

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE LAGOS JUDICIAL DIVISION**  
**HOLDEN AT LAGOS**

**IN THE MATTER OF AN APPLICATION BY INCORPORATED**  
**TRUSTEES OF HEDA RESOURCE CENTRE FOR JUDICIAL**  
**REVIEW IN THE FORM OF AN ORDER FOR MANDAMUS**

SUIT NO: .....

BETWEEN

INCORPORATED TRUSTEES OF  
HEDA RESOURCE CENTRE ..... APPLICANT

AND

ATTORNEY GENERAL OF FEDERATION ... RESPONDENT

**ORIGINATING MOTION**

BROUGHT PURSUANT TO:

1. ORDERS 34 RULES 1(1)A, 2, 3(1) & (2)A, (B) & (C) OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2009
2. SECTION 1(1), (2), 2 (7), (3), (4)A & 20 OF THE FREEDOM OF INFORMATION ACT
3. AND SECTION 15 (5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS ALTERED)
4. AND UNDER THE INHERENT POWERS OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the .....day of ....., 2018 at the hour of 9 O' Clock in

the forenoon or soon thereafter as Counsel may be heard on behalf of the Applicant for the following reliefs:

1. **AN ORDER** of this Honourable court granting leave to the Applicant to apply for judicial review and to seek an order of mandamus directing and or compelling the respondent to revoke the Operating Production Licence (OPL) 245 on grounds that the entire Malabu transaction in relation to the OPL 245 is unconstitutional, illegal and void as it was not legally granted, same having been obtained fraudulently vide corrupt practices.
2. **A DECLARATION** that the grant of the OPL 245 licence to Malabu Oil and Gas Ltd is unconstitutional and illegal and as such it could not have been lawfully held or transferred by Malabu Oil and Gas Ltd.
3. **AN ORDER** of mandamus directing and or compelling the respondent to revoke the Operating Production Licence (OPL) 245 on grounds that the entire Malabu transaction in relation to the OPL 245 is unconstitutional, illegal and void as it was not legally granted, same having been obtained fraudulently vide corrupt practices.

AND TAKE FURTHER NOTICE THAT at the hearing of this application, the Applicant and counsel on his behalf shall rely on Affidavit evidence and the attached Exhibits.

**DATED THIS ..... DAY OF .....,  
2018**

**FOR SERVICE ON:**

**THE ATTORNEY GENERAL OF THE FEDERATION**

Federal Ministry of Justice

Maitama

Abuja, FCT

.....

**Fatimah Usman (Mrs.)**

✓ **Similoluwa Adewale (Mrs.)**

Applicant's Counsel

**HEDA RESOURCE CENTRE**

No. 20, Mojidi Street,

Off Toyin Street, Ikeja.

Lagos.

08062733643

simiaderibigbe2015@gmail.com

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**AFFIDAVIT IN SUPPORT OF ORIGINATING MOTION**

I, Olalekan Buhari Yahaya, Male, Adult, Christian, Programme Officer of HEDA Resource Center of No. 20, Mojidi Street, Off Toyin Street, Ikeja, Lagos State do hereby make oath and state as follows:

1. I am the Programme Officer of HEDA Resource Center, the applicant herein and by virtue of my position, I am conversant with the facts herein deposed to.
2. I have the authority and consent of all the Incorporated Trustees of the Applicant to depose to the facts contained in this affidavit.
3. Unless otherwise stated, all the facts herein deposed to are within my personal knowledge, information, belief.
4. The Applicant is a non-governmental organization established in Nigeria and incorporated by the Corporate Affairs Commission. The Applicant seeks to promote transparency and accountability in

government through human rights and environmental justice. A copy of the constitution of the Applicant is hereby attached and marked **Exhibit HEDA 1**.

