

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 14TH DAY OF MARCH, 2017
BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE
JUDGE

SUIT NO. FHC/ABJ/CS/215/2013

BETWEEN:

JUBILEE-LIFE SAVINGS AND LOANS LTD. ::::: PLAINTIFF

AND

- | | | |
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| <ol style="list-style-type: none">1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)2. LITTLE ACORNS TURNKEY PROJECTS NIGERIA LIMITED3. ARCHITECT SULAIMAN ALIYU | } | DEFENDANTS |
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JUDGMENT

On 7/12/16, the hearing of the Plaintiff's suit commenced by an "Originating Summons" dated and filed on 4/4/2013 was concluded when the 2nd and 3rd Defendants' Counsel was heard on the adoption of the 2nd and 3rd Defendants' "Counter-Affidavit" filed on 11/12/13 in Opposition to the Plaintiff's suit.

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By the said "Originating Summons", the Plaintiff through its Counsel, Sunday Edward, Esq. sets down four (4) issues for determination. These issues are:

- (i) *"Whether there is anything in the laws of the Federal Republic of Nigeria, including the Economic and Financial Crimes Commission Act, which confers judicial powers on the 1st Defendant;"*
- (ii) *"Whether the 1st Defendant's findings, vide its letter to the Plaintiff dated 26th March, 2013, that the Plaintiff deducted the 2nd Defendant's accounts "in excess to the tune of N4,147,001.76", and its resultant request that the Plaintiff come along with the excess deductions, do not amount to an abuse of power and an unwarranted usurpation of judicial functions;"*
- (iii) *"Whether the 1st Defendant acted fairly in requesting the Plaintiff to come with a Memorandum of Understanding which, from the Plaintiff's officers' statements to the 1st Defendant, is not available in the Plaintiff's record;"*
- (iv) *"Whether the 1st Defendant's requests to the Plaintiff as contained in its letter to the Plaintiff dated 26th March, 2013 are not made in bad faith*

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with a bid to prejudicing the ongoing case of the Plaintiff against the 2nd Defendant in Suit No. FCT/HC/CV/2252/13."

In the event that these questions are resolved and probably answered in the way and manner as they will be favourable to the Plaintiff's cause of action, the Plaintiff seeks for seven (7) reliefs. These as endorsed on the "Originating Summons" are:

- (i) "A declaration that there is nothing in the laws of the Federal Republic of Nigeria, including the Economic and Financial Crimes Commission Act, which confers judicial powers on the 1st Defendant;"*
- (ii) "A declaration that the 1st Defendant's findings, vide its letter to the Plaintiff dated 26th March, 2013, that the Plaintiff deducted the 2nd Defendant's account "in excess to the tune of N4,157,011.76", and its resultant request that the Plaintiff come along with the excess deductions amount to an unwarranted usurpation of judicial functions;"*
- (iii) "A declaration that the 1st Defendant acted unfairly in requesting the Plaintiff to come with a Memorandum of Understanding which, from the*

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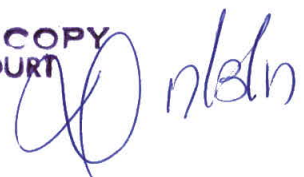
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Plaintiff's officers' statements to the 1st Defendant, is not available in the Plaintiff's record;"

- (iv) "A declaration that the 1st Defendant's requests to the Plaintiff as contained in its letter to the Plaintiff dated 26th March, 2013 are made in bad faith with a bid to prejudicing the ongoing case of the Plaintiff against the 2nd Defendant in Suit No. FCT/HC/CV/2252/13;"*
- (v) "An order declaring null and void and of no effect, the 1st Defendant's findings and/or requests contained in the 1st Defendant's letter to the Plaintiff dated 26th March, 2013;"*
- (vi) "An Order nullifying the 1st Defendant's letter to the Plaintiff dated 26th March, 2013;"*
- (vii) "A perpetual injunction restraining the Defendants, particularly the 1st Defendant, from giving effect to the contents of the 1st Defendant's letter to the Plaintiff dated 26th March, 2013 or acting in any other way that will be prejudicial to the interest of the Plaintiff, save as ordered by a Court of competent jurisdiction."*

The Plaintiff's "Originating Summons" is supported by a 63 odd paragraphed Affidavit deposed to by one Mrs. Titilola Osoba who in paragraph 1 of the said Affidavit, avers that she is the "current

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Abuja Branch Manager" of the Plaintiff. The Affidavit has 14 *documentary exhibits* marked as "TO-1" – "TO-14" respectively.

