

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, 13TH DAY OF APRIL, 2018
BEFORE HIS LORDSHIP, HON. JUSTICE B.F.M. NYAKO
JUDGE

FHC/ABJ/CS/446/2017

BETWEEN

MOHAMMED BELLO ADOKE.....PLAINTIFF

AND

ATTORNEY GENERAL OF THE
FEDERATION.....DEFENDANT

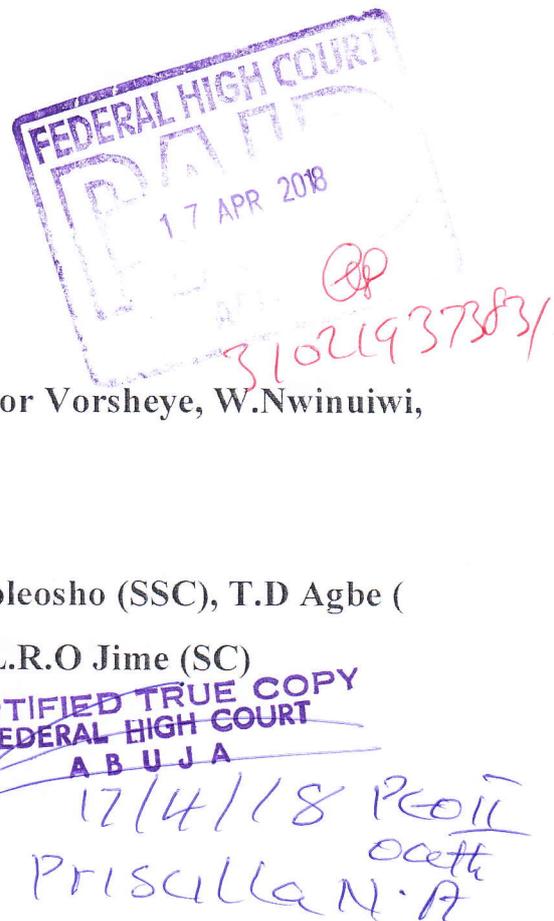
PARTIES: Absent

COUNSEL: Henry Okeke for plaintiff with Victor Vorsheye, W.Nwinuiwi,
I.D Bob-Manuel, E. Okafor: E.Nwagbo

DayoAponta(SGF) for the Defendant with O. Koleosho (SSC), T.D Agbe (SSC),
Abubakar Musa (SSC) B.ANaieju (SC), L.R.O Jime (SC)

JUDGEMENT

By an Originating Summons filed 24/05/17 the plaintiff seeks the determination of the following questions:



- (i) Whether having regard to the provisions of section 5(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the executive powers of the Federation are vested in the President to exercise same directly or through a Minister of the Government of the Federation.
- (ii) Whether by the combined reading of section 5(1); section 147 (1); Section 148(1) and section 150 (1) of the Constitution of the Federal Republic of Nigeria 1999(as amended), the Plaintiff herein while serving as a Minister of the Government of the Federation could exercise the executive powers of the federation vested in the President as directed by the President.
- (iii) Whether the Plaintiff while serving as a Minister of the Government of the Federation can be held personally liable for carrying out the lawful directives and/or implementing the lawful approvals of the President.

The plaintiff is further praying the court for the following reliefs:

- 1: A **DECLARATION** that the involvement of the Plaintiff in the negotiations leading to the implementation of the Settlement Agreement dated 30th November 2006 between Malabu Oil and Gas Limited and the Federal Government of Nigeria and the eventual execution of Block 245 Malabu Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria and Malabu Oil and Gas Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

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ABUJA
17/4/18

2. **A DECLARATION** that the involvement of the Plaintiff in the negotiation and eventual execution of the Block 245 SNUD Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria and Shell Nigeria Ultra Deep and Shell Nigeria Exploration and Production Company Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

3. **A DECLARATION** that the involvement of the Plaintiff in the negotiation and eventual execution of Block 245 Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria; and Shell Nigeria Ultra Deep Limited; and Nigeria National Petroleum Corporation; and Nigeria Agip Exploration Limited; and Shell Nigeria Exploration and Production Company Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

4. **A DECLARATION** that any correspondence/instruction to JP Morgan or any other entity and ancillary actions and processes taken by the Plaintiff in furtherance of the implementation of the Settlement Agreement dated 30th November 2006; Block 245 Malabu Agreement dated 29th April 2011; Block 245 SNUD Resolution Agreement dated 29th April 2011 and Block 245 Resolution dated 29th April 2011 were in furtherance of the lawful directives/approvals of the President in the exercise of his executive powers.

5. **A DECLARATION** that the prosecution of the Plaintiff by the Economic and Financial Crimes Commission on account of his carrying out the lawful directives and implementation of the approvals of the

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ABUJA

17/4/18

President while he served as a Minister of the Government of the Federation is illegal, null and void and inconsistent with the intendment of section 5 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

6. **A DECLARATION** that the Plaintiff cannot be held personally liable for carrying out the lawful directives/approvals of the President while he served as a Minister of the Government of the Federation.

