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To Members of the Malaysian Bar

Highlights from the Appellate Courts (No 17/2026)

The Publications Committee is pleased to circulate the 17th edition of this case note series for the year.

The cases covered in this edition are as follows:

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Contract law – Performance – Compensation under Section 74 of the Contracts Act 1950 – Estoppel

Written by Yuki Lim Jie Ny

(2) Ekovest Capital Sdn Bhd v Tan Tiong Hwa & Anor & Another Appeal (CA)

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Written by Ryan Ng Chin Wern

The case notes may be accessed [here](#) (see page 2 onwards).

Sincerely,

**Gregory Das
Co-Chairperson
Publications Committee**



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Highlights from the Appellate Courts

DataFM Sdn Bhd v Shaziman Transport Sdn Bhd (CA)

Contract law – Performance – Compensation under Section 74 of the Contracts Act 1950 – Estoppel

Panel:

Faizah Jamaludin, JCA
Shahnaz Sulaiman, JCA
Dean Wayne Daly, JCA

Overview

The Court of Appeal decision in **DataFM Sdn Bhd v Shaziman Transport Sdn Bhd** (Civil Appeal No.: B-02(NCVC)(W)-217-02/2024) concerned an appeal by DataFM Sdn Bhd (“**DataFM**”) against a High Court decision holding it liable for breach of a five-year agreement dated 29.11.2013 (“**the Agreement**”), under which DataFM supplied GPS and on-truck computer (“**OTC**”) units and undertook to process the data and furnish prescribed reports, for petroleum-transport vehicles operated by Shaziman Transport Sdn Bhd (“**Shaziman**”) for Petron Malaysia Refining & Marketing Bhd. The High Court found that DataFM had failed to furnish the stipulated OTC reports, ordered repayment of the OTC rentals, and directed an assessment of the operating charge and employee costs claimed by Shaziman, while allowing DataFM’s counterclaim only to the extent of RM7,700.00 for dismantling charges.

The Court of Appeal held that the decisive breach was DataFM’s failure to furnish the prescribed OTC reports, irrespective of whether it was separately obliged to install a fleet downloading station (“**FDS**”). DataFM’s later, unpleaded contentions that an ordinary CPU could have been used, that an FDS installed for Shaziman’s Petronas operations could have been shared, or that Shaziman’s drivers caused the absence of reports, did not establish performance or excuse non-performance. Nor did a meeting between the parties on or about 25.8.2016, or Shaziman’s continued payment and retention of the equipment, amount to acceptance, waiver or estoppel. The appeal was dismissed in its entirety and the High Court’s orders, including the RM7,700.00 award on DataFM’s counterclaim, were affirmed.

Background

Under the Agreement, DataFM agreed to supply, install and maintain the OTC/GPS system (clause 3) and to provide the associated services (clause 4). Exhibit D imposed express reporting obligations: DataFM was to monitor the integrity of the GPS and OTC data, process it, and prepare and distribute prescribed daily, weekly, fortnightly and monthly reports. The monthly rental was RM60.00 per GPS unit and RM60.00 per OTC unit, plus a RM150.00 monthly operating and reporting charge per truck. An FDS was separately priced at RM390.00 monthly rental and RM350.00 installation. Clause 12 provided that early termination by Shaziman left it liable for the outstanding rentals and charges for the balance of the five-year term.

Shaziman’s case was that DataFM failed to furnish the prescribed OTC reports despite payment of the OTC rentals and operating charges. DataFM’s pleaded defence was that an FDS had been

installed at Shaziman’s three (3) Petron bases and the reports generated. At trial, however, DataFM advanced a different case: that it was under no obligation to install an FDS without separate payment, that OTC data could be downloaded via an ordinary CPU or a shared Petronas FDS, and that Shaziman’s drivers had failed to “debrief” the data, relying on Non-Debrief Reports and a single accident report. It also relied on a meeting on or about 25.8.2016 with Shaziman’s director, Ginderpal Singh a/l Harnek Singh (“**Ginderpal**”), as supporting its case.

After a nine-day trial, the High Court found that DataFM had not furnished the stipulated OTC reports, ordered repayment of RM73,320.00 in OTC rentals, and directed an assessment of the RM150.00 monthly operating charge and the employee costs claimed by Shaziman for manually preparing the missing reports. It allowed DataFM’s counterclaim, reduced at trial to RM367,000.40, only to the extent of RM7,700.00 for dismantling charges. DataFM appealed against the whole decision.

