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**IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT No. FHC/ABJ/CS/14/2017

IN THE MATTER OF AN APPLICATION BY THE CHAIRMAN OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION FOR AN ORDER OF INTERIM ATTACHMENT OF OIL PROSPECTING LICENCE 245 PRESENTLY HELD BY SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCO)

BETWEEN

SHELL NIGERIA EXPLORATION & PRODUCTION CO. LTD ...APPLICANT

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION ...RESPONDENT

**CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA**

**MOTION ON NOTICE
BROUGHT PURSUANT TO**

SECTIONS 6(6), 35(3), 36(5) & 44 OF THE

**CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED),
SECTIONS 1(3), 9(2), 10, 11 & 24 FEDERAL HIGH COURT ACT LFN 2004,
ORDER 26 & 29 FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2009 AND
UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT**

7/3/17
Abu S-O
(E O CW)

TAKE NOTICE that this honourable Court shall be moved on the day so fixed by the Court, at the sitting of the Court or hour of 9 O'clock in the forenoon, or so soon thereafter, as Counsel may be heard on behalf of Shell Nigeria Exploration and Production Company Limited (the **Applicant**) for the following:

**FEDERAL HIGH COURT
ABUJA
CASHIER'S OFFICE**
06103117
2807-5814-1109

- (A) **AN ORDER** dismissing this suit or action. Or in the alternative,
- (B) **AN ORDER** striking out this suit or action. Or in the alternative,
- (C) **AN ORDER** striking out this suit or action for want of judicial powers to have acted as prayed and on the basis of processes filed. Further in the alternative,
- (D) **AN ORDER** setting aside, discharging or vacating the Interim Order of this honourable Court made on 26.01.17 attaching OPL 245,

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pending the conclusion of investigation and prosecution of the Applicant.

- (E) **AN ORDER** staying, injunctioning or suspending the effect of the Interim Order made by this honourable Court on 26.01.17 attaching OPL 245, pending the conclusion of investigation and prosecution of the Applicant.
- (F) **AN ORDER** setting aside, discharging or vacating the Interim Order made by this honourable Court on 26.01.17 directing that OPL 245 be managed by the Department of Petroleum Resources on behalf of the Federal Government of Nigeria, pending conclusion of investigation and prosecution of the Applicant.
- (G) **AN ORDER** staying, injunctioning or suspending the Interim Order of attachment made by this honourable Court on 26.01.17 in favour of the Chairman of the Economic and Financial Crimes Commission directing that OPL 245 be managed by the Department of Petroleum Resources on behalf of the Federal Government of Nigeria, pending conclusion of investigation and prosecution, and
- (H) **SUCH FURTHER or OTHER ORDER OR ORDERS** as this honourable Court may deem fit to make in the circumstances of this case.

TAKE FURTHER NOTICE that the grounds upon which this application is brought are that:

1. the institution of the action by the Chairman Economic and Financial Crimes Commission constitutes a gross abuse of process and an abuse of power;
2. this honourable court lacks jurisdiction to hear and determine the action;
3. the process of procuring the grant and the grant of the *Ex-Parte* Order is unconstitutional and unlawful;
4. the processes filed in getting up the action and obtaining the orders granted are materially flawed and incompetent;
5. the conditions precedent to the assumption of jurisdiction were not met in the institution of this matter;
6. the conditions precedent to the exercise of the judicial power of this honourable Court were not met by the Respondent;


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ABUJA

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- 7. the Respondent misrepresented and suppressed material facts in obtaining the *Ex-Parte* Order; and
- 8. it is in the interest of justice that the *Ex-Parte* Order be discharged.

Dated this 31st day of January, 2017



 Godswill Iwuajoku ✓

(Lead by) Prof. Olukonyinsola Ajayi (SAN)

OLANIWUN AJAYI LP,

Applicant Counsel,

Leadway House,

4th Floor, Plot 1061,

Herbert Macaulay Way, (Beside NNPC Towers)

Central Business District,

Abuja.

07037877297

drp@olaniwunajayi.net

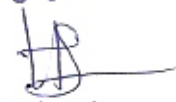
FOR SERVICE ON:

The Respondent


c/o His Counsel,
 Aliyu M. Yusuf.
 Legal and Prosecution Department,
 Economic and Financial Crimes Commission,
 No. 1, Hombori Street,
 off Freetown Street,
 off Adetokunbo Ademola Crescent,
 Wuse II,
 Abuja.

M/A — ₦200.00
 A/O — 200.00
 S/O — 100.00
 W/S — 100.00
 Taxes — 140.00
 Service — 150.00
₦890.00

**CERTIFIED TRUE COPY
 FEDERAL HIGH COURT
 A B U J A**


 7/3/17

**FEDERAL HIGH COURT
 A B U J A
 C A S H I E R**

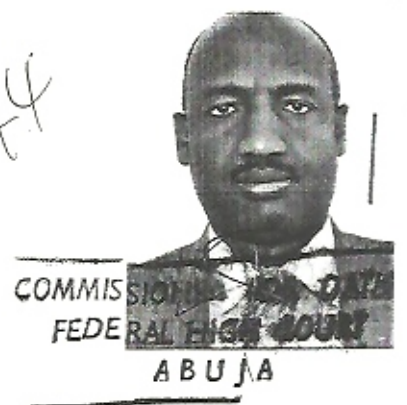
Signature 
 Date _____

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**IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**



SUIT No. FHC/ABJ/CS/14/16

IN THE MATTER OF AN APPLICATION BY THE CHAIRMAN OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION FOR AN ORDER OF INTERIM ATTACHMENT OF OIL PROSPECTING LICENSE 245 PRESENTLY HELD BY SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY (SNEPCo)

BETWEEN

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCo)

... APPLICANT

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION

...RESPONDENT

AFFIDAVIT IN SUPPORT

OF THE APPLICANT'S MOTION ON NOTICE DATED 31.01.17

I, Abubakar Ahmed, Male, Adult, Muslim, Nigerian of 21/22 Freeman House, Marina, Lagos, hereby make oath and state as follows:

1. I am the Government Integration Manager in the Applicant in this matter, and by virtue of my position, I am conversant with the facts deposed to in this Affidavit.
2. In the course of my work as aforesaid, I know of the some of the activities of the Applicant especially in relation to Oil Prospective License 245 (**OPL 245**), and I am conversant with all the facts pertinent and relevant to this matter concerning the Applicant.
3. I have the consent and authority of the Applicant to depose to this Affidavit.

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FEDERAL HIGH COURT
ABUJA**


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7/3/17

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4. Except as otherwise stated, the facts to which I herein depose are:
(i) within my personal knowledge and belief and from the records of the Applicant; and (ii) derived from my reading and understanding of all the processes filed in this matter.
5. The Chairman of the Economic and Financial Crimes Commission (**Respondent**) commenced the action leading to this application by an *Ex-Parte* Originating Summons dated and filed on 11.01.17 (***Ex-Parte* Originating Summons**). The Originating Summons filed by the Respondent is supported by a twenty-one (21) paragraph Affidavit deposed to by one Ibrahim Ahmed (**IA Affidavit**) and a four (4) paragraph written address.
6. I deny each and every allegation of fact in the IA Affidavit as they concern the Applicant, and specifically deny paragraphs 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the IA Affidavit.
7. On 26.01.17, this honourable Court heard the *Ex-Parte* Originating Summons and granted the orders as prayed against the Applicant and others in respect of OPL 245 (the ***Ex-Parte* Order**).
9. I became aware of the *Ex Parte* Order through various online newspaper reports further to which the Applicant briefed the firm of Olaniwun Ajayi LP to obtain the certified true copies of the processes filed in the matter and the *Ex-Parte* Order.
10. I have now read the *Ex-Parte* Originating Summons and the *Ex-Parte* Order, certified copies of which were obtained by our lawyers on 27.01.17, and I note that in obtaining the *Ex-Parte* Order, the Respondent failed to disclose to this honourable Court as follows:
 - 10.1 as at the date the *Ex-Parte* Originating Summons was filed, and argued, there was no seizure or attachment of OPL 245 by the Chairman of EFCC, by EFCC or any officer of the EFCC;
 - 10.2 as at the date the *Ex-Parte* Originating Summons was filed, and argued, there was no criminal complaint laid against the Applicant for any offence under the EFCC Act or any other Act, by the Respondent or EFCC or any officer of the EFCC;

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ABUJA

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7/3/17

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- 10.3 that some officers of the Applicant have been invited by the EFCC to assist in what it then described as an investigation further to a Petition received by the EFCC;
- 10.4 the EFCC has in its custody an array of documents provided to the Respondent regarding OPL 245;
- 10.5 the documents in the EFCC's custody were not referred to in the *Ex-Parte* Originating Summons, or the IA Affidavit;
- 10.6 the OPL 245 cannot be utilised, sold, mortgaged or dissipated, without the consent of the Federal Government of Nigeria (**FGN**) under all relevant enabling laws and regulations and conditions of grant of oil prospecting licences in Nigeria;
- 10.7 OPL 245 is a licence to prospect for oil;
- 10.8 OPL 245 is a chose in action liable to the full control of the FGN;
- 10.9 the Applicant have as at the time of the filing and arguing of the *Ex Parte* Originating Summons spent millions of US dollars to the knowledge and approval of the FGN including in particular through Department of Petroleum Resources (**DPR**);
- 10.10 that no economic value can be derived from OPL 245 without the consent or approval of various agencies of the FGN including DPR, the Nigerian Customs, the Federal Ministry of Industry Trade and Investments, the Federal Ministry of Petroleum Resources, Central Bank of Nigeria and Nigerian National Petroleum Corporation;
- 10.11 the DPR is a Department in the Ministry of Petroleum Resources under the supervision, control of the Minister of Petroleum Resources;
- 10.12 the DPR is charged solely with the responsibility of monitoring the compliance with Petroleum laws, regulations and guidelines in the Oil and Gas Sector in Nigeria;
- 10.13 the civil proceedings between Malabu and the FGN before the Federal High Court which proceeded to the Court of Appeal in Appeal No: CA/A/99/M/06 and the settlement agreement

[Signature] 7/3/17

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reached therein resulted in a consent judgment and now produced and shown to me marked as **Exhibit A2** is the Settlement Agreement dated 30.11.06;

10.14 the arbitration proceedings before the International Court for Settlement of Investment Disputes, and the various settlement agreements reached thereafter granted OPL 245 to the 1st Applicant and Nigerian Agip Exploration Company Limited (**NAE**), and now produced and shown to me marked as **Exhibits A3 – A5** are the said agreements;

10.15 Exhibit A4 was signed by the then Hon. Attorney General of the Federation and Minister of Justice, Hon. Minister of Petroleum Resources, Hon. Minister of Finance for and on behalf of the Federal Government of Nigeria;

10.16 Exhibits A4 & A5 provide that the FGN shall indemnify, save and hold the Applicant harmless against all suits, proceedings, claims, demands, losses and liability of any nature or kind;

10.17 the FGN which granted the OPL 245 has further recognized the interest of 1st Applicant and NAE in OPL 245; and

10.18 the DPR has at all times material been carried along with the Applicant's progress on OPL 245 and have validated the Applicant's activities on the OPL. Now produced and shown to me marked as Exhibit A6a & A6b are true copies of the letter dated 31.08.16 from the DPR to the Managing Director of NAE and the letter dated 06.10.16 from the DPR to the Managing Director of NAE.

11. I verily believe that in obtaining the *Ex-Parte* Order the Respondent misrepresented that:

11.1 OPL 245 needs to be preserved from dissipation; wastage; or taking out of jurisdiction;

11.2 OPL 245 was fraudulently and corruptly taken from the FGN;

11.3 OPL 245 is a property within the contemplation of the EFCC Act;

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FEDERAL HIGH COURT
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7/3/17

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- 11.4 consideration was not fully furnished by 1st Applicant and NAE to the FGN for the grant of an oil prospecting licence by way of re-allocation of OPL 245;
 - 11.5 there was real urgency in seeking the *Ex-Parte* Order;
 - 11.6 the FGN did not voluntarily re-allocate OPL 245 to the 1st Applicant and NAE;
 - 11.7 the Respondent will be highly prejudiced if the reliefs sought in the *Ex-Parte* Originating Summons were not granted; and
 - 11.8 it has a prima facie case against the Applicant.
12. I further verily believe that the interest of justice will be best served if this application is granted.
13. I depose to this affidavit bona fide, conscientiously believing same to be true and in accordance with the Oaths Act, Cap O1 LFN 2004.

Asubor

 DEPONENT

SWORN TO at the Federal High Court Registry, ^{Abuja} Lagos
 This... ^{31st} day of January, 2017

BEFORE ME

 COMMISSIONER FOR OATHS
 FEDERAL HIGH COURT
 ABUJA
 COMMISSIONER FOR OATHS

FEDERAL HIGH COURT
 ABUJA
 CASHIER

Signature: *[Signature]*
 Date: *[Date]*

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 FEDERAL HIGH COURT
 ABUJA

1201-4753-20381

[Signature]
 7/13/17


SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made the ^{2nd} day of ^{Nov} 2006
Between MALABU OIL & GAS LIMITED a Company incorporated in Nigeria
with its office situate at No 35, Kingsway Road, Ikoyi, Lagos (hereinafter called
"MALABU" which expression shall where the context so admits include its
successors in title and assigns) of the first part AND THE FEDERAL
GOVERNMENT OF NIGERIA, represented by the HONOURABLE MINISTER
OF STATE FOR PETROLEUM RESOURCES (hereinafter called "the FGN"
which expression shall where the context so admits include its successors in title and
assigns) of the second part.

WHEREAS:

- (1) A dispute has arisen between MALABU and the FGN regarding the legal title to and proprietorship of an oil block known and situated in the Niger Delta Region of Nigeria and covered by Oil Prospecting Licence ("OPL") 245 (hereinafter called OPL 245).
- (2) MALABU claims that OPL 245 was duly allocated to it by the FGN but later wrongly withdrawn and the FGN contends that the withdrawal was properly done and that MALABU was not entitled to the allocation at the relevant time.
- (3) MALABU commenced an action in Suit No. FHC/ABJ/CS/420/2003 against the FGN and several of its officers and agencies claiming inter alia the re-instatement of the licence over OPL 245 to it. The suit was however struck out on 16th of March 2006 by the Federal High Court, but an appeal has been lodged against the ruling by MALABU in Appeal No. CA/A/99/M/06 now pending at the Court of Appeal, Abuja.
- (4) MALABU has also petitioned the National Assembly seeking the re-instatement of the licence over OPL 245 to it and the setting aside of the revocation.
- (5) The parties have resolved to amicably settle the dispute on the terms and conditions hereinafter contained.