In support of the Originating Summons he filed a 5 paragraph Affidavit with Exhibits 1-18 and Written Address.

In response to the Plaintiff's processes the Defendant filed a Conditional Memorandum of Appearance on the 22nd day of June 2017 and filed a 6 paragraph Counter Affidavit with Exhibit HAGF on 3rd day of July 2017 supported with a Written Address. Defendant also filed a Notice of Preliminary Objection supported by a 6 paragraph Affidavit to which he also attached Exhibit HAGF and a written address.

Plaintiff in response to Defendant's Counter Affidavit filed on 26th day of July 2017 a 6 paragraph Further Affidavit supported with a Written Address on points of law. In reaction to the Defendant's Notice of Preliminary Objection, the Plaintiff on 26th day of July 2017 filed a 7 paragraph Counter Affidavit supported with a Written Address. He also filed a 5 paragraph Further and Better Affidavit on the 16th day of January 2018 containing Exhibits 19 and 20.

Since the Preliminary Objection raises issues of jurisdiction, I shall determine this suit by first looking at the issues raised in the Preliminary objection. In the said objection, the Defendant is challenging the jurisdiction of this Honourable Court to hear and determine the suit on the grounds that:

1. The Plaintiff has not disclosed any cause of action in the suit.

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ABUJA
17/4/18

2. Civil Suit cannot be used to stop criminal prosecution already initiated.
3. The Plaintiff's suit as constituted is incompetent
4. This Honourable Court lacks jurisdiction to hear and determine the Plaintiff's suit.

In his Written Address, Defendant raised two issues for determination to wit:

- (i) Whether the Plaintiff/Respondent's suit discloses a cause of action against the Defendant.
- (ii) Whether the Plaintiff/Respondent's suit is not an abuse of court process?

Learned Counsel argued on issue one that there is a five count charge filed against the plaintiff on the 2nd of March 2017 and that instead of the Plaintiff defending himself at the court in that matter, the plaintiff filed this suit in this court. That the charge against the Plaintiff cannot create a cause of action capable of maintaining a civil suit against the prosecuting authority. Counsel continued that since charges were proffered against the Plaintiff he does not have any cause of action against the Defendant and relied on **ADEKOYA VS. FEDERAL HOUSING AUTHORITY (2008) 11NWLR (PT. 1099) 539** Counsel argued further that section 33, 34, and 35 of the 1999 Constitution are only pre-trial rights and when in the case of pre-trial these sections are not adhered to only then can a cause of action arise in favour of the person accused. That at this juncture the only right thing open to such an accused person is the right to fair hearing and the right to defend either personally or by counsel of his

own choice and relied on **MILITARY GOVERNOR OF IMO STATE & ANOR VS. NWAUWA (1997) LPELR-187.**

He also pointed out that the Federal Government by any of its law enforcement agents has the power to investigate and prosecute any person who is suspected of having committed a crime, that this action was instituted by the Plaintiff to restrain the Attorney General of the Federation and all the Federal Law Enforcement Agencies from performing their constitutional duties and that the Plaintiff in the face of averments in the Plaintiff's Affidavit seeks refuge under the court and cited in his support on this line of argument on the case of **KALU VS. FEDERAL REPUBLIC OF NIGERIA&ORS (2012)LPELR-9287(CA)** and the case of **A.G ANAMBRA STATE VS. UBA (2005) 15 NWLR (PT. 947) 44 at 66 G-C**

Counsel further argued that a person who seeks judicial protection must come clean from any iota of illegality. That it is settled principle of equity that he who comes to equity must come with clean hands. He submitted that the Plaintiff's suit does not disclose any cause of action against the Defendant.

On issue two, Counsel argued that after being charged to court, the Plaintiff ought to have appeared to stand trial but instead he instituted this matter and that this amounts to fiddling with the administration of criminal justice system, an improper use of judicial/court process in litigation and relied on **SARAKI VS. KOTOYE (1992) 11-12 SCNJ 26** and **R. BENKAY NIGERIA LIMITED VS. CADBURY NIGERIA PLC (2012) 3 SC (PT. 11) 169**

He submitted that the court is duty bound to terminate any suit adjudged to have constituted an abuse of court process, that this is an attempt to stop the Plaintiff's prosecution by the Economic and Financial Crimes Commission. He therefore urged the court to so hold and dismiss this suit in it's entirety.

The Plaintiff by a 7 paragraph Counter Affidavit opposed the Preliminary Objections of the Defendant and raised two issues for determination to wit:

- (i) Whether the Plaintiffs case disclosed a reasonable cause of action, and
- (ii) Whether the Plaintiff's suit constitutes an abuse of process.