On 28/11/13, the Plaintiff's Counsel, Sunday Edwards, Esq. filed the "Plaintiff's Written Address in Support of its Originating Summons dated 4th April, 2013".

The Plaintiff's Counsel prefaced the written address by reproducing the three (3) questions set down for determination as well as the seven (7) reliefs endorsed on the "Originating Summons" as the *"introduction"*.

The written address was also used to capture the Plaintiff's "Further Affidavit" deposed to by Abiodun Adeyanju, of Counsel in the Law Firm of Goldtrack Attorneys. It was deposed on 17/10/13 and runs into 8 paragraphs. It was the Plaintiff's response to the "Counter-Affidavit" of the 2nd and 3rd Defendants deposed to by one Aliyu Abubakar who in paragraph 1 of the said "Counter-Affidavit", states that he is *"a Director and a Shareholder in Little Acorns Turnkey Project Ltd."*. It was filed on 5/6/13.

In paragraph 3.1 of the address filed, the Plaintiff's Counsel sets down two (2) issues for determination. These are:

1. *"Whether the 1st Defendant's findings, vide its letter to the Plaintiff dated 26th March, 2013, that the Plaintiff deducted the 2nd Defendant's account "in excess to the tune of N4,157,011.76" and its result request that the Plaintiff come along with*

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the excess deductions amongst other things, do not amount to a clear usurpation of judicial functions."

2. *"Whether, having regard to the suits pending in Court, the 1st Defendant acted lawfully by issuing the said letter dated 26th March, 2013 to the Plaintiff."*

Arguing issue one, the Plaintiff's Counsel after drawing the Court's attention to certain paragraphs of the "Affidavit in Support of the Originating Summons", argued that the Plaintiff is "a primary mortgage institution to the 2nd Defendant". The 2nd Defendant is "a property developer" and has "landed properties/housing units at Lokogoma and Praise Court 2 Estate, Daki-Boyin, Jabi District, Abuja". The relationship between the Plaintiff and the 2nd Defendant had begun since 2008.

It appears that the Plaintiff's "erstwhile Abuja Manager", one Precious Otsu got on well with the 2nd Defendant's alleged "alter ego" – one Abubakar Mohammed Kent until when the said Precious Otsu was queried by the Plaintiff in 2013 and she eventually left the Plaintiff's employment. The business relationship between the Plaintiff and the 2nd Defendant *deteriorated* and it appears that certain issues in relation to commission which the Plaintiff allegedly had an understanding with the 2nd Defendant's Abubakar Mohammed Kent to collect on

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payment for housing units from customers introduced to the 2nd Defendant *led* to misunderstanding and a dispute. Reading the Affidavit and exhibits attached, correspondences were exchanged between both parties, and in the end, the 1st Defendant was involved on a "petition" addressed to it on behalf of the 2nd Defendant. It was the intervention of the 1st Defendant which *led* to the institution of this action when the 1st Defendant, by its letter addressed to the Plaintiff, somehow adjudged the Plaintiff to being liable to make a refund of N43,121,469.43 to the 2nd Defendant. By the Plaintiff's facts, the 5% commission it collects from payments made by customers it introduced to the 2nd Defendant, was based on a "*Memorandum of Understanding*" which the Plaintiff was unable to lay its hand upon when the 1st Defendant demanded for it in the course of its investigation of the "petition". It must be noted in this connection, the facts which the Plaintiff has deposed to in relation to the circumstances under which its "erstwhile Abuja Branch Manager" left its services and who later was found, to be working with the 2nd Defendant's Abubakar Mohammed Kent in another company incorporated by the said Abubakar Mohammed Kent. The "Search Report" of Travolta Engineering Services Ltd. attached as Exhibit "TO-9". The said Otsu Precious is noted in the said "Search Report" as a Director with 200,000 shares in the Company. In paragraph 6.3 of the Plaintiff's address, the issues as to why and how the Plaintiff who was directed by the 1st Defendant to refund N4,157,011.76 to the 2nd Defendant as "*excess commission*" was *contextualized*

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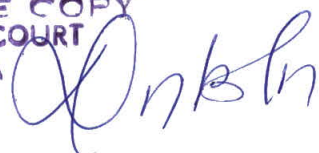


and linked to the Plaintiff's former Abuja Branch Manager who is working with the 2nd Defendant's Abubakar Mohammed Kent who was an executive director of the 2nd Defendant after she left the Plaintiff's services. The Plaintiff's Counsel, in paragraph 6.6 of the written address filed, reproduced the contents of Exhibit "TO-12" – which was the 1st Defendant's letter to the Plaintiff dated 26/3/13.

