take a food handler's test is lawful, mandating an HIV/AIDS test without his informed consent breached Sections 9[1] and [4] of the HIV/AIDS [Anti-Discrimination] Act, and of the National Guidelines for HIV Counselling and Testing, 2011 rendering it unlawful. I adopt my reasoning and conclusion in paragraph 39 above, and hold that this claim partially succeeds.

47. The second claim seeks a declaration that the 1st Defendant's oral revocation of the offer of employment made to the Claimant on the basis of his real or perceived HIV status is in violation of:
- i. Section 42 of the Constitution of the Federal Republic of Nigeria 1999 [as amended]; and/or
 - ii. Section 14[5] of the HIV and AIDS [Anti-Discrimination] Act, 2014; and therefore, unconstitutional, discriminatory on the grounds of health status, and unlawful.



I found in this judgment that there was a binding employment contract between the Claimant and the 1st Defendant. I also found that the termination of the Claimant's employment contract due to his HIV status is unlawful. I adopt my reasoning and conclusions in paragraphs 33 and 44 above, and hold that this claim has been established, and it is granted.

48. The third claim seeks a declaration that the 2nd Defendant's communication of the Claimant's HIV test result to the 1st Defendant and Olukemi Anazodo is in violation of

- i. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 [as amended] and/or Article 12 of the Universal Declaration of Human Rights of 1948; and/or
- ii. Section 13 of the HIV and AIDS [Anti-Discrimination] Act, 2014, and therefore, unconstitutional, unlawful and discriminatory on the grounds of health and an infringement of the right to privacy.

I found in this judgment that while the Claimant gave his consent to forward the "medical examination and tests" results to the 1st Defendant, the Claimant did not authorise the 2nd Defendant to forward his HIV positive result to the 1st Defendant or anyone else. I also found that the 2nd Defendant violated its legal obligation to the Claimant by unlawfully disclosing his HIV positive status to the 1st Defendant and Olukemi Anazodo. This action breached the provisions of Section 37 of the 1999 Constitution and Section 13[1] of the HIV and AIDS [Anti-Discrimination] Act. I adopt my reasoning and conclusions in paragraphs 42 and 43 above, and hold that this claim has been established and is granted.

49. The fourth claim seeks a declaration that the 1st Defendant's oral revocation of the offer of employment to the Claimant is a wrongful breach of the contract between the Claimant and the 1st Defendant. It is the law that a party alleging a breach of contract bears the burden of proof to substantiate his claim. The Claimant stated in paragraphs 13 and 16 of his sworn statement that his employment was terminated via a phone call due to his HIV status, which he argues is contrary to his employment contract. He also claimed that the 1st Defendant did not provide him with any termination letter. The 1st Defendant acknowledged that the Claimant's employment offer was terminated by phone after receiving the Claimant's test result; however, the 1st Defendant maintained that no formal employment relationship existed. Upon reviewing the offer letter, I noted that it lacks a termination clause. This indicates that there was no agreed-upon method for terminating the employment contract. According to Section 9[7][c] of the Labour Act, a contract may be terminated by notice in line with Section



11 of the Act or any other legally acceptable manner. Section 11[1] states that either party to an employment contract may terminate the contract upon the expiration of notice given to the other party informing him of this intention. Subsection 2 elaborates on the notice requirements under subsection 1. Since the parties did not agree on a method for terminating the contract, I believe the general contract principles should apply. Just as contracts can be formed orally or in writing, they can also be terminated in either manner. In the case of **Ifeta v. Shell Petroleum Development Company of Nigeria Limited [2006] 8 NWLR [Pt 983] 585 at 621, 623**, the Supreme Court, per Onnoghen, JSC [later CJN], held that the absence of notice does not matter if the actions of the Respondent have effectively terminated the appointment. Whether notice was given arises when assessing whether the termination aligns with the employment contract's terms. The Court further held that "notice is notice whether in writing or oral, provided both parties are not misled as to what is happening." In conclusion, I hold that this claim has not been substantiated and is therefore refused.

