

At Oug's
24/02/2017
12.49 pm

Art 3

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

320
COMMISSIONER
FEDERAL
COURT



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

- 1. NIGERIAN AGIP EXPLORATION LIMITED
 - 2. SHELL NIGERIA EXPLORATION & PRODUCTION COMPANY LTD
-APPLICANTS

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION.....RESPONDENT

RESPONDENT/APPLICANT COUNTER AFFIDAVIT

I, Ibrahim Ahmed, Adult, Muslim, male, Nigerian citizen and an Investigating officer in the Economic and Financial Crimes Commission ("the EFCC/the Commission"), of No. 5, Fomella Street, off Adetokunbo Ademola Way, Wuse II, Abuja do hereby make oath and state as follows:

- 1. That I have the consent and authority of the Executive Chairman of the EFCC to depose to this Counter Affidavit.
- 2. That the facts deposed hereto, except where expressly stated, are within my personal knowledge the same having been derived by me as a member of the investigating Team saddled

FEDERAL HIGH COURT
ABUJA
CASHIER'S OFFICE
Signature: *[Signature]*
6/3/17


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ABUJA
Abu S. O.
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7/3/17

2801-5314-1109

with investigating a case of Conspiracy, Abuse of Office, Official Corruption and Money Laundering against Applicant and her cohorts.

3. That consequent upon investigation and discovery of the fraudulent acquisition of the subject matter of this suit, this Honourable Court on 27th January, 2017 granted an Order of Interim Forfeiture to preserve the *res* pending conclusion of investigation and prosecution.
4. That in reaction to the said Order of interim forfeiture granted by this Honourable Court, the present Applicants has filed the present applications seeking to set aside Order to the extent that affected the property described as OPL 245.
5. That I have seen and read the 1st Applicant's Motion on Notice, as well as the Affidavit in Support deposed to by one Zainab Ndanusa and consequently state that most of the depositions therein are untrue, irrelevant and deliberately calculated to mislead the Honourable Court.
6. That I specifically state that paragraphs 10, 11, 12, 13, 15, 16(b), (c), (d), (e), (f), and 17 of the Affidavit in Support are not correct.
7. That investigation conducted revealed as follows:
 - a. That sometime in April 1998, Malabu Oil and Gas Limited was incorporated in Nigeria with shareholders namely Mohammed Sani fronting for the late General Sani Abacha, Kwekwu Amafeha representing Dan Etete the then Minister of Petroleum Resources and Hassan Hindu on behalf of Ambassador Hassan Adamu.
 - b. That in April 1998, the company was incorporated; the Federal Ministry of Petroleum Resources offered the

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company deep water oil block prospecting license known as OPL 245 in line with the Federal Government indigenous policy in the upstream sector.

- c. That in furtherance of paragraph (b) above, the Oil prospecting License against all known Government regulations was awarded to Malabu Oil and Gas even before a formal application was submitted by the company.
- d. That in June 1998, General Sani Abacha died and between 1999 and 2000, the corporate status and shareholding structure were altered severally through forged Board Resolutions which eventually divested Mohammed Sani of their shares while new shareholders and directors were appointed fraudulently.
- e. That at the time the company namely Malabu Oil and Gas Ltd was incorporated General Sani Abacha and Dan Etete were Head of State and Minister of Petroleum Resources respectively while Hassan Adamu was Nigerian Ambassador to the United State of America between 1996 and 1999.
- f. That at the time of incorporation, General Sani Abacha, Dan Etete and Hassan Adamu were barred by extant laws from engaging in any form of business by virtue of their office. They used their position to confer unfair advantage on themselves and cronies in allocating OPL 245 to themselves without due process.
- g. That the company contracted Shell Petroleum and SNEPCO in a joint venture scheme for the purpose of prospecting and operating the said license given by the Federal Government of Nigeria.

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- h. That to the knowledge of Shell, the allocation of the Oil well and the procedure adopted by the owners of Malabu Oil and Gas Ltd was fraught with fraud but went ahead to consummate the transaction.
- i. That sometime on 2nd July, 2001, the Federal Government withdrew the title and allocation of OPL 245 to Malabu Oil and Gas Ltd on the directive of Mr. Funso Kupolokun the then Presidential Adviser on Petroleum to President Olusegun Obasanjo after which same was re allocated to Shell Nigeria Ultra Deep Ltd.
- j. That Malabu Oil and Gas Ltd sued the Federal Government over the revocation but the suit was later withdrawn and settled out of court was reached between the parties and the said oil well was re-allocated to Malabu Oil and Gas Ltd.
- k. That Shell and Agip again went into a fraudulent agreement with Malabu Oil and Gas in which the companies will pay signature bonus of \$210 million to the Federal Government of Nigeria while the sum of \$1.2 Billion would be paid to the owners of Malabu Oil and Gas Ltd.
- l. That Shell Petroleum was later to explain that the payment was for compensation but investigation conducted revealed that the money was bribe to Dan Etete and his cronies.
- m. That Shell was aware at the time of consummating this transaction that Dan Etete the owner of Malabu Oil and Gas Ltd was already a convict and hence was not willing to pay the said sum of \$1.2 Billion directly to Dan Etete and or Malabu Oil and Gas Ltd directly.
- n. That one Mohammed Adoke who was the Federal Government counsel in series of Arbitration instituted by

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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.

- o. That the said Mohammed Adoke had written a letter ref No HAGF/FMPR/2011/VOL.1/12 dated 9th February 2011 Seeking the advice of the Department of Petroleum Resources on whether to consummate the transaction involving Shell Ultra Deep Sea, Malabu Oil and Gas Ltd, NNPC, Nigeria AGIP Exploration and Production Company (SNEPCO). The said letter is hereby attached as **Exhibit EFCC 2.**
- p. That the Department of Petroleum Resources replied in a letter reference No. PLLD/880.T dated 1st of April 2011 and advised against the transaction on the ground that it was highly prejudicial to the interest of the Federal Government of Nigeria. The said letter is hereby attached as **Exhibit EFCC 3.**
- q. That despite this advise, the then Honorable Attorney General Mohammed Adoke approved the payment of the said sum of \$1.2 Billion bribe money through Federal Government Escrow Account with JP Morgan Chase Bank in London.
- r. That sometime in May, 2011, Nigeria Agip Exploration (NAE) and SNEPCO instructed Chase Bank to release the said \$1,092,040,000 USD into Escrow Account of the Federal Government.

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- s. That the said money on the instruction of the then Attorney General of the Federation Mohammed Adoke was transferred from the Escrow account to two banks namely First Bank and Keystone Bank operated by Dan Etete and Malabu Oil and Gas Ltd.
- t. That further to paragraph (p) above, the said amount was later laundered with several accounts of individuals and different companies.
- u. That investigation further revealed that the Federal Government was defrauded by SPDC and Malabu Oil and Gas Ltd by under paying the sum of \$210 USD as signature bonus on OPL 245.
- v. That investigation conducted revealed that Malabu Oil and Gas Ltd and SPDC secured OPL 245 through fraudulent scheme involving high scale bribery and corruption by top management of the company.
- w. That Italian Police have also conducted extensive investigation on the fraud committed by Shell Nigeria, Agip and Malabu Oil and Gas Ltd culminating in a criminal charge at the Ordinary Court of Milan.
- x. That the Italian Police in the charge are prosecuting Royal Dutch Shell Plc, Eni Spa and one Scaroni who was its Managing Director, Descalzi was also the General Manager Exploration of Eni. Copy of the charge is hereby attached and marked as exhibits EFCC 4.
- y. Those also being prosecuted are one Casula and Armana who were senior executives of Nigeria Agip Oil Company and one Pegano who was the Managing Director of Nigeria

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Agip Oil Company and one Dan Etete and other co conspirators.

8. That in response to the generality of the depositions in the affidavit in support, I state that during the course of investigation, one Nicholas Hildyard of the Corner House petitioned the Applicant on allegations of Conspiracy, Fraud and Money Laundering in the acquisition of OPL 245, the subject matter of this Application. Copy of the petition is hereby attached and marked as Exhibits EFCC5.
9. That further to paragraph 7 above, the said Nicholas Hildyard attended the Respondent office where he volunteered some useful information to the investigating Team and submitted some useful documents.
10. That our investigation revealed a prima facie case that the Applicant was an active party to the Official Corruption, Fraud and Money Laundering in respect of the deal for OPL 245 thus a criminal charge was prepared against the Applicant and others. Copy of the draft criminal charge is hereby attached and marked as Exhibits EFCC 6.
11. That investigation revealed that ab-initio the allocation of OPL 245 by Chief Dan Etete, (the then Minister of Petroleum Resources) to Malabu Oil and Gas Limited was corrupt and illegal as he was and remains the principal beneficial owner of Malabu Oil and Gas Limited.
12. That investigation further revealed that the Applicants conspired with Mr. Mohammed Bello Adoke, the then Minister of Justice and Attorney General of the Federation to fraudulently acquire the already illegally acquired asset OPL 245 knowing that Malabu's interest in OPL 245 was unlawful.

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- 13. That it is reasonably suspected that the Block 245 Resolution agreement dated 29 April, 2011 was a grand laundering scheme aimed at defrauding the Federal Government of Nigeria.
- 14. That contrary to paragraph 13(b) and (c) of the 1st Applicant's affidavit, the Respondent deny that NAE and SNEPCO incurred huge capital and operating expenditure and wish to state that investigation conducted only revealed that the Applicants and their top Officials together with officials of SNEPCO and Malabu Oil & Gas procured OPL 245 fraudulently in a scheme of bribery, money laundering and official corruption to the tune of about \$1.2 Billion, thereby depriving the Government of Nigeria huge source of revenue.
- 15. That contrary to paragraph 13(d) of the 1st Applicant's affidavit, the money paid to the FGN was not transparent as a painstaking investigation revealed that the said payment to the FGN was fraudulently done as the FGN was under paid.
- 16. That contrary to paragraph 13(e) of the 1st Applicant's affidavit, the interim attachment order granted by this Honourable Court was to preserve the res pending the conclusion of investigation and prosecution and not about management of the oil well as deposed to by the 1st Applicant.
- 17. That the affidavit in support of the Respondent's Application for forfeiture specifically mentioned Applicants and her cohorts of committing crimes which led to the Order of court.
- 18. That contrary to paragraphs 16, 17, and 18 of the 1st Applicant's affidavit, factual and material facts were presented in our earlier motion for interim attachment to court which it relied upon to grant the Order of forfeiture.

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- 19. That in furtherance of paragraph 14 above, investigation of the Respondent revealed that the 1st Applicant knew that OPL 245 was corruptly and illegally obtained by Malabu Oil and Gas Limited and conspired in the retention of the proceed of crime.
- 20. That our investigation also revealed that the 1st Applicant conspired with others to defraud the Federal Government of Nigeria of the sum of about \$1.2 Billion that should rightly have gone to the Federation Account.
- 21. That I have upon my review of the 1st Applicant's affidavit in support particularly paragraphs 16 (b, c, d, e, f) and 17 thereof that the 1st Applicant has failed to exhibit any evidence to support the said depositions.
- 22. That I have also seen and read the 2nd Applicant's Motion on Notice, as well as the Affidavit in Support deposed to by one Abubakar Ahmed and consequently state that most of the depositions therein are untrue, irrelevant and deliberately calculated to mislead the Honourable Court.
- 23. That paragraph 8.1 should be struck out for failing to disclose the source of the information deposed to.
- 24. That contrary to the deposition in paragraph 8.2 of the 2nd Applicant's affidavit in support of motion on notice, there was a criminal complaint to the Respondent Office in Nigeria, and also complaints to Italy, Netherlands pursuant to which the Applicants and officials of the Applicants are already facing criminal prosecution.
- 25. That in agreement with the depositions in paragraph 8.3 the Respondent in the course of its investigation invited some officials of the Applicants to respond to the allegations of the complaint.

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- 26. That contrary to the depositions in paragraph 8.4 and 8.5, investigations conducted revealed that the Applicants along with its officials and other co conspirators in Malabu Oil & Gas Ltd conspired to fleece the Federal Government of Nigeria of the sum amounting to over \$1 Billion in bribery and revenue to the Federal Government in acquiring the said prospecting license.
- 27. That contrary to depositions in paragraphs 8.6, 8.7 and 8.8 of the affidavit in support of the 2nd Applicants motion on notice, the Commission is investigating a case of Criminal Conspiracy, Official Corruption, Money Laundering and Economic Sabotage contrary to relevant enabling laws of the Economic and Financial Crimes Commission, for which the Applicant's officials will be prosecuted upon conclusion of investigation
- 28. That contrary to the depositions in paragraphs 8.9 and 8.10 of the affidavit in support of the 2nd Applicant's motion on notice, the Respondent had knowledge that the Applicant spent millions of dollars with anybody's consent rather investigations conducted revealed that the said OPL 245 was illegally acquired and that the Federal Government was not paid the required revenue therefrom.
- 29. That contrary to the depositions in paragraphs 8.11, 8.12 and 8.13, of the affidavit in support of the 2nd Applicant's motion on notice, the Respondent is investigating a case of Money Laundering, Bribery and Corruption, Economic Sabotage, Tax Evasion, manipulation of signature bonus for which the Applicants, its top officials, and Malabu Oil & Gas prominently featured in.
- 30. That the Applicants are presently facing similar investigations in Italy, Netherlands for which Dan Etete, the former Nigerian Petroleum Minister have been convicted.