Decision of the Court of Appeal

Issue 1: Whether the High Court erred in finding that DataFM breached its contractual reporting obligations

The Court of Appeal noted that the construction of a contract and errors of law are matters on which an appellate court may reach its own view (**Silver Concept Sdn Bhd v Brisdale Rasa Development Sdn Bhd** [2005] 4 MLJ 101). By contrast, findings as to the services actually performed and the reliability of witnesses are evaluative findings of fact which should not be disturbed unless the trial judge is shown to be plainly wrong (**Ng Hoo Kui & Anor v Wendy Tan Lee Peng & Ors** [2020] 12 MLJ 67). Nevertheless, the appellate court remains obliged to consider whether the evidence was properly evaluated (**Letchumanan Chettiar Alagappan v Secure Plantation Sdn Bhd** [2017] 4 MLJ 697).

On the substance, the appeal did not turn on whether DataFM was obliged to install an FDS without separate payment. While the Agreement separately priced the FDS, that did not relieve DataFM of the express reporting obligations in Exhibit D, which were not conditional upon Shaziman subscribing to an FDS. The material breach was DataFM’s failure to provide the prescribed OTC reports. Whether the necessary data was obtained through an FDS, a CPU or by some other means concerned only the manner in which DataFM performed its obligations, rather than the existence of those obligations.

The Court of Appeal further considered DataFM’s departure from its pleaded defence. Its Amended Defence pleaded that

the FDS had been installed and the reports generated; at trial and on appeal it instead ran a materially different case – that an ordinary CPU could be used, that the Petronas FDS could be shared, and that Shaziman's drivers caused the absence of reports by failing to download the data. The Court of Appeal held that these were not further particulars of the pleaded defence, but a new factual explanation for non-performance. This engaged the general principle that a party cannot succeed on a materially different unpleaded case which alters the character of the dispute and deprives the opposing party of fair notice (**Samuel Naik Siang Ting v Public Bank Bhd** [2015] 6 MLJ 1).

The Court of Appeal acknowledged the countervailing principle that a defect in pleading may be cured where the true issue was fully investigated at trial without surprise (**K.E.P. Mohamed Ali v K.E.P. Mohamed Ismail** [1981] 2 MLJ 10; **Ang Koon Kau & Anor v Lau Piang Ngong** [1984] 2 MLJ 277; and **Bank Bumiputra Malaysia Bhd v Emas Bestari Sdn Bhd** [2014] 2 MLJ 49). It held, however, that this was not such a case. The CPU and driver-default explanations were not merely further evidence directed at an existing issue; they raised distinct factual questions concerning the availability and location of computers, driver training and instructions, and the allocation of downloading responsibility, which had not been investigated on that footing. The High Court was therefore entitled to hold DataFM to its pleaded case that the FDS had been installed and the reports generated.

In any event, the Court of Appeal found that the alternative explanations did not establish performance or excuse non-performance. DataFM produced no coherent set of reports or transmission emails, its own email of 30.3.2015 admitted it could not send reports without an FDS, and the Non-Debrief Reports and single accident report did not show recurring performance. The finding of breach was accordingly upheld.

Issue 2: The legal and evidential effect of the meeting on or about 25.8.2016

The transcript of the meeting had to be read as a whole, as a problem-solving discussion in which no concluded terms were recorded. Ginderpal's acceptance of the GPS charge, and his willingness in principle to pay the RM150.00 reporting charge, supported apportionment of that charge but did not admit that DataFM had furnished the OTC reports; he consistently distinguished the accepted GPS functions from the disputed OTC services and called an OTC service without reports "just like not having anything".

This position was reinforced by Shaziman's email later that same day, which expressly reserved that payment did not constitute an acknowledgment that all the required reports had been received. The Court of Appeal considered this reservation inconsistent with any suggestion that Shaziman had waived DataFM's breach or accepted full performance of its contractual obligations. Accordingly, the meeting did not displace the High Court's finding that DataFM had breached its reporting obligations.