Learned Counsel argued that the contention of the Defendant that the Plaintiff's case does not disclose any reasonable cause of action is misconceived as only in matters commenced by Writ of Summons can Defence raise the objection of the matter not disclosing reasonable cause of action. He pointed out that the Affidavit in support of the Originating Summons is evidence and this is unlike a statement of claim in support of a Writ of Summons. He submitted that besides that is an action for the interpretation of certain provisions of the Constitution of the Federal Republic of Nigeria.

He also argued that the Affidavit in support of the Originating Summons is the only document from which the court will look at to see if the case proffered discloses a reasonable cause of action and relied on **SHELL B.P PETROLEUM DEV. CO. LTD & ORS VS. ONASANYA (1979) 6 SC 89, 94** and also on paragraph 4(a), (d), (dd), (ee) (ii), (mm), (rr) (tt), (uu) and (vv) and also exhibits 1,2,7,8, and 9 of the Plaintiff's supporting Affidavit to the Originating Summons.

Counsel submitted that there is a reasonable cause of action and referred the court to the aforementioned paragraphs of the Plaintiff's supporting Affidavit. He maintained that in this case, the cause of action is the persecution of the Plaintiff for carrying out the lawful directives of the then President of Nigeria, President Goodluck Ebele Jonathan, GCFR that this led to the injury suffered by the Plaintiff and it is this injury which constitutes the cause of action in this suit.

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ABUJA
17/4/18

He stressed that apart from the above, the Plaintiff is seeking the interpretation of the Constitution and that a cause of action automatically arises in favour of the Plaintiff who alleges the violation of his right under the Constitution and relied on **ACCORD PARTY VS. GOVEROR OF KWARA STATE (2011) ALC FWLR (PT. 555) 220 at 292-293.**

On issue two Learned Counsel pointed out that a judicial process is considered abused when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent or in a way as to hinder the efficient and effective administration of justice in such cases whereby the party institutes multiple actions on the same subject matter against the same opponent on the same issue and relied on the dictum of Onnoghen JSC in **AFRICAN CONTINENTAL BANK PLC VS. NWAIGWE & ORS (2011) LPEL-208 (SC) AND ABUBAKAR VS. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS (2007) SC 102.**

He submitted that the Defendant in this case has failed to furnish this court with the facts of multiplicity of actions between the same parties on similar issues on the same subject matter and that this contention of abuse of court process must fail. He also submitted that the Plaintiff has not in this case sought any injunctive relief preventing his prosecution by the Defendant or any of its agents and that Exhibit HAGF which the Defendant tendered only contains allegations of offences against the Plaintiff and that the Plaintiff has not been served with the charge. He urged the court to dismiss the Defendant's Preliminary Objection and hold that the Plaintiff's action discloses a reasonable cause of action; the suit is not an abuse of process and delves into the main case of the Plaintiff on the merit.

Having reviewed the processes and arguments of the Parties, I now consider the Preliminary Objection filed by the Defendant challenging the jurisdiction of this Court to hear and determine the issues raised by the Plaintiff in the Originating Summons. It is trite law that the issue of jurisdiction goes to

the root of the matter before the Court and when raised, should first be determined before the Court can proceed to the substantive matter. The defendant has in its preliminary objection raised four grounds upon which he is challenging the jurisdiction of this Court and two issues for determination which are essentially the same as the two issues formulated by the Plaintiff / Respondent. I therefore will adopt and consider the two issues formulated by the Defendant seriatim:

On the 1st issue as to whether the Plaintiff/ Respondent's suit discloses a cause of action against the defendant, Learned Counsel for the Defendant has placed reliance on Exhibit HAGF which is Charge No. FHC/OBJ/CR/39/2017 instituted by the Economic and Financial Crimes Commission where the Plaintiff and one other person are Co-Defendants and has argued that the Plaintiff is seeking to use this civil suit as a sword instead of a shield against the criminal trial when he enters his defence to the criminal charge filed by the EFCC.

It seems to that the Defendant/Applicant set out in their Preliminary Objection to convince this Honourable court the suit of the Plaintiff/Respondent did not disclose any cause of action hence the lack of jurisdiction by this court to try same. However, in the totality of the arguments of the Defendant/Applicant on this issue tends to be solely predicated on the fact that the Plaintiff/Respondent is seeking to restraint the Attorney General from discharging his lawful and constitutional duty of prosecuting the Plaintiff/Respondent. This in my view misses the point. It is trite that in the determination of the jurisdiction of the court in any proceeding, reference is usually had to the claim and reliefs of the plaintiff's suit. See **SHELL.B.P. PETROLEUM DEV. CO. NIG LTD & ORS VS. ONASANYA (1979) 6 SC 89, 94**

I have carefully examined the Plaintiff/Respondent relief's in the Originating Summons, and cannot find where any injunctive relief is sought

against the Attorney General of the Federation to stop the Prosecution of the Plaintiff/ Respondent. What is, evident are declaratory reliefs which are premised on the interpretation of certain provisions of the Constitution.