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31. That contrary to the depositions in paragraphs 8.13 of the affidavit in support of the 2nd Applicant's affidavit in support of the motion on notice, the proceedings referred to at the Federal High Court was built on Fraudulent representation by Malabu Oil & Gas Ltd floated by top officials of the Petroleum Ministry which is the fulcrum of the investigation currently being conducted by the Respondent.
32. That contrary to the depositions in paragraphs 8.14, 8.15, 8.16 and 8.17, of the affidavit in support of the 2nd Applicant's motion on notice, the said Attorney General of the Federation Mr. Mohammed Adoke referred to is presently under investigation along with the Finance Minister for fraudulently using Federal Government escrow account to receive the bribe money paid by the Applicants to Malabu Oil & Gas Ltd.
33. That contrary to the depositions in paragraphs 8.18 of the affidavit in support of the 2nd Applicant's motion on notice, the Respondent have no knowledge that the DPR had knowledge of the scheme of which is the license to prevent it from being alienated or otherwise dealt with by the Applicants pending the outcome of investigation and prosecution.
34. That the Respondent and the people of Nigeria will be highly prejudiced if the interim attachment order granted by this Honourable Court pending investigation and prosecution is discharged/set aside.
35. That it will not be in the interest of justice to discharge the interim forfeiture of this court and that the Respondent will be seriously prejudiced if this application is granted.
36. That I depose to this counter affidavit in good faith to the best of my knowledge and believing same to be true and correct in accordance with Oaths Act, LFN 2004.

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FEDERAL HIGH COURT
ABUJA


7/3/17

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[Handwritten signature]
.....
DEPONENT

SWORN TO AT THE ABUJA REGISTRY OF THE FEDERAL HIGH COURT

THIS... 24th DAY OF... Feb2017

BEFORE ME

~~COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA~~

COMMISSIONER FOR OATH

OFFICIAL

FEDERAL HIGH COURT
ABUJA
CASHIER

Signature... *[Handwritten Signature]*
Date... ..

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ABUJA

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7/3/17

ETCC 1 332



A. A. UMAR & CO

BARRISTERS AND SOLICITORS

ADVOCATES OF THE SUPREME COURT OF NIGERIA

THE EXECUTIVE CHAIRMAN
EFCC

RECEIVED
1400h

ABUJA OFFICE:
B.M. DALHATU & CO. (PREMISES)
NO. 59 USUMA STREET MAITAMA
F.C.T ABUJA

KANO OFFICE:
NO. 17 ZARIA ROAD,
GYADI-GYADI NEW LAY-OUT KANO.
0064-912441

20th January, 2012

The Chairman,
Economic and Financial Crimes Commission
Idiagbon House
Wuse II, Abuja

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

ECONOMIC & FINANCIAL CRIMES
COMMISSION (EFCC)
RECEIVED
DATE: 21/02/2012
OFFICE OF THE EXECUTIVE CHAIRMAN

Investigate & report. See interim report 15/02/20 or see file 14/02/12

Dear Sir,

PETITION BY PECOS ENERGY LIMITED OF PLOT 416 LOBITO CRESCENT, WUSE II ABUJA AND MOHAMMED SANI AGAINST EDNAN AGANEV OF INTERNATIONALCONSULTING LIMITED OF CONFEDERATION OF SWITZERLAND, CONTONAND CITY OF GENEVA, CONSULAR SERVICE OF UNITED STATESOF AMERICA; MR. RASKY GBINIGIE OF NO. 35 KINGSWAYROAD,IKOYI LAGOS; SHELL NIGERIA ULTRA DEEP LIMITED ('SNUD'); NIGERIAN AGIP EXPLORATION LIMITED ('NAE'); SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED (SNEPCO) AND MR. DANETETE.

We act as Solicitors to Messrs Pecos Energy Limited and Mohammed Sani (here in after referred to as "Our Clients") and we write this letter on their behalf and instructions.

The main complaint of Our Client is that, the persons and institutions named above conspired, forged, stole and generally manipulated the laws of this country with connivance of some Nigeria officials to deprive Our Clients of their 70% (Seventy per centum) stake in a company known as "MALABU OIL & GAS LIMITED".

BRIEF HISTORY

MALABU OIL AND GAS LIMITED was incorporated in the year 1998 by the Corporate Affairs Commission and was issued a Certificate No. 334442. The subscribers to the Memorandum and Articles of Association were Mohammed Sani, Kwekwu Amafegha and Hassan Hindu. They were also the 1st Directors of the Company. Among other assets of the company were two oil prospecting Licences which were granted by the Nigerian Government upon commencement of business, they are OPL 214 and OPL 245.

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Mohammed Sani subscribed to 50% (*Fifty per centum*) shares of Malabu Oil and was appointed a Director of the company. While Messrs Pecos Energy Limited, upon being satisfied with the genuineness of the incorporation of Malabu Oil and Gas Limited and the ownership of one Alhaji Aliyu Mohammed Jabu of shares in Malabu Oil and Gas Limited, bought from the said Alhaji Jabu, his stake, for a consideration of \$5, 000, 000.00 USD (*Five Million U.S. Dollars*). We attach the sales agreement between Our Client (Pecos Energy Limited) and Alhaji Aliyu Mohammed Jabu together with a Standard Chartered Bank draft evidencing payment of the said shares by Messrs Pecos Energy Limited. The interest of Our Client (Messrs Pecos Energy Limited) was registered at the Corporate Affairs Commission. The respective interests of Our Clients (i.e. their shares in Malabu Oil and Gas Limited) were never transferred or assigned to any person or entity up till the time of writing this petition to you.

ILLEGAL TRANSACTIONS.

i. **MR. RASKY GBINIGIE:**

He has always been acting as the Secretary of Malabu Oil and Gas Limited and is aware of the identities of the share holders of Malabu Oil and Gas Limited. Without the consent of Our Clients and in a purported meeting of Malabu Oil, they were purported to have had their shares forfeited. The fake/forged resolution was filed at Corporate Affairs Commission by Mr. Gbinigie on 18th December, 2006.

ii. **SHELL NIGERIA ULTRA DEEP LIMITED, NIGERIAN AGIP EXPLORATION LIMITED AND SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED.**

The above named entities are Nigerian Companies, incorporated under the Laws of Nigeria. They are aware or deemed to be aware of corporate laws of Nigeria as they carry on their business in the Country.

Between 2009 and 2011, these entities, agreed to buy one of the assets of Malabu Oil; that is OPL 245 and the price agreed with Mr. Dan Etete was \$1.3 Billion USD (*One Billion, three hundred million U.S. Dollars*). They were aware of the interest of Our Clients in Malabu Oil. Despite this knowledge, instead of contacting all interested parties, they devised away to "overcome" the problems of Our Clients' interest in the company. This resulted in the taking back of the Oil block granted to Malabu Oil (OPL 245) and granting it to the above named companies for the same price of \$1.3 Billion US Dollars (*One Billion, three hundred million U.S. Dollars*), which money was paid to Mr. Dan Etete. Even if Our Clients are willing to forego their stakes on the Oil block, they are entitled to the 70% (*Seventy per centum*) of the proceeds of the sales, which is equivalent to their share holdings in the company. It is the assertion of Our Clients that the whole transaction having been undertaken without their consent is illegal, null and void.

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(iii) MR. DAN ETETE:

This person is a share holder in Malabu Oil and his interest was represented by one Kwekwu Amafegha at incorporation and subsequently. He owns 30% (Thirty per centum) of the company's 20,000,000 (Twenty million) shares of one naira each. He was aware that, the company was granted Oil prospecting licenses Nos. OPL 245 and OPL 214 in 1998. He was aware of the potential of OPL 245 and working in concert with Mr. Rasky Gbinigie caused and altered, illegally, the structure of Malabu Oil share holdings and the Board of Directors. He then commissioned Ednan Agnev of International Legal Consulting Limited of Switzerland to find prospective buyers of OPL245. Negotiations and other schemes were perfected to enable Mr. Dan Etete to sell the Oil block for the sum of \$1.3 Billion U.S. Dollars (One Billion, three hundred million U.S. Dollars). Mr. Dan Etete went into a complex payment agreement and has finally been paid the sum of \$801,092,000.00 (Eight hundred and one Million, Ninety two thousand U.S. Dollars), which he has illegally retained to the detriment of Our Clients and will receive the balance as soon as a consulting dispute with International Legal Consulting Limited is settled by a sole arbitrator in London.

SUMMARY

1. Malabu Oil and Gas Limited was incorporated in 1998 and when it commenced business in the same year, it applied for and was granted oil blocks known as OPL 245 and OPL 214.
2. Our Clients are owners of 70% (Seventy per centum) shares of Malabu Oil Gas and Limited with Messrs Pecos Energy Limited having 20% (Twenty per centum) shares by way of purchase from one Allaji Aliyu Mohammed Jabu for the sum of \$5, 000, 000.00 USD. (Five million U.S. Dollars), its interest was registered with Corporate Affairs Commission. While Mohammed Sani has 50% (Fifty per centum) shares of Malabu Oil & Gas Limited and has been one of the first Directors of the company.
3. Without the consent or knowledge of Our Clients, Mr. Dan Etete purported to have divested the interest of Our Clients, and thus purported to be the sole owner of the shares of Malabu Oil through his surrogates.
4. Mr. Dan Etete, then negotiated with Shall Nigeria Exploration and Production Company Limited, Nigeria Agip Exploration Limited, through the third party named earlier, surrendered OPL 245 for the sum of \$1.3 Billion USD (One Billion, three hundred million U.S. Dollars) and has already received a part payment of \$801,092,000.00 USD (Eight hundred and one Million, Ninety two thousand U.S. Dollars) and will receive the balance as soon as a consulting dispute with International Legal Consulting Limited is settled by a sole arbitrator in London.

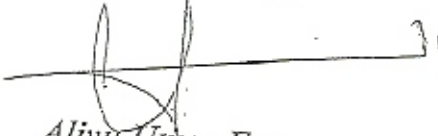
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FEDERAL HIGH COURT
ABUJA

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7/3/17

PRAYER

Our Clients instruct us to request you to use your good office and the powers conferred on you to thoroughly investigate this petition and ensure that justice is done in the matter: Should you require further explanations, Our Clients are willing to give you all the necessary co-operations in conducting your investigations.

Yours faithfully,



Aliyu Umar Esq.
Principal Partner.

Cc:

- i. Pecos Energy Limited.
- ii. Mohammed Sani.

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ABUJA**



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PECOS ENERGY LIMITED
AND
ALHAJI MOHAMMED SANI

PETITION

JANUARY, 2012

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FEDERAL HIGH COURT
ABUJA


7/13/12

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PECOS ENERGY LIMITED

AND

MOHAMMED SANI

PETITION AGAINST:

EDNAN AGANEV OF INTERNATIONAL CONSULTING LTD.,
SWITZERLAND.

CONTONAND CITY OF GENEVA

CONSULAR SERVICE OF UNITED STATES OF AMERICA

MR. RASKY GBINIGIE, IKOYI, LAGOS.

SHELL NIGERIA ULTRA DEEP LTD. (SNUD)

NIGERIA AGIP EXPLORATION LTD. (NAE)

SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY
LTD. (SNEPCO).

MR. DAN ETETE

In Respect of

MALABU OIL AND GAS LTD.

JANUARY, 2012

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FEDERAL HIGH COURT
ABUJA



7/3/12

THIS IS THE DOCUMENT REFERRED TO IN PARAGRAPH 1 OF THE MEMORANDUM

ETC C 2 338 196
OFFICE OF THE HON. ATTORNEY-GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE

P.M.B. 192
Telegrams: Solicitor
Telephone: 09-5238300
Telefax: 09-5235208



Federal Ministry of Justice
Shehu Shagari Way
Maitama, Abuja FCT
Nigeria.

HAGF/FMPR/2011/VOL.1/2

The Director,
Department of Petroleum Resources
7, Kofo Abayomi Street
Victoria Island,
Lagos.

9th February 2011

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

24/2/11

RE: RESOLUTION AGREEMENT BETWEEN FGN,SHELL NIGERIA ULTRA-DEEP, MALABU OIL AND GAS LIMITED, NNPC NIGERIA AGIP EXPLORATION AND PRODUCTION COMPANY NIGERIA LIMITED (SNEPCO) IN RESPECT OF OPL 245- NNPC's DIRECTIVES

I have been directed to refer to the above subject matter and to inform you that the Federal Government is proposing to negotiate an amicable resolution with all parties involved in this matter.

2. As a preliminary step, one of the parties has forwarded a draft Resolution Agreement to the office of the Honourable Attorney-General of the Federation. As one of the agencies whose interest would be affected by the outcome of these negotiations, I am further requested to forward herewith the draft Resolution Agreement for your necessary comments.

3. It would be highly appreciated if your comments would reach the office of the Honourable Attorney-General of the Federation by Wednesday the 23rd of February 2011.

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HS
7/3/11

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4. Please accept the assurances of the high regards of the Honourable Attorney-General of the Federation and Minister of Justice.

Jedy-Agba B. E (Mrs)

For: The Honourable-Attorney General of the Federation and Minister of Justice

IN WITNESS WHEREOF I HAVE SIGNED THIS DOCUMENT AT ABUJA ON THE 13TH DAY OF JULY 2017

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FEDERAL HIGH COURT
ABUJA

7/13/17

EFC 334 OF 100

MINISTRY OF PETROLEUM RESOURCES

DEPARTMENT OF PETROLEUM RESOURCES

7, KOFO ABAYOMI STREET, V/ISLAND

P.M.B. No: 4611777
Telephone: 27478
Website: www.dpmnigeria.com



Ref. No: PILD/880.T
Date: 1st April, 2011

The Hon. Attorney-General of the Federation
And Minister of Justice
Federal Ministry of Justice
Shehu Shagari Way
Maitama, Abuja FCT
Nigeria

OFFICE OF THE ATTORNEY-GENERAL
OF THE FEDERATION AND MINISTER
OF JUSTICE
Federal Ministry of Justice Abuja
4611777
2011

SAS
Examine the document very carefully
drawings
5/4/11

Dear Sir

RE: RESOLUTION AGREEMENT BETWEEN FGN, SHELL NIGERIA
ULTRA-DEEP, MALABU OIL AND GAS LIMITED, NNPC, NIGERIA AGIP
EXPLORATION AND PRODUCTION COMPANY NIGERIA LIMITED
(SNEPCO) IN RESPECT OF OPL 245-NNPC'S DIRECTIVES.