5. The Respondent is an official of the Federal Government of Nigeria appointed as Attorney General of the Federation and also doubles as the Minister of Justice.
6. Following public knowledge and outcry over the unfortunate and scandalous Malabu deal, the Applicant petitioned the offices of the Respondent demanding proper and effective investigation and prosecution of all government officials and individuals involved.
7. The Applicant further requested that the Federal Government outrightly revoke the grant of the OPL 245 as fraudulently granted to Malabu Oil and Gas Ltd and discontinuance of any thorough-going relationship with Eni/Shell by the Federal Government. A copy of the Applicant's letter to the respondent dated the 12<sup>th</sup> day of February, 2018 is hereby attached and marked **EXHIBIT HEDA 2**.
8. The basis for the above request is that the OPL 245 was not legally granted to Malabu Oil and Gas Limited following the fact that the ex-Minister of Petroleum Services, Dan Etete, who purportedly granted the licence to Malabu Oil and Gas Limited in his official capacity, did so in express contravention of the Code of Conduct for Public Officers as contained in Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as altered), as it was discovered that the said Dan Etete had a represented personal interest of 30% shareholding amounting to 6 million shares in the company, initially using a fictitious name, Kweku Amafeha, at the time of the award of OPL 245 to Malabu Oil and Gas Limited. Kweku at all material times was a pseudonym of Etete according to

the sworn testimony of Etete in *Energy Ventures Partners Ltd v. Malabu Oil and Gas Ltd* (2013) EWHC 2118 (comm).

9. The above act constitutes the height of conflict of interest and corrupt practices and this much was admitted in the Federal Government's pleadings in the Admiralty & Commercial Court of the High Court of Justice in the United Kingdom where it has initiated an action as Claimant against Malabu Oil and Gas Limited with Claim number CL-2016-000631.
10. The government, in spite of its pleadings at the said UK Court asserting the willful engagement of a corrupt process in the contract by Shell and ENI in the Malabu deal and agreements is still involved in a thorough going relationship with the said ENI as a Joint Venture partner and has continued negotiations in finalizing terms for ENI's commitment to take over the funding of the government's 60% interest in the NNPC/ENI joint venture, in addition to the latest exploration agreement allegedly signed with ENI-AGIP recently in Italy. A scanned copy of the aforementioned UK Court process is hereby attached and marked **EXHIBIT HEDA 3**.
11. Subsequently, communications with the office of the Minister of State for Petroleum Resources, and latest exploration agreement purportedly signed with ENI-AGIP in Italy have revealed a compromising assertion maintained by the Ministry of Petroleum Resources to the effect that the position of the Nigerian government is to await the outcome of the ongoing court actions in respect of OPL 245 before taking any far-reaching decisions in terms of its dealings with ENI. A copy of the Applicant's correspondence with the Ministry of Petroleum Resources including the Ministry's response is

hereby attached and marked **EXHIBIT HEDA 4A and 4B** respectively.

12. The position of the Ministry of Petroleum Resources on the presumption of ENI's innocence in the face of government's pleadings before a competent court of jurisdiction in the United Kingdom to the contrary is contradictory, fraudulent and deliberately skewed towards another possible corrupt deal to the detriment of the overriding interest of Nigerians.

13. This subject matter is of utmost national concern and particularly of great interest to the Applicant, the civil society, the human rights community and Nigerians in general.

14. By the nature of this case, it ought to be heard urgently.

15. It is in the overriding interest of justice to grant the prayers contained in the Originating Motion.

16. I depose to this affidavit solemnly and in good faith, believing same to be true and in accordance with the Oaths Act currently in force.

.....  
**DEPONENT**

**SWORN TO AT THE FEDERAL HIGH COURT REGISTRY, LAGOS  
THIS ..... DAY OF ....., 2018**

**BEFORE ME**

**COMMISSIONER OF OATHS**



- c. I processed and printed the said online printout over a period which the computer was used regularly to store and process information in the course of ordinary computer activities.
- d. During this period, there was usually supplied to the computer (Laptop and printer) in the ordinary course of computer activities the information contained in the document (printout) and in the course of performing my functions as a human rights advocate and chairman of the Board of Trustees of the Applicant.
- e. That throughout this period, the computer was operating properly, or in the event that it was out of operation, such did not affect the production or accuracy of the contents of the online printout.
- f. That the above statements are made to the best of my knowledge and belief.

**Dated this ..... day of ....., 2018**

.....