The relevant question that arises therefore is whether the Plaintiff/Respondent has a right under the law to seek interpretation of the provisions of the Constitution as it affects him? It is my considered view that the Plaintiff/Respondent has such a right and this Court so holds. I am therefore not persuaded by the submissions of the Defendant/Applicant that the Plaintiff Respondent's suit does not disclose a cause of action. More importantly the Defendant/Applicant instead of arguing the trust of this issue as to whether a cause of action is disclosed or not has dissipated more energy in argument that the plaintiff cannot use the civil suit to restrain his prosecution. This as I have earlier pointed out is not the case of the Plaintiff/ Respondent.

I have also examined **Exhibit HAGF** attached to the Defendant's Counter Affidavit to ascertain its nexus to the Plaintiff's declaratory reliefs and I am unable to find any link between **Exhibit HAGF** and the Declarations sought by the Plaintiff.**Exhibit HAGF** contains "money laundering charges" against the Plaintiff in respect of a banking transaction in which it is alleged that cash payments in excess of the permissible limit were paid into the Plaintiff's mortgage account with Unity Bank PLC. This in my view is totally unrelated to the issue of the OPL 245 which is the subject matter upon which the issues for determination are predicated in the Originating Summons before this Court.

Having studied the Originating Summons, I am of the view that it is merely seeking interpretation of certain provisions of the constitution and declaratory reliefs as they relate to the directives/ approvals of the Executive President of the Federal Republic of Nigeria in connection with the implementation of OPL 245 resolution agreement which the Plaintiff implemented and is praying this Court for a declaration that he cannot be held

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ABUJA

12/4/08

personally liable for carrying out such directives, being merely an agent of a disclosed principal.

The Originating Summons in my review does not indicate that the Plaintiff is seeking any injunctive relief against his prosecution by the Defendant or any other prosecutorial agency. The Originating Summons merely seeks to ascertain the extent of Presidential Powers as contained in Section 5 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and whether a Minister who is appointed under section 147 and directed by the President under section 148 of the Constitution (as the Plaintiff asserts) can be held personally liable for carrying out the lawful directives of the President. It is my view therefore that the Defendant has not placed any material before the court in support of his contention. I therefore find no link between **Exhibit HAGF** and the declaratory reliefs sought by the plaintiff and accordingly declare that **Exhibit HAGF** is extraneous to the determination of this issue. The contention of the defendant that the Plaintiff cannot use this civil suit as a sword against a criminal prosecution is in my view without basis and cannot stand.

I also agree with Learned Counsel for the Plaintiff's submission that the Affidavit in support of the Originating Summons is the only document which this court will look at and decipher whether or not the case proffered discloses a reasonable cause of action. See **SHELL.B.P. PETROLEUM DEV. CO. NIG LTD & ORS VS. ONASANYA (SUPRA)** and relevant paragraphs of the Affidavit in Support of the Originating Summons as already outlined above.

I therefore hold that the Affidavit in support of the Originating summons which details the persecution and injury that the Plaintiff has suffered for carrying out the lawful directives of the then President of the Federal Republic of Nigeria, President Goodluck Ebele Jonathan, GCFR discloses a reasonable cause of action.

I therefore hold that the Plaintiff's suit discloses a Cause of action. Issue one is therefore resolved in favour of the Plaintiff/ Respondent.

On issue two, whether the Plaintiff /Respondent's suit is not an abuse of court process, the defendant has placed heavy reliance on **Exhibit HAGF** in coming to the conclusion that the Plaintiff's suit is an abuse of process. I have already stated that Exhibit HAGF is extraneous to the declaratory reliefs sought by the Plaintiff/Respondent. Furthermore, the Defendant/Applicant has not placed any other material evidence besides **Exhibit HAGF** to support his contention that the Plaintiff/Respondent suit is an abuse of court process. Accordingly, the defendant's arguments premised on **Exhibit HAGF** are hereby discountenanced and go to no issue.

I agree with the submission of the Learned Counsel for the Plaintiff/Respondent that judicial process may be considered abused where a party institutes multiple actions on the same subject matter against the same opponent on the same issue as ably captured by the dictum of Onnoghen, JSC(As He Then Was) in **AFRICAN CONTINENTAL BANK PLC VS NWAIGWE & ORS (2011) LPELR -208(SC) AND ABUBAKAR VS. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS (2007) 2 SC 102**. The Defendant/Applicant has not placed before the court, evidence to show that the Plaintiff filed multiple suits involving the same parties and on similar issues. The contention of abuse of court process therefore fails.

On the whole, this Court finds that the preliminary objection of the Defendant/ Applicant lacks merit and it is hereby dismissed.

I now turn to the Originating Summons before this Court where the Plaintiff is seeking determination of the questions and reliefs which I have already outlined in this Judgment. The Plaintiff's Originating Summons dated 24th May 2017 raised three questions for determination and sought six declaratory reliefs.