50. The fifth claim is for an order for the award of ₦5,000,000.00 [five million naira] as general damages against the 1st Defendant for grossly violating the Claimant's fundamental rights by subjecting him to a compulsory food handlers/HIV test as a condition for resuming work with the 1st Defendant. Damages are a form of pecuniary compensation awarded in cases of wrongdoing, whether tort or breach of contract. Such compensation is typically granted as a lump sum at the time of judgment, unconditionally and generally. In breach of contract cases, the measure of damages is the loss that arises directly and naturally from the breach. Significantly, the principles governing the award of damages in tort differ from those in contract law. The purpose of tort damages is to restore the Claimant to the position he would have been in had the tort not occurred. Conversely, contract damages aim to place the Claimant in the position he would have been in had the contract been fulfilled satisfactorily, as established in **Agbanelo v. Union Bank of Nigeria Ltd [2000] LPELR-234[SC] 20 - 21**. Contrary to the 2nd Defendant's argument in its second issue, the appropriate measure of damages is not simply the Claimant's agreed monthly salary of ₦66,673.33. The harm suffered by the Claimant is related to a breach of contract, a violation of the 1999 Constitution, and the HIV and AIDS [Anti-Discrimination] Act. As a result, different considerations must be taken into account. In general, awarding damages is within the Court's discretion and is intended to alleviate losses caused by the opposing party, as noted in **Nigerian Railway Corporation v. Ojo [2021] LPELR-55971[CA] 40 - 41**. I found in this judgment that while requiring the Claimant to take a food handler's test is lawful, mandating an HIV/AIDS test without his informed consent breached Sections 9[1] and [4] of the HIV/AIDS [Anti-Discrimination] Act, and of the National Guidelines for HIV Counselling and Testing, 2011 rendering it unlawful. This claim is related to the first claim, which was partially successful. Therefore, this claim is partially successful. Having determined that the 1st Defendant violated the Claimant's rights, the Court must provide a remedy. In a similar case, **Mrs. Georgina**



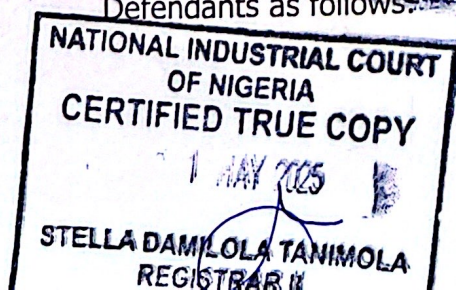
Ahamefule v. Imperial Medical Centre & Anor, Suit No. ID/1627/2000, an unreported decision of the Lagos High Court, Ikeja Judicial Division, delivered on 27th September 2012, by Hon. Justice Y. O. Idowu [Mrs.], the Plaintiff, an employee of the Defendant, became pregnant. The Defendant conducted an initial HIV test and subsequent confirmatory tests on the Claimant without her informed consent. The Court found that subjecting the Plaintiff to HIV testing without her informed consent constituted an unlawful battery. Furthermore, the Defendant's failure to provide pre-test and post-test counselling services amounted to a negligent breach of professional duty, resulting in an award of ₦2 million in compensation for the unlawful conduct of HIV testing without the Plaintiff's informed consent and for the Defendant's negligence. In another case involving violating an employee's fundamental right to freedom from discrimination, **Owolabi Susan v. Aso Savings & Loans Plc**, Suit No. NICN/AK/52/2015, also an unreported judgment delivered on 10th July 2018, by Hon. Justice O. O. Oyewumi [now JCA], the Court awarded the Claimant ₦2,435,915.07 as compensation for the infringement of her inviolable and inalienable right to work. In **Adewunmi Akinola v. Ocean Marine Solutions Ltd** [supra], I ruled in favour of the Claimant and awarded her five years' salary. Section 19[d] of the National Industrial Court Act, 2006, grants this Court the authority to award compensation or damages in any situation contemplated by the Act. Given that the Claimant's net salary was ₦66,673.33, I now award him the salary he would have earned for three years as general damages, totalling ₦2,400,239.88.

51. The sixth claim is for an order for the award of ₦1,000,000.00 [one million naira] as general damages against the 2nd Defendant for violating the Claimant's fundamental rights by communicating the Claimant's HIV test results to the 1st Defendant and Olukemi Anazodo without the Claimant's consent. This claim is ancillary to relief three, which has been granted. I found that the 2nd Defendant breached its statutory duty to the Claimant by disclosing his HIV positive status without authorisation to the 1st Defendant and Olukemi Anazodo. This action also violated the provisions of the HIV and AIDS [Anti-Discrimination] Act. According to Section 13[2] of the Act, breaching this provision can result in up to 2 years' imprisonment or a fine of ₦500,000 for individuals and ₦1,000,000 for institutions, or both. Therefore, I award the Claimant ₦500,000 in damages against the 2nd Defendant for infringing on the Claimant's rights.
52. The seventh claim is for an order for the award of ₦5,000,000.00 [five million naira] as general damages against the 1st Defendant for the wrongful breach of the contract between the Claimant and the 1st Defendant, having induced the Claimant to disengage from his former employers. This claim is ancillary to relief four, which has been refused. Therefore, this claim also fails.
53. The eighth claim seeks interest on all the sums claimed in [5], [6] and [7] above at the rate of 22% per annum until the sum is liquidated. This Court is empowered by



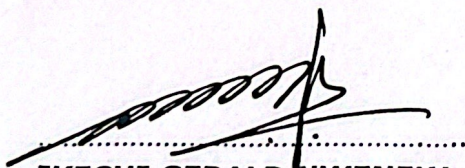
Order 47 Rule 7 of the National Industrial Court of Nigeria [Civil Procedure] Rules, 2017, to award post-judgment interest at the minimum rate of 10% per annum. The Claimant has not established his claim for 22% post-judgment interest. Accordingly, I hold that the Claimant is entitled to interest on the monetary awards at 10% per annum from the date of this judgment.