**DEPONENT**

**SWORN TO AT THE FEDERAL HIGH COURT REGISTRY, LAGOS**

**THIS ..... DAY OF ....., 2018**

**BEFORE ME**

**COMMISSIONER OF OATHS**

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
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**AND**

**ATTORNEY GENERAL OF FEDERATION** ... **RESPONDENT**

**VERIFYING AFFIDAVIT**

I, **Olalekan Buhari Yahaya**, Male, Christian and Nigerian, of No. 20, Mojidi Street, Off Toyin Street, Ikeja, Lagos State Lagos, do hereby make oath and state as follows:

1. I am the Programme Officer of the trustees of Incorporated Trustees of HEDA Resource Center, the applicant herein.
2. By virtue of the above stated fact, I am conversant with the facts of the case.
3. All the facts contained in the statement attached to this application are true to the best of my knowledge and information.
4. I hereby verify all the facts contained in the statement herein.

5. I make this declaration in good faith believing same to be true and in accordance with the provisions of the Oaths Act.

.....

**DEPONENT**

**SWORN TO** at the Federal High Court Registry, Lagos

Dated this ..... day of ....., 2018

**BEFORE ME**

**COMMISSIONER FOR OATHS**



fight against corruption and entronement of transparence, accountability, probity towards the eradication of corruption in Nigeria.

## **2. RELIEFS SOUGHT BY THE APPLICANT**

1. **AN ORDER** of this Honourable court granting leave to the Applicant to apply for judicial review seeking an order of mandamus directing and or compelling the respondent to revoke the Operating Production Licence (OPL) 245 on grounds that the entire Malabu transaction in relation to the OPL 245 was unconstitutional, illegal and void as it was not legally granted, same having been obtained fraudulently vide corrupt practices.

## **3. GROUND FOR SEEKING THE RELIEFS SOUGHT**

- i. The Respondent as the Chief Legal Officer of the federation is responsible for advising the government on legal matters and representing it in litigation. Following his position as the guardian of public interest, his office is charged with the duty to investigate, vet and approve all government transactions with the overriding public interest being of paramount consideration. He also has the powers to rescind or revoke any agreement or transaction that has been shown to be illegal or invalid.
- ii. The Respondent received a petition from the Applicant requesting the revocation of the OPL 245 Licence on grounds of its unconstitutionality, illegality and allegations of corrupt practices which renders the transaction null and void.
- iii. The Applicant, pursuant to its anti-corruption mandate requested that the Federal Government outright revoke the

grant of the OPL 245 as fraudulently granted to Malabu Oil and Gas Ltd and discontinue any thorough-going relationship with Eni/Shell by the Federal Government.

- iv. Despite the Applicant's request, the Respondent has refused and or neglected to take appropriate steps towards the requested revocation and has continued to deal with the involved companies.

#### 4. FACTS IN SUPPORT

1. The Applicant is a non-governmental organization established in Nigeria and incorporated by the Corporate Affairs Commission. The Applicant seeks to promote transparency and accountability in government through human rights and environmental justice. A copy of the constitution of the Applicant is hereby attached and marked **Exhibit HEDA 1**.
2. The Respondent is an official of the Federal Government of Nigeria appointed as Attorney General of the Federation and also doubles as the Minister of Justice.
3. Following public knowledge and outcry over the unfortunate and scandalous Malabu deal, the Applicant petitioned the office of the Respondent demanding proper and effective investigation and prosecution of all government officials and individuals involved.
4. The Applicant further requested that the Federal Government outright revoke the grant of the OPL 245 as fraudulently granted to Malabu Oil and Gas Ltd and discontinuance of any thorough-going relationship with Eni/Shell by the Federal Government. A copy of the Applicant's letter to the respondent dated the 12<sup>th</sup> day of February, 2018 is hereby attached and marked **EXHIBIT HEDA 2**.

5. The basis for the above request is that the OPL 245 was not legally granted to Malabu Oil and Gas Limited following the fact that the ex-minister of petroleum services, Dan Etete, who purportedly granted the licence to Malabu Oil and Gas Limited in his official capacity did so in express contravention of the Code of Conduct for Public Officers as contained in the Fifth Schedule, Part 1 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), as it was discovered that the said Dan Etete had a represented personal interest of 30% shareholding amounting to 6 million shares in the company, initially using a fictitious name, Kweku Amafeha, at the time of the award of OPL 245 to Malabu Oil and Gas Limited. Kweku at all material times was a pseudonym of Etete according to the sworn testimony of Etete in *Energy Ventures Partners Ltd v. Malabu Oil and Gas Ltd* (2013) EWHC 2118 (Comm.)
6. The above act constitutes the height of conflict of interest and corrupt practices and this much was admitted in the Federal Government's pleadings in the Admiralty & Commercial court of the High Court of Justice in the United Kingdom where it has initiated an action as Claimant against Malabu Oil and Gas Limited with Claim Number CL-2016-000631.
7. The government, in spite of its pleadings at the said UK court asserting the willful engagement of a corrupt process in the contract by Shell and ENI in the Malabu deal and agreements is still involved in a thorough-going relationship with the said ENI as a Joint Venture partner and has continued negotiations in finalizing terms for ENI's commitment to take over the funding of the government's 60% interest in the NNPC/ENI joint venture, in addition to the latest exploration agreement allegedly signed with ENI-AGIP recently in Italy.