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ABUJA
17/4/18

In argument, the Plaintiff formulated two (2) issues for the determination to wit:

- (a) Whether by the combined interpretation of Section 5(1), 147(1), and 148(1) and 150(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, the executive powers of the President are legally exercisable by him directly or through Ministers of the Government of the Federation.
- (b) Whether the Plaintiff as a Minister in the Government of the Federation could be held personally liable for acts done in furtherance of the lawful directives/approvals of the President in the exercise of the President's executive powers vested in him by section 5(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Counsel pointed out that the principles relating to the interpretation of constitutional provisions though not exhaustive was laid out in the case of **A.G. BENDEL STATE V. A.G. FEDERATION (1981) 10 SC 1** wherein the court per Obaseki JSC that:

- (1) *Effect should be given to every word used in the constitution.*
- (2) *A constitution nullifying a specific clause in the constitution shall not be tolerated unless where absolutely necessary.*
- (3) *A constitutional power should not be used to attain unconstitutional result.*
- (4) *The language of the constitution, where clear and unambiguous must be given its plain and evident meaning.*

- (5) *The constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety hence a particular provision should not be severed from the rest of the constitution.*
- (6) *While the language of the constitution does not change the changing circumstances of a progressive society for which it was designed, it can yield new further import to its meaning.*
- (7) *A constitutional provision should not be construed in such a way as to defeat its evident purpose.*
- (8) *Under the constitution granting specific powers, a particular power must be granted before it can be exercised.*
- (9) *Declaration by the National Assembly of its essential legislative functions is precluded by the constitution.*
- (10) *Words are the common signs that men make use of to declare their intentions one to another, and when the words of a man express intentions plainly, there is no need to have recourse to other means of interpretation of such words.*
- (11) *The principles upon which the constitution was established rather than the direct operation or literal meaning of the words used should measure the purpose and scope of its provisions.*

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ABUJA
17/4/18

(12) *Words of the constitution are, therefore, not to be read with “stultifying narrowness”.*

He submitted further that the courts are enjoined to interpret the sections of the Constitution together, that the constitutional provisions must be read as a whole in determining the object of the particular provision and relied on **A. G. LAGOS STATE VS. A.G. FEDERATION & 35 ORS (2014) 4 SC Part 2 at 27-28.**

Counsel urged the court to rely on the above principles in interpreting sections 5(1)(a)(b),147(1),148(1)and150 of the 1999 Constitution of the Federal Republic of Nigeria. He submitted that if read together, the sections will reveal that the executive powers vested in the President of the Federal Republic of Nigeria are to be exercised directly by him or through a Minister of the Government assigned at the discretion of the President to discharge the responsibility of the business of the Government of the Federation.

He continued that another fundamental principle of statutory interpretation is that, where the words of statute are themselves precise and unambiguous, then such words must be given their natural and ordinary meaning and relied on **ADEWUNMI VS. A.G. EKITI STATE (2002) 1 SC 47 AT 70-71**

He pointed out that, according to the Oxford Advanced Learner’s Dictionary 7th Edition at page 1543 defined ‘**THROUGH**’ under item 6 to mean “By means of “while at page 75, it defined ‘**ASSIGN**’ to mean “To give somebody something that they can use, or some work or responsibility”. He maintained that to ask the President of Nigeria to carry out personally all powers granted to him under the Constitution will be onerous, rigorous and arduous and that, this is why the same Constitution gave the President powers to carry out such functions and duties “ By means of ‘a minister’ so appointed by him.”

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ABUJA
17/4/18

He also pointed out that Section 193 (1) of the Constitution which deals with State Governors and their Commissioners is similar to Section 148(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. He urged the court to rely on the cases of **EMMANUEL OLAGBEMIRO 7 ORS VS. PRINCE SALIU OLATIWOLA & ORS (2014) LPELR-22597(CA)** and **GADZAMA & ANOR VS. ADAMU & ORS (2014) LPELP-24363 CA** where the court held that by the provisions of section 193(1) of the Constitution, the Governor could and did rightly assign part of his duties to the Commissioner for Chieftaincy Matters and Commissioner for Lands and Survey respectively and hold same.

He submitted on the whole that the plaintiff acted on the authorization of the President and relied on paragraph 4bb of the Affidavit in support of the Originating Summons as well as **Exhibit 10A and 10B** and paragraph 4cc and **Exhibit 11A and 11B**. That **Exhibit 10B and 11B** are Presidential approvals and that the Plaintiff carrying out the mandate of the President contained in **Exhibits 10B and 11B** was done pursuant to section 5(1) and 148 (1) and urged the court to so hold.

Learned Counsel also argued that aside that the above submissions, Sections 5(1) (a) and 148(1) of the Constitutions also intends to create Principal/Agency relationship between President of the Federal Republic of Nigeria and a Minister of the Government so appointed by him. He stressed when a Minister carries out the lawful directions assigned to him by the Executive President he acts in the capacity of an agent under the instruction of his principal, in this case the President. He relied on paragraph 4(a) of the Affidavit in support of the Originating Summons and the cases of **PAUL EDEM VS. CANON BELLS LTD & ANOR (2005) 12 NWLR (PT. 938) 27**, **UNIVERSITY OF ABUJA VS. OLOGE (1996) 4 NWLR (PT. 445) 706 AT 721H** and **U.T.C (NIG) PLC VS. PHILLIPS (2012) 6 NWLR (PT. 1295) 161 G-H**.