The above subject and the Letter with Ref; No.; HAGF/FMPR/2011/VOL.1/2 dated 9th February 2011 from the Office of the Honourable Attorney-General of the Federation and Minister of Justice requesting for our comments on the attached draft Block 245 Resolution Agreement refers, please.

2) In order for the issues to be fully appreciated, the Honourable Attorney General's indulgence is most respectfully craved to allow us present a brief back ground on the issues regarding OPL 245.

OPL 245-BRIEF BACK GROUND

OPL 245 was allocated to Malabu Oil and Gas Company Limited (an indigenous company) in April 1998 on a Sole Risk basis. OPL 245 is located in water depths above 1,000m in Nigeria's territorial waters off the Coast of the Niger Delta. Malabu and Shell Nigeria Ultra Deep Limited (SNLD) a special purpose vehicle of Shell Petroleum Development Company Nigeria

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Limited (SPDC) concluded arrangements under which SNUD farmed into OPL 245 by way of a transfer of a 40% undivided interest in OPL 245 from Malabu to SNUD subject to final approval of the Deed of Assignment by the Federal Government of Nigeria. However, before the approval of the Deed of Assignment could be given by the Federal Government, the Government on the 2nd of July 2001 by way of a revocation withdrew the allocation of OPL 245 from Malabu Oil and Gas Company Limited.

In May 2002, following a bidding process involving SPDC and Exxon-Mobil, SPDC was awarded Contractor Rights in OPL 245 and in December 2003 executed a PSC with the NNPC, lease holders to OPL 245. Following a judicial challenge of the revocation of its licence by Malabu Oil and Gas Limited at the Supreme Court, a settlement judgment was entered into by Malabu Oil and Gas Limited and the Federal Government which resulted in Government re-awarding OPL 245 to Malabu Oil and Gas Limited in 2006 thereby vitiating the PSC between NNPC and SPDC in respect of the OPL.

Subsequent to the re-allocation of OPL 245 to Malabu Oil and Gas Limited, SPDC through SNUD brought arbitration under the Netherlands-Nigeria Bilateral Investment Treaty (BIT) against the Federal Government seeking the following Relief's:

1. A declaration that the FRN has breached the Netherlands-Nigeria BIT;
2. A declaration that each such breach has caused harm to SNUD;
3. An award of such relief as the Tribunal determines, including, but not limited to, a declaration confirming that NNPC is the valid licence holder of OPL 245 and an order instructing FRN to procure NNPC to act in such a way as allows SNUD to implement the terms of the PSC in full restitution of its rights or, alternatively, monetary compensation in respect of the harm caused to the Claimant by the aforesaid breaches;
4. An award of the Claimant's costs for the arbitration;
5. An award of compound interest at a commercial rate on any monetary compensation from the date of the breach or the date payment should have been made or the date of award up to the date of payment;
6. Such other relief as the Tribunal determines appropriate.

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Since the institution of the arbitral proceedings at the International Centre for the Settlement of International Disputes ("ICSID"-ICSID Case No.; ARB/07/18), the Parties (SNUD and FGN) have diligently pursued the arbitration to a point where the decision of the tribunal is now being awaited.


4. The fore-going represents the issues in respect of OPL 245 before the latest proposed Resolution Agreement which we shall now proceed to comment on.

5. In the proposed Resolution Agreement, 6 (six) entities, i.e. Federal Government of Nigeria (FGN), Shell Nigeria Ultra-Deep Limited (SNUD), Malabu Oil and Gas Limited (Malabu), Nigerian National Petroleum Corporation (NNPC), Nigerian Agip Exploration Limited (NAE) and Shell Nigeria Exploration and Production Company Nigeria Limited (SNEPCO) are the parties.

6. The Principal Terms of the proposed Resolution Agreement are as follows:

- (i) In consideration of an agreed sum to be paid by FGN to Malabu as determined in the Resolution Agreement (this sum is not stated in the draft), Malabu shall waive all and any interest or rights in Block 245 and grant its consent to the re-allocation of the interests in Block 245, by the FGN as agreed in the Resolution Agreement;
- (ii) SNUD agrees to the re-allocation of its interest in Block 245 to SNEPCO and SNEPCO will reimburse SNUD in respect of costs incurred under Clause 3 (of the Resolution Agreement) and 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 the terms of the 2003 PSC and in consideration of this payment SNUD would consent to the re-allocation of the interests in Block 245, by the FGN as agreed in Clause 1.3 of the Resolution Agreement (i.e. re-allocation to SNEPCO).
- (iii) The FGN in exercise of its powers under the Petroleum Act Cap P10 LFN 2004 would re-allocate the interests in Block 245 jointly to NAE and SNEPCO and would commit that no Oil Prospecting License (OPL) shall be issued in respect of Block 245 other than to SNEPCO and NAE in accordance with the terms of the Resolution Agreement.
- (iv) Following the re-allocation to NAE and SNEPCO, SNUD shall on behalf of SNEPCO and NAE pay to the FGN a Signature Bonus as determined in the Resolution Agreement while the FGN shall

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immediately after deliver to NAE and SNEPCO an OPL in their joint names.

- (v) The issuance of the fresh OPL in the names of NAE and SNEPCO shall terminate the 2003 PSC between NNPC and SNUD and both NNPC and SNUD releases and discharges 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 Resolution Agreement.
- (vi) The fresh OPL shall be for a period of 10 (ten) years from the effective date and any subsequent OMLs derived there from shall be for an initial period of 20 (twenty) years.
- (vii) The sum of two hundred and seven million nine hundred sixty thousand US Dollars (\$207,960,000.00) in the escrow account under the Escrow Agreement dated 22ND December 2003 shall, following the termination of the Escrow Agreement by SNUD and FGN be paid to the FGN as Signature Bonus for the re-allocation of OPL 245 to SNEPCO and NAE.
- (viii) NAE shall upon the re-allocation of OPL 245 to NAE and SNEPCO deposit an agreed sum in an Escrow account to be jointly opened in the names of FGN and MALABU, this amount representing additional bonus due to FGN. ✓
- (ix) FGN shall in turn release the sum in the joint escrow account to Malabu. ✓
- (x) NAE and SNEPCO shall execute a Production Sharing Agreement (PSA) for the operation of OPL 245. ✓
- (xi) The PSA shall be a Production Sharing Contract PSC as defined in section 17 of the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, LFN 2004.
- (xii) The applicable fiscal terms applicable to any OMLs derivable from OPL 245 shall be the fiscal terms as provided in the Deep Offshore Act.

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- (xiii) In the event that any change of laws or rules occurs that materially changes the applicable fiscal terms, the Parties to the Resolution Agreement shall agree to such modifications to the Resolution Agreement and or any agreements between them in furtherance thereof as will compensate for the adverse effect of such changes.
- (xiv) The Parties to the PSA (NAE and SNEPCO) being holders of OPL 245 following the re-allocation in accordance with the Deep Offshore Act shall be entitled to the allocation and lifting of Tax Oil under the PSA and shall remit the appropriate taxes to the relevant FGN agencies.
- (xv) The Signature Bonus to be received by FGN under the Resolution Agreement and the sum of \$335,600.00 incurred by SNUD related to the execution of the work programme pursuant to the 2003 PSC shall be treated as recoverable cost by NAE and SNEPCO in their operation of OPL 245.
- (xvi) The ISCID Arbitration between SNUD and FGN shall be withdrawn and all pending suits between the parties discontinued.
- (xvii) FGN shall grant full and unconditional exemption from any and all taxes, levies, duties, fees, and charges whatsoever (including by way of withholding) arising or relating to the re-allocation of interests (including payments between the parties) contemplated under this Resolution Agreement. x
- (xviii) FGN including all its relevant agencies (NNPC) waives any right to acquire any participating interest in Block 245 and any OML derived there from (including, without limitation, any back-in-right which might be exercisable by NNPC) and waive any title to any portion of production from Block 245 other than the obligation of the Parties to pay royalty and taxes due from such production. y

7. The preceding paragraphs represent the principal terms of the proposed Resolution Agreement. In our view, the terms of the Resolution Agreement as proposed are highly prejudicial to the interest of Government for the following reasons:

- (i) Malabu is yet to pay the Signature bonus for the re-allocation of OPL 245 which is part of the Settlement Judgment in the suit between it and the Federal Government. Further more, FGN paying Malabu to relinquish its right in the Block, which right by reason of

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the non-payment of the Signature Bonus is yet to mature would amount to paying Malabu for an asset it does not yet have.

Besides, it is completely contrary to the law and the Petroleum Act in particular for a party to consent to the allocation or re-allocation of an OPL or OML by the Minister.

(ii) SNUD has no interest in OPL 245 except the interest it has in the 2003 PSC between it and NNPC as the sole concessionaire to the Block. Even so, the interest in the 2003 PSC was terminated by the re-allocation of the Block to Malabu. Therefore, there is no basis either in law or fact for the assertion that SNUD has any existing interests in Block 245.

In deed, the main relief sort by SNUD in the ISCID arbitration is as follows: An award of such relief as the Tribunal determines, including, but not limited to, a declaration confirming that NNPC is the valid licence holder of OPL 245 and an order instructing FRN to procure NNPC to act in such a way as allows SNUD to implement the terms of the PSC in full restitution of its rights or, alternatively, monetary compensation in respect of the harm caused to the Claimant by the aforesaid breaches.

Therefore, it is preposterous to be asserting in the Resolution Agreement that SNUD has any interest in OPL 245 which the FGN by agreeing to pay money for would procure the consent of SNUD to re-allocate.

(iii) Granting OPL 245 to NAE and SNEPCO in the manner proposed in the Resolution Agreement would be contrary to the prevalent practice in Nigeria at the moment where Oil Prospecting Licenses are now granted on the basis of transparent and open competitive licensing rounds. FGN by committing to re-allocate the Licence to NAE and SNEPCO in this manner would be opening itself up to scandal and even future litigations more so when NAE hitherto the present Resolution Agreement was not a party to any of the transactions between the parties in respect of OPL 245.

(iv) Further more, the Resolution Agreement proposes to award OPL 245 to NAE and SNEPCO on a Sole Risk basis with out the FGN nor any of its agencies having a right of "back-in" in any future OML derived from the Block (this is untenable because

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parties can not by their Agreement exclude the operation of a Legislation in force).

FGN by agreeing to this proposal would be throwing away an enormous amount of financial resources more so when under the 2003 the NNPC was the concessionaire on the block. Indeed, there is no economic justification for removing NNPC as concessionaire and excluding the right of the FGN through NNPC to back-in or have a share of any production from the Block. Such an arrangement would leave for the FGN very little of the enormous potential economic value from the Block and create uncertainty in the interpretation and application of the relevant Nigerian Laws in this area.

In this regard, the FGN should not be unmindful of the still unresolved judicial cases involving the interpretation and application of the Deep Offshore Act and the Back-in-Right Regulations in the cases involving SAPETRO and the FGN on the one hand and Panfa and the NNPC on the other. By endorsing an Agreement such as is being proposed in this case, the FGN would be weakening its arguments in both cases and further throwing confusion in the practice of the law.

(xix) Further more, it is not sound policy for the FGN to be agreeing with private entities to under mine the intent and purpose of any future legislation or regulation it might make in respect of fiscal terms applicable to petroleum production operations. This is the direct effect of the term in the proposed Resolution Agreement requiring the parties to the Agreement to meet and agree to such modifications to the Resolution Agreement and or any Agreements between them in furtherance thereof as will compensate for the adverse effect of any future changes in the law.


(xx) Also, the proposal in the Resolution Agreement purporting to give NAE and SNEPCO the right to lift Tax Oil under the PSA to be signed between the two upon the allocation of OPL 243 to both parties on the execution of the Resolution Agreement would be contrary to the usual practice where the NNPC lifts Tax Oil on behalf of the FGN under the PSCs. It should be noted here that Tax Oil and its lifting confers several other economic advantages aside from the tax revenue payable to government.