A scanned copy of the aforementioned UK Court process is hereby attached and marked **EXHIBIT HEDA 3**.

8. Subsequently, communications with the office of the Minister of State for Petroleum Resources in Nigeria and latest exploration agreement purportedly signed with ENI-AGIP in Italy have revealed a compromising assertion maintained by the Ministry of Petroleum Resources to the effect that the position of the Nigerian government is to await the outcome of the ongoing court actions in respect of OPL 245 before taking any far-reaching decisions in terms of its dealings with ENI. A copy of the Applicant's correspondence with the Ministry of Petroleum Resources including the Ministry's response is hereby attached and marked **EXHIBITS HEDA 4A and 4B** respectively.
9. The position of the Ministry of petroleum resources on the presumption of ENI's innocence in the face of government's pleadings before a competent court of jurisdiction in the United Kingdom to the contrary is contradictory, fraudulent and deliberately skewed towards another possible corrupt deal to the detriment of the overriding interest of Nigerians.
10. This subject matter is of utmost national concern and particularly of great interest to the Applicant, the civil society, the human rights community and Nigerians in general.

Dated this ..... day of ....., 2018

.....  
**Fatimah Usman (Mrs.)**  
✓ **Similoluwa Adewale (Mrs.)**  
Applicant's Counsel  
HEDA RESOURCE CENTRE  
No. 20, Mojidi Street,  
Off Toyin Street, Ikeja.  
Lagos.  
08062733643  
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- b. **A DECLARATION** that the grant of the OPL 245 licence to Malabu Oil and Gas Ltd is unconstitutional and illegal and as such it could not have been lawfully held or transferred by Malabu Oil and Gas Ltd.
- c. **AN ORDER** of mandamus directing and or compelling the respondent to revoke the Operating Production Licence (OPL) 245 on grounds that the entire Malabu transaction in relation to the OPL 245 is unconstitutional, illegal and void as it was not legally granted, same having been obtained fraudulently vide corrupt practices.
- d. **AND** for such order or other orders as this Honorable Court may deem fit to make in the circumstances.

1. The Applicant also filed a 4 paragraph statement in support of the application.

#### 4. SUMMARY OF FACTS

The facts leading to this application are as stated in the summary of facts in support of the application.

### 3.00 ISSUE FOR DETERMINATION

The Applicant submits the issues for determination which are stated as follows:

- 1. **WHETHER**, considering the facts and circumstances of this case, the Applicant is entitled to **AN ORDER** of this Honourable Court granting leave to the Applicant to apply for **AN ORDER OF MANDAMUS** in terms of the statement filed with this application and an Order of Mandamus as sought in the Originating Motion compelling the Respondent to revoke the illegal contract complained about in this suit.

#### 4.00 ARGUMENT ON ISSUE 1:

4.01 Following the Applicant's petition dated 12<sup>th</sup> February, 2018 to the Respondent wherein the Applicant demanded for the proper and effective investigation and prosecution of all government officials and individuals involved in the Malabu deal, the Applicant further requested that the Federal Government outright revoke the grant of the OPL 245 as fraudulently granted to Malabu Oil and Gas Ltd and discontinuance of any thorough-going relationship with Eni/Shell by the Federal Government.

4.02 Having confirmed that from the response of the Minister of Petroleum that the government is still having some dealings with the said Eni/Shell and also making arrangements to go into a joint venture with it, the applicant responded and reiterated the need to halt and suspend all thorough going relationships with the said Eni/Shell pending the outcome of the investigations and suits with respect to the Malabu deal.