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FEDERAL HIGH COURT
ABUJA


7/3/17

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NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In the spirit of an amicable settlement and without any admission of liability for any alleged wrongful, unlawful, unjust or any like conduct, the FGN agrees to re-allocate the oil block known as and covered by Oil Prospecting Licence 245 (herein called OPL 245) to MALABU within 30 (thirty) days from the date of this Agreement.
2. The signature bonus in respect of OPL 245 shall be the sum of US\$210,000,000 (Two Hundred and Ten Million US Dollars) payable by MALABU to the FGN. In this regard, the FGN acknowledges that MALABU had hitherto paid the sum of US\$2,040,000 (Two Million and Forty Thousand US Dollars) to the FGN in respect of this Oil Block which sum shall be deducted from the aforesaid signature bonus leaving a balance of US\$207,960,000 (Two Hundred and Seven Million, Nine Hundred and Sixty Thousand US Dollars) to be paid by MALABU to the FGN within 12 (twelve) months from the date of the re-instatement of OPL 245 to MALABU.
3. The parties agree that MALABU shall, if it so desires be at liberty to assign OPL 245 or any part thereof in accordance with the provisions of the Petroleum Act.
4. Pursuant to this Agreement and in consideration of the foregoing, MALABU hereby forever and absolutely discharges and releases the FGN, its Officers, Agents, Agencies and Privies howsoever described or any person acting for and/or on its behalf, from all claims or demands which MALABU has or may have, and from all actions, proceedings, obligations, liabilities, losses and damages brought, made, incurred, sustained or suffered by MALABU now or in the future relating to, arising from or howsoever connected with the withdrawal or revocation by the FGN from MALABU of OPL 245.
5. Immediately upon the execution of this Agreement, MALABU shall withdraw, discontinue and terminate its Appeal No. CA/A/99/M/06 now pending against the FGN and its Agencies at the Court of Appeal, Abuja. MALABU shall cause the requisite evidence of this withdrawal/discontinuance to the Solicitors to be delivered to the FGN within 72 hours of the same being withdrawn or discontinued.

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FEDERAL HIGH COURT
ABUJA


7/3/17

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IN WITNESS WHEREOF the parties have caused this Agreement to be executed the manner hereinafter appearing.

The Common Seal of the within named "MALABU"
MALABU OIL & GAS LIMITED
Was hereunto affixed in the presence of:

[Handwritten signature]

DIRECTOR

[Handwritten signature]

SECRETARY

SIGNED AS A DEED for and on behalf
of the within named "FGN"
FEDERAL GOVERNMENT OF NIGERIA
by:

[Handwritten signature]

HONOURABLE MINISTER OF STATE
FOR PETROLEUM RESOURCES

In the presence of:

NAME: *Anthony George Ikoli*

ADDRESS: *999C Amadi Street, Wuse, Abuja*

OCCUPATION: *LEGAL PRACTITIONER*

SIGNATURE: *[Handwritten signature]*

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

[Handwritten initials]
7/3/17

EXHIBIT A3 151

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA 21/4/11

BLOCK 245 SNUD RESOLUTION AGREEMENT

THIS RESOLUTION AGREEMENT is made this 21st day of April 2011

Between

THE FEDERAL GOVERNMENT OF NIGERIA (hereinafter referred to as the FGN) represented by Honourable Attorney General of the Federation and the Minister of Petroleum Resources; and

SHELL NIGERIA ULTRA-DEEP LIMITED, a company incorporated under the laws of the Federal Republic of Nigeria having its registered office at Freeman house, 21/22 Marina, Lagos (hereinafter referred to as SNUD, which expression where the context so admits shall include its successors-in-title and assigns); and

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY NIGERIA LIMITED, a company incorporated under the laws of the Federal Republic of Nigeria having its registered office at Freeman house, 21/22 Marina, Lagos (hereinafter referred to as SNEPCO, which expression where the context so admits shall include its successors-in-title and assigns);

FGN, SNUD and SNEPCO may also be referred to herein individually as a "Party" or, collectively, as the "Parties".

WHEREAS:

- A. On the 29th of April 1998, the FGN granted an Oil Prospecting License (OPL 245) over oil block 245 ("Block 245") to MALABU.
- B. On 30th March, 2001, MALABU and Shell Nigeria Ultra Deep Limited ("SNUD") entered into a Farm-in Agreement, and a Deed of Assignment under which MALABU assigned forty (40) percent equity interest in OPL 245 to SNUD.
- C. On the 2nd July 2001, FGN revoked OPL 245.
- D. By a letter dated the 23rd May 2002, the then Honourable Minister of Petroleum Resources, on behalf of FGN awarded Block 245 to SNUD on the basis of a Production Sharing Contract ("PSC"), following a competitive bid with another international oil company, on the invitation of the FGN.
- E. On 22nd December 2003, Nigerian National Petroleum Corporation ("NNPC") executed a PSC with SNUD, (hereinafter referred to as the "2003 PSC"), granting SNUD the right to exclusively operate Block 245 as contractor for a term of thirty (30) years.

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ABUJA

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7/3/11

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ABUJA
Signature.....
Date..... 23/4/11

Ben Nwobu. Registrar

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F. Subsequent to the revocation referred to in paragraph C above and the execution of the 2003 PSC, ~~several suits involving FGN, MALABU and SNUD, were filed to determine disputes arising from the revocation of OPL 245 by the FGN, the termination of the agreements between MALABU and~~ SNUD referred to in paragraph B above, and the execution of the 2003 PSC in respect thereof, with SNUD.

G. On 30th November, 2006, the FGN executed a settlement agreement with MALABU wherein the FGN, without admission of liability for any alleged wrongful, unlawful, unjust or any like conduct, agreed to re-allocate Block 245 to MALABU in consideration of MALABU discharging and releasing the FGN from all claims and suits filed by MALABU against the FGN in connection with the revocation of MALABU's interest on 2nd July 2001.

H. As a result of the execution of the settlement agreement referred to in paragraph G above, a number of ~~arbitration proceedings were initiated by SNUD against FGN and/or MALABU~~ including the Bilateral Investment Treaty (BIT) arbitration No. ARB/07/18 pending at the International Centre for the Settlement of Investment Disputes ("ICSID Arbitration"), to enforce SNUD's rights to exclusively operate Block 245 as Contactor on the basis of the 2003 PSC between NNPC and SNUD.

I. The cases remaining between FGN, MALABU and SNUD are:

- i. CA/A/25M/2003 - SNUD vs. The House of Representatives and MALABU.
- ii. ICC No. 12136 MS (C12137/MS) SNUD vs. MALABU. (Arbitration with resulting award in favor of SNUD delivered on 20th December 2004, and costs of US\$2.735 million awarded against MALABU.)
- iii. FHC/NRJ/01/2009 - SNUD vs. MALABU, by which the ICC Award was registered on 29 March, 2010, making it enforceable in Nigeria.
- iv. ICSID Case No. ARB/07/18- Bilateral Investment Treaty arbitration between SNUD and the FGN. (Ruling pending.)

J. On 2nd July 2010, FGN again issued a letter to MALABU, re-allocating Block 245 to MALABU.

K. FGN has decided to resolve its differences with SNUD amicably with respect to Block 245.

L. Notwithstanding paragraph J above, ~~MALABU is willing to settle and waive any and all claims to any interest in Block 245 in consideration of receiving compensation from the FGN.~~

M. Further to paragraphs K and L above, FGN has entered into an agreement of even date with MALABU (the "MALABU Settlement") in respect to the matters referred to in paragraphs G, I and J above, by which, MALABU has relinquished all claims to OPL 245 and agrees to all future actions which FGN may take under this Resolution Agreement with respect to Block 245.

N. Pursuant to paragraphs K and L above, and with the full consent and agreement of MALABU, FGN is willing to reallocate Block 245 to Nigerian Agip Exploration Limited, ("NAE") and

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FEDERAL HIGH COURT
ABUJA

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FEDERAL HIGH COURT
ABUJA

Signature.....
Date 23/7/2012

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SNEPCO (an Affiliate of SNUD), in accordance with the terms of a reallocation agreement, even date to be entered into between FGN, SNUD, SNEPCO, NAE and NNPC, ("the Reallocation Agreement").

NOW THEREFORE, FGN and SNUD HAVE AGREED as follows with respect to Block 245:

1 All existing, claimed, asserted or disputed rights and privileges of SNUD, including contracts, and arrangements, arising from or pursuant to Block 245 whether such rights and privileges existed, are claimed, asserted or disputed among themselves, or against the whole world (including any party claiming through FGN) shall at the Execution Date, be substituted by the following arrangement:

1.1 FGN has executed the MALABU Settlement, under which MALABU, (i) has relinquished all claims to OPL 245; and (ii) has agreed to release SNUD from all pending obligations and liabilities arising from any judgment/awards made pursuant to the various cases instituted and/or against SNUD by MALABU that now exist or at any time existed arising from the litigation and claims referred to in this Resolution Agreement, including the award made by the House of Representatives in favour of MALABU which is the subject of Suit No. CA/A/25M/2003

1.2 Pursuant to Clause 1.1 herein and in the exercise of its powers under the Petroleum Act, Cap P10, Laws of the Federation of Nigeria, 2004, FGN shall reallocate the interests in Block 245 jointly to SNEPCO and NAE; and shall issue the Oil Prospecting license in respect of Block 245 jointly in the names of SNEPCO and NAE. The terms of the reallocation of Block 245 to SNEPCO and NAE shall be the subject of the Reallocation Agreement, and shall include the following:

- i. that the Oil Prospecting License to be issued to SNEPCO and NAE shall be for an aggregate period of ten (10) years commencing from the date it is issued, and
- ii. Any OMLs which may derive therefrom shall have duration of twenty (20) years with additional renewals as allowed by law.

2 Upon the execution of this Agreement by the Parties, FGN shall deliver to SNUD, a certified true copy of the MALABU Settlement.

3 Not later than two Business Days from the issuance and delivery to SNUD of the MALABU Settlement:

- a. SNUD shall discharge MALABU from all pending obligations and liabilities arising from any judgment/awards made pursuant to the various cases instituted and/or against MALABU by SNUD that now exist or at any time existed arising from the litigations and claims referred to in this Resolution Agreement; In particular, SNUD shall discharge MALABU from payment of all awards made by any court, administrative proceedings or tribunals, including the payment of the sum of 2,735 million US Dollars and 110,000 Naira respectively, being the costs awarded against MALABU in favor of SNUD by the ICC and affirmed by the Federal High Court in Suit No. FHC/NR/01/2009, SNUD versus MALABU and the Court of Appeal on 17 June 2010, and

3 *Handwritten signature/initials*

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date..... 23/7/2012

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FEDERAL HIGH COURT
ABUJA

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b. SNUD and FGN shall withdraw and wholly discontinue all ongoing and pending suits/arbitration in respect of Block 245. Pursuant thereto, SNUD and FGN shall file settlement reflecting the agreement herein in the form attached to this Resolution Agreement as schedule 1 to be adopted as the judgment of the respective courts in Suit No. CA/A/25M/2003 and the Final Award in ICSID Case No. ARB/07/18. Provided that, in the event of the FGN failing to fulfill its obligations under this Resolution Agreement, such as issuing the Oil Prospecting Licence pursuant to Clause 1.2 within the term provided in the Reallocation Agreement, the ICSID Arbitration tribunal shall be entitled to take into consideration, matters contained in this Agreement, including the payment of any Signature Bonus made under the Reallocation Agreement, solely for the purpose of making appropriate award in respect of the Signature Bonus.

4. FGN hereby releases and discharges SNUD, its agents, officers and functions, or any person claiming through SNUD, its agents, officers and functions, of all obligations and liabilities arising from any judgment/awards made pursuant to the various law suits instituted and/or petitions whether known or unknown that now exist or at any time existed arising from the disputes, litigation and claims referred to in this Resolution Agreement; except that this release shall not be deemed to extend to any claim arising from this Resolution Agreement. In particular, such discontinuance shall serve as a discharge to SNUD from any claims whatsoever that may arise from the execution of this Resolution Agreement or any actions taken there under.

5. Each Party acknowledges that, in entering into this Resolution Agreement, it has relied on the express or implied representation and other assurances made by the other Party, its agents and representatives before the signature of this Resolution Agreement regarding the efficacy of the terms thereof.

6. This Resolution Agreement and any agreements executed by the Parties on the date of this Resolution Agreement or in pursuance thereof, supersede all and any agreement or arrangement between the Parties or any of them entered into prior to the date of this Resolution Agreement, either by letter directive, or howsoever relating to Block 245.

7. No amendments, changes or modifications to this Resolution Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto.

8. Each of the Parties shall do all such acts and execute and deliver all such documents as shall be reasonably required in order to fully perform and carry out the terms of this Resolution Agreement.

9. Each Party agrees that they and their employees, agents, agencies, subsidiaries, and attorneys will keep confidential at all times this Resolution Agreement, the terms thereof, and the discussions or negotiations that led to this Resolution Agreement, except to the extent required by law or any competent regulatory body.

10. Definitions:

"Affiliate" means: a company which, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a Party. For this purpose control means the direct or indirect ownership of in aggregate fifty percent (50%) or more of the voting capital.

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FEDERAL HIGH COURT
ABUJA

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ABUJA

Signature: *[Signature]*
Date: 23/7/12

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"Business Day" shall mean a day other than Saturday, Sundays and public holidays, on which banks are open for business in Nigeria

"Clause" means a clause of this Resolution Agreement.

"Execution Date" means the date first written in this Resolution Agreement; being the date on which all Parties to this Resolution Agreement execute this Resolution Agreement.

SIGNED AND AGREED the day and year first above written

For and on Behalf of the FEDERAL GOVERNMENT OF NIGERIA:

Isellorahone

THE HON. ATTORNEY GENERAL AND MINISTER OF JUSTICE.

[Signature]

THE HON. MINISTER OF PETROLEUM RESOURCES

The COMMON SEAL of SHELL NIGERIA ULTRA-DEEP LIMITED was affixed to this Resolution Agreement and was duly delivered in the presence of:

[Signature]

DIRECTOR

[Signature]

SECRETARY

The COMMON SEAL of SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED was affixed to this Resolution Agreement and was duly delivered in the presence of:

[Signature]

DIRECTOR

[Signature]

SECRETARY

CERTIFIED TRUE COPY
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ABUJA
Signature: *[Signature]*
Date: 23/1/17

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7/3/17

EXHIBIT A 4

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COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
21/01/17

BLOCK 245 RESOLUTION AGREEMENT

THIS AGREEMENT ("FGN Resolution Agreement") is made this ^{29th} day of April 2011.