In paragraph 6.7 of the address, the Plaintiff's Counsel argued that "*it is obvious from the content of ... Exhibit "TO-12" that the 1st Defendant is seeking to enforce contract between the Plaintiff and the 1st (sic) Defendant*" and submitted the 1st Defendant is making its requests "*pursuant to Section 38(1) of the **EFCC (Establishment) Act, 2004***". It was submitted, that "*there is nothing in Section 38(1) or on any other Sections of the **EFCC (Establishment) Act** or any other existing law that empowers the 1st Defendant to enforce contract or collect common debts*". The Plaintiff's Counsel cited a number of authorities to buttress the submissions that the *statutory powers* conferred on the 1st Defendant are not to be exercised in the *collection of debts* on behalf of anybody. The Court was urged to resolve issue one in favour of the Plaintiff.

On issue 2, the Plaintiff's Counsel argued the said issue based on pending suits between the parties including the one filed by the Plaintiff's "erstwhile Abuja Branch Manager" to emphasize the point that the 1st Defendant can no longer be seen to be acting

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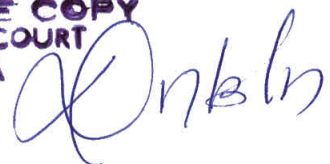


on any issue which is already *subjudice* between the parties. The Court's attention was drawn to Exhibit "TO-10" – attached to the "Originating Summons" being a certified true copy of *an interim order of injunction* granted by the M.N. Yunusa, J. on 19/12/12 in Suit No. FHC/L/CS/1563/12. It was contended that Exhibit "TO-12" being the 1st Defendant's letter dated 26/3/13 was issued during the pendency of the said suit.

In paragraphs 8.5 and 8.6 of the address filed, the Plaintiff's Counsel alluded to suits filed against the Plaintiff by *subscribers* for the 2nd Defendant's housing units in its Praise Court 2 Estate and that the Plaintiff was forced to institute another suit against the 2nd Defendant for the refund of funds paid through the Plaintiff by some of the *subscribers* for the 2nd Defendant's housing units and drew the Court's attention to Exhibit "TO-14". It was argued that the 1st Defendant's letter, i.e. Exhibit "TO-12" dated 26/3/13 is "*judgmental and that the 1st Defendant acted unlawfully by issuing same to the Plaintiff during the pendency of suits mentioned herein*". The Court was urged to resolve issue 2 in favour of the Plaintiff.

The 1st Defendant when served with the Plaintiff's "Originating Summons" and the "written address" which I have just highlighted, on 5/12/13 filed the "*1st Defendant/Respondent Counter-Affidavit to the in Opposition (sic) to the Plaintiff/Applicant's Originating Summons dated 4th day of April 2013*". It was deposed to by one Samson Oloje who in paragraph

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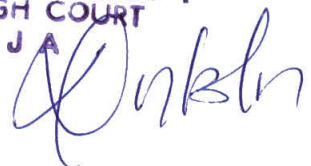
1 of the "Counter-Affidavit" states that he is "*a litigation officer attached to the EFCC*". The said "Counter-Affidavit" largely denied the Plaintiff's allegations and it runs into 29 odd paragraphs!

The 1st Defendant's Counsel, Onjefu Obe, Esq. filed a "written address" dated 5/12/13.

The 1st Defendant's Counsel (his written address was unpagged and was not divided into paragraphs to make references to its specific portions quite easy) having done the "*introduction*" – by which exercise, he relayed the Plaintiff's questions set down for determination and the *reliefs being sought* as well as the 1st Defendant's "Counter-Affidavit filed in Opposition to the Plaintiff's suit", set down one issue for determination. It is: "*Whether the 1st Respondent has the powers to commence investigation against the Applicant pursuant to the **Economic and Financial Crimes Commission (Establishment) Act, 2004.***"

This issue in my view, is too generally broad as it was not couched to address the specific *facts* and *issues* in contention. These are that the *transactions* involving the Plaintiff and the 2nd Defendant which *led* to what appears on the face of it as a *dispute of a civil nature* and that both parties, including the "erstwhile Plaintiff's Abuja Branch Manager" are already in Courts on these issues. The issue which Mr. Obe has set down, is to borrow the term often used in philosophy, amounts to a "*red herring*" because, the provisions of Sections 6 and 7 of the **EFCC**