54. The ninth claim is for the cost of this action. Costs typically follow the outcome of litigation. A successful party is entitled to costs, regardless of whether they are specifically claimed, unless there are special reasons to deny them. This principle is seen in **Egypt Air Limited v. Ibrahim & Anor [2021] LPELR-55882[CA] 35 - 36** and **Jalbait Ventures Nigeria Ltd & Anor v. Unity Bank Plc [2016] LPELR-41625[CA] 38 - 39**. The primary purpose of costs is to compensate the successful party for litigation expenses. Costs are not intended as a bonus to the victorious party or to rectify all financial losses incurred during litigation, nor should they be awarded based on sentiment or used as a punishment for the losing party. The Court possesses unfettered discretion to award costs, which must always be exercised judiciously. See Order 55, Rules 1 and 5 of the Court Rules, as well as **Jalbait Ventures Nigeria Ltd & Anor v. Unity Bank Plc [supra]** and **Yakubu & Anor v. Ministry of Housing and Environment, Bauchi State & Anor [2021] 12 NWLR [Pt 1791] 465 at 485**. In determining costs, the Court considers the filing fees paid, the case duration, the number of witnesses presented by the victorious party, the cost of legal representation, the value of the naira at the time expenses were incurred, and the current value. See **Adelakun v. Oruku [2006] LPELR-7681[CA] 26 - 28**. Given the facts and circumstances of this case, I hold that the Claimant is entitled to the costs associated with this action. The Claimant incurred approximately ₦36,870 on filing and service fees, attended four hearings, and was represented by counsel at eight proceedings, which spanned about three years and eight months. Taking into account the depreciation of the naira, the inflation rate, the costs of filing and serving processes, and the length of time it has taken the Claimant to enforce his rights, I hereby award the Claimant ₦500,000 [five hundred thousand naira] in legal costs to be paid by the Defendants.
55. The tenth claim is for any further order[s] the Honourable Court may deem fit to make in the circumstances of this case. This omnibus prayer has been held to be an imprecise claim. As the Court does not act in vain, it will not grant an unspecific claim. See **A. G., Ogun State & Ors v. A. G., Federation [2002] 18 NWLR [Pt 798] 232**. Thus, this claim is refused.
56. On the whole, the Claimant's claims succeed partially. Reliefs 2, 3, 5, 6, 8 and 9 are granted. Relief 1 succeeds partially, while reliefs 4, 7 and 10 fail and are dismissed. For the avoidance of doubt, judgment is entered for the Claimant against the Defendants as follows:



- a. It is declared that the 1st Defendant's requirement for the Claimant to undergo a mandatory HIV test as a condition for resuming work on 9th August 2021 is a violation of Section 9[1] and [4] of the HIV and AIDS [Anti-Discrimination] Act, 2014, and is therefore unlawful.
- b. It is declared that the termination of the Claimant's employment contract due to his HIV status violates Section 14[5] of the HIV and AIDS [Anti-Discrimination] Act, 2014, and is therefore unlawful.
- c. It is declared that the 2nd Defendant's communication of the Claimant's HIV test result to the 1st Defendant and Olukemi Anazodo breached Section 37 of the 1999 Constitution and Section 13[1] of the HIV and AIDS [Anti-Discrimination] Act, 2014, and is therefore unlawful.
- d. The 1st Defendant shall pay the Claimant ₦2,400,239.88 [two million, four hundred thousand, two hundred thirty-nine naira, eighty-eight kobo] as general damages for violating the Claimant's rights.
- e. The 2nd Defendant shall pay the Claimant ₦500,000 [five hundred thousand naira] as general damages for infringing on the Claimant's rights.
- f. The Defendants shall pay the Claimant the cost of this action, which is assessed at ₦500,000 [five hundred thousand naira].
- g. All monetary awards shall bear interest at 10% per annum from today until the judgment sum is fully liquidated.

Judgment is entered accordingly.



IKECHI GERALD NWENEKA
JUDGE

15/5/2025

Attendance: Parties absent

Appearance: ...

Chizelu Emejulu Esq. for the Claimant

Kenneth C. Ahia, SAN, with Israel O. Anyuzgi Esq. and Charles Odindu Esq. for the 1st Defendant

B. Sheetham-West Esq. for the 2nd Defendant