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ABUJA
17/4/18

Counsel submitted that since the relationship that exists between the Plaintiff and the then President of Nigeria is that of Principal/Agent, he is absolved of any personal responsibility of proper execution of instructions. He continued that this is based on the fact that only where the agent acts outside the scope of his authority the agent seldom incurs personal liability and cited the case of **SAMUEL OSIGWE VS PRIVATIZATION SHARE PURCHASE LOAN SCHEME MANAGEMENT CONSTRUCTION LTD & ORS (2009) 3 NWLR (PT. 1128) 378.**

He submitted that an agent cannot be competently sued for carrying out the legal directives of his disclosed principal, that the said principal (President) is vested with power or discretion to initiate and execute economic policies which is expected to further the economic development of the country and relied on paragraph 4 (x) of the supporting affidavit. He urged the court to hold that the Plaintiff cannot be held personally liable for any actions taken while serving as a Minister of Government.

He submitted that a literal interpretation of the Sections posited for interpretation in the case will suffice. The sections are not ambiguous, vague and that it cannot be argued that they are derivatives of different meanings. He urged the court to apply 4 out of the 12 cannons of interpretation enunciated in the case of **A.G. BENDEL STATE VS A.G. FEDERATION (SUPRA)** and grant the declarations and orders sought therein.

As earlier mentioned, in response to the suit, the Defendant also filed a 6 paragraph Counter Affidavit with **Exhibit HAGF** and a Written Address wherein he raised a sole issue for determination to wit:

Whether from the circumstance of this case, the documentary and Affidavit evidence before this Honourable court, this court can grant to the Plaintiff the six declaratory reliefs sought by him in this suit.

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ABUJA
17/4/18

Learned Counsel submitted that the Plaintiff having been appointed as a minister of the Federal Republic of Nigeria pursuant to section 147 and 148 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and made the Attorney General of the Federation as the Chief Law Officer of the Federation, all the lawful instructions he executed were pursuant to section 5 of the 1999 constitution (as amended). That this captured in the Plaintiff's questions 1, 2 and 3 as can be seen on the face of the Plaintiff's Originating Summons.

He continued that the only thing that can be deciphered from the Plaintiff's submission is that he carried out the instructions of Mr. President pursuant to section 5 of the Constitution.

He submitted further that the crux of the charge (Exhibit HAGF) attached to the Defendant's Counter Affidavit relates only to the unauthorized actions of the Plaintiff while he served as the Honourable Attorney General of the Federation and Minister of Justice and not the lawful and authorized actions of the Plaintiff relating to the settlement process of the dispute involving stakeholders in OPL 245.

He submitted that, the case of the State against the Plaintiff as filed by the Economic and Financial Crimes Commission (EFCC) is that while he was serving as the Honourable Attorney General of the Federation he committed crimes contained in the Charge Sheet attached to Exhibit HAGF.

He stated that, the law is settled that where in the course of performance of a duty delegated to a servant, he commits a criminal act; such a servant is personally liable for the criminal acts so committed. He relied on **A.P.C VS. P.D.P (2015) 15 NWLR (PT. 1481) 1 AT 73 Paras G-H**, the Supreme Court held thus:

"There is no vicarious liability in the realm of criminal law. Anyone who contravenes the law should carry his cross..."

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ABUJA
17/4/18

He submitted further that the Plaintiff cannot use his defence of authorized act in form of a civil suit as a weapon to stop his criminal prosecution; he can only use it in form of a shield as a defence when he enters his defence in the criminal charge filed against him by the EFCC.

He argued that, assuming without conceding that this type of suit is legally permissible by law, the Defendant shall contend that the Plaintiff herein failed to prove that the allegation of money laundering as diversion of public funds leveled against him were approved by the President. That the law is trite that he who alleges must prove and relied on section 132 of the Evidence Act, 2011.

He submitted that the burden of proof placed on the Plaintiff herein whose reliefs in this suit are all declaratory in nature is higher than that required in ordinary civil suit and that the law is trite that a declaratory relief is an invitation to the court to make a pronouncement as to the legal position of a state of affairs. He cited in his support **A.G. RIVERS STATE VS. A.G. BAYELSA STATE (2013) 3 NWLR (PT. 1340) at 123, NEXT INT. LTD VS. OBATOYINBO (2013) ALL FWLR (PT. 701) at P. 1549 and NWAOGU VS. ATUMA (2013) 221 LCRN (PT. 2).**

Counsel submitted that the Plaintiff has not placed before the Honourable Court the required evidence to entitle him to the declarations sought, plaintiff having failed woefully to prove as required by law to be entitled to the declarations sought.