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Act, supra. have *clearly* and *specifically* addressed the issue which he has set down. The issue which he needs to address and argue, is whether the 1st Defendant can at all times, regardless of the *nature of transactions* between individuals in which they may have *disagreement* or *dispute*, whether it is the business of the 1st Defendant to *deploy* its "*investigative arsenal*" into investigating what may eventually turned out to be a *breach of contract* between parties and where there may be such a *breach* and both parties are already in Courts to assert their right, whether the 1st Defendant, even if it received a "petition" from one of the disputing parties, ought not to caution itself by engaging its *statutory powers* to embark on a *needless investigation* of a matter it should have advised both parties to explore either an *amicable settlement* of their differences either by themselves or through a *mediator* or *arbitrator* and if they could not achieve a resolution, to exercise their *undoubted right of access* to the Courts of the land created by the **Constitution** to resolve all forms of *legal disputes*. Alternatively, whether there are probable and legitimate grounds on the facts produced, for the 1st Defendant to come up with a view, that what looks like a civil dispute arising from a breach of contract, has alleged commission of financial and economic crimes at the bottom of it which need to be investigated upon the "*petition*" of the 2nd and 3rd Defendants against the Plaintiff and its erstwhile "Abuja Branch Manager". This, in my view, could have better addressed the involvement of the 1st Defendant in the matter rather than to

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set down an issue which can easily be argued within the confines of the provisions of Sections 6 and 7 of the **EFCC Act**, supra. without regard to the facts in issue or in dispute. The said issue as framed was rather too *hypothetical* or *academic* in content.

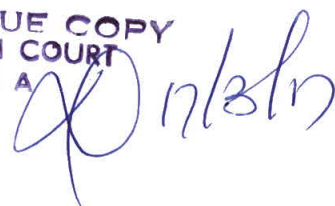
In his submissions, the 1st Defendant's Counsel went into the *legislative history* of how the 1st Defendant as a Commission was established and eventually, as expected, landed his "kite" on the provisions of Sections 6 and 7 of the **EFCC Act** which I had alluded to.

The 1st Defendant's Counsel argued that "*the question here is whether the pending petitions/allegations against the Applicant and others borders (sic) on any form of economic and financial crimes and other form of corruption which the EFCC is empowered to investigate and probably prosecute*".

It was argued that "*the Applicant who is now accused of fraud and stealing of money over N800,000,000 (Eight Hundred Million Naira) is an act which constitute an offence which falls within the ambit of the powers conferred on the 1st Defendant*".

When I read this aspect of the 1st Defendant's Counsel's submission, I was tempted to ask him how he came about this issue from the processes filed, and in particular, from the 1st Defendant's own letter attached as Exhibit "TO-12" to the Plaintiff's "Originating Summons" and Exhibit "F" attached to the 2nd and 3rd Defendants' "Counter-Affidavit" which basically

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concerned one Abubakar Mohammed Kent, an "erstwhile Executive Director" of the 2nd Defendant. By Exhibit "TO-14", the Plaintiff and the 2nd and 3rd Defendants are already in the FCT High Court.

The 1st Defendant's Counsel urged the Court to dismiss the Plaintiff's suit as in his view, it's a "*delay and tactics normally employed by persons who have skeleton in their cupboards and afraid of being exposed*".

The 2nd and 3rd Defendants on their part, through the 3rd Defendant, filed a "2nd and 3rd Defendants "Counter-Affidavit in Opposition". It was filed on 5/6/13 and runs into 57 odd paragraphs. The 2nd and 3rd Defendants' "Counter-Affidavit" was not only detailed on the facts in issue, but was able to give the Court, a *graphic picture* of what had transpired between the Plaintiff's "erstwhile Abuja Branch Manager", Precious Otsu and the 2nd Defendant's former Director, Abubakar Mohammed Kent. It appears that it was the query issued by the Plaintiff to its "erstwhile Abuja Branch Manager", Otsu Precious, and which eventually *led* to her exit from the Plaintiff that exposed the "*untidy*", if one may describe it as such, *alliance* between the said Otsu Precious and the 2nd Defendant's "erstwhile Executive Director", Abubakar Mohammed Kent. If the 3rd Defendant's depositions in the "Counter-Affidavit" filed on behalf of the 2nd and 3rd Defendants are to be believed, it seems that both the Plaintiff and the 2nd Defendant may have been "*victims*" of fraud



perpetrated by their respective officers in what can be described as an "*inside dealing*" in relation to the 2nd Defendant's account maintained with the Plaintiff. The question for any Court of law to find answer to, given this *bizarre scenario*, is as to what extent is the Plaintiff and *probably*, the 2nd Defendant as "*corporate bodies*" involved, either directly or by *active acquiescence*, in the *scam* which the Plaintiff's "erstwhile Abuja Branch Manager", Otsu Precious perpetrated with the 2nd Defendant's Director, Abubakar Mohammed Kent using the 2nd Defendant's account with the Plaintiff as its customer to execute. It is in this connection, that the 1st Defendant may have a role to play in order to *unearth* and *unmask* the perpetrators of the financial fraud on innocent *subscribers* for the 2nd Defendant's land and housing units in Lokogoma Estate, Abuja.