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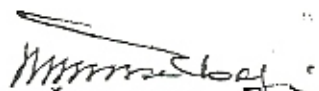
- (xxi) Two of such advantages are the huge financial value arising from the arbitrage of the Tax Oil which would now go to NAE and SNEPCO and the enormous leverage that the FGN exercises by virtue of NNPC lifting the Tax Oil which would no longer be there where NAE and SNEPCO to lift the Tax Oil.
- (xxii) Also, the proposed Resolution Agreement provides for the treatment of the Signature Bonus received by the FGN under the Agreement and the sum of \$335,600.00 purportedly incurred by SNUD related to the execution of the work programme pursuant to the 2003 PSC as recoverable cost by NAE and SNEPCO. In effect, this means that the FGN would not have received any Signature Bonus on the Block and FGN would have indirectly paid for SNUD's claimed expenditure under the 2003 PSC.
- (xxiii) Further more, the matter of OPL 245 is already subject to arbitration at the instance of SNUD. That arbitral proceeding is far gone and a decision is expected any moment soon. After agreeing to submit to arbitration and expending so much time and expenses in the conduct of the arbitration, it would be counter-productive at this final stage to truncate what ever the outcome of the arbitration would be.
- (xxiv) The notion of a six party settlement at this stage is some thing that in our view would not be feasible. This is because Malabu is not a party to the arbitration. Therefore there is no basis for the Company to agree to a settlement at this stage, when there is no decision yet that is adverse to its interest in the block.
- (xxv) Indeed, it is not in the best interest of the FGN at this stage to encourage any settlement of the issue outside the pending arbitral decision/award for the following reasons:
 - (i) The position of the FGN has not been proven to be untenable or weak hence there is no real threat that the arbitral award would go against the interest of the Government; and
 - (ii) SNUD is seeking for either the Re-allocation of the Block to NNPC as Licensee and Shell as Contractor under the PSC between NNPC and SNUD; or in the alternative the award of the Monetary Value of the Block plus interest. In our view, none of these two


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out-comes can leave the FGN without any viable options if any of them were to occur. Hence, the FGN is in an excellent position legally and economically at this time to hedge, pending the outcome of the arbitration and then choose what best option suits its interest after the result of the arbitration is known.

In conclusion, the Resolution Agreement as proposed is highly prejudicial to the interest of the Federal Government, more so when there is considerable leverage on the part of the FGN irrespective of the outcome of the arbitration. Government should therefore re-evaluate the proposal with a view to securing for the FGN a more advantageous out come from any resolution of the matter.


W.A.OBAJE,fnape,fnmgs.
Director, Department of Petroleum Resources

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PROSECUTOR'S OFFICE
AT THE ORDINARY COURT OF MILAN

Proceeding n. 54772/13 R.G.N.R.

Notice of conclusion
of preliminary investigation
under art. 415 bis Criminal Procedure Code.

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

The prosecutor

24/2/17

having regard to the proceedings of the criminal case in the epigraph against

1. **Scaroni Paolo** born in Vicenza on 28.11.1946
Defended by lawyer Alberto Moro Visconti of the Milan Court and by lawyer Enrico De Castiglione of the Milan Court, both with offices in Milan, piazza San Pietro da Gessate, 2
By choice domiciled by the defenders
2. **Descalzi Claudio** born in Milan on 27.02.1955;
Defended by lawyer Paola Severino of the Rome Court, with offices in Rome via Ciro Menotti, 4
By choice domiciled by the defender
3. **Casula Roberto** born in Cagliari on 22.05.1962;
Defended by lawyer Guido Carlo Alleva of the Milan Court, with offices in Milan, via Vincenzo Monti, 6
By choice domiciled by the defender
4. **Armana Vincenzo** born at Piazza Armerina on 27.02.1972
Defended by lawyer Fabrizio Siggia of the Rome Court with offices in Rome, via Cardinal De Luca, 22 and by lawyer Luca Santa Maria of the Milan Court, with offices in Milan, via Serbelloni, 1
By choice domiciled by the defender lawyer Luca Santa Maria
5. **Pagano Ciro Antonio** born in Toronto (Canada) on 10.03.1962
Defended by lawyer Federica Rinaldini of the Milan Court with offices in Milan, Via Fontana n.1
By choice domiciled by the defender
6. **Obi Chukwuemeka Zubelum** born in Lagos (Nigeria) on 14.05.1971
Defended by lawyer Sergio Spagnolo of the Milan Court and by lawyer Paolo Tosoni of the Milan Court, both with offices in Milan, viale Piave II
By choice domiciled by the defenders
7. **Agaev Ednan Tofik Ogly** born in Baku (Russia) on 25.10.1956
Defended by lawyer Francesco D'Alessandro of the Castrovillari Court, with offices in Milan, via Turati 29 by the Studio Rock
By choice domiciled by the defender
8. **Di Nardo Gianluca** born in Venice on 28.10.1967

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Defended by lawyer Fabrizio Manganiello of the Milan Court, with offices in Milan, via Sant'Eusebio 24
By choice domiciled by the defender

9. **Bisignani Luigi** born in Milan on 18.10.1953
Defended by lawyer Lattanzi Fabio of the Rome Court and lawyer Massimo Pellicciotta of the Milan Court, with offices in Milan, via Lavater 5
By choice domiciled by the defender lawyer Massimo Pellicciotta

10. **Falcioni Gianfranco** born at Domodossola on 14.4.1945
Defended by lawyer Gian Filippo Schiaffino of the Milan Court, with offices in Milan, via Ardgo Boito 8
By choice domiciled by the defender

11. **Etete Dausia Loya** called Dan born in Odi (Nigeria) on 10.1.1945
Defended by lawyer Antonio Secci of the Milan Court, with offices in Milan, via Alfonso La Marmorata 40
By choice domiciled by the defender

12. **Eni spa**
with registered office in Rome, Piazzale Mattei 1 – pro tempore legal representative: Emma Marcegaglia, born in Mantova on 24 December, 1965
defended by lawyer Carlo Federico Grosso of the Turin Court and lawyer Nerio Dioda of the Milan Court
By choice domiciled at the legal department of Eni in Rome, Piazzale Mattei 1

13. **Royal Dutch Shell PLC**
with registered office in The Hague (The Netherlands), Carel Van Bylandtlaan, 30
pro tempore legal representative: Van Beurden Bernardus Cornelis Adriana Margriet, born in Roosendaal en Nispen, on 23 aprile 1958
defended by lawyer Bruno Lorenzo Cova of the Turin Court and lawyer Francesca Petronio of the Milan Court, with offices in Milan, via Rovello, 1
By choice domiciled by the law firm Paul Hastings (Europe) LLP, in Milan, via Rovello, 1

for crimes and administrative offenses listed below:



because

- Scaroni**, in his capacity as Managing Director and General Manager of Eni,
- giving the consent to the intermediation of Obi proposed by Bisignani and inviting Descalzi to conform to it;
 - being constantly informed by Descalzi about the evolution of the negotiations and meeting personally, along with Descalzi, Nigeria's President Goodluck Jonathan both at the stage of finalizing agreements (13 August 2010) as well as in the final stage, during an electoral gathering in Nigeria, on 22 February 2011;

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- Descalzi, as General Manager of the Exploration & Production Division of Eni from July 2008
- taking personal contacts with Emeka Obi and with Eni executives in Nigeria Casula and Armanna and being informed of the request of fees;
- receiving from Bisignani indications about behaviour to bear in the negotiations;
- agreeing with his counterpart Malcolm Brinded of Shell the price of the deal, to the extent of \$ 1.3 billion, and later, up to the conclusion of the negotiation, coordinating with the same Brinded the position of the two companies Eni and Shell;
- meeting, along with Scaroni, President Jonathan to define the deal;

Casula, as Eni officer responsible for operational and business activities in Sub-Saharan Africa based in Nigeria:

- signing, on behalf of NAE (Nigerian Agip Exploration Ltd) commitments with Obi and constantly liaising with the latter during the negotiations;
- reporting to Descalzi;
- keeping operational contacts with his counterpart in the Shell, Peter Robinson, and organizing meetings with Shell executives at his home in Nigeria;
- preparing with Obi and Descalzi the meeting on August 13, 2010 in Abuja with President Jonathan concerning the OPL245 deal and participating to a subsequent meeting with the aforesaid Jonathan on February 22, 2011
- attending meetings held at the office of the Attorney General in Abuja (Nigeria) from November 18 to 25 2010, with the presence of the Attorney General Bello Adoke and Alhaji Abubaker, during which economic conditions of the deal were agreed (1.3 bn.)
- participating to the next meeting with Dan Etete in Milan on the night between November 30 and 1 December 2010, present Agaev and Obi, for fixing issues concerning fees;
- coordinating with Armanna;
- overseeing activities of the negotiating team of Eni, up to the drafting of the texts of the "resolution agreements";
- being informed of the movements of money after the signing of the resolution agreements;

Armanna, in his capacity of senior advisor of NAOC (Nigerian Agip Oil Company Ltd) and Vice President for Eni's sub-Saharan upstream activities:

- maintain relations, from the beginning, with Obi and Etete, having full knowledge about the destination a large part of the sums paid by Eni to political sponsors of the operation and about agreements for paying back significant sums to executives of Eni and Shell companies;
- informing Bisignani of the trend of negotiations and getting indications about behavior to be kept;
- meeting in more occasions the Attorney General Muhammed Bello Adoke and discussing with him the same issue of the fees;
- attending meetings at the Attorney General from November 18 to 25 2010, present the Attorney General Adoke and Alhaji Abubaker, in which economic conditions of the deal were agreed (1.3 bn.);
- receiving from Adoke in December 2010, the indication about the negotiating scheme finally and actually adopted and focused on an active role of the Nigerian government (FGN) which under the agreements would have reallocated the OPL245 license to Eni and Shell and received the payment of the "consideration" of \$ 1.092.040.000 destined to Etete, over the "signature bonus" of \$ 207.960.000;
- coordinating with Falcioni and Bajo Oyo for the further transfer of the money paid by Eni onto the account of the Nigerian government at JP Morgan Chase in London and then getting from Bajo Oyo the sum of € 917,952 with the false purpose "heritage Armanna";

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Pagano, in his capacity as managing director of NAE

- signing up on behalf of NAE the offer submitted on 30 October 2010 to Raiffeisen Bank, advisor of Obi, for the purchase of 100% of the "participating interest " of Malabu in OPL245 through the following payments: \$ 207.960.000 in favour of the Nigerian government as signature bonus and \$ 1.053.000.0000 directly to Malabu;
- attending meetings with Shell executives at the home of Casula in Nigeria;
- participating to the meeting with President Jonathan on February 22, 2011;
- signing on behalf of NAE, the FGN Resolution Agreement on 29 April 2011;

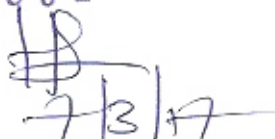
Obi, in his capacity as holder of the company Energy Venture Partners Ltd (EVP):

- receiving from Etete the task of finding a buyer for the block 245 and agreeing with Etete that the difference – so-called "excess price" - between the amount that ENI / NAE agreed to pay and the amount accepted by Etete would be retained by Obi, with the forecast that said premium had to be earmarked for the remuneration of the same Obi and his sponsors Di Nardo and Bisignani, Eni and Shell and the Nigerian public officials, in particular the oil minister Diezani Alison Madueke;
- signing on 25.2.2010 a "confidentiality agreement" with NAE whereby Obi received in fact an exclusive right to deal with Etete;
- operating in accordance with Ednan Agaev, who acted as an intermediary in close contact with Shell executive Peter Robinson and Guy Colegatee John Copleston – Shell advisors;
- meeting on several occasions the Attorney General Adoke and maintaining relations with the same as well through persons associated with him, namely Roland Ewubare and Oghogo Akpata; maintaining as well relations with Diezani Alison Madueke and the General Gusau;
- keeping constant contacts with Descalzi, Casula and Armanna and informing them of developments in the negotiations;
- liaising, through Di Nardo, with Bisignani and Scaroni;
- receiving from the NAE on 30 October 2010 the offer for the purchase of 100% of the "participating interest " of Malabu in OPL245 and delivering it to Etete;
- by participating to the meeting with Etete in Milan on the night between November 30 and December 1 2010, present Obi, Agaev and Casula, to define the issues concerning fees;
- continuing to hold contacts with Descalzi and Casula up to the adoption of the time next to the adoption by the FGN of the Resolution Agreement;

Agaev, in its capacity as owner of the company International Legal Consulting Ltd (ILC), conducting activities of intermediary between Shell and Etete

- receiving a contract from Etete to assist in the negotiations on the sale of the rights of Malabu in OPL245 and agreeing upon a "success fee" of 6%;
- encountering Richard Granier Deferre - trustee and former co-defendant of Etete - and discussing with him the conditions of the relationship with Etete;
- keeping constant contact with Emeka Obi and agreeing with him the position to be taken in regard to Eni and Shell companies;
- meeting several times Peter Robinson of Shell and John Copleston and Guy Colegate - these already operating at MI6 and subsequently hired by Shell as Senior Business Advisor and Strategic Investment Advisor;
- meeting on several occasions the National Security Advisor General Aliyu Gusau and getting from him information on the expectations of President Jonathan and the other members of the government; putting in contact Gusau with Obi close to the visit of Scaroni and Descalzi to President Jonathan in August 2010;
- participating to the meeting with Etete in Milan on the night between November 30 and December 1 2010, present Obi, Agaev and Casula, for the definition of issues regarding fees;
- maintaining relations with Etete until the transaction closes;

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Di Nardo

- proposing the intermediary of Emeka Obi to acquire OPL245 and keeping in constant contact with the latter;
- acting as a link person between Obi and the top management of Eni through Bisignani;

Bisignani

- presenting to Scaroni the possibility to carry through the deal of OPL245 through the intermediation of Obi and receiving the consent of Scaroni;
- meeting, at the home of Scaroni, Claudio Descalzi and confirming the need for the intermediation of Obi, taking into account the terms of his relationship with Nigerian government circles;
- meeting Armanna and pleading with him the cause of Obi;
- discussing with Descalzi the evolution of the negotiations and giving indications about the behaviors to be kept;
- keeping constant contacts with both Scaroni as well as Descalzi in the phase of the definition of the agreement on the economic conditions of the deal (1.3 bn) in November 2010;