Between

THE FEDERAL GOVERNMENT OF NIGERIA (hereinafter referred to as the FGN) represented by Honourable Attorney General of the Federation and Minister of Justice, the Minister of Petroleum Resources and the Minister of Finance; and

SHELL NIGERIA ULTRA-DEEP LIMITED, a company incorporated under the laws of the Federal Republic of Nigeria having its registered office at Freeman house, 21/22 Marina, Lagos (hereinafter referred to as SNUD, which expression where the context so admits shall include its successors-in-title and assigns); and

NIGERIAN NATIONAL PETROLEUM CORPORATION, a statutory corporation established under the laws of the Federal Republic of Nigeria whose Head Office is at NNPC Towers, Central Area, Herbert Macaulay Way, P.M.B 190, Garki, Abuja, Nigeria (hereinafter referred to as "NNPC" which expression where the context so admits shall include its successors-in-title and assigns), and

NIGERIAN AGIP EXPLORATION LIMITED a company established under the laws of the Federal Republic of Nigeria whose registered office is at Churchgate Building, Plot 473 AO Constitution Avenue, Central Business Area, Abuja, (hereinafter referred to as "NAE", which expression where the context so admits shall include its successors-in-title and assigns), and

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED, a company incorporated under the laws of the Federal Republic of Nigeria having its registered office at Freeman house, 21/22 Marina, Lagos (hereinafter referred to as SNEPCO, which expression where the context so admits shall include its successors-in-title and assigns);

FGN, SNUD, NNPC, SNEPCO and NAE may also be referred to herein individually as a "Party" or, collectively, as the "Parties".

Execution version

Handwritten initials and signatures: JJA, PS, SSA

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Signature: [Handwritten Signature]
Date: 23/7/12

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ABUJA

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WHEREAS:

- A. On the 29th of April 1996, FGN granted an Oil Prospecting License (OPL 245) over oil block 245 ("Block 245") to Malabu Oil & Gas Limited company incorporated under the laws of the Federal Republic of Nigeria ("MALABU").
- B. On 30th March, 2001, MALABU and SNUD entered into a Farm-in Agreement, and a Deed of Assignment under which MALABU assigned forty (40) percent equity interest in OPL 245 to SNUD.
- C. On the 2nd July 2001, FGN revoked OPL 245.
- D. By a letter dated the 23rd May 2002, the then Honourable Minister of Petroleum Resources, on behalf of FGN awarded Block 245 to SNUD on the basis of a Production Sharing Contract ("PSC"), following a competitive bid with another international oil company, on the invitation of the FGN.
- E. On 22nd December 2003, NNPC executed a PSC with SNUD, (hereinafter referred to as the "2003 PSC"), granting SNUD the right to exclusively operate Block 245 as contractor for a term of thirty (30) years.
- F. Subsequent to the revocation referred to in paragraph C above and the execution of the 2003 PSC, various law suits involving the FGN, NNPC, MALABU and SNUD, were instituted to determine disputes arising from the revocation of OPL 245 by the FGN, the termination of the agreements between MALABU and SNUD referred to in paragraph B above, and the execution of the 2003 PSC in respect thereof, with SNUD.
- G. On 30th November, 2006, the FGN executed a settlement agreement with MALABU wherein the FGN, without admission of liability for any alleged wrongful, unlawful, unjust or any like conduct, agreed to re-allocate Block 245 to MALABU in consideration of MALABU discharging and releasing the FGN from all claims and suits filed by MALABU against the FGN in connection with the revocation of MALABU's interest on 2nd July 2001.
- H. As a result of the execution of the settlement agreement referred to in paragraph G above, a number of dispute resolution proceedings were initiated by SNUD against the FGN including the Bilateral Investment Treaty (BIT) arbitration No. ARB/07/18 pending at the International Centre for the Settlement of Investment Disputes ("ICSID Arbitration"), to enforce SNUD's rights to exclusively operate Block 245 as Contractor on the basis of the 2003 PSC between NNPC and SNUD.
- I. The extant cases of those referred to in paragraphs F and H above, are:

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A. B. U. J. A

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A. B. U. J. A

Signature: [Handwritten Signature]
Date: 23/7/12

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- i. CA/A/25M/2003 - SNUD vs. The House of Representatives and MALABU.
- ii. ICC No. 12136 MS (C12137/MS) SNUD vs. MALABU (Arbitration with resulting award in favor of SNUD delivered on 20th December 2004, and costs of US\$2.735 million awarded against MALABU.)
- iii. FHIC/NRJ/01/2009 - SNUD vs. MALABU, by which the ICC Award was registered on 29 March, 2010, making it enforceable in Nigeria.)
- iv. ICSID Case No. ARB/07/18- Bilateral Investment Treaty arbitration between SNUD and the FGN. (Ruling pending.)

J. On 7th July 2010, FGN again issued a letter to MALABU, re-allocating Block 245 to MALABU.

K. FGN is willing to settle all claims to any interest in OPL 245 by SNUD against FGN and/or MALABU in the terms of this Agreement.

L. Pursuant to paragraph K above, FGN has entered into agreements of even date, respectively with MALABU and SNUD (The 'Resolution Agreements'), in respect of the resolution referred to in paragraph K above, by which, MALABU has relinquished all claims to OPL 245 and agrees to all future actions which FGN may take under this FGN Resolution Agreement with respect to OPL 245.

M. SNUD agrees to the reallocation of its interest in Block 245 to SNEPCO, an Affiliate of SNUD, and SNEPCO agrees to reimburse the past costs and the signature bonus paid by SNUD in respect of Block 245 as well as to agree terms with NAE to jointly undertake the future development of the Block 245

inter by
party only

N. FGN and SNUD now wish to resolve their differences amicably with respect to Block 245 and to set out the agreed interests of the Parties with respect to Block 245 in accordance with the terms of this FGN Resolution Agreement.

NOW THEREFORE, pursuant to FGN's confirmation of the full and final resolution with MALABU and SNUD, of all MALABU's and SNUD's respective claims and issues in dispute over Block 245 and a mutual reciprocal release from all claims, under the Resolution Agreements, FGN, SNUD, NNPC, SNEPCO and NAE HAVE AGREED in the manner hereinafter stated

- 1.1 SNEPCO shall reimburse SNUD in respect of: (i) costs incurred by SNUD under Clause 2(i); and (ii) costs of three hundred thirty five million and six hundred thousand US Dollars (\$335,600,000) incurred by SNUD related to the execution of the work-programme pursuant to

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SIGNATURE
DATE 23/7/12

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ABUJA

[Signature]
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the terms of the 2003 PSC and in consideration of this payment SNUD hereby consents to the reallocation of the interests in Block 245 by the FGN as agreed in Clause 1.2 herein.

- 1.2 The FGN hereby causes the allocation of Block 245 and will cause the grant of the relevant Oil Prospecting license by the Minister of Petroleum Resources in favour of SNEPCO and NAE as joint licence holders under the Petroleum Act Cap P10, Laws of the Federation of Nigeria, 2004 on the terms of this FGN Resolution Agreement.
- 1.3 Following the execution of this FGN Resolution Agreement, (i) SNUD shall, on behalf of SNEPCO and NAE pay to the FGN the Signature Bonus in accordance with Clause 2 below, and FGN hereby agrees that not later than seven (7) days thereafter FGN shall grant the Oil Prospecting license in respect of Block 245 to SNEPCO and NAE and (ii) NAE shall, on behalf of NAE and SNEPCO and FGN, appoint an escrow agent for the purpose of paying to FGN a sum equal to one billion ninety two million and forty thousand Dollars (US\$1,092,040,000) for the purposes of FGN settling all and any existing claims and/or issues over Block 245, in accordance with Clause 3 below.
- 1.4 Upon the grant of the Oil Prospecting License to SNEPCO and NAE pursuant to Clause 1.2 hereof, NNPC and SNUD agree that the 2003 PSC is terminated as of the date of grant of the Oil Prospecting License to SNEPCO and NAE. Consequent upon the termination of the 2003 PSC, NNPC and SNUD release and discharge each other fully and effectively from all and any existing and continuing obligations that would otherwise survive the termination of the 2003 PSC except that this release shall not be deemed to extend to any claim or obligations related thereto and arising from this FGN Resolution Agreement.
- 1.5 The FGN confirms that the Oil Prospecting License to be granted to SNEPCO and NAE shall be for an aggregate period of ten (10) years commencing from the date it is issued, and any OMLs which may derive therefrom shall have a duration of twenty (20) years plus additional renewals as allowed by law.

2 Upon the execution of this FGN Resolution Agreement by all the Parties herein:

- i) FGN and SNUD as parties to an escrow agreement dated 22nd December 2003 ("the Escrow Agreement") shall issue to the Escrow Agent, (JP Morgan Chase Bank) a notice (in the form attached to this FGN Resolution Agreement as Schedule 1) as required under Clause 10.1 of the Escrow Agreement, terminating the Escrow Agreement with an instruction to pay the sum of two hundred and seven million nine hundred sixty thousand US Dollars (\$207,960,000.00) representing the Signature Bonus, into the FGN Receiving Account. The balance of the Escrow Fund shall be paid into the Shell Receiving Account free of any taxes. The Parties acknowledge and agree that the payment of the Signature Bonus made pursuant to this Clause 2(i), represents the full payment of the Signature Bonus for the acquisition by SNEPCO and NAE of all rights over Block 245 and that no other payments are or will be due by any of SNUD, SNEPCO and NAE to FGN in this respect other than as provided for in Clause 3.
- ii) FGN and NAE shall enter into an escrow agreement ("Escrow Agreement no. 2"), substantially in the form attached to this FGN Resolution Agreement as Schedule 2, with a bank of international standing acceptable to such Parties within five (5) Business Days from the Execution Date.

Execution version

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Signature.....
Date.....

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For the purposes of Clause 2(i) above, "Escrow Agent", "Escrow Fund", "FGN Receiving Account" and "Shell Receiving Account" shall have the meaning ascribed to them in the Escrow Agreement.

- 3. Within five (5) Business Days of the grant and delivery to SNEPCO and NAE by FGN of the Oil Prospecting license for Block 245 duly issued jointly in the name of SNEPCO and NAE pursuant to Clause 1.2 above NAE shall, on behalf of both NAE and SNEPCO, wire transfer to the account opened in accordance with the Escrow Agreement no. 2 the amount of one billion ninety two million and forty thousand Dollars (US\$1,092,040,000) to the benefit of FGN pursuant to Clause 1.3.

Subject to receipt by NAE and SNEPCO of a letter from FGN confirming that it has achieved the full and final resolution of all claims and issues in dispute over Block 245 and obtained a release from all claims on Block 245 from the relevant parties, NAE and SNEPCO as parties to the Escrow Agreement No.2 shall issue to the escrow agent, a notice (in the form attached to the Escrow Agreement No.2) terminating the Escrow Agreement No. 2 with an instruction to pay the sum indicated in this Clause 3 into the FGN Escrow Account as defined in the Escrow Agreement No.2.

- 4. The rights and obligations of NAE and SNEPCO as between themselves in the operations of Block 245 shall be governed by a Production Sharing Agreement (PSA) to be executed between themselves or between themselves and/or their nominees.
- 5. The PSA shall be treated as and deemed a "Production Sharing Contract" as defined in section 17 of the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria 2004.
- 6. The FGN confirms to NAE and SNEPCO that the fiscal terms as provided in the Deep Offshore and Inland Basin Production Sharing Contracts Act Cap D3, Laws of the Federation of Nigeria, 2004, shall be applicable to the PSA between NAE and SNEPCO with respect to Block 245.

In the event of any enactment of or change in the laws or regulations of Nigeria or any rules, procedures, guidelines, instructions directives or policies, applying to this FGN Resolution Agreement and/or the Oil Prospecting License for Block 245 and/or subsequent Oil Mining Lease (OML) derived therefrom, including the above fiscal terms, introduced by any Government department or Government parastatals or agencies occurs subsequent to the Execution Date, which materially and adversely affects the rights and obligations or the economic benefits of NAE and SNEPCO, the relevant Parties shall agree to such modifications to this FGN Resolution Agreement and/or any agreements between the relevant Parties in furtherance hereof as will redress and remove the adverse effect of such changes with retroactive effect from the date of such adverse change.

- 7. Tax Oil under the PSA shall be allocated, in the proportion of their interests in Block 245, to NAE and SNEPCO, as Holder as defined in the Deep Offshore and Inland Basin Production Sharing Contracts Act. Each of NAE and SNEPCO shall have the right to lift its share of the allocated Tax Oil and remit the proceeds thereof to the appropriate agencies of the FGN for the discharge of their proportionate share of the PPT obligations attributable to the Contract Area.