Secondly, it is important to ascertain the *veracity* of the allegation that the Plaintiff executed a "*Memorandum of Understanding*" with the 2nd Defendant to deduct 5% as commission from payments made by *subscribers* who were introduced by the Plaintiff to the 2nd Defendant for the purposes of its business as *estate developer*. These, in a nutshell, are the *facts* and *issues* which the 3rd Defendant's "Counter-Affidavit" has shed some lights on the Plaintiff's case when viewed from the *prism* of the 2nd and 3rd Defendants.

The 2nd and 3rd Defendants' Counsel, A.H. Izu, Esq. filed a "Written Address of 2nd and 3rd Defendants". It's dated 10/12/13

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and was filed on 11/12/13. As was with the style of 1st Defendant's Counsel's presentation of his written address, the 2nd and 3rd Defendants' Counsel also *prefaced* the 2nd and 3rd Defendant's written address by its "*introduction*". In paragraph 2.0 of the said address, the 2nd and 3rd Defendants' Counsel sets down one issue for determination. It's "*whether the 1st Defendant has legal right to receive and investigate complaints of financial crimes received from the 2nd and 3rd Defendants/Respondents against the Plaintiff/Applicant in pursuance of the extant provisions of **E.F.C.C. (Establishment) Act, 2004***". The issue as framed by the 2nd and 3rd Defendants' Counsel is virtually similar to that of the 1st Defendant's Counsel which I had criticized as being generally broad.

Let me quickly correct the 2nd and 3rd Defendants' Counsel on the question which he posed in the context of the 1st Defendant's "*legal right*". If the 2nd and 3rd Defendants' Counsel, as a student of jurisprudence, had borne in mind the classifications of *jural* relations as was ably analyzed by Prof. Hohfeld, (Ref. to "**JURISPRUDENCE**" by Prof. Funso Adaramola, 4th Ed. Pages 147 – 160) he would have realized, that the 1st Defendant has no "*legal right*" but *statutory powers* to exercise. The issue would have been better framed as the 1st Defendant having the "*statutory power*" to *receive and investigate* complaints made to it by the 2nd and 3rd Defendants.

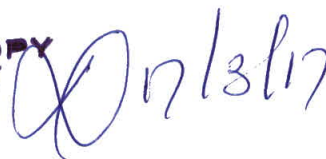
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Secondly, and having regard to the detailed facts in the 3rd Defendants' deposition in the 2nd and 3rd Defendants' "Counter-Affidavit", the issue set down should have been whether, given the allegations which the 2nd and 3rd Defendants have made in their "Counter-Affidavit" and in particular in Exhibit "F" attached to it on which was the "petition" written on behalf of the 2nd and 3rd Defendants to the 1st Defendant, whether there was a *probable* ground or grounds in the said "petition" that would necessitate the 1st Defendant to exercise its *statutory powers* as conferred by Sections 6 and 7 of its enabling Act, to conduct investigation into the serious allegations of fraud and financial crimes made against the Plaintiff and its "erstwhile Abuja Branch Manager" who allegedly acted in *collusion* with the 2nd Defendant's "erstwhile Executive Director", Abubakar Mohammed Kent. It is wrong to frame a general issue based on Sections 6 and 7 of the **EFCC Act** without tying it up with the *facts* of the case by which the 1st Defendant may have exercised its *undoubted statutory powers* to investigate allegations which border on financial or economic crimes.

In his oral submissions on the said issue, the 2nd and 3rd Defendants' Counsel made a recourse to the provisions of Sections 6 and 7 of the **EFCC Act**. The 2nd and 3rd Defendants' Counsel argued that the 2nd and 3rd Defendants have the right to report the commission of any offence to the police or law enforcement agent or Agency which include the 1st Defendant in

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the instant suit. He cited a few *judicial decisions* of the appellate Courts to buttress this submission.