Falcioni

- accepting the task, in the final phase of the story, to distribute the money paid by Eni for the OPL 245 license and to this purpose establishing the company Petrol Service and opening the account A209798 Bank payable to Petrol Service Co. LP at BSI Lugano on which was transferred on 31.5.2011 the sum of \$ 1.092.040.000 (sum returned a few days later from Lugano BSI to JP Morgan Chase in London for "compliance" reasons);
- keeping contacts and entering into written agreements with Bajo Oyo for the retrocession of a portion (\$ 50 million) of the amount paid by Eni, and informing Armanna of relationships in place;

Etete, in his capacity as representative of Malabu company, holder by fraudulent means from 1998 of OPL245 exploration license

- establishing negotiations with Eni and Shell, also through Agaev and Obi, to sell back OPL 245 against a remuneration;
- receiving from the Minister of Petroleum Diezani, following the decision of President Jonathan, the authorization to dispose of 100% of OPL 245;
- conducting confidential negotiations with Aliyu Abubaker, who worked as an agent of Goodluck Jonathan;
- accepting, under government's pressure, the total sum of \$ 1.3 billion that had been established by Eni and Shell;
- agreeing with the Minister of Petroleum Diezani Adoke and the Attorney General, as well as Eni and Shell, the Resolution Agreements of 29 April 2011;
- receiving from the Nigerian government on the basis of FGN Resolution Agreement \$ 801.5 million and transferring to Alhaji Aliyu Abubaker, directly or through companies connected to him, sums of money amounting to about \$ 520 million to be allocated to the payment of President Jonathan, members of the Government and other Nigerian public officials;

in concurrence among them, and with Abubaker Alhaji Aliyu, Malcolm Brinded, Peter Robinson, Guy Colegate, John Coplestone, against whom we precede separately

carried out convergent actions aimed at letting companies Eni and Shell companies, 50% each, obtain exploration rights on block 245 in Nigeria in return for the payment of the sum of \$ 1,092,040,000 to the Malabu company (attributable to Dan Etete) allegedly holder of the rights on the block 245, having been agreed during the negotiations for the acquisition of the block, that such funds, net of forfeited funds by the same Etete (about \$ 250 million used by Dan Etete for his own benefit and of very numerous other-beneficiaries for the purchase of properties, planes, armored cars, etc.) were largely intended, as in fact happened, for the remuneration:

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JP 7/13/17

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- of the President of Nigeria Goodluck Jonathan and other members of the Nigerian Government in office at the relevant time - namely the oil minister Diezani Alison Madueke and the Attorney General Muhammed Bello Adoke;
- of other Nigerian public officials such as the National Security Advisor Aliyu Gusau, the member the House of Representatives Bature Umar, former Senator Ikechukwu Obiorah - holders of conditioning powers on President Jonathan and other members of the government;
- of the former Attorney General Christopher Baje Oyo, for his role in the reallocation of the license OPL 245 to Malabu on 30.11.2006 and subsequent activities of "adviser";
- and in part held back by intermediaries and partly retroceded in favor of Eni and Shell officers;

* in order to determine public officials Goodluck Jonathan, President of Republic of Nigeria and, * each for the part of his/her own responsibility, the minister of justice and Attorney General Mohammed Bello Adoke and the oil minister Diezani Alison Madueke, as well as, with intermediary functions in negotiations, other public officers mentioned above (Baje Oyo, Gusau, Bature, Obiorah), to adopt on 29 April 2011 the act known as the FGN Resolution Agreement, formulated in terms of act settling disputes and having the effect to award Eni and Shell 50% each exploration rights on the block 245 in the deepwater of the Nigerian republic

- Without tender
- At a price unilaterally established by Eni and Shell
- In violation of the reserve of shares granted to so-called "indigenous companies" on the basis of governmental guidelines ("Government's Policy of Indigenous Exploration Programme")
- With full and unconditional exemption from all national taxes (notably 'capital gains tax, taxes on income, withholding taxes, value added tax')
- With the provision of applicability of a favorable tax regime (the one provided by the Deep Offshore and Inland Basin Production Sharing Contracts Act Chapter D3, Laws of the Federation of Nigeria 2004) and a safeguard clause against future changes in taxation regime
- With express limitations and constraints to the power of the Nigerian government, and any government entity or agency, to take over the exploitation of the oil block and
- With the provision of the obligation for the Nigerian government to "keep Eni and Shell safe from any future legal action concerning the block and possible adverse rulings and procedural expenses";

to this end, they concurred in the payment dated 24.5.2011 by the NAE (Nigerian Agip Exploration) of the sum of \$ 1,092,040,000 onto the escrow account of the FGN (Federal Government of Nigeria) at JP Morgan Chase in London;


Funds (\$ 1,092,040,000) transferred on 31.5.2011 to the account of Petrol Service Co.- attributable to Falcioni - at BSI Lugano and subsequently, on 3.6.2011, returned by the bank BSI to JP Morgan Chase London for reasons of "compliance ";

subject on 4.8.2011 to freezing, as to \$ 215 mio, due to the legal action brought by Obi against Malabu/Etete at London Commercial Court;

transferred on 24.8.2011, to the extent of \$ 801.5 million, onto the Nigerian accounts of Malabu and later:

- as for \$ 54,418,000 collected in cash by Abubaker Aliyu
- as for \$ 466,064,965.44 transferred to Bureau de Change in Abuja and later handled in cash in Nigeria - after repeated conversions in local currency and as a result of transactions named "forex trade" - by Abubaker Aliyu; funds aimed at remunerating public officials such as the same Jonathan, the Attorney General Mohammed Bello Adoke, the Minister of Petroleum Diezani Alison Madueke; the Minister of Defense and former National Security Advisor Aliyu Gusau;

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- as for \$ 10,026,280 paid to the former Attorney General Christopher Adebayo Ojo (Bajo Oyo);
- as for \$ 11,465,000 paid to the former senator Ikechukwu Obiorah;

- and for the part allocated to the retrocessions to Eni directors and executives:
- transferred to the extent of € 917,852 on 8.5 .2012 in favor of Vincenzo Armanna, onto a bank account at UBI Bergamo, from the above-mentioned Bajo Oyo, with the purpose of "heritage Giuseppe Armanna ";
 - delivered in cash, in an amount detected in \$ 50 million, at the home of Roberto Casula in Abuja;
 - paid, at the end of the legal action at the London Commercial Court, in two tranches
 - on the date of 27 March 2014 as for \$ 112,616,741 and later on the date of 28 March 2014 as for \$ 6,272,955 – onto the account of EVP Energy Venture Partners of Obi at LGT Bank Schweiz Geneva, from which account on 02.05.2014 a part of this sum, namely CHF 21,185 million, was transferred by Obi to the account FOF Fox Oil Fund Lda of Gianluca Dinardo at the bank Safra Sarasin in Lugano

With the aggravating circumstance of the number of people and the facts being committed by criminal groups operating in more states.

In Milan, Abuja, The Hague, London, Lugano and other places from Autumn 2009 to 2 May 2014



administrative offense under articles 5, 6, 7 and 25, comma 3 ° and 4 ° Legislative Decree no. 231/2001

with reference to the offense committed as specified above, in the interest and for the benefit of Eni SpA:

- By Paolo Scaroni, Claudio Descalzi, Roberto Casula, people in senior positions within Eni SpA;
- By Armanna Vincenzo, Ciro Antonio Pagano - subject persons - for effect of failure of management or supervisory obligations by the company.

In Milan, Abuja, The Hague, London, Lugano and other places from Autumn 2009 to 2 May 2014



administrative offense under articles 5, 6, 7 and 25, comma 3 ° and 4 ° Legislative Decree no. 231/2001

with reference to the offense committed as specified above, in the interest and for the benefit of Ro:

- By Malcom Brinded and Peter Robinson, people in senior positions within Royal Dutch Shell Plc;
- By Guy Colegate e John Coplestone – subject persons - for effect of failure of management or supervisory obligations by the company.

In Milan, Abuja, The Hague, London, Lugano and other places from Autumn 2009 to 2 May 2014

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Injured parties

Federal Republic of Nigeria, by the Nigerian Embassy in Rome, Via Orazio n. 14

warns

suspects, the mentioned organizations and their defenders, as indicated above, that the documents relating to completed investigations is filed with the secretary of the Public Prosecutor and that are entitled to examine them and take copies.

warns

suspects, the mentioned organizations and their defenders, as indicated above, that are entitled to, within a period of 20 days to submit statements, produce documents, deposit documents relating to the defense investigations, ask the prosecutor to carry out acts of investigation, as well as to show up to make statements or ask to be subjected to interrogation.

THIS IS THE BEST COPY REFERRED TO AS EXHIBIT IN PARAGRAPH 10 OF THE VERDICT

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IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA FHC / ABJ / CR / 267 / 2016

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

- 1. DUAZIA LOYA ETETE (aka DAN ETETE)
- 2. ALIYU ABUBAKAR
- 3. MOHAMMED ADOKE
- 4. MALABU OIL & GAS LTD
- 5. ROCKY TOP RESOURCE LTD
- 6. IMPERIAL UNION LTD
- 7. NOVEL PROPERTIES & DEV. CO. LTD
- 8. GROUP CONSTRUCTION LTD
- 9. MEGATECH ENGINEERING LTD

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT

24/2/17

.....DEFENDANTS

CHARGE

That you Dauzia Loya Etete (aka Dan Etete) and Malabu Oil & Gas Ltd, on or about 24th August, 2011 in Abuja within jurisdiction of this Honourable Court directly or indirectly took control of sum of \$400,000,000 (Four Hundred Million US Dollars) only paid from the Federal Government of Nigeria Escrow account No. 41451493 IBAN 30CHAS609242411492 with JP Morgan Chase Bank in London into the account of Malabu Oil & Gas Ltd domicile in PHB PLC (now Key Stone Bank) account No. 1005552028 when you knew that the funds formed part of the proceeds of an unlawful activity to wit: Fraud and thereby committed an offence contrary to section 15(2) of the Money Laundering (Prohibition) Act 2011 as amended in 212 and punishable under section 15(3) of the same Act.

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COUNT 4

That you Dausia Loya Etete (aka Dan Etete) and Malabu of Oil & Gas Ltd on or about the 10th August, 2011 in the Abuja within the jurisdiction of this Honourable Court directly or indirectly converted the sum of \$401,540,000 (Four Hundred and One Million, Five Hundred Thousand US Dollars) only which sum was transferred from the Federal Government of Nigeria Escrow account No. 41451493 IBAN GB 30CHAS609242411493 with JP Morgan Chase Bank in London into the account of Malabu Oil & Gas Ltd domiciled in Bank PHB (now Key Stone Bank) account No. 1005552028 which you purportedly claimed was received as payment for oil prospecting license (OPL) 245 when you knew that the said funds formed part of the proceeds of your unlawful activity, to wit: fraud and thereby committed an offence contrary to section 15(2) (b) of the Money Laundering (Prohibition) Act 2011 as Amended in 2012 and punishable under section 15(3) of the same Act.

COUNT 5

That you Aliyu Abubakar, Rocky Top Resources Ltd, sometime in 2011 in Abuja within the jurisdiction of this Honourable Court did retain the sum of \$336, 456, 906.78 (Three Hundred and Thirty Six Million Four and Fifty Six Thousand Nine Hundred and Six Dollars, Seventy Eight Cent) only in Bank PHB PLC (now Key Stone Bank) account No. 1005556552 belonging to Rocky Top Resources Ltd when you reasonably ought to have known that the said funds formed part of the proceeds of an unlawful activity of Dan Etete and Malabu Oil & Gas Ltd to wit: fraud and you thereby committed an offence contrary to section 15 (2) (d) of the

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money laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 15 (3) of the same Act.

COUNT 6

That you Dauzia Loya Etete (aka Dan Etete) and Malabu Oil & Gas Ltd some time in Abuja within the jurisdiction of the Honourable Court having reason to know that the aggregate sum of \$801, 540, 000 (Eight Hundred & One Million, Five Hundred & Forty Thousand US Dollars) only directly represent the proceeds of an unlawful activity of Malabu Oil and Gas Ltd, to wit, fraud in respect of the said amount used the said funds and you thereby committed an offence contrary to section 15(2) of the Money Laundering Act 2011 as Amended in 2012 and punishable under section 15(3) of the same Act .


COUNT 7

That you Dauzia Loya Etete (aka Dan Etete), Malabu Oil and Gas Ltd and Mohammed Adoke Bello SAN CFR sometime in 2011 in Abuja within the jurisdiction of this Honourable Court conspired among yourselves to commit Money Laundering offences contrary to section 15 of the Money Laundering (Prohibition) Act 2011 AS Amended in 2012 and punishable under section 15(3) of the same Act.

COUNT 8

That you Mohammed Adoke Bello SAN CFR on or about the 10th August, 2011 in Abuja within the jurisdiction of this Honourable Court aided Dauzia Loya Etete (aka Dan Etete) and Malabu Oil & Gas Ltd to commit the offence of money laundering by facilitating the payment of an aggregate sum of \$801,540,000 (Eight Hundred & One Million, Five Hundred & Forty Thousand US dollars) only to Dauzia Loya Etete (aka

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Dan Etete) and Malabu Oil & Gas Ltd through the Federal Government of Nigeria Escrow account No, 41451493, IBAN GB 30CHAS609242411493 with JP Morgan Chase Bank in London which you reasonably ought to have known represented the proceeds of an unlawful activity, to wit; fraud and thereby committed an offence contrary to section 18(a) of the Money Laundering (Prohibition) Act 2011 as Amended in 2012 and punishable under section 15(3) of the same Act.