Issue 3: Whether Shaziman was entitled to repayment of RM73,320.00 and to an assessment of the RM150.00 monthly operating charge

Although the Agreement as a whole was not unperformed, the commercial object of the OTC component lay in the recurring reports, which were not furnished. Under section 74 of the Contracts Act 1950, the RM73,320.00 in OTC rentals was properly treated as loss caused by the breach, subject to being accounted for at the assessment to avoid duplication. As for the RM150.00 charge, since Exhibit B described an integrated operating and reporting service and Ginderpal had accepted the charge in principle, it could not be characterised wholly as OTC or GPS-related; the High Court was correct to direct an assessment at which Shaziman must prove the portion attributable to services not provided, with full credit for GPS services supplied.

Issue 4: Whether Shaziman's claims were precluded by estoppel or the principle against approbation and reprobation

DataFM argued that Shaziman's retention of the units, continued payments and failure to terminate gave rise to an estoppel (**Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd** [1995] 3 MLJ 331) or an inconsistent election (**Nabors Drilling (Labuan) Corporation v Lembaga Perkhidmatan Kewangan Labuan** [2020] 12 MLJ 54). The Court of Appeal held that, although detriment is not essential to establish estoppel, the relevant question is whether it would be unjust to permit Shaziman to insist on its strict legal rights. Given Shaziman's repeated complaints, demands for the reports, express reservation of its position when making payment, and its exposure to charges under clause 12 in the event of early termination, its conduct neither encouraged DataFM to believe that it would not enforce its rights nor amounted to a true election between inconsistent rights. Accordingly, neither estoppel nor election assisted DataFM.

Issue 5: Whether the High Court was correct in ordering an assessment of the costs of preparing reports manually

Shaziman claimed RM536,831.85 for employees engaged to prepare the reports manually. The Court of Appeal held that salary paid to an existing employee is not the measure of contractual loss; Shaziman must prove additional expenditure or a measurable loss from the diversion of productive time. As operational witnesses gave evidence of manual reporting work and manual reports were produced, this supported the direction for assessment, though it did not establish that every salary and period claimed was attributable to the breach. The direction for assessment was affirmed, without endorsing the pleaded sum or any component of it.

Issue 6: Whether the High Court erred in rejecting any part of DataFM's counterclaim

DataFM's counterclaim, reduced at trial to RM367,000.40, was allowed only to the extent of RM7,700.00 for dismantling charges. On appeal, DataFM advanced eight (8) heads which did not reconcile with the pleaded or reduced counterclaim and included sums already paid or credited. The GPS rentals and

installation charges had been paid, and the missing-OTC and overtime charges credited, leaving no basis to reinstate them.

The claims for outstanding OTC rentals and operating charges were also rejected for want of proof of performance. Further, a separate claim for RM8,444.00 arising from the parties' Petronas arrangement could not be introduced into the present dispute.

As for the dismantling charges, Exhibit C prescribed a fee of RM200.00 per truck, rather than per device. As the GPS and OTC units were housed together in each truck, the High Court had correctly awarded RM7,700.00, instead of the RM15,400.00 claimed by DataFM on a per-device basis.

Conclusion

The Court of Appeal dismissed the appeal in its entirety. It affirmed the High Court's finding that DataFM had breached its contractual reporting obligations, a conclusion resting on the express terms of Exhibit D rather than on any unconditional obligation to install an FDS free of charge.

Additionally, the Court of Appeal affirmed the repayment of RM73,320.00 and the directions for assessment of the RM150.00 monthly operating charge and the employee costs claimed by Shaziman, subject to the evidential and compensatory limits stated in its grounds, and found no basis to interfere with the RM7,700.00 awarded on DataFM's counterclaim. DataFM was ordered to pay Shaziman costs of RM35,000.00, subject to *allocatur*.