4.03 The Respondent refused, neglected and or failed to grant the Applicant's request and as such has blatantly continued engaging the said Eni/Shell, thus projecting an image contrary to its anti-corruption policy.

4.04 My Lord, the essence of judicial review such as mandamus is to secure or enforce the performance of a public duty. In **FAWEHINMI v. IGP [2002] 7 NWLR (Pt. 767) @ Pp. 697-698, paras. H-A**, The Supreme Court held:

*“The prerogative writ of mandamus is issued or ordered by the Courts to secure or enforce the performance of a public duty...”*

- 4.05 We respectfully refer Your Lordship to the case of **FAWEHINMI v. I. G. P (Supra)**, where the Supreme Court while considering the pre-conditions to the grant of the prerogative relief of mandamus held that:

*“The prerogative writ of mandamus is issued or ordered by the Courts to secure or enforce the performance of a public duty. It is pre-eminently a discretionary power and the Courts will decline to award it if other legal remedies are available and effective. An Applicant for the grant of the order must show that he has sufficient legal interest to protect and that he has demanded the performance of the public duty from those obliged to do so and was refused”.*

- 4.06 Furthermore, In the case of **OHAKIM v. AGBASO [2010] 19 NWLR (Pt. 1226) @ Pp. 227-228, paras. F-A**, the Supreme Court on meaning of mandamus held as follows:

*“Mandamus is an order issued by a court of law, usually the High Court, to compel the performance of a public duty in which the person applying for same has sufficient legal interest. An order of mandamus only issues to a person or corporation, requiring him or them to do some particular thing therein specified which appertains to his or their office, and is in the nature of public duty...”*

- 4.07 My Lord, it is a precondition requirement for the grant of order of mandamus that the applicant must show that it has sufficient legal interest to protect and that it has demanded the performance of the public duty from those obliged to so. My Lord, we respectfully submit that as a civil society with the mandate of promoting transparency, accountability and exposing corrupt and fraudulent practices in government institutions and amongst government officials on the basis of the provisions of Section 15(5) of the 1999 Constitution of the Federal Republic of Nigeria (as altered), the applicant has a legal interest in the Malabu deal and issues arising therefrom.
- 4.08 Furthermore, the Applicant has stated in its statement in support that it made demands to the Respondent vide a letter dated 12<sup>th</sup> February, 2018
- 4.09 My Lord, it is our humble submission that after the Applicant's demand via its letter dated 12<sup>th</sup> February, 2018 the Respondent refused, failed or neglected to act on it.
- 4.10 My Lord, the duty required of the Respondent is the revocation of the Operating Production Licence (OPL) 245 on grounds that the entire Malabu transaction in relation to the OPL 245 is unconstitutional, illegal and void as it was not legally granted, same having been obtained fraudulently vide corrupt practices. The corrupt practices alleged can be traced to the status of one Dan Etete who was the Minister for Petroleum and who granted himself the licence complained about.
- 4.11 By Paragraph 1 of the Code of Conduct for Public Officers contained in Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as altered),  
*“A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.”*

4.10 It is submitted that the act of granting the licence to the Malabu Oil deal to a company in which the said Mr. Dan Etete had interest at the time of the said transaction amounts to fraudulent and illegal transaction which must be revoked as fraud unravels all transaction no matter what.

4.11 We therefore urge Your Lordship to hold that the Respondent is bound to grant the demands of the Applicant as he is by virtue of his office, under a legal obligation to comply in the overriding interest of the general public. We therefore pray Your Lordship to resolve the issue in favour of the Applicant.

#### 5.00 CONCLUSION

5.01 On the basis of the above reasoning, principles, legal and judicial authorities, the Applicant urges this Honourable Court to grant the reliefs as sought by the Applicant in the Statement accompanying the Originating Motion.

#### 6.00 LIST OF AUTHORITIES

1. OHAKIM v. AGBASO [2010] 19 NWLR Pt. 1226 @ Pp. 227-228, paras. F-A
2. FAWEHINMI v. I. G. P (2002) 7NWLR Pt. 767 @ Pp. 697-698, paras. H-A

DATED THIS.....DAY OF .....,  
2018

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Fatimah Usman (Mrs.)  
✓ Similoluwa Adewale (Mrs.)  
Applicant's Counsel

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