On issue two (2) which is: "*Whether the 1st Defendant can in exercise of its powers of investigation as provided in **EFCC Act**, request the production of vital evidence that it needs to carry out a thorough investigation.*" When I read this issue as framed, I was wondering why the 2nd and 3rd Defendants' Counsel has decided to take this issue as a separate one which could have been argued under the broader issue one. This is because, if the 1st Defendant has the power to receive complaints of commission of financial and economic crimes and can investigate same, why wouldn't its power to conduct investigation also involve the power to "*request for the production of vital evidence that it needs to carry out a thorough investigation*". Where a Counsel fully understands and has a firm *grasp* of the *facts* of the case he handles, it will be so easy to frame the issues for determination without resorting to needless "*hair splitting*" of one issue into as many as two or three. The second issue framed by the 2nd and 3rd Defendant's Counsel is in my view, unnecessary if not *puerile* as a *legal issue* once the provision of Sections 6 and 7 of the **EFCC Act**, supra. confer on the 1st Defendant, the "*power*" and not the "*right*" (using Prof. Hohfeld's analysis of classifications of *jural* relations which I had earlier mentioned) to receive complaints on alleged commission of financial and economic crimes and to investigate same. The power to call for evidence in the course of

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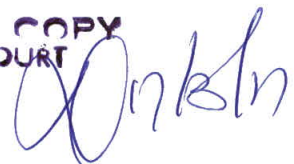


its investigation is already *subsumed* in its *statutory powers* to receive complaint and to conduct investigation into allegations of financial and economic crimes.

The hearing of the adoption of the Counsel to the 2nd and 3rd Defendants' Counsel, Henry Anachuna, Esq. was concluded on 7/12/16 and Judgment was reserved till 23/2/17 as the Plaintiff's and the 1st Defendant's Counsel have been heard on previous dates. However, on 23/2/17, the Judgment could not be delivered because, I had to travel to the U.K. where I undertook a training program organized by the U.K. Judicial College (International) in Northampton in U.K. which held between 20th – 24th February, 2017. I consequently asked the Registrar to re-schedule the Judgment till today.

In the course of my reviewing the processes filed and the written addresses filed to argue the issues, I had made certain *findings* and expressed certain remarks which I hold, will have impact on the decision which I have reached in the matter. Initially, having regard to the lengthy "Affidavit" and "Counter-Affidavit" filed, in particular by the Plaintiffs on the one hand and by the 2nd and 3rd Defendants on the other, I wanted to direct that pleadings be filed so that both parties can call their respective witnesses. But by the time I read the 3rd Defendant's "Counter-Affidavit" which he has deposed to on behalf of the 2nd and 3rd Defendants, I found out that when the details of the facts in the said "Counter-Affidavit" are *juxtaposed* with, perhaps are used to interrogate

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the Plaintiffs' 63 paragraphed Affidavit depositions of Mrs. Titilola Osoba – the “current Abuja Branch Manager” of the Plaintiff, the issues in this matter are *simple* and *straightforward*. It is in my view, whether there are *probable* grounds and reasons for the 1st Defendant to intervene in order to conduct investigation based on the allegations contained in a petition addressed to it by the 2nd and 3rd Defendants as stated in Exhibit “F” attached to the 2nd and 3rd Defendant’s “Counter-Affidavit”.

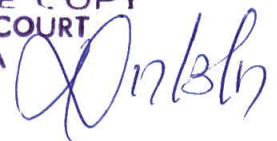
By my reading of the said “Counter-Affidavit”, except it is established that the Plaintiff *connived* with “its erstwhile Abuja Branch Manager”, one Mrs. Precious Otsu who appears to have *colluded* with the 2nd Defendant’s “erstwhile Executive Director”, Abubakar Mohammed Kent to have allegedly opened *fictitious accounts* in the 2nd Defendant’s name and operated same to defraud as it were, innocent members of the public who *subscribed* through the Plaintiff for land or housing unit in the 2nd Defendant’s Lokogoma Estate, Abuja, the Plaintiff certainly has a *duty* and *obligation*, not only to clear its name in the allegations, but it must co-operate with the 1st Defendant to *unearth*, with the aid of its record kept and maintained by its “erstwhile Abuja Branch Manager” to *unravel* the alleged *criminal collusion* between the Plaintiff’s “erstwhile Abuja Manager” and the 2nd Defendant’s Executive Director to perpetrate the fraud contained in Exhibit “F” attached to the 2nd and 3rd Defendants’ “Counter-Affidavit”. The graphic details and accounts of the issues which I