Written by
Yuki Lim Jie Ny
Member, Publications Committee

Ekovest Capital Sdn Bhd v Tan Tiong Hwa & Anor & Another Appeal (CA)

Housing development – Schedule H agreement – Liquidated ascertained damages – Full and final settlement – Accord and satisfaction – Limitation – Subsequent change in law – Partial CCC – Rebate

Panel:

Azizul Azmi b Adnan, JCA
Ong Chee Kwan, JCA
Nadzarin b Wok Nordin, JCA

Overview

In **Ekovest Capital Sdn Bhd v Tan Tiong Hwa & Anor & Another Appeal** (Civil Appeal No.: W-04B(NCVC)(W)-349-10/2025), the Court of Appeal (“**the COA**”) considered two appeals heard together concerning claims for balance liquidated ascertained damages (“**LAD**”) by purchasers of two residential parcels in the EkoCheras mixed development. Upon delivery of vacant possession, the purchasers had accepted LAD and signed letters recording full and final settlement of all claims concerning the parcels and common facilities (“**the Settlement Letters**”). They later sought further LAD by relying on decisions affecting the commencement and terminal dates of the LAD period.

The COA allowed the appeals. The orders below were set aside insofar as they awarded balance or additional LAD, interest and costs, and the purchasers’ claims were dismissed. The Settlement Letters constituted a binding accord and satisfaction discharging the accrued LAD claims. The statutory character of a Schedule H agreement did not prevent a *bona fide* post-breach compromise of an accrued monetary claim, as distinct from prospective dilution of statutory purchaser protection. The rebate counterclaim remained dismissed.

Background

Before the Schedule H sale and purchase agreements (“**the SPAs**”) were signed, the Controller granted the developer an extension of time (“**EOT**”) on 18 October 2013, extending completion from 36 to 48 months. The purchasers paid RM10,000 in booking fees for each parcel on 7 September 2013. Their SPAs, executed on 16 December 2013 and 10 April 2014 respectively, incorporated the 48-month period.

Notices of Vacant Possession and a Partial Certificate of Completion and Compliance (Borang F1) (“**the Partial CCC**”) were issued on 2 May 2019. The Partial CCC covered the purchasers’ residential blocks, while the architect had separately certified the common facilities complete. Vacant possession was deemed delivered on 16 May 2019. The full CCC followed on 13 September 2019 as the architect attributed the interval principally to outstanding compliance matters in the hotel block.

The developer paid LAD calculated over 48 months from the SPA dates. The purchasers signed the Settlement Letters, banked the payments, took the keys and occupied the parcels without protest. Relying on the Federal Court decision in **Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan**, the purchasers commenced proceedings on 24 February 2020, initially alleging that the EOT was invalid and alternatively claiming further LAD.

The Sessions Court allowed the claims. During the High Court appeal, the Federal Court in **Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd** established that *Ang Ming Lee* did not retrospectively invalidate earlier EOTs, and the purchasers accepted the EOT as valid. The High Court nevertheless applied the *PJD Regency* principle and computed the LAD from the booking-fee date, extended the LAD period to the full CCC, treated the Settlement Letters as not being a bar to the claim and rejected the counterclaim for the rebate.

Decision of the COA

Limitation and the reach of Obata-Ambak

The COA rejected the developer’s section 6(1) Limitation Act 1953 defence. The limitation finding in *Obata-Ambak* concerned purchasers challenging the SPA terms that were agreed upon execution. These purchasers did not challenge the EOT or 48-month period and they only claimed the balance LAD under the SPAs.

Under clauses 25(3) and 27(3) of the SPAs, the causes of action accrued when the purchasers took vacant possession and when the vendor completed the common facilities. Before the contractual period expired and delivery occurred, there was no breach or ascertainable delay. The February 2020 action was therefore within time. It follows that the *Obata-Ambak* decision did not provide for an overarching limitation defence, although its treatment of full and final settlements remained decisive.

The Settlement Letters were a binding accord and satisfaction

When the Settlement Letters were signed, the breach had occurred and the LAD claims had crystallised. The developer tendered payment under the SPAs and the law as it then stood. In return, the purchasers accepted “full and final settlement of any and all loss and damage” and irrevocably waived further claims. They retained the payments and accepted possession.

The COA referred to section 64 of the Contracts Act 1950 and held that the provision “*permits a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him, or to accept instead of it any satisfaction which he thinks fit. A compromise of an accrued claim, supported by payment which is accepted, binds according to its terms. The law leans in favour of upholding settlements. There is a public interest in finality and in disputes being laid to rest without litigation, and a party who has taken the benefit of a settlement will not be heard to approbate and reprobate*”.

The COA distinguished between the prospective dilution of statutory rights and the compromising of an accrued claim.