COUNT 9


That you Aliyu Abubakar, Rocky Top Resources Ltd, Novel Properties & Dev. Co. Ltd. Group Construction Ltd and Megatech Engineering Ltd between Aug, and December, 2011 in Abuja within this Honourable Court disguised the origin of an aggregate sum of \$478, 603,750 (Four Hundred and Seventy Eight Million, Six Hundred and Three Thousand, Seven Hundred and Fifty US Dollars) only by paying several companies for services rendered when you reasonably ought to have known that the said funds directly represented the proceeds of an unlawful activity of Dausia Loya Etete (aka Dan Etete) and Malabu Oil & Gas Ltd, to wit, fraud and you thereby committed an offence contrary to section 15(2), (a) of the Money Laundering (Prohibition) Act 2011 as Amended in 2012 and punishable under section 15(3) of the same Act.

DATED 16 DAY OF 12 2016


Jonson Ojogbane, Esq. (JP),
C.C. Ndubeze,
H.M. Mohammed,
Victor Ukagwu,
Complainant's Counsel,



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Economic and Financial Crimes Commission
No 1. Hombori Street, off Freetown
Street, off Adetokunbo Ademola
Crescent, Wuse II, Abuja.
08162796041 or 08052137803.

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

SUIT NO: FHC/ABJ/C.S/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).

EX-PARTE ORIGINATING SUMMONS

BROUGHT PURSUANT TO SECTIONS 24(a), 26(1)(a) & (3), 28, 29(a) & (b) OF THE ECONOMIC AND FINANCIAL CRIMES (ESTABLISHMENT) ACT, 2004, AND SECTION 44(2)(K) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND THE INHERENT POWERS OF THIS HONOURABLE COURT

WRITTEN ADDRESS IN SUPPORT OF EX PARTE ORIGINATING SUMMONS

1.0 INTRODUCTION:

1.1 May it please this Honourable Court; the Applicant filed an ex parte application for an interim attachment of the respondent's properties pursuant to Sections 24(a), 26(1) (a) & (3), 28, 29(a) & (b) of the Economic and Financial Crimes (Establishment) Act, 2004, and Section 44(2)(k) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the inherent powers of this Honourable Court pending the determination of the criminal investigation and trial against the respondent.

1.2 The application is supported by 21 paragraphs affidavit deposed to by Ibrahim Ahmed who is an investigating officer with the EFCC. Furthermore, this written address seeks to serve as the argument of the applicant in support of the application. We adopt same and urge your lordship to grant the application.

2.0 ISSUES FOR DETERMINATION:

The singular issue we propose for determination is:

WHETHER THIS HONOURABLE COURT HAS THE POWERS TO GRANT THE ORDERS SOUGHT BY THE APPLICANT AND

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WHETHER THE APPLICANT IS ENTITLED TO THE ORDERS SOUGHT?

3.0 ARGUMENT

3.1 We answer this in the affirmative and we submit with respect that this Court has the powers to grant the orders sought and that the Applicant is entitled to the orders sought.

3.2 My lord, the crux of this application is that the Commission received petition against Shell Nigeria Ultra Deep Limited (SNUD); Nigerian Agip Exploration Limited (NAE); Shell Nigeria Exploration and Production Company Limited (SNEPCO) and Mr. Dan Etete. The petition alleged Criminal Conspiracy, Bribery, Official Corruption and Money Laundering.

The petition alleged conspiracy to commit fraud, forgery of board resolutions to alter share structure of the company.

3.3 That investigation revealed that Malabu Oil and Gas Ltd and SPDC secured OPL 245 through fraudulent scheme involving high scale of bribery and corruption by their top managements of the company.

3.4 We submit that this Court is empowered by sections 24(a), 26(1) (a) & (3), 28 and 29(a) & (b) of the Economic and Financial Crimes Commission (Establishment) Act, 2004, to grant an application attaching the properties derived from the proceeds of Financial crimes, under the EFCC Act, in the interim particularly when such properties belong to a person who has been arrested, or is been investigated or prosecuted by the EFCC. The said sections provide thus:

24(a) of the EFCC Act provides:

“ANY PROPERTY-

WHETHER REAL OR PERSONAL, WHICH REPRESENTS THE GROSS RECEIPTS A PERSON OBTAIN DIRECTLY AS A RESULT OF THE VIOLATION OF THIS ACT OR WHICH IS TRACEABLE TO SUCH GROSS RECEIPTS...IS SUBJECT TO FORFEITURE TO THE FEDERAL GOVERNMENT AND NO OTHER PROPERTY RIGHTS SHALL EXIST ON IT”

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Section 26(1) (a) of the EFCC Act provides:

"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..."

Section 28 of the EFCC Act provides:

"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".

Section 29 EFCC Act provides:

"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"

SECTION 44(2) (K) of the Constitution provides:

NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED AS AFFECTING ANY GENERAL LAW.

RELATING TO THE TEMPORARY TAKING OF POSSESSION OF PROPERTY FOR THE PURPOSE OF ANY EXAMINATION, INVESTIGATION OR ENQUIRY"

3.5 My Lord, we submit that the forgoing sections are clear and unambiguous. Also the said provisions confer a special jurisdiction on this Court and empower the Court grant the

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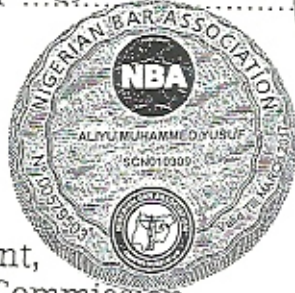
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interim Order sought by the Applicant upon an ex-parte application.


2.2 It is humbly submitted that there is prima facie evidence placed before this Honorable Court to warrant the assets/properties liable to an order of interim attachment of this Honorable Court and pray this Court to so hold.

DATED THIS.....11th.....DAY OF January.....2017.


Aliyu M. Yusuf,
Jonson Ojogbane Esq. (JP)
H.M. Mohammed,
Legal and Prosecution Department,
Economic and Financial Crimes Commission,
No. 1, Hombori Street, Off Freetown Street,
Off Adetokunbo Ademola Crescent,
Wuse II, Abuja.
08162796041.



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30 MAR 2016
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global witness



RE:COMMON



THE
CORNER
HOUSE

Mr Ibrahim Magu
Executive Chairman
Economic and Financial Crimes Commission
5 Fomella Street
Off Adetokunbo Ademola Crescent
Wuse II
Abuja
Email: imagu@efccnigeria.org

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

Handwritten notes:
det.
Treat as if (S. 23)
23/03/16
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24/2/17

BY COURIER and EMAIL

15 March 2016

Dear Chairman Magu,

THE EXECUTIVE CHAIRMAN'S
OFFICE, EFCC
RECEIVED
Sign: [Signature]
Date: 23/3/16 Time: 1:40
Secret Registry

Re: OPL/245

Petition to investigate (1) Royal Dutch Shell ("Shell") (2) Shell Nigeria Ultra Deep (SNUD) (3) Peter Robinson (4) John Copleston (5) Nike Olafimihan (6) German Burmeister (7) and other Shell current and former executives, including but not limited to all those in positions of authority in the construction of the deal for OPL 245.

We write as non-governmental organisations who, for the past five years, have been actively investigating the illegal and corrupt sale in 2011 of Nigeria's OPL 245 oil block to the multinational companies Shell and Eni.

We understand that the Economic and Financial Crimes Commission ("EFCC") is already investigating the roles of Chief Dan Etete, former Attorney-General Mr Mohammed Bello Adoke, Mr Abubakar Aliyu and others in the corrupt sale.

We also understand that the EFCC is collaborating with the Milan magistrate in an investigation into Eni, some of its executives, and other named individuals who are alleged to have conspired to pay bribes and/or receive kickbacks in relation to the deal. The individuals who are now under investigation include Mr Gianluca di Nardo, Mr Roberto Casula, Mr Vincenzo Armanca, Mr Zubelum Chukwuemeka Obi, Mr Paolo Scaroni, Mr Claudio Descalzi, Mr Luigi Bisignani and Chief Dan Etete.

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The purpose of this petition is to draw your attention to strong, prima facie evidence that (1) Royal Dutch Shell ["Shell"], (2) Shell Nigeria Ultra Deep (SNUD), (3) Peter Robinson (4) John Copleston (5) Nike Olafimihan (6) German Burmeister and potentially other current and former Shell executives [hereafter "Shell and its executives"], were active parties to the corruption, fraud, money laundering and associated criminality surrounding the deal for OPL 245; and to request that the EFCC investigate and seek to hold to account all those for whom the evidence demonstrates their involvement.

In sum, the cumulative evidence in the public domain provides strong grounds for believing that Shell and its executives were the leading architects of a corrupt, fraudulent and criminal conspiracy:

- a) To obtain assets (namely the OPL 245 license) that they knew to have been corruptly and illegally obtained by Malabu Oil and Gas ["Malabu"] and which thus constituted stolen goods;
- b) To monetise those stolen goods for the corrupt benefit of Dan Etete and officials in the Jonathan administration and their associates; and
- c) To do so by defrauding Nigeria of US\$1.1 billion that should rightfully have gone to the Federation Account for the benefit of the Nigerian people.

These allegations are set out in further detail below.

The Petitioners

The petitioners (in alphabetical order) are as follows:

- **Corner House** is a UK non-governmental organisation with a track record of holding companies involved in corruption to account;
- **Dotun Oloko** is a Nigerian and UK anti-corruption campaigner;
- **Global Witness** is a non-governmental organisation based in Washington and London, that investigates and campaigns to prevent natural resource related conflict and corruption, and associated environmental and human rights abuses;
- **Re:Common** is a membership-based, not-for-profit association registered in Rome that campaigns to hold companies and international financial institutions to account for corruption.

The Persons of Interest

The persons whose role in the 2011 sale and purchase of OPL 245 we request that the EFCC investigate are:

- **Royal Dutch Shell** is an Anglo-Dutch company headquartered in The Hague. Shell's American depository receipts are registered with the Securities & Exchange Commission (SEC) and are publicly traded on the New York Stock Exchange. The company is also registered on the London Stock Exchange;

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ABUJA**

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- Shell Nigeria Ultra Deep (SNUD) is a wholly-owned subsidiary of Royal Dutch Shell and was the corporate entity (together with Eni's subsidiary in Nigeria, Nigerian Agip Exploration (NAE)) to which the licence for OPL 245 was corruptly passed in 2011;
- Peter Robinson was Vice-President Commercial Sub Saharan Africa at Shell, and was involved in the negotiations that led to the corrupt deal.
- John Copleston was Strategic Investment Advisor at Shell at the time of the deal and was actively involved in the negotiations.
- Nike Olafimihan was Managing Counsel for Shell Nigeria at the time of the deal and took part in the negotiations.
- German Burmeister was General Manager Commercial & Non Operated Ventures for Shell at the time of the deal and also took part in the negotiations.

The Salient Facts

The factual background is as follows:

- OPL 245 is a 1,958 square kilometre oil field located in the Eastern Niger Delta in the offshore waters of Nigeria.
- In April 1998, the exploration licence for the field was awarded by Chief Dan Etete, the then Nigerian Minister of Petroleum Resources, to Malabu, a limited company, incorporated in Nigeria with registration number RC 334442. Malabu had been established as an entity just five days earlier.
- The award was corrupt and illegal because Etete was (and remains) the principal beneficial owner of Malabu, as established by the UK High Court. In effect, he abused his office to award the oil license to himself, contrary to Para 1, 6(1) and 9 of the Fifth Schedule Part 1 on the Code of Conduct for Public Officers contained in the 1979 Constitution of the Federal Republic of Nigeria and section 98 of the Criminal Code Act of Nigeria.
- The award of the licence to Malabu also breached the Petroleum Act and conditions stipulated in the Regulations in several instances including: (i) applicants were required to apply in writing but, Etete awarded OPL 245 to Malabu without Malabu applying for the

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licence;¹ (ii) Malabu failed to pay the signature bonus and the licence should therefore have lapsed.²

- In March 2001, Shell Nigeria Ultra Deep Limited (SNUD) acquired an interest in the stolen asset though entering into a Farm-In agreement with Malabu. Shell must or should have known that Malabu's interest in OPL 245 was unlawful because of the reasons cited above and was in effect seeking to benefit from the proceeds of Malabu's corruption.
- In July 2001, the licence was revoked by the Federal Government of Nigeria ("FGN").
- In May 2002, the FGN awarded OPL 245 to SNUD on a production sharing basis with the Nigerian National Petroleum Corporation ("NNPC").
- In December 2006, the asset was illegally re-awarded to Malabu in clear breach of Nigeria's Constitution, laws and government policies. As outlined above, Malabu was in unlawful possession of the licence and as the House of Representatives has stated: *"An illegality cannot be legal. Any permit or authorisation to carry out an illegality is itself illegal"*.³ Section 23 of the Code of Conduct Bureau and Tribunal Act stipulates the punishment for public officers found guilty of contravening any of the provisions of the Act and states that the applicable sanctions include *"seizure and forfeiture to the State of any property acquired in abuse or corruption of office"*.
- The public officials that executed the 2006 settlement agreement therefore fraudulently attempted to represent that Malabu was rightly entitled to OPL 245, contrary to Chapter 12 of the Criminal Code Act of Nigeria which, in section 98, as highlighted earlier, makes it an offence for a public official to corruptly restore OPL 245 to Malabu. It is instructive that according to evidence heard in UK court US\$10 million from the deal has been traced to Bayo Ojo SAN, who was the Attorney General at the time of the 2006 settlement.