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 ABUJA

Signature: *(Signature)*
 Date: *23/2/12*

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8. The Parties hereby expressly agree that nothing in this FGN Resolution Agreement shall be taken as an admission by FGN, or any of its agents and authorities, including NNPC, of the possibility that either SNEPCO or NAE acting in their respective capacities as Contractor' (as such term is defined), under existing production sharing contracts with NNPC are engaged in Petroleum Operations, nor can it be cited in any ongoing arbitral proceedings between NAE, SNEPCO and any of the agencies of FGN in respect of such existing production sharing contracts between NAE, SNEPCO and NNPC.
9. FGN confirms that all sums reimbursed to SNUD by SNEPCO under Clause 1.1(ii) above is expenditures on mineral assets, being the acquisition of petroleum deposits or rights in or over such deposits and information relating to the extent of such deposits, and is incurred wholly, exclusively, necessarily and reasonably for the purposes of petroleum operations in Block 245 and shall be treated accordingly for the purposes of the laws listed in the First Schedule to the Federal Inland Revenue (Establishment) Act 2007, and as such each of NAE and SNEPCO shall be entitled to treat the sums referred to in Clause 1.1(ii) above in accordance with their participating interest in the Block 245 when calculating PPT and pursuant to the PSC Act.
10. FGN hereby grants full and unconditional exemption from any obligations and liabilities in respect of capital gains tax, taxes on income, withholding taxes and Value Added Tax in respect of the transactions and payments mentioned in Clause 1 arising from or relating to this FGN Resolution Agreement. Notwithstanding the foregoing and without prejudice to the position of FGN and NNPC, NAE and SNEPCO shall not be precluded from presenting a claim for any allowances applicable by law on the amount of Signature Bonus to FIRS in the normal course.
11. The Parties enter into this Agreement on the understanding that NAE and SNEPCO and/or their permitted assigns shall be sole and exclusive owners of Block 245 for the duration of the Oil Prospecting Licence and any OMI, derived therefrom, including any renewals allowed by law. Notwithstanding the foregoing, if at any time FGN and/or its relevant agencies and institutions decides by law to participate or acquire any interest in the Oil Prospecting licence or any OMI, for Block 245 issued pursuant to this FGN Resolution Agreement, the FGN undertakes to NAE and SNEPCO that:
- (i) the participation of the FGN and/or its relevant agencies and institutions shall be exercised by way of acquiring not more than fifty (50%) percent interest under the Oil Prospecting licence or relevant oil mining lease subject to the payment by FGN to NAE and SNEPCO of the cost of the latter's acquisition of Block 245 which shall be an amount equal to the proportionate share relative to the interest acquired by the FGN and/or its relevant agencies and institutions of the sums paid by NAE and SNEPCO under Clauses 2 and 3 of this FGN Resolution Agreement net of any taxes, levies or other duties whatsoever plus accrued interest as agreed by the relevant parties; and
 - (ii) the FGN and/or its relevant agencies and institutions shall enter into a production sharing contract with NAE and SNEPCO as Contractors for the exclusive conduct of petroleum Operations in respect of the FGN's acquired interest in the Block 245 ("FGN PSC"): The

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Date ... 23/7/12

terms of the FGN PSC shall be no less favourable than the terms previously agreed between NNPC and SNUP in the agreement referenced in Preamble 1; and

(ii) the FGN's and/or its relevant agencies and institutions' proportionate share relative to its acquired interest, of all costs incurred by NAE and SNEPCO in Block 245 from the date of the grant of the Oil Prospecting Licence, pursuant to Clause 1.3, up to the date of the acquisition of interest by FGN and/or its relevant agencies and institutions pursuant to this Clause 11, shall be recoverable by NAE and SNEPCO under the FGN PSC.

12. FGN confirms that the terms of this FGN Resolution Agreement have been agreed by all the appropriate agencies of the FGN including the Ministry of Finance, and the Federal Inland Revenue Service.
13. FGN acknowledges that, in entering into this FGN Resolution Agreement, the other Parties have relied on its express or implied representation and other assurances made by its agents and representatives before the signature of this FGN Resolution Agreement regarding the efficacy of the terms thereof.
14. This FGN Resolution Agreement and any agreements executed by the Parties on the date of this FGN Resolution Agreement or in pursuance thereof, supersede all and any agreement or arrangement between the Parties or any of them entered into prior to the date of this FGN Resolution Agreement, either by letter directive, or howsoever relating to Block 245.
15. No amendments, changes or modifications to this FGN Resolution Agreement shall be valid except if the same are in writing and signed by a duly authorised representative of each of the Parties hereto.
16. Each of the Parties shall do all such acts and execute and deliver all such documents as shall be reasonably required in order to fully perform and carry out the terms of this FGN Resolution Agreement.
17. FGN shall indemnify, save and hold harmless, and defend SNUP, SNEPCO and NAE from and against all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages, and all other related costs and expenses, based on, arising out of, related to, or in connection with: (i) this FGN Resolution Agreement, (ii) the Resolution Agreements and/or (iii) the issuance of the Oil

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 Signature: *[Signature]*
 Date: 23/7/12

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Prospecting license in respect of Block 245 jointly in the name of SNEPCO and NAE, and arising out of any asserted prior interest in Block 245.

18. Each Party agrees that they and their employees, agents, agencies, subsidiaries, and attorneys will keep confidential at all times, this Agreement, the terms thereof, and the discussions or negotiations that led to the Agreement, except to the extent required by law or any competent regulatory body.

19. Definitions:

19.1 "Affiliate" means: a company which, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a Party. For this purpose control means the direct or indirect ownership of in aggregate fifty percent (50%) or more of the voting capital.

19.2 "Business Day" shall mean a day other than Saturday, Sundays and public holidays, on which banks are open for business in Nigeria

19.3 "Clause" means a clause of this Resolution Agreement.

19.4 "Execution Date" means the date first written in this Resolution Agreement; being the date on which all Parties to this Resolution Agreement execute this Resolution Agreement.

19.5 "PSA" means the production sharing agreement to be entered into between NAE and SNEPCO for the conduct of Petroleum Operations in respect of OPL 245 pursuant to this Agreement.

19.5 "Signature Bonus" means the sum referred to in Clause 2(i) of this Resolution Agreement.

SIGNED AND AGREED the day and year first above written.

For and on Behalf of the FEDERAL GOVERNMENT OF NIGERIA:

THE HON. ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE.

THE HON. MINISTER OF PETROLEUM RESOURCES

THE HON. MINISTER OF FINANCE

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....

Date.....


23/7/12

The COMMON SEAL of NIGERIAN AGIP EXPLORATION LIMITED was affixed to this Resolution Agreement and was duly delivered in the presence of:

Execution version

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FEDERAL HIGH COURT
ABUJA


7/3/12


VICE CHAIRMAN AND MANAGING DIRECTOR


COMPANY SECRETARY

The COMMON SEAL of SHELL NIGERIA ULTRA-DEEP LIMITED was affixed to this FGN Resolution Agreement and was duly delivered in the presence of:


DIRECTOR


SECRETARY


The COMMON SEAL of SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED was affixed to this FGN Resolution Agreement and was duly delivered in the presence of:


DIRECTOR


SECRETARY

The COMMON SEAL of NIGERIAN NATIONAL PETROLEUM CORPORATION was affixed to this FGN Resolution Agreement and was duly delivered in the presence of:


GROUP MANAGING DIRECTOR



COMPANY SECRETARY/LEGAL ADVISER

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature 
Date 23/7/2012

Execution version



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FEDERAL HIGH COURT
A B. U. J. A


7/3/12

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SCHEDULE 1 - PRO-FORMA NOTICE TO JP MORGAN CHASE BANK

JP Morgan Chase Bank
Trinity Tower
9 Thomas Moore Street
London E1W 1YT
ATTENTION: Institutional Trust Services - Escrow Administration

TERMINATION NOTICE

We refer to the Escrow Agreement dated 22nd December 2003 between The Government of the Federal Republic of Nigeria (FGN), Shell Nigeria Ultra Deep Limited (Shell) and JPMorgan Chase Bank (the "Escrow Agreement"). Words and expressions used in this letter shall have the same meanings as in the Escrow Agreement.

This is to notify the Escrow Agent in accordance with Clause 10.1 of the Escrow Agreement that FGN and Shell have agreed to terminate the Escrow Agreement.

You are hereby instructed to release the sum of two hundred and seven million, nine hundred and sixty thousand US dollars (US \$207,960,000 million) out of the Escrow Funds into the FGN Receiving Account on the date you receive from the FGN, a copy of the attached Block 245 Resolution Agreement duly initialed and signed by all the parties therein; and you are further instructed to pay the balance thereof outstanding in the Escrow Account into the Shell Receiving Account.

Upon the satisfaction of the conditions and instructions stated above and the Escrow Fund is zero, FGN and Shell irrevocably instructs the Escrow Agent to close the Escrow Account.

Consequently the Escrow Agreement shall terminate on the date of closure of the Escrow Account but no later than the day of 2011 .

DATED THIS day of 2011

SIGNED AND AGREED the day and year first above written.

For and on Behalf of the FEDERAL GOVERNMENT OF NIGERIA:

.....
ACCOUNTANT GENERAL OF THE FEDERATION

For and on Behalf of SHELL NIGERIA ULTRA DEEP LIMITED:

Execution version

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Signature
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.....
DIRECTOR

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FEDERAL HIGH COURT
ABUJA

Signature
Date

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SCHEDULE 2
PRO-FORMA ESCROW AGREEMENT NO.2

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ABUJA
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Date: *23/7/17*

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EXHIBIT A5 118

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
B I J A

IN THE COURT OF APPEAL
HOLDEN IN ABUJA

APPEAL NO. CA/25M/99
SUIT NO. FHC/ABK/CS/138/2003

BETWEEN

- 1. SHELL NIGERIA ULTRA DEEP LIMITED
- 2. THE SHELL PETROLUEM DEVELOPMENT COMPANY OF NIGERIA LIMITED

} APPELLANTS

AND

- 1. THE HOUSE OF REPRESENTATIVES OF THE NATIONAL ASSEMBLY
- 2. HON. HALIM AGODA, CHAIRMAN HOUSE COMMITTEE OF PETROLEUM RESOURCES
- 3. THE SPEAKER, HOUSE OF REPRESENTATIVES
- 4. MALABU OIL & GAS LIMITED

} RESPONDENTS

TERMS OF SETTLEMENT

A. WHEREAS

(1) By Writ of Summons dated 17th February 2003 and issued out of the Federal High Court sitting in Abuja as Suit No. FHC/ABJ/CS/138/2003 on 20th March 2003, the Appellants (as Plaintiffs) claimed against the Respondents (as Defendants), declaratory and injunctive reliefs *inter alia* that the powers conferred on the House of Representative and on its Committees including the Committee of Petroleum Resources to inquire into or conduct a hearing under Section 88 of the 1999 Constitution of the Federal Republic of Nigeria did not entitle the House Committee:-

- (i) to conduct such hearing for the purpose other than for the purpose of making law or

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Signature *[Signature]*
Date 23/7/12

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- (ii) to conduct a judicial trial on the pretext of a legislative hearing and or
- (iii) to adjudicate on a dispute or an alleged dispute between two private citizens to wit – Plaintiffs and 4th Defendant as alleged in 4th Defendant’s petition in respect of OPL 245.

- (2) Upon preliminary objections raised by the Respondents and after hearing counsel for the Parties, the Federal High Court sitting at Abuja ruled on 5th July 2004 that Appellants’ action was premature and in the concluding order, struck out the suit.
- (3) The Appellants being dissatisfied with the ruling of 5th July, 2004 appealed to the Court of Appeal as Appeal No. CA/A/25M/2005 on 8th July 2004 seeking from the Court of Appeal the relief that the ruling of 5th July, 2004 be set aside and that suit No. FHC/ABJ/CS/138/2003 be restored with all subsisting motions for hearing on the merit. The appeal has been entered in the Court of Appeal Abuja and Briefs of Argument exchanged by the Appellants and 1st to 3rd Respondents.
- 4. The 1st – 3rd Respondents conducted the hearing and awarded the sum of US\$550Million against the Appellants on 22/5/03 in favour of the 4th Respondents
- (5) The Appellants and 4th Respondent (hereinafter referred to as “the Parties”) in this Appeal are desirous of settling all issues giving rise to this suit and have resolved to settle on the terms stated below.

B NOW THEREFORE, in consideration of the foregoing which are hereby incorporated and made part of this Agreement, and in further consideration of the matters set forth below, the parties agree to settle on the following terms:

- (i) The Parties hereby amicably resolve and settle the claims and underlying dispute in this Appeal.
- (ii) This Terms of Settlement shall not be construed at any time for any purpose as an admission of liability of any party on the subject matter of the Appeal.

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FEDERAL HIGH COURT
A B U J A

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7/3/17

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FEDERAL HIGH COURT
A B U J A

Signature.....
Date 23/7/17

[Handwritten Signature]

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- (iii) Upon execution of this Terms of Settlement by the parties, the Appellants shall forthwith discontinue all suits and matters between themselves and in particular, this appeal No. CA/A/25M/2005 without any further assurance.
- (iv) Notwithstanding the final order(s) to be made by the Court of Appeal upon the discontinuance of the appeal, each party has agreed not to make any claim or insist on any right or liability arising out of the proceedings, findings and or decisions of the House of Representatives and or its Committee on Petroleum Resources in connection with the matters giving rise to this suit, and in particular, petition of the 4th Respondent to the 1st and 3rd Respondents against the Appellants in respect of Oil Prospecting Licence 245(OPL 245).
- (v) ~~The parties henceforth unambiguously resolve and relinquish all claims and rights in law, contract and equity inuring in the past or future of their individual benefit against one another howsoever in respect of OPL 245.~~ Specifically, the Appellants and the 4th Respondent agree and hereby absolve and hold one another harmless and free of liability in whatever form to the other in respect of all awards made by any court, administrative proceedings or tribunals together with any and all damages or monetary awards in favour of either one against the other, including the sum of US\$550Million awarded by the 1st - 3rd Respondents to the 4th Respondent in the proceedings referred to in paragraph 4 above, and the payment of the sum of 2.735 Millions US Dollars and 110,000 Naira respectively being the costs awarded against MALABU in favour of SNUD by the arbitral tribunal of the International Chamber of Commerce and affirmed by the Federal High Court, sitting in Lagos in Suit No. FHC/NRJ/01/2009, SNUD versus MALABU and the Court of Appeal on 17 June 2010.
- (vi) ~~In this Settlement each party is bound and prohibited from re-opening and/or re-litigating any issue covered by or contemplated in this Appeal or the Federal High Court suit or in any way charging the Appellants in any manner before any Court of law or Tribunal or Arbitration Panel or the National Assembly in respect of OPL 245, being the subject matter of the dispute that led to the present action.~~

Dated at Abuja this.....day of.....2011

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SIGNATURE.....
DATE..... 23/7/12

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Signed, Sealed and delivered by the duly authorized representatives of the Parties:

[Handwritten signature]

- 1) FOR: THE SHELL NIGERIA ULTRA DEEP LIMITED
 Name: MR CHKE ONYEJERUE
 Designation: MANAGING DIRECTOR

[Handwritten signature]

- 2) FOR: THE SHELL PETROLUUM DEVELOPMENT COMPANY OF NIGERIA LIMITED
 Name: MUTIN SUUMONY
 Designation: MD

[Handwritten signature]

- 3) FOR: MALABU OIL & GAS LIMITED
 Name: RASKY GBINIGIE
 Designation: COMPANY SECRETARY/LEGAL ADVISER

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Signature: *[Handwritten signature]*
Date: 23/7/12

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7/3/12

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COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

EXHIBIT 172
AGA

MINISTRY OF PETROLEUM RESOURCES

DEPARTMENT OF PETROLEUM RESOURCES
7 KOFO ABAYOMI STREET VICTORIA ISLAND LAGOS

P.M.B. No: 12650, Lagos

Telephone: 01-2790000

Website: www.dprnigeria.com



The Managing Director
Nigerian Agip Exploration Limited
40/42 Aguiyi Ironsi Street,
Maitama, FCT, Abuja

Dear Sir,

RE: REQUEST FOR THE APPROVAL OF ZABAZABA & ETAN FIELD DEVELOPMENT PLAN (FDP)

Reference is made to our letter PI.3032/DOP/FDP/ETAN/V.1/43 dated 2nd June, 2016 and yours IO/OPL245/ABJ/OM/34/2016 of 10th June, 2016 requesting for approval to be granted for Zabazaba FDP as standalone FDP using the joint Zabazaba/Etan FDP package earlier submitted to the Department of Petroleum Resources (DPR).