He continued that all the bulky documents attached by the Plaintiff did not in any way mention or state when the President permitted or authorized the Plaintiff to launder or direct the sum of money alleged to have been laundered or diverted by the Plaintiff.

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ABUJA
12/4/18

Counsel submitted that, the Plaintiff has in paragraph 3, 16, 3.31 of his Written Address argued extensively the principle of principal/agency relationship and had emphasized on the position that an agent is not held liable for his wrongful acts while carrying out the instructions of his principal in the normal course of duty.

He maintained that the argument on agency and principal relationship which took the entire chunk of the Plaintiff's argument in support of his Originating Summons is a total misapplication of the law.

He urged the court to discountenance all the arguments canvassed by the Plaintiff and dismiss the suit for lacking merit.

In response to the Defendant's Counter Affidavit, the Plaintiff filed a 6-paragraph Further Affidavit and reply on points of law. Learned Counsel adopted the sole issue for determination raised by the Defendant and submitted that in accordance with the provisions of section 132 of the Evidence Act, 2011 the Plaintiff has discharged the burden of proof upon him as he has placed necessary material and affidavit evidence before the court to warrant the determination of the questions he seeks before the court. Counsel therefore urged the court to discountenance the arguments of Defendant for being misconceived.

Counsel also filed a Further and Better Affidavit to which he attached **Exhibits 19 and 20**. **Exhibit 19** is a letter written by the Defendant to the Acting Chairman of the Economic and Financial Crimes Commission (EFCC) to the effect that the Plaintiff has no case to answer in respect of the actions he took pursuant to directives/approvals of the President with respect to the implementation of OPL 245 resolution agreement. While **Exhibit 20** is a letter from the Honourable Minister of State for Petroleum Resources written to the Chief of Staff to the President in response to the latter's request for advise on the letter written by the Honourable Attorney General of the Federation and Minister of Justice to the Acting Chairman of the EFCC on the OPL 245

Settlement Agreement implemented by the Plaintiff, in which, the Hon. Minister of State for Petroleum Resources concurred with the opinion of the Attorney General of the Federation.

Counsel argued that contrary to the contention of the Defendant that the Plaintiff exceeded the directives of the President and in the process committed a crime, he contended that **Exhibits 19 and 20** which remain un-contradicted and unchallenged confirm that the Plaintiff acted within the confines of the lawful directives given to him by the President and is therefore protected by law.

I have carefully studied the provisions of sections 5 (1), 147, 148 and 150 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The relevant sections of the Constitution are produced hereunder:

5. *“(1) Subject to the provisions of this Constitution, the executive powers of the Federation:*

(a) *shall be vested in the President and may subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and*

(b) *Shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.”*

147. *“(1) There shall be such offices of Ministers of the Government of the Federation as may be established by the President.”*

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ABUJA

17/4/18

148 “(1) *The President may, in his discretion assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government.*”

150. *(1) there shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation.*

I have examined the above provisions and have taken cognizance of the principles of interpretation as enunciated in the *locus classicus* of **OLAWOYIN VS COP (1961) NSC (VOL.2) PAGE 90 AT 99.; A.G. BENDEL STATE V. AG FEDERATION (1981) 10 SC 1; ISOLA V. AJIBOYE (1994) 7-8 SC 1 at 35; (1994) 6 NWLR 506, NAFIU RABIU V. KANO STATE (1980) 8-11 SC 130 AT 149.**

I am also mindful of the principle of interpretation distilled from the case of **A.G LAGOS STATE VS AG. FEDERATION & 35 ORS (2014) 4SC (PT. 2 PAGE 1 AT 27-28** that:

“ it is a settled principle of interpretation that whenever a court is faced with the interpretation of a constitutional provision the Constitution must be read as a whole in determining the object of the particular provision. This requirement places a duty on the court to interpret sections of the constitution together.”

I am of the considered view that these constitutional provisions are clear and unambiguous and must therefore be given their literal and ordinary meaning. Consequently, a community reading of sections 5 (1), 147 (1), 148 (1) and 150 of the Constitution of the federal Republic of Nigeria 1999 as amended leaves

me in no doubt that the executive powers of the federation as vested in the President are legally exercisable by him directly or through a Minister of the Government of the Federation.