¹ "Block 245 was allocated as a discretionary allocation under which the applicant would normally write to the minister applying for a block and listing willingness to comply with provisions and conditions that would be imposed, and giving information about the proposed methods for developing the block. There was no application letter or form from Malabu. In other words, contrary to the assertions of Malabu Oil and Gas, at no time did Malabu ever apply for the block, either through a letter, an application form, or any other way. Nonetheless, the minister, Chief Dan Etete, gave instructions for OPL 245 to be allocated to Malabu." Excerpt from a May 2003 House of Representatives Report which was referenced in Royal Courts of Justice Case No: 2011 FOLIO 792 between Energy Venture Partners Limited and Malabu Oil and Gas Limited, Paragraph 21

² "The award of the licence was subject to an obligation to pay a signature bonus to the Nigerian Government of \$20 million. It was common ground that the only sum ever paid by Malabu was the sum of US \$2.04 million paid on 15 May 1999." - Royal Courts of Justice Case No: 2011 FOLIO 792 between Energy Venture Partners Limited and Malabu Oil and Gas Limited, Paragraph 18

³ July 2013 report of the Nigerian House of Representatives Committee's investigation into sale of OPL 245, page 66

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- Between May 2009 and December 2010, Etete, now fully in control of Malabu, sought to sell his stolen asset, OPL 245, directly to Shell and Eni, using two companies, Energy Venture Partners ("EVP") and International Legal Consulting Limited ("ILC"), as middlemen.
- In December 2010, negotiations were halted after Mohammed Abacha, the son of Nigeria's former military dictator, initiated a legal challenge alleging that he was a part owner of Malabu and that Etete had fraudulently taken control of the company.
- Shell and Eni then conspired with Mr Adoke and others to engineer a revised structure that would enable them to acquire the stolen asset from Malabu via a transfer through the FGN. This was achieved in April 2011 through a deal under which Shell/Eni acquired the rights to OPL 245 through a series of back-to-back agreements ("the Resolution Agreements") involving the FGN as an intermediary.
- On 29 April 2011, Malabu entered into an agreement with the FGN, entitled "Block 245 Malabu Resolution Agreement", under which Malabu relinquished all claims to OPL 245 in exchange for the FGN paying it US\$1,092,040,000.
- On the same day, the FGN entered into a related agreement, entitled "Block 245 Resolution Agreement", with the Shell/Eni consortium, under which Eni (for the consortium) agreed to pay an identical sum of US\$1,092,040,000 to the FGN for the rights to OPL 245.
- The US\$1,092,040,000 paid by the Shell/Eni consortium to the FGN was deposited in an escrow account and subsequently a deposit account held by the FGN with JP Morgan Chase. JP Morgan has acknowledged that, acting on the instructions of the FGN, it made two transfers to Malabu's bank accounts in Nigeria, both on the 23rd August 2011. The first, for \$401,540,000, was to Malabu's account (No 2018288005) with First Bank of Nigeria; and the second, for US\$400,000,000, was to Malabu's account (No. 3610042472) with Keystone Bank.

The Allegations to be investigated

Based on the evidence we have seen, further detail of which we can provide to the EFCC, we request that the EFCC investigate three main allegations:

1. That Shell and its executives sought to obtain assets (namely the OPL 245 license) that they knew to have been corruptly and illegally obtained by Malabu Oil and Gas in contravention of the Money Laundering (Prohibition) Act 2004 which in section 16 makes it an offence to acquire and retain property that they knew represented either directly or indirectly the proceeds of another person's criminal conduct.⁴
 - Shell knew that the license for OPL 245 had been awarded to Malabu by Dan Etete when he was Oil Minister.
 - Shell was aware of Dan Etete's role in awarding OPL 245 to Malabu, as evidenced by its claimant's memorial in 2009 in arbitration before the International Centre for

⁴ <http://nass.gov.ng/document/download/5807>

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Settlement of Investment Disputes ICSID Case No. ARB/07/18: "In 1998, during the President Abacha regime, OPL 245 had been allocated to Malabu on behalf of the Ministry of Petroleum Resources by Mr Dan Etete in his capacity as the then Presidential Advisor on Petroleum and Energy."⁵

- Dan Etete has himself confirmed his role in awarding OPL 245 to Malabu, stating in an August 2002 interview: "Oil Blocs had always been awarded in accordance with the Petroleum Act of the Federal Republic of Nigeria on discretion of both Blocks 245 and 246 were properly awarded by me. I have the constitutional right to award."⁶
 - In evidence quoted in a May 2003 Report of the Nigerian House of Representatives into the OPL 245 dispute between Malabu and Shell, Chief Etete freely accepted that he was the owner of Malabu.⁷
 - In September and October 2008 Global Witness raised concerns with the then Managing Director of Shell Nigeria Basil Omiyi about Etete's suspected ownership of Malabu and their suspected negotiations with Etete.
 - Prior to Shell and Eni's illegal acquisition of OPL 245, Mohamed Abacha wrote to both companies informing them that Etete had acquired Malabu illegally.
 - In a court challenge by International Legal Consulting Limited ("ILC"), Mr Agaev of ILC testified that he had been told by John Copleston of Shell that he knew of Abacha's claim.
 - The discussions between Shell and Eni over OPL 245 involved direct negotiations with Etete. The relationship is detailed in internal Shell emails read out in UK court and testimony in the same court. The emails show that Shell treated Malabu as being controlled by Etete.
 - In effect, at all times in the negotiations to acquire OPL 245, Shell and executives must have been aware that the oil license was a stolen asset. They nonetheless actively sought to acquire it, and ultimately succeeded in this aim, in contravention of Nigerian law which forbids the receipt or handling of stolen goods, and in so doing, conspired to defraud and then defrauded the Nigerian people of satisfactory payment in return for their national asset.
2. That Shell and its executives jointly and severally conspired to monetise the stolen OPL 245 asset in contravention of section 14 of the Money Laundering (Prohibition) Act 2004.
- The acquisition of OPL 245 by Shell and Eni was achieved through an unlawful arrangement, namely the 2011 Resolution Agreements.

⁵ In the Matter of an arbitration before the International Centre for Settlement of Investment Disputes, ICSID Case No ARB/0718, Between Shell Nigeria Ultra Deep Limited and Federal Government of Nigeria, "Claimants Memorial", 30 April 2009

⁶ This Day, 31 August 2002, "My Role Under Abacha – Etete", <http://web.archive.org/web/2005011074427/http://www.thisdayonline.com/archive/2002/08/31/20020831.con01.html>

⁷ Paragraph 24 ii of Gloster LJ's judgment.

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- On a proper analysis, the Resolution Agreements were an agreement (via the FGN) for the disposal of the stolen OPL 245 assets by Malabu and for their unlawful "fencing" to Shell and Eni.
 - As such, they constituted a conspiracy to monetise assets that Shell and its executives must have known to have been obtained corruptly and illegally. The monies received by Malabu for OPL 245 were thus proceeds of crime and the Resolution Agreements were, in effect, an elaborate laundering scheme.
 - Critically, internal Shell and Eni emails (obtained by Italian journalist Claudio Gatti and published on his website⁸) reveal that both companies were intimately involved in the design, negotiation, and execution of the arrangements to ensure the funds were sent to Malabu via the FGN. They were thus active parties to the creation and operation of the laundering scheme.
 - The beneficiaries of the conspiracy were Shell and Eni (which obtained control of the stolen asset); Dan Etete (who controlled the stolen asset that was monetised); and, according to allegations made by the Italian Public Prosecutor, both Eni officials and Nigerian officials who are said to have conspired to arrange kickbacks and bribes. Evidence has been presented to the UK courts that money has been traced to former Attorney General Bayo Ojo SAN as well as "fronts for President Goodluck Jonathan" in the words of the prosecutors.
 - As such, there are substantial grounds for believing that Shell and its executives acted criminally in breach of Nigerian money laundering legislation and monetised stolen goods.
3. Shell and its executives jointly and severally conspired to defraud Nigeria of US\$1.1 billion that should rightfully have gone to the Federation Account in contravention of Nigerian law.
- Under Article 162 of the Nigerian Constitution, all revenues from the sale of natural resources, including oil revenues, must be paid into a special account known as the Federation Account.
 - As a company that has operated in Nigeria for many decades, Shell must have been well aware of this requirement.
 - The scheme Shell engineered breached Article 162 of the Nigerian Constitution by ensuring that the payment for OPL 245 was diverted to Malabu, bypassing the Federation Account altogether.
 - Indeed, the scheme could not have been effected without such an illegal arrangement. Defrauding Nigeria of US\$1.1 billion was thus hard-wired into the Resolution Agreements that Shell took part in designing.

Actions sought

⁸ <http://gradozeroblog.it/news/eni-il-miliardo-destinato-all-ex-ministro-del-petrolio-nigeriano-dan-etete>

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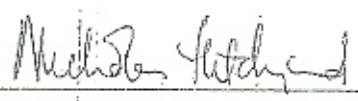
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We request that the EFCC take steps to investigate the above allegations, including through mutual legal assistance requests to obtain court orders for all notes, emails, text messages, phone records and other materials that Shell and its executives might hold in relation to the OPL 245 deal; and to seek to prosecute all those found to be complicit in any crime in any relevant jurisdiction.

We remain at the EFCC's disposal should it require further evidence of the allegations that we seek to be investigated.

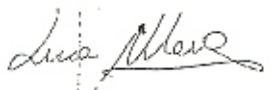
Yours sincerely



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IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA.

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

- 1. SHELL NIGERIA EXPLORATION PRODUCTION COMPANY LTD
- 2. NIGERIA AGIP EXPLORATION LIMITED
- 3. ENI SPA
- 4. RALPH WETZELS
- 5. CASULA ROBERTO
- 6. PUJATTI STEFENO
- 7. BURRAFATO SEBASTIANO
- 8. DOUZIA LOUYA (A.K.A DAN ETETE)
- 9. MOHAMMED BELLO ADOKE
- 10. ALIYU ABUBAKAR
- 11. MALABU OIL & GAS LIMITED

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

24/2/17

DEFENDANTS


INFORMATION

DATED THIS.....DAY OF2017.

At the Criminal Division of the High Court of Lagos State Holden at Ikeja, on the day of 2017, the Court is informed by the Executive Chairman of the Economic and Financial Crimes Commission on behalf of the Federal Republic of Nigeria that:

- 1. SHELL NIGERIA EXPLORATION PRODUCTION COMPANY LTD
- 2. NIGERIA AGIP EXPLORATION LIMITED

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- 3. ENI SPA
- 4. RALPH WETZELS
- 5. CASULA ROBERTO
- 6. PUJATTI STEFENO
- 7. BURRAFATO SEBASTIANO
- 8. DOUZIA LOUYA (A.K.A DAN ETETE)
- 9. MOHAMMED BELLO ADOKE
- 10. ALIYU ABUBAKAR
- 11. MALABU OIL & GAS LIMITED

Are charged with the following offence(s):


COUNT 1
STATEMENT OF OFFENCE

Conspiracy contrary to section 26 of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under section 12 of the same Act.

PARTICULARS OF THE OFFENCE

That you Shell Nigeria Exploration Production Company Limited, Nigeria Agip Exploration Limited, ENI SPA, Ralph Wetzels (whilst being Director of SNEPCO), Casula Roberto (Italian)(whilst being the Director of AGIP), Pujatti Stefeno (Italian (while being a Director in AGIP), Burrafato Sebastiano (Italian), (while being a Director with AGIP), Douzia Louya Etete (A.K.A Dan Etete), Mohammed Bello Adoke, Aliyu Abubakar, and Malabu Oil & Gas Limited sometime in 2011 in Lagos within the jurisdiction of this Honourable Court conspired among themselves to commit a felony to wit: Official Corruption and thereby committed an offence.

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COUNT 2

STATEMENT OF OFFENCE

Official Corruption contrary to section 9 of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under section 9(b) of the same Act.

PARTICULARS OF THE OFFENCE

That you Douzia Louya Etete (A.K.A Dan Etete), Mohammed Bello Adoke, Aliyu Abubakar, and Malabu Oil & Gas Limited sometime in 2011 within the jurisdiction of this Honourable Court corruptly received the aggregate sum of \$801,000,000.00 (Eight Hundred and One Million Dollars) in relation to the grant of Oil prospecting license in respect of OPL 245 from Shell Nigeria Exploration Production Company, Nigeria Agip Exploration Limited and ENI SPA and thereby committed an offence.

COUNT 3

STATEMENT OF OFFENCE

Official Corruption contrary to section 9 of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under section 9(b) of the same Act.

PARTICULARS OF THE OFFENCE

That you Shell Nigeria Exploration Production Company Limited, Nigeria Agip Exploration Limited, ENI SPA, Ralph Wetzels (whilst being Director of SNEPCO), Casula Roberto (Italian)(whilst being the Director of AGIP), Pujatti Stefano (Italian (while being a Director in AGIP), Burrafato Sebastiano (Italian), (while being a Director with AGIP),sometime in 2011 within the jurisdiction of this Honourable Court corruptly gave the aggregate sum of \$801,000,000.00 (Eight Hundred and One Million Dollars) to Douzia Louya Etete (A.K.A Dan Etete), Mohammed Bello Adoke, Aliyu Abubakar, and Malabu Oil & Gas Limited on

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account of the grant of Oil prospecting license in respect of OPL 245 and thereby committed an offence.

Dated this.....day of.....2017.

Jonson Ojogbane Esq. (JP),
Economic and Financial Crimes Commission,
No. 1, Hombori Street, Off Freetown Street,
Off Adetokunbo Ademola Crescent,
Wuse II, Abuja.
08162796041.

FOR SERVICE ON:
The Defendant.

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ABUJA**

7/13/17

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IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA.