Devices that are imposed before a dispute arises to exclude, cap or vary the terms of a Schedule H contract would attract the application of the rule against contracting out of a statute, as referred to in ***Sentul Raya Sdn Bhd v Hariram Jayaram***. A settlement that arises after a breach does not vary the statutory contract. Rather, such a settlement takes those rights as they stand and resolves the resulting money claim. Neither the Housing Development (Control and Licensing) Act 1966 nor its Regulations prohibit such a compromise.

On the applicability of ***Loh Tina & Ors v Kemuning Setia Sdn Bhd***, the COA opined that *Loh Tina* concerned estoppel used to perfect an unlawful deprivation of statutory rights. Here, the EOT was valid and the developer relied on the Settlement Letters, which was held to be “*a binding accord and satisfaction which discharged the appellant’s liability for LAD in respect of the parcels and the common facilities*”. The maxim that there is no estoppel against a statute did not apply.

The purchasers’ subjective intention could not alter the clear written terms. No duress, coercion or unconscionable procurement was pleaded or proved. There was no contemporaneous protest or reservation and the monies were never tendered back. The informed waiver authorities concerned a known under-calculation or bare receipt. Here, the payments reflected the full entitlement under the SPAs and the law as it stood at the date of the Settlement Letters.

Later developments in law and unjust enrichment

It was held that a compromise allocates factual and legal risk. A later decision / development in the law showing that one party might have recovered more does not vitiate that compromise. The *Ang Ming Lee, PJD Regency* and the Partial CCC decisions could not retrospectively turn full and final payments into part payments. The COA was also mindful of the warning given by the Federal Court in *Obata-Ambak* and opined that allowing parties to reopen a concluded settlement by reason of development in law would cause a retrospective windfall resulting in unjust enrichment.

The COA did not decide whether *PJD Regency* required LAD to run from the booking fee date, but assumed this to be the position in favour of the purchasers. The *PJD Regency* principle was held to govern computation of a subsisting claim as it cannot revive a claim that has already been discharged.

Delivery supported by the Partial CCC

Although the COA’s ruling on the Settlement Letters disposed of the appeals, the COA proceeded to address the Partial CCC issue because it had been fully argued in the appeal. On the particular facts, vacant possession delivered on 16 May 2019 was valid. Read purposively, Borang F and F1 each certified that the building covered was complete, safe and fit for occupation, while by-law 25(2) of the Uniform Building By-Laws 1984 expressly permitted partial certification of a completed part.

The Partial CCC covered the whole residential blocks. The common facilities were separately certified complete, and the outstanding matters principally concerned an unrelated hotel block, being the final phase of the mixed development. The COA opined that LAD under a Schedule H contract was designed to compensate purchasers for exclusion from the parcels and common facilities, and that “it is not a penalty referable to the completion of the development at large”. The COA preferred *Tham Wai Keat* and distinguished *Chau Chee Sing* and *Wong Sii Ling*, wherein the partial certificates covered only part of accommodation sold, in contrast with the present appeal concerning the Partial CCC covering the whole residential blocks.

Treatment of the rebate

As no balance LAD was held to be payable, the matter of computation of LAD was held to be academic. It was held that any LAD that was payable should nevertheless use the net purchase price to avoid compensating an outlay never made. It was also observed that a rebate operates defensively in computing LAD, not offensively as a freestanding debt. It followed that the COA upheld the dismissal of the counterclaim.

Written by
Aiman Abd Gaffar
Member, Publications Committee

Liberty Technology Resources v Suruhanjaya Syarikat Malaysia (CA)

Contract law – Express termination clause and common law termination – Liquidated ascertained damages – Prematurity of LAD claim – Double recovery – Burden of proof on delay – Unrebutted expert evidence – “Obviously lacking in defensibility” test

Panel:

Mohd Nazlan b Mohd Ghazali, FCJ

Faizah bt Jamaludin, JCA

Ismail b Brahim, JCA

The case of **Liberty Technology Resources v Suruhanjaya Syarikat Malaysia** (Civil Appeal No.: W-01(NCC)(W)-362-07/2023) concerned principles on contract law, particularly:

- (a) whether principles on total failure of consideration and time being of the essence are relevant when termination is exercised under an express contractual right;
- (b) the construction of a contractual election clause, including the timeframe for exercising an option and whether a later pleading can retrospectively constitute a valid election;
- (c) the prematurity of liquidated ascertained damages (“**LAD**”) claims, and whether overlapping LAD claims amount to double recovery; and
- (d) the burden of proof on delay, and the weight to be given to unrebutted expert evidence under the “obviously lacking in defensibility” test.