2. We have carefully reviewed your request in accordance with Section 37 of Petroleum (Drilling and Production) Regulations 1969, as amended and wish to advise that you comply with the directives in our letter of 2nd June, 2016 to submit an FDP package containing only issues related to Zabazaba field. This is because the information contained in the joint Zabazaba/Etan package are not clearly distinguished between Zabazaba and Etan.

3. You are to note that the provisional approval granted for the development of Etan field was premised on the drilling of an additional well (Etan west 3) which was earlier approved but yet to be drilled by NAE. Hence, the provisional approval cannot be regarded as a full FDP approval since the condition for the said approval has not been satisfied.

4. Please also note that the consideration for the approval of your Zabazaba FDP can only be progressed when a separate FDP for Zabazaba field is submitted and the process of conversion of OPL 245 to OML is initiated. As earlier advised, you are to liaise with our Basinal and Lease Administration Branch of DPR on the conversion of OPL 245 to an OML.

5. We acknowledge the receipt of Remita Retrieval Reference (RRR) number S111892057 dated 13th June, 2016 for fifty thousand Naira (N50,000.00) only, being the statutory processing fee for this permit.

Yours faithfully,

E.K. Bekee, fcida
for: Director of Petroleum Resources

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Ref. No: PI.3032/DOP/FDP/ZABAZABA/V.1/29
Date: August 2016

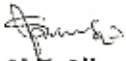


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vi. Payment of DPR service charge of one hundred thousand naira (N100,000).

Please note that the grant of Conceptual Design Approval of the Zabazaba & Eṭan Development Project is predicated on providing satisfactory details on the requested provisions accordingly.

Yours faithfully,



M.T. Ali

for: Director, Petroleum Resources

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IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT No. FHC/ABJ/CS/14/2017

IN THE MATTER OF AN APPLICATION BY THE CHAIRMAN OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION FOR AN ORDER OF INTERIM ATTACHMENT OF OIL PROSPECTING LICENCE 245 PRESENTLY HELD BY SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCO).

BETWEEN

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCO) ... APPLICANT

AND

CHAIRMAN ECONOMIC AND FINANCIAL CRIMES COMMISSIONRESPONDENT

APPLICANTS' WRITTEN ADDRESS IN SUPPORT OF
MOTION ON NOTICE DATED 31.01.17

Godswill Iwuajoku
(Led By) Professor Konyin Ajayi SAN
OLANIWUN AJAYI LP,
Applicants' Counsel
THE ADUNOLA

Leadway House,
4th Floor, Plot 1061,
Herbert Macaulay Way, (Beside NNPC Towers)
Ikoyi, Lagos.

drp@olaniwunajayi.net | ☎: 0802930550

FEDERAL HIGH COURT
ABUJA
CASHIER

Signature: *[Handwritten Signature]*

1201-4753-5381

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A. INTRODUCTION

1. Further to an Ex-Parte Originating Summons dated and filed on 11.01.17 (**Ex-Parte Originating Summons**), this honourable Court granted orders of interim attachment and interim management in respect of Oil Prospecting License 245 (**OPL 245**) at the instance of the Chairman, Economic and Financial Crimes Commission (**the Respondent**), and dated 26.01.2017 (**Ex-Parte Order**). The Applicant, Shell Nigeria Exploration and Production Company Limited (**SNEPCO**) has filed a Motion on Notice (**the Application**) praying for the orders contained therein.
2. The Application is supported by a 13 paragraph affidavit deposed to by Mr Abubakar Ahmed in favour of the Applicant (**AA Affidavit**). Reliance is placed on all the paragraphs of the AA Affidavit and this Written Address.

B. ISSUES FOR DETERMINATION

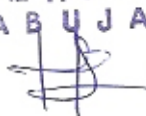
3. The Applicant respectfully submit that two issues arise for determination:
 - 3.1 Whether the Originating Summons ought not to be dismissed or struck out for being incompetent; and
 - 3.2 Whether the Ex-Parte Order ought not to be set aside or discharged.

C. ARGUMENTS

Preliminary Considerations

4. At the outset, the Applicant considers it necessary to examine some preliminary issues, which would help this honourable Court in determining the Application.
5. This is a highly unusual claim because the Oil Prospecting License (**OPL**) in dispute is a mere license which is not a ***property*** within the

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contemplation of the Economic and Financial Crimes Commission Act (**EFCC Act**). This is the first and most basic misdirection the EFCC has led this honourable Court to (as shall be made good subsequently in this address). The issue in dispute is an intangible right to explore and prospect for petroleum within the area of the licence.

6. Everything about the operation of this license is controlled by the FGN in accordance with the provisions of the Petroleum Act.. If oil is discovered in commercial quantities after successful prospection, it is the FGN that has the power to convert the license to a lease. The license cannot be transferred, sold, assigned or mortgaged without the consent of the FGN. Indeed, the licensee cannot be in possession of the area covered by the license without the permission of the FGN. As recent as October 2016, the FGN itself has written to confirm its endorsement of the overall facility development model for a field covered by the license.
7. It is this license, the operations of which is entirely controlled and regulated by the FGN (**OPL 245**), that has been attached by the Ex-Parte Order, on an interim basis, and pending the conclusion of investigation and prosecution of the Applicant.
8. It is difficult to understand the juridical foundations on which the *Ex-Parte* Originating Summons stands. The *Ex-Parte* Originating Summons appears to stand on a tripod of propositions, each of which is thoroughly illogical and a combination of which, is inherently contradictory. First, it is contended that the Applicant defrauded the FGN by underpaying the signature bonus on OPL 245 (paragraph 9u of the supporting affidavit deposed to by Ibrahim Ahmed on 11.01.17 (**IA Affidavit**)). Second, it is contended that the Applicant secured OPL 245 through fraudulent means (paragraph 9(v) of the IA Affidavit).

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Third, it is contended that the "*properties sought to be attached are deemed proceeds of crime*" (paragraph 16 of the IA Affidavit).

9. In the first place, it is logically impossible for a thing to be both procured fraudulently and at the same time be the proceeds of crime. The proposition that a thing is the proceed of a crime presupposes that there was an antecedent crime and the thing sought to the attached is what the criminal has used the proceed of the crime to procure. Using the classical example, it ought to mean that an accused person has laundered money (the crime) and has used the money to purchase a property which is the subject of an attachment application (proceeds of the crime). The property cannot be the object of the crime and the proceeds of crime at the same time, particularly in this case where the EFCC is not questioning the source of the funds used by the 1st Applicant to acquire OPL 245.
10. Beside this contradiction, the Applicant will take each of the Respondent's tripod propositions in turn. First, the Respondent cannot correctly argue that the signature bonus paid for OPL 245 was an underpayment without stating the correct signature bonus. For the avoidance of doubt, the Applicant contends that the Applicant and Nigerian Agip Exploration Company Limited (**NAE**) paid the full amount of consideration requested by the FGN. The onus is on the Respondent to show that the sum paid was an underpayment by reference to the objective sum which ought to have been paid. The Respondent has failed to show this.
11. Secondly, the Respondent cannot merely allege, as it did in paragraph 9(v) of the IA Affidavit that OPL 245 was secured by fraudulent means without putting forward, at the minimum, *prima facie* evidence linking the Applicant with the alleged fraud. Fraud cannot merely be alleged without being substantiated, particularly in circumstances where it is

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contemplated to attach the item said to have been secured by fraudulent means. Needless to say, the EFCC has failed to particularise its allegation of fraud.


12. Thirdly, the allegation that OPL 245 is "*deemed*" to be proceeds of crime epitomises the approach of the EFCC to this case. Even before the conclusion of investigation, the Respondent has effectively pre-judged the Applicant and deemed OPL 245 "*proceed of crime*", and has only approached the court because OPL 245 "*cannot be attached or forfeited to the Federal Government of Nigeria without a Court Order*" (paragraph 16 of the IA Affidavit). As will be made good below, the approach of the Respondent attempts to reverse the presumption of innocence guaranteed the Applicant by the 1999 Constitution of the Federal Republic of Nigeria (as amended) (**1999 Constitution**), and effectively deems the Applicant guilty until the Applicant is shown innocent. This is shocking, odd and against all known principles of the rule of law.

ISSUE ONE:

WHETHER THE ORIGINATING SUMMONS OUGHT NOT TO BE DISMISSED OR STRUCK OUT

13. The Applicant submits that the Ex Parte Originating Summons ought to be dismissed or in the alternative struck out for being incompetent. The Applicant shall make good this point by arguing:
 - 13.1 the Court lacked jurisdiction to entertain the Originating Summons;
 - 13.2 the Originating Summons is incompetent for being an abuse of power and the process of this honourable Court.

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The Court lacked jurisdiction to entertain the Originating Summons

The Originating Summons was improperly commenced

14. The Applicant submits, as a threshold issue that this honourable Court lacked jurisdiction to entertain the Ex Parte Originating Summons. It is trite law that for a court to be competent to entertain a matter brought to it for adjudication: (x) the court must be properly constituted; the subject matter of the case must be within the court's jurisdiction and there must be no feature in the case preventing the court from exercising jurisdiction; and (z) the case must be commenced by due process of law and upon the fulfilment of any conditions precedent to the exercise of jurisdiction. See **Madukolu v Nkemdilim** [1962] 2 SCNLR 341.
15. The Applicant concedes that the Court was properly constituted at the point of making the Ex-Parte Order and the subject matter of the action was well within the court's subject-matter jurisdiction. However, the Applicant's position is that the action was neither commenced by due process of law nor upon the fulfillment of conditions precedent to the exercise of the Court's jurisdiction. To buttress this point, it will be necessary to consider the *Ex-Parte* Originating Summons and the grounds upon which it was brought.
16. The *Ex -Parte* Originating Summons was brought pursuant to Sections 24(a), 26(1) (a) and (3), 28, and 29(a) and (b) of the EFCC Act and Section 44(2) (k) of the 1999 Constitution.
17. Section 28 of the EFCC Act provides as follows in relation to interim attachment of property:

"Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such

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economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the Court."

- 18. Section 29 of the EFCC Act on the other hand provides as follows in relation to an order of interim forfeiture of property:

Where -

(a) the assets or properties of any person arrested for an offence under this Act has been seized ; or

(b) any assets or property has been seized by the Commission under this Act,

the Commission shall cause an ex-parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.

- 19. Section 26 of the Act on the other hand provides as follows as regards seizure of property:

(1) Any property subject to forfeiture under this Act may be seized by the Commission in the following circumstances -

(a) the seizure is incidental to an arrest or search; or

(b) in the case of property liable to forfeiture upon process issued by the Court following an application made by the Commission in accordance with the prescribed rules.

(2) Whenever property is seized under any of the provisions of this Act, the Commission may-

(a) place the property under seal; or

(b) remove the property to a place designated by the Commission.

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(3) *Properties taken or detained under this section shall be deemed to be in the custody of the Commission, subject only to an order of a Court*

20. Given that the *Ex-parte* Order prayed for and granted by this honourable Court is for the interim attachment of OPL 245, Section 28 of the Act is the pertinent provision for consideration.
21. Before discussing Section 28 of the Act, the Applicant submits that the EFCC Act clearly established the Commission and laid down the powers and duties exercisable by the Commission and the Chairman of the Commission respectively. Section 1 of the EFCC Act established the EFCC itself (which the Act refers to as the "*Commission*"), whilst Section 2(1) of the Act sets out the composition of the Commission. It is instructive to note that the Commission is a separate juristic entity, and the Chairman of the EFCC is only a member of the Commission. The legislature in its wisdom thought fit to give certain powers to the Commission and certain powers to the Chairman. For example, Section 34 of the EFCC Act confers on the Chairman of the Commission the power to apply to court for a freezing order on banks and other financial institutions, whilst the power to apply for interim attachment or interim forfeiture under Sections 28 and 29 of the Act is conferred on the Commission itself rather than on the Chairman.
22. Consequently, the Chairman of the EFCC who approached this honourable Court for the *Ex-Parte* Order and in whose favor the *Ex-Parte* Order was granted is not the proper party to approach the Court to seek an order under Section 28 of the Act and institute criminal proceedings under the Section. The Commission itself is the repository of that power rather than the Chairman who is only a member of the Commission. In the absence of an authorization or delegation by the Commission to the Chairman, the Originating Summons was

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improperly commenced by the Chairman of the EFCC and thus manifestly incompetent to ignite the jurisdiction of this honourable Court. See **Anyah v Iyayi** [1993] 7 NWLR (Pt. 305) 290 at 316 E-H, which stands for the proposition that where a person exercises a power that a statute has vested in a different person or authority, the action of the unauthorized person is bad in law.