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

- 1. SHELL NIGERIA EXPLORATION PRODUCTION COMPANY LTD
- 2. NIGERIA AGIP EXPLORATION LIMITED
- 3. ENI SPA
- 4. RALPH WETZELS
- 5. CASULA ROBERTO
- 6. PUJATTI STEFENO
- 7. BURRAFATO SEBASTIANO
- 8. DOUZIA LOUYA (A.K.A DAN ETETE)
- 9. MOHAMMED BELLO ADOKE
- 10. ALIYU ABUBAKAR
- 11. MALABU OIL & GAS LIMITED



.....DEFENDANTS

PROOF OF EVIDENCE

- 1. Letter of Petition
- 2. Statements of Defendant and Witnesses
- 3. Further take note that the prosecution shall at the trial tender any other relevant exhibits to prove this case.

LIST OF WITNESSES AND THEIR ADDRESSES

- 1. INVESTIGATION OFFICERS
 - A. IBRAHIM AHMED
Economic and Financial Crimes Commission,
Abuja.
- 2. SIMON TAYLOR
Global Witness.

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3. NICHOLAS HILDYARD
The Corners House.
4. DOTUN OLOKO
5. LUCAS MAINES
6. Further take note that the prosecution shall at the trial call any other relevant witness (es) to prove this case.

Dated this.....day of.....2017.

Jonson Ojogbane Esq.(JP),
Economic and Financial Crimes Commission,
No. 1, Hombori Street, Off Freetown Street,
Off Adetokunbo Ademola Crescent,
Wuse II, Abuja.
08162796041.

FOR SERVICE ON:
The Defendant.

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L. Durojig.
24/02/2017
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IN THE FEDERAL HIGH COURT OF JUSTICE
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

1. NIGERIAN AGIP EXPLORATION LIMITED
2. SHELL NIGERIA EXPLORATION & PRODUCTION COMPANY LTD }APPLICANTS

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION.....RESPONDENT

RESPONDENT'S WRITTEN ADDRESS IN OPPOSITION TO THE MOTION ON NOTICE DATED 31ST JANUARY, 2017.

1.0 INTRODUCTION

With utmost respect my lord, on 27th of January, 2017, this Honourable court granted an interim forfeiture order based on an application by the Respondent/Applicant relying upon Sections 6 (d) 7, 24 (a), 26 (1), 28, 29, 34 (1) & (2) of EFCC Act 2004, Section 44 (2) (k) CFRN 1999 (as amended) and under the inherent jurisdiction of this court.

1.1 My lord would graciously recall that the ground upon which the application was made in respect of OPL 254 was that it was subject of

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an investigation, inquiry and examination by the EFCC. There was therefore, need to preserve the asset pending the conclusion of investigation and subsequent trial of the Applicant and her cohorts.

1.2 The Applicants/Persons Affected (Nigerian Agip Exploration Limited) being dissatisfied with the Order of Court has supposedly brought this present application praying the court to set aside its Order of interim forfeiture as it relates to OPL 245.

1.3 In response to this application, the Respondent/Applicant has filed a Counter affidavit of 36 paragraphs deposed by one Ibrahim Ahmed, and a set of Exhibits. We rely on all the depositions and contents thereof, respectively. Furthermore, this written address seeks to serve as our argument in opposition of the application. We adopt same and urge your lordship to refuse the application of the Applicant.


2.0 ISSUES FOR DETERMINATION

WHETHER THE APPLICANT HAS PLACED SUFFICIENT MATERIAL BEFORE THE COURT TO WARRANT A DISCHARGE/VACATION OF THE COURT'S EARLIER EX-PARTE ORDER OF INTERIM FORFEITURE DATED 27TH JANUARY, 2017 WITH SPECIFIC REFERENCE TO THE PROPERTY DESCRIBED AS OPL 245.

3.0 ARGUMENT

3.1 My Lord we humbly submit that having regard to the relevant laws pursuant to which the *Ex-parte* Order of Interim forfeiture dated 27th January, 2017 was made, this Honourable Court has no power to entertain the present application in the first place. In making this submission, we humbly draw the attention of the Court to the ex-parte application of the Applicant/Respondent for interim forfeiture order. It is very evident that the application was not made pursuant to any of the provisions of the Federal High Court (Civil Procedure) Rules. It was made pursuant to some the relevant statutory provisions, which

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includes the EFCC Act, as clearly stated on the face of the Motion paper. My lord, it is trite that statutory provisions as in principal legislation take precedence over rules of court. It is also beyond argument that the said EFCC Act pursuant to which the Court order was granted does not provide for filing for an application to set aside by any person. It is our submission that the Applicant cannot resort to the rules of this Court to seek for discharge of the Order of this Honourable Court in application where the rule do not apply. We urge your lordship to so hold.

3.2 Assuming, but without conceding that the present Applicant could apply for discharge of the Order of this Court under the rules of this Court for the purpose of the present application, we humbly submit with respect, ask Does the Applicant/Respondent have judicial power to set aside an Order of this Court and release the property in question to the Applicant? Our answer is negative. My lord, even if the Order of this Court were null and void *abinitio* (which is not the case here), the Applicant/Respondent has no *vires* to set it aside or even vary it. What more, the Order was a valid one issued by a court of competent jurisdiction after due process of law followed. Thus, it our contention that the Applicant has woefully failed to place sufficient material before the Court to enable it exercise its discretion (if it has same) in their favour. To this end, we humbly urge your lordship to refuse the Motion paper and, consequently strike out the Motion for being incompetent.

3.3 My lord, in the unlikely event that your lordship rules that the Court can look at the Applicant's application for whatever it is worth, we humbly submit that the Applicant has again failed to place sufficient material before the Court to warrant the setting aside or discharge of the earlier Order of the Court. To start with, it is our submission that this Honourable Court was duly empowered by the relevant cited provisions to grant all the Orders sought by the

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Applicant/Respondent in its *ex parte* application that gave rise to the Order of 27th January, 2017 now being sought to be set aside by the present Applicant. The present applicant has woefully failed to substantiate or prove the allegation of misstatement or suppression of fact on the part of the Applicant/Respondent. In fact, by the time one places the present applicant's affidavit in support side-by-side our counter affidavit to the present application, it crystal clear that if anybody is involved in misstatement or suppression of facts, it is the present applicant. We humbly commend to your lordship the detailed facts contained in the depositions in our counter affidavit particularly paragraphs 6 to 20 thereof and contents of our **Exhibit EFCC1**.

- 3.4 Furthermore, going by the deposition in the counter affidavit and the relevant exhibits, the the present Applicant is at best a conduit for a grand money laundering scheme orchestrated by Douzia Louya (A.K.A Dan Etete), Mohammed Bello Adoke along with the Applicant and her cohorts with respect to the property in question. In view of this, Can it be said that your lordship was not justified to Order for temporary attachment and forfeiture of the assets pending the conclusion of investigation and subsequent trial of the Applicant and her cohorts?
- 3.5 It is our contention that the authorities cited by the counsel to the Applicant in its paragraphs 11-14 of written address to the effect that the EFCC has failed to comply with the preconditions to the exercise of the rights created by sections 28 and 29 of the EFCC Act, are not applicable in this case. To start with it is our submission that the Applicant's counsel has grossly misconceived the provision of section 26(1)(b) of the EFCC Act to state that it creates a condition precedent to the exercise of the rights created by sections 28 and 29.

Section 26(1) of the EFCC Act, 2004 which deals specifically on the issue of seizure of property provides thus:

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

- a) the seizure incidental to an arrest or search;
or
- b) in the case of property liable to forfeiture upon process issued by Court following an application made by the Commission in accordance with the prescribed rules".

It is our submission that the operative word used in section 26(1) is "may" as opposed to the word "shall". It is also trite that the word "may" when used in a statute is indicative of discretion as it commands permissiveness. We refer My Lord to the case of ATAYI FARMS LTD V N.A.C.B LTD (2013)4NWLR(PT810) PG. 427@P447-448paras G-B. Where it was held that:

"...in construction of statutes, the word "may" as opposed to "shall" is indicative of discretion or choice between two or more alternative..."

In the instant case the Respondent approached the court for temporary forfeiture and management of OPL 245 which happens to be the subject matter of this suit. It is our contention that nowherein section 26 of the EFCC Act, it is stated that a property must first be seized before an application can be brought for its forfeiture and we urge My Lord to so hold.

- 3.6 Furthermore the Applicant counsel in paragraphs 15- 21 of its written address also cited the provision of section 43 of the EFCC Act and argued to the effect that because the Attorney General of the Federation has not made rules or regulations to set out the process by which the powers created under section 28 and 29 of the EFCC Act are

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to be exercised, as a result they are inchoate and such the jurisdiction of this Honourable Court is ousted. My Lord this argument is misconceived and should be discountenanced. And in response to this argument we place reliance on the case of ATAYI FARMS LTD V N.A.C.B(Supra) and further recommend to My Lord the provision of section 6(d) of the EFCC Act, 2004 which spells out the functions of the Commission amongst which include:

“the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds”.

See also section 13(1)(c) and (d) of the EFCC Act, 2004. It is conceded that till date the Attorney General of the Federation has not made any rules or regulation however it is also our contention that section 43 of the EFCC Act is not made mandatory for the exercise of the sections 28 and 29 of the EFCC Act, and we urge my Lord to so hold.

3.7 We further submit with the greatest respect that the learned counsel for the present Applicant has misapprehended the correct position of the law with respect to the earlier *ex-parte* Order of this Court. To start with, the contention by the learned counsel for the Applicant in paragraphs 22-43 of their written address that by virtue of the judicial authority of *Nwaigwe v. FRN* (cited in his address), section 29 of the EFCC Act, 2004 is unconstitutional does not represent the current position of the law. The law since moved away from *Nwaigwe's case*. The Court of Appeal has affirmed the constitutionality of that section in later case of *Dangabar vs FRN (2014) 12 NWLR (PT. 1422) 575*. What we are saying in essence is that section 29 of the EFCC Act is valid and constitutional. At any rate, our *ex-parte* application was not based solely on the said section 29. There were many other applicable

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provisions. In fact, the most relevant provisions pursuant to which the Court granted the ex parte Order are sections 26 and 24 of the EFCC Act and 44(2)(k) of the Constitution of the Federal Republic of Nigeria, 1999.

- 3.8 To this end, we submit, with respect, that this Court is empowered by both the Constitution and the EFCC (Establishment) Act, 2004 to grant the Order it did on 27th January, 2017 and the present application has not shown sufficient reason, legal or factual, to warrant disturbing the said order. We further submit that the nature and duration of ex-parte Order was clearly stated on the face of the Order. On its nature, it is both an order of attachment and interim forfeiture. As for its duration, it lasts "*pending the conclusion of investigation*".
- 3.9 On the propriety of the ex-parte we again rely on *DANGABAR V. FRN*(supra) thus, the Order does not violate anybody's right to fair hearing because it is in the nature of a preservatory order. It is made in the interest of the prosecutor and the Defendants in order to prevent dealing with the properties in such a way that can render the final judgment of the court nugatory. We urge your lordship to so hold and resolve the issue by holding that the Applicant has not placed sufficient material before the Court to disturb its earlier ex-parte Order.

In the said case of *DANGABAR V FRN* it was held by the court on the constitutionality of interim order of attachment (as in the instant case) and forfeiture of assets and properties that:

"The definitions of the words "examination", "investigation" and "enquiry" confirms that section 44(2)(k) of the Constitution of the Federal Republic of Nigeria, 1999(as amended), which allows the temporary taking of possession of property for the

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purpose of any examination, investigation or enquiry, necessarily allows the temporary taking of possession of property during the conduct of a criminal case. To do otherwise will give the constitutional provision a very narrow interpretation which will defeat the purpose of the Constitution itself.

(P.609, paras C-E).

Furthermore it was held in the case that:

“An order of interim attachment and forfeiture of assets and properties of an accused person pending determination of the criminal charge against the accused person,...is presavatory. Furthermore, such order is consistent with the intendment of section 44(2)(k) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which permits the temporary taking of possession of property for the purpose of any examination, investigation or enquiry”.

See also (p.601, paras. D-E) and (P. 607 paras. E).

- 3.10 Meanwhile, it is apparent that the present Applicant does not deeply reflect or appreciate the fact that the most relevant provisions for the purpose of the property the subject of the present application are section 26(1)(b) read in conjunction with section 24(a) and 25 of the EFCC Act, 2004. To this end, we further draw the attention of the Honourable Court to the attempt being made by the Applicant's counsel to import into section 26 what the law does not provide.

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Section 26(a) & (b) are clearly disjunctive given the word "OR" employed by the legislature at the end of subsection (a) before subsection (b). However, when paraphrasing that provision in his address, the Applicant through his counsel turned the word "OR" to "AND" in order to justify the *CONJUNCTIVE* meaning he went on to canvass (in paragraphs 9 - 14 of the address) in place of the *DISJUNCTIVE* provision. Incidentally, even the decision in *Nwaigwe*, which is heavily relied upon in their address clearly indicates that the two subsections are disjunctive. We commend to your lordship the dictum of Mukhtar, JCA.

4.0 CONCLUSION

4.1. We therefore respectfully urge your lordship to refuse the Applicant's application and dismiss the same for lacking in merit.

DATED THIS 24th DAY OF Feb 2017

[Signature]

Aliyu M. Yusuf, Esq.

Jonson Ojogbane, (JP) Esq.

H.M. Mohammed,

Economic and Financial Crimes Commission,

No 1, Hombori Street, off Adetokunbo Ademola Way, Wuse II, Abuja

08162796041.



FOR SERVICE ON

1st Applicant

C/O Their Counsel,

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Chukwuka Ikwuazom,

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[Signature]
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