Background Facts

The Appellant (“**Liberty**”) and the Respondent (“**SSM**”) entered into an Enterprise Resource Planning Agreement dated 13.9.2017 (“**ERP Agreement**”), under which Liberty was engaged to develop, configure, and implement a comprehensive ERP system. The original completion date was 31.10.2017 and the contract price was RM29,800,000.00 (later increased to RM35,530,152.00).

Four extensions of time (“**EOT**”) were granted, culminating in a 4th EOT to 31.8.2019, which also subjected Liberty to LAD under clause 20.2(a) of the ERP Agreement for the period of 1.4.2019 to 31.8.2019.

Liberty’s request for a further extension on 29.8.2019 was rejected. SSM issued a Notice of Default under clause 25.1(a) of the ERP Agreement on 19.11.2019, triggering a 30 day Remedy Period. Liberty failed to remedy the breaches, and SSM issued a Notice of Termination under clauses 25.1(a) and 25.2 of the ERP Agreement on 23.12.2019.

At termination, the ERP system was approximately 88% complete, and SSM had paid Liberty RM12,228,365.80 in milestone payments. Liberty claimed for outstanding fees and licence fees. SSM counterclaimed for a declaration of lawful termination, a refund of RM12,228,365.80 under clause 25.3(b)(i) of the ERP Agreement, and LAD.

The High Court dismissed Liberty’s claim and allowed SSM’s counterclaim in full, with costs.

The Court of Appeal Decision

The Court of Appeal allowed the appeal in part and held, among others, as follows:

(1) Lawfulness of Termination

Liberty’s reliance on total failure of consideration and time not being of the essence was misplaced. A party terminating under an express contractual right need not satisfy rescission requirements at common law. *Berjaya Times Square* was distinguished as the party seeking a refund therein did not have an equivalent express contractual right therein and pursued a claim for refund under common law rescission. The termination was held to be lawful.

(2) Entitlement to Refund

Clause 25.3(b) of the ERP Agreement provides SSM with 2 disjunctive options on termination: Option 1 required Liberty to remove the ERP Solutions within 30 days from termination, triggering a refund obligation; and Option 2 allowed SSM to retain or acquire completed portions of the ERP Solutions.

The Court of Appeal held that the 30-day period in Option 1 is integral and had to be elected within the 30-day window. Once it lapsed without election, Option 1 could no longer operate as it became impossible to do so within 30 days. SSM’s purported election via its pleading in the counterclaim after the 30-day period had expired could not retrospectively revive a contractual right that had already lapsed.

(3) Payment for Work Done and Oracle Licence Fees

The ERP Agreement was a fixed-price and milestone-based contract. Hence, Liberty was not entitled to payment absent milestone completion.

Liberty’s section 74 of the Contracts Act 1950 claim for Oracle licence fees depended on the termination being unlawful. Since termination was held lawful, the claim failed. Furthermore, clause 13.2.7 of the ERP Agreement placed third-party software costs on Liberty.

(4) Entitlement to LAD

The phrase “until actual delivery or performance” in clause 20.2(a) of the ERP Agreement defines the period of accrual, not a precondition to payment. The prematurity argument therefore failed.

However, the Court of Appeal found that LAD Claim 3 covered the same period as LAD Claim 2, resulting in double recovery. This LAD Claim 3 was disallowed.

(5) Burden of Proof to Show Delay

In respect of Liberty's defence to the LAD Claim, the burden was on Liberty to prove that SSM caused or contributed to the delay in completing the ERP System. In this regard, the Court of Appeal did not disturb the High Court's findings that Liberty failed to discharge its burden.

(6) Acceptance of Expert Evidence

The Court of Appeal declined to disturb the acceptance of DW5's expert evidence attributing delay to Liberty. The Court of Appeal held that where expert evidence is unopposed and not "*obviously lacking in defensibility*", a court should not reject it in favour of its own inferences, particularly as Liberty did not file a rebuttal expert report.

Conclusion

The appeals were partially allowed with costs.

Written by
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