The Originating Summons was not issued after following due process of law

23. In addition to the foregoing, the Applicant submits that the Originating Summons was not issued following due process of law.
24. As stated in paragraph 20 above, Section 28 of the EFCC Act sets out the conditions precedent for approaching the Court for an interim attachment. For ease of reference, Section 28 of the EFCC Act is reproduced again below:

*"Where a person is arrested for an offence under this Act, the Commission shall immediately **trace and attach** all the assets and properties of the person acquired as a result of such economic or financial crime and **shall thereafter cause to be obtained an interim attachment order from the Court.**"*

(Emphasis added)

25. The Applicant submits that a sober consideration of Section 28 of the Act contemplates three distinct steps. First, there must be an arrest. After the arrest, the Respondent must trace and attach the property in question. Thirdly, the Respondent must make an application to the court for an interim order of attachment.
26. Indeed, the fact that the first two steps must be followed before the third step is taken is laid bare by the use of the words "*shall thereafter cause to be obtained*" in Section 28 of the EFCC Act. The Applicant submits that this process must be strictly followed and the Respondent

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- cannot leapfrog any of these steps in the purported exercise of its powers under Section 28 of the Act.
27. To determine whether Section 28 of the EFCC Act was followed, it is necessary to consider the IA Affidavit in support of the *Ex-Parte* Originating Summons. A thorough examination of the IA Affidavit reveals that there is no evidence therein that either the Applicant or a director or officer of the Applicant has been arrested for an offence in connection with OPL 245. The IA Affidavit only states that the EFCC has investigated the Applicant (paragraphs 6, 7, 8 and 9) and is in the process of preferring a charge against the Applicant (paragraph 11).
 28. The Applicant respectfully submits that the mere averment in the IA Affidavit that the EFCC has investigated the Applicant (paragraphs 6, 7, 8 and 9) and is in the process of preferring a charge against the Applicant (paragraph 11) does not satisfy the condition precedent to issuing the *Ex-Parte* Originating Summons.
 29. The law is clear that where a statutory requirement is laid down for the exercise of a legal authority, that requirement ought to be followed. Thus, in **U.N.T.H.M.B v Nnoli** [1994] 8 NWLR (Pt. 363) 376 at 401 F-G, the Supreme Court per Oguntade JSC held: "*where a statutory requirement for the exercise of a legal authority is laid down, it is expected that the public body vested with the authority would follow the requirements to the details. The non-observance in the process of reaching its decision renders the decision itself a nullity*".
 30. This judicial attitude to requiring strict compliance with procedure on the part of public bodies conferred with legal authority has impacted on the interpretation of Section 28 of the EFCC Act itself. Thus, in **Nwaigwe v Federal Republic of Nigeria** [2009] 16 NWLR (Pt. 1166) 169 at 192 D-E, the Court of Appeal held:

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"The procedure provides (sic) by sections 28 and 29 of the EFCC Act are mandatory and the EFCC has no power to manufacture something else. The procedure under the law must be complied with."

31. In the light of the foregoing, the Applicant submits that this honourable Court lacked jurisdiction to entertain the Originating Summons and consequently, the case ought to be struck out and the Ex-Parte Order discharged.


The Originating Summons is incompetent for being an abuse of the process of this honourable Court and an abuse of power

32. The Applicant submits that the *Ex-Parte* Originating Summons is both an abuse of the process of this honorable Court and an abuse of power by the Chairman of the EFCC. The Applicant's position is that the unilateral usurpation of the powers of the Commission by the Chairman of the EFCC and the eagerness with which the Chairman approached the Court without satisfying the preconditions for the grant of the Ex-Parte Order are extremely condemnable and amount to an abuse of the power of office of the Chairman of the EFCC.

The Ex-Parte Originating Summons is an abuse of process

33. The Applicant contends that the *Ex-Parte* Originating Summons is an abuse of the process of this honourable Court. The Applicant shall make good this point by arguing that: (x) OPL 245 is not property within the contemplation of the EFCC Act; and (y) the Ex-Parte Originating Summons serves no useful purpose.

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OPL 245 is not property within the contemplation of the EFCC Act

34. As stated in paragraph 20 above, the legal regime governing interim attachment of property is contained in Section 28 of the EFCC Act.
35. The word 'attachment' is defined in the 10th edition of the Black's Law Dictionary thus: "*the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment*". Going further, the dictionary defined attachment as "*a writ ordering legal seizure of property or of a person*".
36. The focus of attachment under Section 28 of the EFCC Act is on property. The Applicant submits, in agreement with the EFCC, that the goal of an attachment under this Section is the preservation of the property from dissipation pending the investigation and prosecution of the case (see paragraph 17 of the IA Affidavit). This proposition finds support in the case of **Esai Dangabar v Federal Republic of Nigeria** (2012) LPELR 10732 (CA), where the Court of Appeal held that:
- "...the intention of Sections 28 and 29 of the EFCC Act is merely to get a preservative order on the property suspected to be proceeds of crime so as to prevent the accused person or suspect from dissipating the assets and thereby create a situation of a fait accompli upon his conviction. It is after an accused person has been convicted that the assets can be finally confiscated. And if the accused person is acquitted then the properties will be returned to him."***
- (Emphasis added)
37. However, the Applicant contends that OPL 245 is not "property" within the contemplation of the EFCC Act. The EFCC Act does not define "property" for the purpose of interim attachment under Section 28 of the EFCC Act. "Property", for the purpose of the forfeiture provisions,

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is defined in Section 24(a) of the EFCC Act (which the EFCC has relied on in bringing the Originating Summons) as follows:


Any property

(a) whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;

- 38. As is clear from the above, 'property' as used under the Act focuses on 'real or personal property which a person obtains directly as a result of a violation of the provisions of the Act.
- 39. Given that Sections 28, 29 and 30 of the EFCC Act target the deprivation of property, the Applicant submits that these provisions are expropriatory in nature and ought to be construed in favour of the Applicant.
- 40. It is trite law that expropriatory legislation is interpreted permissibly in favour of the person whose rights are being encroached on and strictly against the public body. Thus, in **Provost Lagos State College of Education & Others v Edun & Others** [2004] 6 NWLR (Pt. 870) 476 at 509 E-F where the Supreme Court per Tobi JSC held:

"It is settled law that expropriatory statutes which encroach on a person's proprietary rights must be construed fortissime contra preferentes that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition." (Emphasis added)

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41. The Supreme Court reaffirmed the principle more recently in **Adole v Gwar** [2008] 11 NWLR (Pt. 1099) 562 at 608-609 E-F, where the Supreme Court per Ogbuagu JSC held:

"Any law which has the effect of depriving a citizen of any right to his property must be construed, in the absence of clear words to the contrary, in such a manner as to preserve the citizen's rights to the property. This is clearly the attitude of the courts in interpreting or in the construction of expropriatory statutes."

42. Again, the Applicant submits that this line of reasoning is rooted in the Rule of Lenity, which posits that any doubt regarding the import of a statutory provision should be resolved in favour of the defendant, which in this case is the Applicant.
43. In the light of the foregoing, the Applicant respectfully submits that on a strict interpretation of the joint provisions of Sections 24 and 28 of the EFCC Act, OPL 245 is not 'property' within the contemplation of the Act. The EFCC Act focuses on 'real or personal' property which a person obtains directly as a result of a violation of the Act. The EFCC Act does not contemplate intangible rights or choses in action. This proposition finds support in the decision of the House of Lords in **R v Cuthbertson** [1980] 2 All ER 401 at 406, where the House of Lords held that the power of forfeiture (and by extension, attachment) was restricted to physical items and did not extend to choses in action and other intangible items. In the absence of a Nigerian authority which clearly delineates the precise scope of Section 24(a) of the EFCC Act, the Applicant submits that this case should be strong persuasive authority that this honourable Court ought to consider in determining this Application.
44. As earlier stated, OPL 245 is a license granted by the Federal Government of Nigeria to the Applicant and NAE to enable them to

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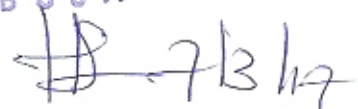
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prospect for oil in the deep waters offshore Nigeria. Being a license to prospect for yet undeveloped commercial quantities of crude oil, OPL 245 is not in the nature of property capable of being attached. The OPL creates an indestructible licence in favour of the Applicant and by its legal nature the FGN possess at all times firm contractual and regulatory control over the licence. The OPL cannot be hidden or put beyond the reach or control of the FGN. In reality, the order of the court confers nothing but a pyrrhic victory as the order is incapable of enforcement.

45. The Applicant therefore prays this honourable Court to discharge the Ex-Parte Order on the basis that OPL 245 is not "*property*" of the nature contemplated by the EFCC Act.
46. For completeness, the Applicant submits that likewise, Section 26 of the EFCC Act is unavailable to the EFCC. The section deals with seizure of property and not interim attachment. In any event, the focal point of the Section is on physical property as borne out clearly by Section 26(2) which requires the EFCC to put the seized property under seal, or remove the seized property to a place designated by the EFCC. As argued above, OPL 245 is incapable of habitation and as such, incapable of seizure. The EFCC can neither place Nigeria's seas under seal nor can it remove the area covered by OPL 245 to a place designated by the EFCC. Section 26 of the EFCC Act is therefore inapplicable to the facts of the case, for the mere fact that OPL 245 cannot possibly be seized.
47. Assuming *arguendo* that there is a theoretical possibility that OPL 245 can be seized under Section 26 of the Act, the Applicant submits that the process required by that section has not been followed. As argued above, the EFCC is required to strictly comply with prescribed rules in order to obtain an order of Court for the seizure of property. As has

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been demonstrated above, not only is OPL 245 not property within the contemplation of the EFCC Act, the EFCC has woefully failed to comply with due process in issuing the Originating Summons.

The Ex-Parte Originating Summons serves no useful purpose

- 48. It is trite law that abuse of court process involves circumstances and situations of infinite varieties, conditions and situations. Also, processes of court that constitute abuse of court process are not closed and cannot be pigeonholed. See **Umeh v. Iwu** [2008] 8 NWLR (Pt 1089) 225 at 243, paras A-C. One of the instances of abuse of court process is where the processes of the court have not been used bona fide and properly as held by the Supreme Court in **R-Benkay Nigeria Ltd v. Cadbury Nigeria Ltd** [2012] 9 NWLR (Pt 1306) 596 at pp. 616-618, paras H-A.
- 49. In addition, it is a basic principle of our procedural law that the process of the Court will not be invoked where its invocation will be unnecessary, not needed or unwarranted. See **Makinde v. Akinwale** [1995] 6 NWLR (Pt. 399) 1 at 10. Put simply, an action will be an abuse of the process of the court where it would be hopelessly useless.
- 50. It is therefore trite that the law does nothing in vain. Thus, the process of the court ought not to be invoked where its invocation would be unnecessary, not needed or unwarranted. And where such an application is made, a court of law will decline to make an order that would be futile. In **Makinde v. Akinwale** [1995] 6 NWLR (Pt. 399) 1 at 10 paras. D-E, the Supreme Court stated that "A court will not indulge in making a useless order. It has a duty to ensure that it does not make an order in vain." See also **Nigerian National Supply Co. Ltd. v. Sabana & Co. Ltd. & Ors.** [1988] 2 NWLR (Pt. 74) 23.

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51. The Applicant humbly submits that the Originating Summons which gave rise to the Ex-Parte Order are unwarranted for reasons considered in the ensuing paragraphs.
52. An OPL is granted pursuant to section 2 of the Petroleum Act, Cap. P10, LFN 2004 which empowers the Minister to grant oil exploration and prospecting licences and oil mining leases. Whilst paragraph 36 of the Schedule to the Petroleum Act gives the holder of an OPL a general right to enter and remain on the land and do such things as are authorised by the licence, by the provisions of the Act. However, the Minister retains absolute control to regulate the operation of an OPL. For instance, paragraph 6 of the Schedule to the Petroleum Act empowers the Minister to determine the duration of an OPL whilst paragraph 14 prohibits the assignment of an OPL, or any right, power or interest therein without the prior consent of the Minister. Thus, it is pellucid that the FGN remained in control of the OPL 245 at all times and the Applicant could do nothing in respect of OPL 245 without the prior approval of the FGN.
53. Moreover, paragraph 25 of the Schedule empowers the Minister of Petroleum to revoke any oil prospecting licence if in his opinion the licensee: (i) is not conducting operations in a certain manner, (ii) has failed to comply with any provision of the Act or any regulation or direction given thereunder, (iii) is not fulfilling his obligations under the special conditions of his licence or (iv) fails to pay his due rent or royalties within the period specified or has failed to furnish such reports on his operations as the Minister may lawfully require. The Minister also exercises general supervision over all operations carried on under an OPL and makes regulations in respect thereof.
54. What is clear from the above provisions of the Petroleum Act is that the FGN retain control over OPL 245 and could revoke same or order a

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stop work or suspend operations thereunder (albeit only with justification). Furthermore, the Applicant could not derive any economic value from OPL 245 without an intervention by the FGN. It is inconceivable therefore that the same FGN would require an order of attachment or need to procure one in order to restrain the Applicant from the exercise of its rights in OPL 245.

- 55. Further, the authorities are clear that the essence of an order of attachment under section 28 (or an order of interim forfeiture under section 29) is to preserve property suspected to be the proceeds of crime, from dissipation or depletion, pending the conclusion of investigation and prosecution. See the case of **Esai Dangabar v. FRN** (Supra).
- 56. The question that begs to be answered is whether an OPL is an asset that may be dissipated or depleted such that it would lend itself to a preservative order? The answer can only be in the negative.
- 57. Further, the possibility that the Applicant would deal with OPL 245 in such a way that could render the judgment of a court nugatory is non-existent. As deposed to in paragraph 10.6 of the AA Affidavit, there is no risk of OPL 245 being utilized, sold, mortgaged or dissipated, without the consent of the FGN, thus rendering the institution of the Ex-Parte Originating Summons otiose.
- 58. This is more so as the courts have held that an ex-parte order ought not to be granted where the party obtaining same could use their administrative power to resolve the difficulty (Assuming without conceding that there is any difficulty with respect the acquisition or operation of OPL 245). Therefore, an ex-parte order would be set aside if the party that obtained the order failed to use its administrative power that might have resolved the difficulty painted or projected to the court. See **Animashaun v. Bakare** [2010] 16 NWLR (Pt 1220)

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513 at 538, paras. C-H. It is beyond contention therefore that the FGN possessed the powers to stop or prevent any perceived dissipation or depletion of the OPL in issue, and the procurement of the Ex-Parte Order is unwarranted. . Indeed, the FGN was not confronted with any difficulty in respect of OPL 245 and, if there was any, such was created by the FGN to create a platform for the order secured.

59. Further, as earlier submitted in this Address, it is a logical inconsistency to conceive or describe OPL 245 as proceeds of a crime. On the one hand, the Respondent has not made a case that ill-gotten funds were employed for the acquisition of OPL 245, whilst on the other, an asset alleged to be a crime or the object of a crime cannot at the same time be "proceeds" of the same crime. The OPL is a chose created by the Petroleum Act, it is only the physical certificate evidencing its existence that is with the Applicant, so the proposition that an attachment order of court is required to preserve is absurd and preposterous. Further, the Respondent misrepresented to the Court that OPL 245 was a proceed of crime as it is clear that there were negotiations between the FGN and the Applicant before OPL 245 was allocated to the Applicant and NAE and agreed consideration paid to the FGN. If there was any crime, it must have been committed by the FGN.

60. It is the humble submission of the Applicants therefore that the *Ex-Parte* Originating Summons and the grant of the Ex-Parte Order are unnecessary. The procurement of the Ex-Parte Order is also improper as is the Respondent's application to the Court. We urge the Court to so hold that the Ex-Parte Order was secured for a purpose other than that recognized at law or contemplated by the legislature, that is, to preserve the proceeds of crime from being dissipated. It is submitted that there is no evidence before the court that OPL 245 is the res of

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the criminal Charge No FHC/L/294C/2009.. Besides the fact that the Applicant is not charged, those charged are alleged to have committed offence in respect of funds in a designated account of the FGN. There is incontrovertible evidence that the money originally belonged to the Applicant or paid at its instance to the FGN.