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read in the 2nd and 3rd Defendants' "Counter-Affidavit" and to which the Plaintiff has not controverted or explained by way of a "Further Affidavit" or to put them in a different, if not proper perspectives, are such that the *pendency* of this suit and that filed in Exhibit "TO-14" or the one instituted by the Plaintiff's "erstwhile Abuja Branch Manager", Otsu Precious should not be allowed to *truncate* or *frustrate* the allegations from being investigated by the 1st Defendant. It is in my view, part of the concept of the rule of law, that no one is allowed to use the *instrumentality of the judicial process to sabotage the exercise of legitimate statutory powers* by the 1st Defendant to investigate allegations which it *prima facie* has "jurisdiction" and *probable* and *legitimate* grounds to investigate and to *canvass* the *pendency* of Court's actions as a "*stalking horse*" to prevent the exercise of such *statutory powers*.

Let it be clearly understood, that this *judicial statement* is not *intended* and was by no means *intended* to be a *judicial license* to encourage the 1st Defendant that it can in *defiance* of pending Court's case, continue to act in the purported exercise of its so called *statutory powers*. It is only a Court of law, seised of a matter that has the jurisdiction and the *judicial powers*, either to give the 1st Defendant, a "green light" as I will do in this case to continue with its investigation or to place the 1st Defendant under a "*judicial amber light*" to exercise patience whilst the issues which *led* to the institution of the Court's case are yet to be



judicially determined. It is a *legal fallacy*, perhaps more of a constitutional "*heresy*" in a democratic State that is governed by a written **Constitution** such as ours, that as the 2nd and 3rd Defendants' Counsel tend to argue, that the Court cannot restrain the 1st Defendant in the exercise of its purported *statutory powers* to investigate a complaint. Where the exercise of such powers is *established* or *proven* to constitute abuse of a *bona fide* and *legitimate powers* conferred by an Act, or where its exercise will constitute a *violation* of any of the provisions of the **Constitution**, the Court as the 3rd arm of government (the Judiciary is not an Agency of Government) it is by virtue of Sections 4(8); 6(1) and (6)(b) of the **Constitution**, the only organ of the three organs which form the "*tripod*" – by virtue of Sections 4, 5 and 6 of the **Constitution**, on which the machinery of government is established, that has the "*final say*", not only on the *legality of actions* of the other organs of the government, but on the *constitutionality of acts* or in-action of any organ or agency of the government including the 1st Defendant. Any Counsel who is a genuine student of *constitutional law in a democracy* that is run on the *principles of separation of powers and rule of law*, will readily understand that in all *civilized and advanced legal systems*, it is only the Court that is "*clothed*" with the responsibility and a "*badge*" if I can say so, to act as the "*guardian*" of the **Constitution**. It remains, by the provisions of the **Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended**, the "*sentinel*" empowered by the

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Constitution to *stand firm* at the *imaginary "gates"* of exercise of *statutory* and *constitutional powers* by organs, agents and officers of government and to decide which act will be *allowed* and *permitted* or *disallowed* to hold or stand under the **Constitution**. This analysis, in my view, was ably demonstrated in practical terms in recent time in the Presidential history of the U.S. where certain "Executive Orders" issued by the new President, Mr. Donald Trump was *over-ruled* by the Federal Courts in the U.S. The State organs, i.e. the Homeland Security and Customs and Border Protection Authorities which are primarily *saddled* to implement the said "Executive Orders" quickly suspended them once they became aware that a Federal Court had *nullified* the said "Executive Orders" as *unconstitutional*.

In the light of the analysis which I have made, I have advisedly taken a decision to determine the Plaintiff's suit on the basis of its "Originating Summons" as filed.

In relation to question 1 in the said "Originating Summons" I will answer it in the *negative* as the powers conferred on the 1st Defendant by Sections 6 and 7 of its enabling Act are executive in character, and they are meant to conduct criminal investigations into allegations of commission of financial and economic crimes within the 1st Defendant's *narrow and specific jurisdiction*.

In relation to question 2 in the "Originating Summons", I will answer it in the *negative* as the powers which the 1st Defendant exercised to conduct investigation into allegations in Exhibit "F"

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attached to the 2nd and 3rd Defendants' "Counter-Affidavit" are not *judicial powers* but *purely executive* if not *administrative*, to conduct investigation as it was empowered to do pursuant to Sections 6 and 7 of its enabling Act and the "*findings*" it made by which it wrote Exhibit "TO-12" i.e. letter dated 26/3/13 to the Plaintiff was not a *judicial finding* but *administrative result* of its investigation.