On whether the Plaintiff can be held personally liable for acts done in furtherance of the lawful directives /approvals of the President, I have examined paragraph 4d, 4bb and 4cc of the Affidavit in Support of the Originating Summons as well as **Exhibits 10A & 10B and 11A & 11B. Exhibit 11B** is a Presidential approval directing the Plaintiff to implement the Block 245 Resolution Agreement, while Exhibit 10B is the approval by the President for Malabu Oil and Gas Limited to be paid US1, 080,040,000.00 Billion Dollars in settlement of the dispute. I am therefore in agreement with the Plaintiff's submission that he was merely carrying out the lawful directives of the President and that a principal and agent relationship is created where the President assigns a responsibility to a Minister appointed by him pursuant to section 147 and 148 of the Constitution. See **SAMUEL OSIGWE VS PRIVATIZATION SHARE PURCHASE LOAN SCHEME MANAGEMENT CONSORTIUM LTD & ORS (2009) 3 NWLR (PT. 1128) 378; AMADUIME VS. IBOK (2006) 6 NWLR (PT. 975) 150 AT 177.**

It is my considered view that while the Plaintiff was carrying out the lawful directives of the President pursuant to section 5 (1) and 148 (1) of the Constitution of the President as contained in **Exhibits 10B and 11B** with respect to the implementation of the OPL 245 resolution agreement, an agency relationship of a disclosed principal was established. The Plaintiff, as agent of a disclosed principal therefore incurred no personal liability. See **UTC (NIG) PLC V. PHILLIPS (2012) 6 NWLR (PT. 1295) 161 PARAS G-H.**

The Defendant has argued that the Plaintiff has failed to place before the Honourable court the required evidence to entitle him to the declarations sought and that a higher burden of proof is required of the Plaintiff before the declarative reliefs can be granted. I agree with the submission of the Learned

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ABUJA
17/4/18

Counsel for the Defendant that it is trite law that a declaratory relief is an invitation to the court to make a pronouncement as to the legal position of a state of affairs.

However, considering the Affidavit evidence and materials placed before this Honourable court, the Plaintiff has in my view discharged the burden of proof required of him under section 132 of the Evidence Act, 2011. This therefore takes me to Exhibit 19 and 20 attached to Plaintiff's Further and Better Affidavit which deal with the letter of the Defendant to the Acting Chairman of the EFCC to the effect that a review of the OPL 245 Resolution Agreement did not disclose a case against the Plaintiff. It is a fact that Exhibit 19 and 20 are not challenged by the Defendant. Not having been challenged, the court is entitled to come to a reasonable conclusion that the Plaintiff has discharged the burden required of him in accordance with the provisions of section 133(2) of the Evidence Act, 2011.

On the whole, I am convinced that the provisions of sections 5 (1), 147 (1), 148 (1) and 150 of the Constitution of the Federal Republic of Nigeria 1999,(as amended) are clear and unambiguous and should be given their literal and ordinary meaning. I therefore hold that the executive powers of the federation vested in the President by virtue of section 5 (1) of the Constitution can be exercised by him directly or through Ministers appointed by him and that by the combined effect of sections 5 (1),147(1), 148(1) and 150 of the Constitution, the Plaintiff who was appointed a Minister in the Government of the Federation by the then President of the Federal Republic of Nigeria, President Goodluck Ebele Jonathan GCFR, can exercise the executive powers of the Federation vested in the President as directed by the President, and that the Plaintiff while serving as a Minister of the Government of the Federation cannot be held personally liable for carrying out the lawful directives and/or implementing the lawful instructions of the President.

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12/4/18

I therefore resolve all the issues formulated by the Plaintiff in his favour and accordingly make the following declarations that:

(1) the involvement of the Plaintiff in the negotiations leading to the implementation of the Settlement Agreement dated 30th November 2006 between Malabu Oil and Gas Limited and the Federal Government of Nigeria and the eventual execution of Block 245 Malabu Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria and Malabu Oil and Gas Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

(2) The involvement of the Plaintiff in the negotiation and eventual execution of the Block 245 SNUD Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria and Shell Nigeria Ultra Deep and Shell Nigeria Exploration and Production Company Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

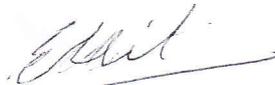
(3) the involvement of the Plaintiff in the negotiation and eventual execution of Block 245 Resolution Agreement dated 29th April 2011 between the Federal Government of Nigeria; and Shell Nigeria Ultra Deep Limited; and Nigeria National Petroleum Corporation; and Nigeria Agip Exploration Limited; and Shell Nigeria Exploration and Production Company Limited was in furtherance of the lawful directives/approval of the President in the exercise of his executive powers.

(4) any correspondence/instruction to JP Morgan or any other entity and ancillary actions and processes taken by the Plaintiff in furtherance of the implementation of the Settlement Agreement dated 30th November 2006; Block 245 Malabu Agreement dated 29th April 2011; Block 245 SNUD Resolution Agreement dated

29th April 2011 and Block 245 Resolution dated 29th April 2011 were in furtherance of the lawful directives/approvals of the President in the exercise of his executive powers, and

- (5) The Plaintiff cannot be held personally liable for carrying out the lawful directives/approvals of the President while he served as a Minister of the Government of the Federation.

I am however unable to grant relief 5 in the Plaintiff's Originating Summons as the Economic and Financial Crimes Commission was not joined in the suit. Besides, In the light of **Exhibit 19**, the relief has become academic.



Honourable Justice B.F.M. Nyako

Judge

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