- 61. Consequently, the *Ex-Parte* Originating Summons amounts to an abuse of court process. It is settled law that where the Court finds that an action is an abuse of process, the proper order for the court to make is for the court to dismiss the action. See **Anyadubav N.R.T.C. Ltd** [1990] 1 NWLR (Pt. 127) 397 at 408. See also **Arubo v Aiyeleru** [1993] 3 NWLR (Pt. 280) 126 at 146 D – F.
- 62. We therefore pray this honourable Court to dismiss the Originating Summons and consequently set aside the Ex-Parte Order.

Unconstitutionality and abuse of power

Reversal of the Presumption of Innocence

- 63. The Respondent, by the Ex-Parte Originating Summons, sought to attach OPL 245 pending the conclusion of investigation and prosecution of the Applicant and other companies, and also urged the Court to direct the DPR to manage OPL 245, pending the conclusion of investigation and prosecution. The two reliefs sought by the Respondent were granted by this Court, vide the Ex-Parte Order.
- 64. It is the Applicant's humble contention that the Respondent misled this honourable Court into making an order that is unconstitutional, having regard to Sections 36(5) and 44(1) of the Constitution as will be demonstrated to your lordship in the succeeding paragraphs.
- 65. The Court of Appeal in **Odunayo v. State** (2013) LPELR-21459(CA) stated that "*The presumption of innocence which is an essential foundation in our adversary adjudicatory system has a secured place*

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in our criminal jurisprudence, which is the constitutionally guaranteed."

- 66. Section 36 of the CFRN spells out the components of fair hearing. Specifically, Section 36(5) provides that a person who is accused of a crime is presumed to be innocence till he is proven guilty. According to the Court of Appeal in **Al-Hassani v. The State** [2011] 3 NWLR (Pt. 1233) 254 at 281-282, paras H-F:

"It is a well-established legal principle that, before an accused is to be tried, he is presumed until he is proved guilty. This is the constitutional presumption of innocence under Section 36(5) of the Constitution of Nigeria, 1999. Therefore, an accused person is presumed innocent until proved guilty by the prosecution and he is not expected to prove his innocence."

- 67. Based on the foregoing, the onus is on the EFCC to provide evidence to show that OPL 245 is the proceeds of a crime. At the minimum, the EFCC must provide *prima facie* evidence linking the Applicants to the commission of an offence under the EFCC Act before OPL 245 can be lawfully attached. In **Aduku v. Federal Republic of Nigeria** [2009] 9 NWLR (Pt. 1146) 371 at 396-397, paras G, the Court of Appeal defined *prima facie* as follows:

*"Prima facie means that there is a ground of proceeding. But a prima facie case is not the same as proof which comes later when the court has to find whether the accused is finally guilty or not guilty. And **evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused.**"*
(Emphasis added).

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68. Similarly, in **Federal Republic of Nigeria v Sebastian Adigwe and Others** (Unreported) – Charge No. FHC/L/294C/2009, the Federal High Court per Tsoho J defined *prima facie* thus:

"the term "prima facie case" means that there is a ground for proceeding. That the evidence discloses a prima facie case when it is such that if uncontradicted and if believed will be sufficient to prove the case against the Accused. It has been made clear however that a prima facie case is not the same as proof which comes later when the court has to find whether the accused is finally guilty or not guilty."

69. The Applicant humbly submits that it is only reasonable that the presumption of innocence applies to a person who is suspected to have committed a crime or who is alleged to be connected to a suspect or an accused. Suffice it to state that as of the date the Respondent filed this action, no charge had been alleged or laid against the Applicants. Neither was it alleged that the OPL 245 is a proceed of crime committed by the accused in Charge No FHC/ABJ/CR/268/2016. It therefore follows that OPL 245 cannot be proceeds of crime.

70. An examination of the IA Affidavit reveals that there is no iota of evidence from which it can be safely concluded that OPL 245 is the proceeds of crime. Indeed, paragraph 16 of the IA Affidavit is the only averment which attempts to show OPL 245 as the proceeds of a crime. However, rather than set out evidence, paragraph 16 attempts to reverse the presumption of evidence by deeming OPL 245 as being the proceeds of a crime. There being no provision in the EFCC Act that the property in the possession of a person arrested or suspected to have committed an economic or financial crime is presumed to be proceeds of crime, it behoves the Respondent to have shown to the Court that OPL 245 was proceeds of crime.

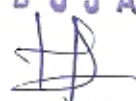
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71. In a criminal case, the burden of proof rests squarely on the prosecution and it is beyond reasonable doubt. See **Jua v. The State** [2010] 4 NWLR (Pt. 1184) 217 at 243 paras. A-C. There is nothing in the IA Affidavit to indicate any attempt on the part of the Respondent to show that OPL 245 was acquired as a result of economic and financial crime. While the Respondent stated in paragraph 9(t) of the IA Affidavit that money was laundered, the Respondent did not allege that the Applicant laundered and assisted in the laundering of these monies. If money was laundered it could only have been done after the grant of OPL 245 to the Applicant and not before. It is submitted that the natural order of things is that proceeds come out of a crime and not, as in this case, the other way around. After all, "proceeds" is defined in Section 20(3) of the Act to mean "...any property derived or obtained, directly or indirectly, through the commission of an offence under this Act." The Respondent also alleged fraud in paragraph 9(u) and (v) of the IA Affidavit without any particulars.
72. The Applicant submits therefore that the grant of the *Ex-Parte* Order in absence of proof by the EFCC that OPL 245 amounts to proceeds of crime is tantamount to a breach of section 36(5) of the CFRN and the grant is therefore unconstitutional.
73. In the event however, that this honourable Court finds that there is no burden on the Respondent under section 28 to establish that OPL 245 was acquired by the Applicant as a result of an economic or financial crime, then the Applicant submits that such interpretation would mean that Section 28 and the forfeiture provisions imply a presumption that the property is a proceed of crime and consequently, section 28 would be unconstitutional on account of Section 36(5) of 1999 Constitution.
74. Viewed from either perspective, it is beyond cavil that the *Ex-Parte* Originating Summons constitutes an unlawful means of reversing the

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presumption of innocence guaranteed under the Constitution. Consequently, it is the Applicant's submission that the *Ex-Parte* Originating Summons which procured the *Ex-Parte* Order is unconstitutional, and we pray this honourable Court to so hold.

Unlawful deprivation of property rights

75. The Applicant further submits that the Respondent breached Section 44 of the 1999 Constitution in applying for the *Ex-Parte* Order. The pertinent provision of Section 44 is set out below for ease of reference:

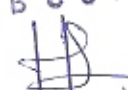
"44. (1) *No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria **except in the manner and for the purposes prescribed by a law** that, among other things -*

(a) *requires the prompt payment of compensation therefore and*

(b) *gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."*

76. It is clear from the above provision that that the compulsory taking of possession or acquisition of moveable property or an interest in immovable property is not permitted except such action is "***in the manner and for the purposes prescribed by a law***", which requires the prompt payment of compensation and gives to a person claiming compensation a right of access to the court or other tribunal

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vested with jurisdiction for the determination of his interest and the amount of compensation.

- 77. Whilst section 44(2) of the CFRN provides that nothing in subsection (1) shall be construed as affecting any general law which provides for the circumstances listed in paragraphs (a) – (m) of subsection (2), the Applicant respectfully submits that such derogation cannot extend to the requirement for the existence of a law and compliance with the process or conditions laid down under such law, as provided under section 44(1).
- 78. Consequently, the Applicant submits that the taking of moveable property or interest in immovable property without due compliance with conditions prescribed in the relevant statute would be unconstitutional. We refer the Court to the case of **Nigerian National Petroleum Corporation & Anor v. Famfa Oil Limited** [2012] 17 NWLR (Pt. 1328) 148 at 196-7, paras. H-A, where the Supreme Court in construing the provision of section 44(1) of the CFRN held that the acquisition of oil interests by the FGN without due compliance with the provisions of the relevant statute is unconstitutional.
- 79. In the light of the foregoing, the Applicant submits that the Ex-Parte Order is unconstitutional as it amounts to an unlawful deprivation of the Applicant's property rights without lawful justification or due course.

DPR and EFCC at cross purposes

- 80. In addition to the foregoing, the Applicant humbly submits that the practical implication of the Originating Summons is to put both the FGN (acting through the DPR) and the EFCC at cross-purposes, if not on a collision course.

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81. The DPR, which is another agency of the FGN and exercises oversight functions over the Applicant's operation of OPL 245, continues to provide approvals for the conduct of operations in the Licence including the recent endorsement of the overall facility development model for a field in OPL 245.
82. As shown by Exhibit A6a and A6b of the AA Affidavit, the DPR confirmed its endorsement of the overall facility development model by its letter dated 6 October 2016.
83. It is humbly submitted therefore that the *Ex-Parte* Order operates as an order of forfeiture. Hence, the grant of the *Ex-Parte* Order is unconstitutional as it would mean that the Applicant has been permanently deprived of its rights even though there has been no proceeding against it.
84. Assuming without conceding that the *Ex-Parte* Order does not amount to de-facto forfeiture, it cannot be denied that the *Ex-Parte* Order puts the FGN, which granted OPL 245 and required the Applicant to convert certain fields therein to an OML (on the one hand), and the EFCC which seeks to attach the OPL and thus halt prospecting operations (on the other hand) on a collision course. It is strange that two agencies of the FGN would be consciously working at cross purposes in this manner. The fact that the EFCC failed to disclose this FGN approval to the court is further symptomatic of the Chairman of the EFCC's abuse of power and consequently provides legal basis upon which this honourable Court should set aside the *Ex-Parte* Order. We pray this honourable Court to so hold.

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ISSUE TWO:

WHETHER THE EX-PARTE ORDER OUGHT NOT TO BE SET ASIDE OR DISCHARGED.

85. The Applicant adopts all the arguments made in relation to the first issue for determination and submits that each of those arguments provides grounds for this honourable Court to exercise its jurisdiction to set aside or discharge the Ex-Parte Order.

86. In addition to the above, the Applicant submits that the Ex-Parte Order ought to be set aside or discharged for the reasons set out below:

86.1 the Ex-Parte Order was procured by the suppression of material facts;

86.2 the Ex-Parte Order was procured by material misrepresentations; and

86.3 the Ex-Parte Order was obtained irregularly.

87. This honourable Court has the power to set aside or discharge an ex-parte order it made. It is settled law that the Court has the power to do justice to the parties before it. This power flows directly from the provisions of **Sections 1(3), 9(2), 10, 11 and 24 of the Federal High Court Act.**

88. At the core, it is worthy of note that the *Ex-Parte* Order is an order of the court made pursuant to Section 28 of the EFCC Act. It is implicit in the aforementioned provisions of the Federal High Court Act and the Rules of this honourable Court that the court has the power to set aside any order it makes exparte.

89. It is wrong for the Respondent to have proceeded by way of an ex-parte order in the manner it did. Given the expropriatory nature of Section 28 of the EFCC Act, proceedings under it are, at the minimum, quasi-criminal in nature. Given the impact of the invocation of the provisions on the enjoyment of property rights guaranteed under the 1999 Constitution, the Applicant submits that it was wrong to proceed

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by way of an *Ex-Parte* Originating Summons to obtain the *Ex-Parte* Order. The power to proceed by way of an ex-parte application is expressly conferred under Section 29 (b) of the EFCC Act and not in Section 28 of the Act. Given that Section 28 of the Act leaves it open to the Commission whether to proceed by on notice or ex-parte, the Applicant submits that it is only in circumstances of urgency where there is a threat of dissipation of the res that it would be proper to make an ex-parte application under Section 28 of the EFCC Act. As has been argued above, and would be shown in the succeeding paragraphs, there is no such threat of dissipation in this case.

90. The law is also clear that interim orders are to last until particular events and are not interlocutory in nature. This is another reason why the grant of the *Ex-Parte* Order was irregular and ought to be set aside.
91. This power to set aside irregularly obtained ex-parte orders has received judicial imprimatur in **U.T.B. Ltd & Ors v. Dolmesch Pharmacy Nig. Ltd** [2007] 16 NWLR (Pt. 1061) 520 at 542 para. D.

Suppression of Material Facts

92. It is a cardinal principle of law going by the very nature of ex-parte applications, that an applicant (being the only party that will be heard by the court) must not suppress any material fact to the Court. According to the Court of Appeal per Uwaifo J.C.A (as he then was) in **Onyemelukwe v. Attamah** [1993] 5 NWLR (Pt. 293) 350 at 364 paras G-H,

"...misrepresentation and/or suppression of material facts would have drawn the attention of the learned judge to the realization that the plaintiffs did not deserve the ex parte injunction, and therefore the Court should have discharged it: ...The law is that

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the court will deal very strictly with a party applying ex parte... and who had misrepresented or suppressed material facts. (Emphasis added)

93. The power of a court of law to set aside its order made ex parte where there is a suppression of material facts has been endorsed in a myriad of cases, including the Supreme Court decisions in **U.T.B. v. Dolmetsch Pharm (Nig) Ltd** [2007] 16 NWLR (Pt. 1061) 520 at 528 and **R. Benkay (Nig) Ltd v. Cadbury (Nig) Plc** [2006] 6 NWLR (Pt. 976) 338 at 367-368 paras E-C.
94. Strikingly, the IA Affidavit failed to disclose to this honourable Court the material facts in paragraphs 10.1 – 10.18 of the AA Affidavit. Specifically, the Respondent failed to disclose to this Court that there were certain actions and arbitral disputes involving the Applicant, the Federal Government of Nigeria and Malabu Oil and Gas Limited which resulted in various settlement agreements, in particular, Exhibits A3 – A5 , in respect of which OPL 245 was re-allocated to the Applicant and NAE. Exhibits A3 – A5 are executed by the Federal Government of Nigeria through not just the former Attorney General and Minister of Justice of the Federation but also the Minister for Petroleum Resources and Minister for Finance.
95. Having not brought the aforementioned facts to the attention of this honourable Court, the Respondent suppressed material facts and breached its obligation to make full and frank disclosure to this honourable Court imposed on the Respondent by the Supreme Court in **Sotiminu v. Ocean Steamship (Nig) Ltd & Ors** [1992] 5 NWLR Pt. 239 at 26, para A-C.
96. The consequence for the Respondent's suppression of material facts in this case, as the Court of Appeal held in **Onyemelukwe v. Attamah** [1993] 5 NWLR (Pt. 293) 350 at 364 paras G-H, is that the Ex-parte

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Order in favour of the Respondent should be set aside. The Applicant respectfully urge your lordship to so hold in consequence thereof discharge the Ex-Parte Order.