In relation to question 3 in the "Originating Summons", I will answer the question in the *affirmative* because, the alleged 5% commission which formed part of the allegations against the Plaintiff in the handling of the 2nd Defendant's account kept with it, was by the Plaintiff's own account, based on the alleged "*Memorandum of Understanding*" it executed with the 2nd Defendant. So, it was *legitimate* for the 1st Defendant to request the Plaintiff to produce the said "*Memorandum of Understanding*" from its own record as the 2nd Defendant denied any such understanding with the Plaintiff.

On question (iv) in the "Originating Summons", I will answer the said question in the *affirmative* so that the *pendency* of a civil action is not used by any of the parties thereto, to mount an *imaginary "obstacle"* that will prevent the 1st Defendant from getting to the bottom of the "petition" it has received from the 2nd and 3rd Defendants which not only alleged massive fraud against its erstwhile executive director, Abubakar Mohammed Kent, but roped in the Plaintiff's "erstwhile Abuja Branch Manager", Precious Otsu as acting in *collusion* with the 2nd Defendant's "erstwhile Abuja Branch Manager" to defraud the 2nd Defendant by opening *fictitious*

accounts in the 2nd Defendant's name with the Plaintiff with which innocent *subscribers* for the 2nd Defendant's housing units were allegedly defrauded.

In the light of the answers which I have given to each of the four (4) questions set down by the Plaintiff in its "Originating Summons", relief 1 in the Plaintiff's "Originating Summons" *succeeds*; relief 2 fails having regard to the answer I had given to question 2 in the "Originating Summons". Reliefs 3 and 4 also *fail* for the same reasons I had given to questions 3 and 4 in the "Originating Summons". Relief (v) fails as the *findings* made by the 1st Defendant was not a "judgment" but a *finding* by the investigation conducted by the 1st Defendant. Relief (vi) cannot be upheld as its fate is *intertwined* with relief (v) which fails. Relief (vi) also fails as the 1st Defendant had *legitimate* and *probable grounds* and *reasons* based on the *facts* produced by both parties to institute investigation into the "*petition*" it received from the 2nd and 3rd Defendants by Exhibit "F" attached to their "Counter-Affidavit".

As I had said earlier, the Plaintiff, except it *acquiesced* or *connived* with its "erstwhile Abuja Branch Manager", Otsu Precious to perpetrate the alleged *monumental fraud* with the 2nd Defendant's "erstwhile Executive Director", Abubakar Mohammed Kent, it has a *moral* and *legal obligation* to assist the 1st Defendant with its record, in the course of its investigation of Mrs. Precious Otsu; Abubakar Mohammed Kent and any other persons who investigation may have revealed as being involved in the alleged *scam*. Applying the provision of Order 56 Rule 1 of the **Federal**



High Court (Civil Procedure) Rules, 2009, the Plaintiff's suit having succeeded only on its relief 1 on the "Originating Summons", the 1st Defendant shall on the strength of this Judgment, proceed with its investigation of the Plaintiff; the Plaintiff's "erstwhile Abuja Branch Manager", Otsu Precious; Abubakar Mohammed Kent – the 2nd Defendant's "erstwhile Executive Director" and any other person(s) who the *findings* of the investigation may have find *culpable* and to charge such *indicted* persons to a Court of *competent jurisdiction* within the shortest possible time of its completion of the investigation.

The Plaintiff's suit succeeds on only its relief 1 in the "Originating Summons" dated and filed on 4/4/13. It fails on reliefs 2, 3, 4, 5 and 6. I have made *consequential orders* to strengthen the *statutory* hands of the 1st Defendant to conduct its investigation and prefer criminal charges against persons who may be indicted by the investigation.

This shall be the Judgment of this Court which I was unable to deliver on 23/2/17 for the reasons which I had given in order to meet the *necessity* and *obligation* of the provisions of Section 294(1) of the **CFRN, 1999 As Amended**.



HON. JUSTICE G.O. KOLAWOLE
JUDGE
14/3/2017

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FEDERAL HIGH COURT
ABUJA



COUNSEL'S REPRESENTATION:

1. H.O. CHICHI, ESQ. for the PLAINTFF.
2. MS. IJEOMA IWUOHA holds brief for HENRY ANACHUNA, ESQ. for the 2ND and 3RD DEFENDANTS.
3. VICTOR UKAGWU, ESQ. for the 1ST DEFENDANT.

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Twelyn Okpo
ADJ