Misrepresentation of Material Fact

97. The Applicant submits that not only did the Respondent fail to disclose material facts which would have given the Court a better understanding of the Ex-Parte Originating Summons, the IA Affidavit is tainted with material misrepresentations as borne out by paragraphs 11.1- 11.8 of the AA Affidavit.
98. Contrary to the averment in paragraphs 17 and 18 of the IA Affidavit, there was no imminent risk of the dissipation of OPL 245 because OPL 245 is merely an intangible right to prospect for oil in the Nigerian seas. As already indicated, paragraph 14 of the Schedule to the Petroleum Act prohibits the assignment of an OPL, or any right, power or interest therein without the prior consent of the Minister. Therefore, the FGN remains in control of the OPL 245 at all times, and do not require the Ex-Parte Order in order to forestall the dissipation of OPL 245.
99. Accordingly, the Respondent feigned dissipation and urgency in obtaining the Ex-Parte Order as there was imminent risk of the dissipation of OPL 245. Moreover, the Respondent misrepresented that OPL 245 was corruptly taken from the Federal Government because as demonstrated above, the Respondent failed to establish that OPL 245 is the proceeds of crime. Beyond bland assertions, the Respondent failed to show *prima facie* evidence linking the Applicant to any of the offences mentioned in paragraph 11 of the IA Affidavit.
100. This point assumes greater poignancy in light of the fact that the Respondent suppressed from this honourable Court that OPL 245 was

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re-allocated to the 1 Applicant and NAE in 2011 in furtherance of Exhibits A3- A5, and upon the payment of the consideration agreed by the parties.

- 101. It is only fitting for this honourable Court to discharge the *Ex-Parte* Order based on the decision of the Court of Appeal in **Okeke v Okoli** [2000] 1 NWLR (Pt. 642) 641 at 652 B-F, where the Court held as follows:

"Where an ex parte order is based on an important misstatement the court should not hesitate to discharge the order at once. This is because, in ex parte applications, the utmost good faith must be observed and the court must impress on the parties the importance of dealing in good faith with the court." (Emphasis added)

See also **Onyemelukwe v. Attamah** (Supra)

The Ex-Parte Order was Irregularly Obtained

- 102. The Applicant submits that the Ex-Parte Order was irregularly obtained because: (i) the IA Affidavit is fraught with averments which offend the Evidence Act 2011, and in consequence thereof, the Ex-Parte Originating Summons is bereft of factual foundation; and (ii) of the reasons advanced in paragraphs above which are herein incorporated by reference.

Defective Paragraphs of the IA Affidavit

- 103. It is the Applicant's respectful submission that the *Ex-Parte* Order was wrongly procured by the Respondent as the material paragraphs in the IA Affidavit are defective and offend the provisions of Section 115 (1) of the Evidence Act 2011 which provides that:

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"That one Mohammed Adoke who was the Federal Government counsel in series of Arbitration instituted by Shell in London on the said oil well and who later became the Attorney General of the Federation conspired with Shell/Agip to route the payment of the said sum of \$1.2 Billion bribe money through Federal Government Escrow Account with JP Morgan Chase Bank"

106. The provisions of Section 115(1) and (2) are quite clear and have been accorded their literal interpretation. See the cases of **Ogunwale v. Syrian Arab Republic** [2002] 9 NWLR (Pt. 771) 127 at 153, para. H and **LNG Ltd v. Adic Ltd** [1995] 8 NWLR (Pt. 416) 677 at 702, which support the proposition that an affidavit which contains legal argument or conclusion are liable to be struck out. In **Ogunwale v. Syrian Arab Republic**, the Court of Appeal held that:

"An affidavit as well as a counter-affidavit as here had to be concerned with statement of facts and circumstances thereto and not dabble into areas of objections, prayers, legal arguments and conclusions. It is trite law that the contents of affidavits must be confined to matters, as are admissible by the rules of evidence"

107. Also, in **Danson Izedomwen & Anor. v. Union Bank Plc. & Anor.** [2012] 6 NWLR (Pt. 1295) 1 at 47, paras E-F, the Court of Appeal while upholding the decision of this honourable Court (Coram M.B. Idris J) held that the use of the word "conclusion" in Section 87 of the Evidence Act (now Section 115(2) of the Evidence Act 2011) does not refer solely to legal conclusions but also any conclusion based on fact or law which is a process of reasoning to reach an opinion, or draw an inference, which is the preserve of the court.
108. Against the backdrop of the foregoing, it is our humble submission that paragraphs 9(h), 9(k), 9(i), 9(m), 9(n), 9(u), 9(v), 12 and 13 the IA Affidavit contain conclusions that only the court can reach - the said

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paragraphs are therefore incompetent and should have been struck out.

- 109. The implication of the foregoing is that if the averments in the excerpted paragraphs were struck out or discountenanced, the IA Affidavit would lack the material facts and pertinent factual foundation on which the relief sought by the Originating Summons could have been granted as the remaining paragraphs are empty shells which cannot get up a case for the Respondent.
- 110. In this wise, the Applicant commends to your lordship the decision of the Court in **Idiok v State** [2004] 12 NWLR (Pt. 888) 513, at 581 para H, where the Court held that: "if the above stated paragraphs in the affidavit of the applicant are removed, there is nothing left to support the affidavit of the applicant... That being so, I have no doubt in my mind that the application becomes a barren exercise."
- 111. The Applicant therefore urges your lordship to set aside the Ex-Parte Order, which was procured based on a materially defective Affidavit.

Staying the Effect of the Ex-Parte Order

- 112. The Order dismissing or striking out the action and/or discharging or setting aside the *Ex-Parte* Order means that it is unnecessary to stay the effect of the *Ex-Parte* Order. However, out of the abundance of caution, the Applicant will hereunder canvass reasons why this honourable Court ought to stay, injunct or suspend the effect of the *Ex-Parte* Order.
- 113. The Applicant has given sufficient reasons above why the action ought to be dismissed or alternatively struck out, and the Ex-Parte Order discharged. The Applicant respectfully incorporates these arguments and urges this honourable Court to grant the Applicant's prayer for an Order staying, injuncting or suspending the Ex-Parte Order. It is submitted, on the strength of the AA Affidavit and the foregoing

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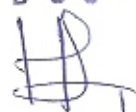
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submissions, that the Applicant has put forward sufficient reasons to enable this honourable Court exercise its discretion in the Applicant's favour.

114. The Applicant submits that being an executory order, the Ex-Parte Order is amenable to an order staying, suspending or injuncting same. The Applicant further submits that it has met the conditions for the grant of an Order of stay as there are special circumstances in this case which warrant the grant of the order staying or injuncting the Respondent from giving effect to the Ex-Parte Order. See **Okafor & Ors v. Nnaife** [1987] 2 NSCC 1194 at 1197 - 1198. From the facts deposed to in the AA Affidavit and the foregoing submissions of this written address, the Applicant has demonstrated the special circumstances which exist in this case including the abuse of power by the Respondent and the abuse of the process of this honourable Court. Further the Respondent, in procuring the Ex-Parte Order, failed to disclose whilst also misrepresenting various facts to this honourable Court as shown in paragraphs 10 and 11 of the AA Affidavit. In light of these special circumstances, the Applicant urges this honourable Court to grant the order staying or injuncting the Ex-Parte Order. The Applicant further submits that the balance of convenience is in its favour as it is the Applicant who would suffer irreparably in this case as shown by the AA Affidavit. Moreover, severe loss would also be occasioned to the Federal Government in the event that prospecting activities are stalled in respect of OPL 245.

115. In any event, the Applicant submits that it would be unconscionable for the Respondent to proceed to enforce the Ex-Parte Order in view of the Application as held by the Supreme Court in **Military Governor, Lagos State v. Ojukwu** [1986] 1 All NLR (Pt 1) 200. In light of the foregoing, the Applicant respectfully urges this honourable Court to

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grant an Order staying or suspending the Ex Parte Order as prayed in the Application.

D. CONCLUSION

116. Based on the foregoing, the Applicant respectfully urges this honourable Court to resolve the issues for determination formulated by the Applicant in its favour and in consequence thereof, discharge the Ex-Parte Order.

Dated this 31st day of January 2017

Godswill Iwuajoku

(Led by Prof. Konyin Ajayi SAN)

OLANIWUN AJAYI LP,

Applicant's Counsel

THE ADUNOLA

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Ikoyi, Lagos.

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FOR SERVICE ON:

The Respondent

C/o His Counsel,

Aliyu M. Yusuf.

Legal and Prosecution Department,

Economic and Financial Crimes Commission,

No. 1, Hombori Street,

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ABUJA

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Off Freetown Street,
Off Adetokunbo Ademola Crescent,
Wuse II,
Abuja.

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LIST OF AUTHORITIES

1. **Adole v Gwar** [2008] 11 NWLR (Pt. 1099) 562
2. **Al-Hassani v. The State** [2011] 3 NWLR (Pt. 1233) 254
3. **Animashaun v. Bakare** [2010] 16 NWLR (Pt 1220) 513
4. **Anyadubav N.R.T.C. Ltd** [1990] 1 NWLR (Pt. 127) 397
5. **Anyah v Iyayi** [1993] 7 NWLR (Pt. 305) 290
6. **Arubo v Aiyeleru** [1993] 3 NWLR (Pt. 280) 126
7. **Danson Izedomwen & Anor. v. Union Bank Plc. & Anor.** [2012] 6 NWLR (Pt. 1295) 1
8. **Eşai Dangabar v Federal Republic of Nigeria** (2012) LPELR 10732 (CA)
9. **Idiok v State** [2004] 12 NWLR (Pt. 888) 513
10. **Jua v. The State** [2010] 4 NWLR (Pt. 1184) 217
11. **Madukolu v Nkemdilim** [1962] 2 SCNLR 341
12. **Makinde v. Akinwale** [1995] 6 NWLR (Pt. 399) 1
13. **Military Governor, Lagos State v. Ojukwu** (1986) 1 All NLR (Part 1) 200
14. **Nigerian National Petroleum Corporation & Anor v. Famfa Oil Limited** [2012] 17 NWLR (Pt. 1328) 148
15. **Nigerian National Supply Co. Ltd. v. Sabana & Co. Ltd. & Ors.** [1988] 2 NWLR (Pt. 74) 23
16. **Nwaigwe v Federal Republic of Nigeria** [2009] 16 NWLR (Pt. 1166) 169
17. **Odunayo v. State** (2013) LPELR-21459(CA)
18. **Ogunwale v. Syrian Arab Republic** [2002] 9 NWLR (Pt. 771) 127
19. **Okafor & Ors v. Nnaife** (1987) 2 NSCC 1194
20. **Okeke v Okoli** [2000] 1 NWLR (Pt. 642) 641
21. **Onyemelukwe v. Attamah** [1993] 5 NWLR (Pt. 293) 350

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22. **Provost Lagos State College of Education & Others v Edun & Others** [2004] 6 NWLR (Pt. 870) 476
23. **R v Cuthbertson** [1980] 2 All ER 401
24. **R-Benkay Nigeria Ltd v. Cadbury Nigeria Ltd** [2012] 9 NWLR (Pt 1306) 596
25. **Sotiminu v. Ocean Steamship (Nig) Ltd & Ors** [1992] 5 NWLR Pt. 239
26. **U.N.T.H.M.B v Nnoli** [1994] 8 NWLR (Pt. 363) 376
27. **U.T.B. Ltd & Ors v. Dolmesch Pharmacy Nig. Ltd** [2007] 16 NWLR (Pt. 1061) 520
28. **Umeh v. Iwu** [2008] 8 NWLR (Pt 1089) 225

STATUTES AND THE RULES OF COURT

1. Constitution of the Federal Republic of Nigeria 1999 (as amended);
2. Economic and Financial Crimes Commission Act 2004;
3. Evidence Act 2011;
4. Federal High Court Act;
5. Federal High Court (Civil Procedure) Rules 2009.

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IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA



SUIT No. FHC/ABJ/CS/14/16

IN THE MATTER OF AN APPLICATION BY THE CHAIRMAN OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION FOR AN ORDER OF INTERIM ATTACHMENT OF OIL PROSPECTING LICENSE 245 PRESENTLY HELD BY SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY (SNEPCO)

BETWEEN

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCO)

...APPLICANT

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION

...RESPONDENT

AFFIDAVIT OF URGENCY

I, Godswill Iwuajoku, Male, Adult, Christian, Nigerian, Legal Practitioner of Plot 1061 Herbert Macaulay Way, Abuja, hereby make oath and state as follows:

1. I am a Legal Practitioner in the firm of Olaniwun Ajayi LP, and counsel to the Applicant in this matter. By virtue of which, I am conversant with the facts deposed to in this Affidavit.
2. I have the consent of the Applicant and authority of my employers to depose to this affidavit.
3. The Chairman of the Economic and Financial Crimes Commission (**Respondent**) commenced an *Ex-Parte* Originating Summons dated and filed on 11.01.17 (**Ex-Parte Originating Summons**).
4. On 26.01.17, this honourable Court heard the *Ex-Parte* Originating Summons and granted the orders as prayed against the Applicant and others in respect of OPL 245 (the **Ex-Parte Orders**).
5. On 31.01.17, the Applicant filed an application to set aside and or discharge the *Ex-Parte* Orders amongst other reliefs.

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- 6. I verily believe that the *Ex-parte* Orders will have adverse operational and financial consequences for the Applicant and the Applicant will suffer irreparable loss and damage if the application to set aside and or discharge the *Ex- Parte* Orders is not heard urgently.
- 7. I further verily believe that it will be in the interest of justice to hear the Applicant's application expeditiously.
- 8. I depose to this affidavit *bona fide*, conscientiously believing same to be true and in accordance with the Oaths Act, Cap O1 LFN 2004.

[Signature]

DEPONENT

SWORN TO at the Federal High Court Registry, Abuja
This 8th day of January, 2017

~~BEFORE ME~~
 COMMISSIONER FOR OATHS
 FEDERAL HIGH COURT
 ABUJA
 COMMISSIONER FOR OATHS

Oaths - #100.00
 filing - 100.00
#200.00

FEDERAL HIGH COURT
 ABUJA
 CASHIER

Signature: *[Signature]*
 Date: *3 March 2*

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