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

SUIT NO: FHC/ABJ/CS/14/2017

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

BETWEEN

NIGERIAN AGIP EXPLORATION LIMITED - APPLICANT

AND

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION - RESPONDENT

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REPLY ON POINTS OF LAW
TO THE RESPONDENT'S WRITTEN ADDRESS DATED 24 FEBRUARY 2017

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INTRODUCTION

1. This Applicant herein filed a Motion on Notice dated 31 January 2017 (the "**Motion to Discharge**") seeking (a) an order discharging the *ex parte* Order of Interim Attachment made by this Honourable Court on 26 January 2017, and (b) an order discharging the *ex parte order* directing the Department of Petroleum Resources to manage OPL 245 on behalf of the Federal Government of Nigeria pending the conclusion of investigation and prosecution of the Applicant and other persons/ entities (the "**Order**").

2. The Applicant's Motion to Discharge was supported by a 22 paragraph affidavit deposed to by Zainab Ndanusa, legal practitioner in the firm of Messrs Aluko & Oyebode, Counsel to the Applicant (the "**Supporting Affidavit**") and a Written Address dated 31 January 2017 (the "**Applicant's Written Address**").

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3. In response, the Respondent has filed a 36 paragraph Counter Affidavit deposed to by one Ibrahim Ahmed on 24 February 2017 (the "**Respondent's Counter Affidavit**"), and a Written Address of the same date (the "**Respondent's Written Address**").

4. This Reply on Points of Law is submitted in response to arguments made in the Respondent's Written Address.

## SUMMARY OF ARGUMENTS

5. In the Respondent's Written Address, the Respondent argues that:

   a. The Applicant has no right to apply for the setting aside of the Order, and this Honourable Court has no jurisdiction to grant such an application;

   b. The Order was properly made on the basis of Section 44(2)(k) of the Constitution and Sections 24 and 26 of the EFCC Act;

   c. The Applicants have failed to provide sufficient material to show why the Order ought to be set aside, and

   d. The existence of and the compliance with procedural rules are not mandatory pre-conditions to the application of Sections 28 and 29 of the EFCC Act.

6. This Reply on Points of Law addresses these arguments.

## REPLY ON POINTS OF LAW

***A. This Honourable Court has the jurisdiction to set aside the Order on the basis that it was made without jurisdiction, in absence of the conditions precedent to the exercise of the Court's power to make the Order, and in violation of the Applicant's fundamental human rights – by which reason it is unconstitutional and ab initio, null and void.***

7. The Respondent argues at paragraphs 3.1 – 3.3 of its Written Address that the ex-parte application by which it sought the grant of the Order was brought pursuant to the provisions of the Economic and Financial Crimes Commission (Establishment, etc.)

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Act, Cap. E1, Laws of the Federation of Nigeria, 2004 (the "**EFCC Act**") and therefore, that:

a. the Applicant is not entitled to file an application to discharge the Order because the EFCC Act does not permit the filing of an application to set aside the Order, and

b. this Honourable Court has no jurisdiction to discharge the Order "*even if the Order of this Court were null and void ab initio*"

8. The Applicant respectfully submits that (a) this Honourable Court is entitled, by reason of its inherent jurisdiction which is guaranteed by the Constitution to set aside an Order made without jurisdiction, (b) the EFCC Act does not, in any way, limit the jurisdiction of this Honourable Court to set aside the Order, and (c) even if the EFCC Act did preclude the setting aside of the Order, this Honourable Court would still retain the jurisdiction to determine whether or not the Order was properly made.

*The inherent jurisdiction of the Court*

9. This Honourable Court is entitled, by reason of **Section 6** of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to the inherent jurisdiction to set aside an Order where it is improperly made or otherwise made without jurisdiction.

10. This aspect of your Lordship's inherent jurisdiction is settled. In **Adeyemi-Bero v Lagos State Development Property Corporation & Anor** (2012) LPELR – 20615, the learned Justices of the Supreme Court stated the principle as follows:

> *"The principle is that* ***a person affected by the judgment of a court which is a nullity is entitled to have the very court set it aside Ex debito Justitiae. The court in its inherent jurisdiction has the power to set aside its own judgment or order made without jurisdiction or if same has been fraudulently obtained****. In such a circumstance, an appeal for the purpose of having the null judgment or order cannot be said to be necessary. See Bello v. INEC & 2 ORS. (2010) 8 NWLR (Part 1196) 342; Odofin v. Olabanji (1996) 3 NWLR (Pt.435) 126 and Ogola v. Ogolo NSCQLR (2006) Vol. 25) 423."*

11. Likewise, in **Mark v Eke** (2004) LPELR – 1841, the Supreme Court also stated that:

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> ***"The law is settled that any court of record including the Supreme Court, see Olabanji v. Odofin (1996) 2 SCNJ 242 at 247; (1996) 3 NWLR (Pt. 435) 126, has the inherent jurisdiction to set aside its own judgment given in any proceeding in which there has been a fundamental defect, such as one which goes to the issue of jurisdiction and competence of the court."***

12. Clearly, it is the Applicant's position that the Order is fundamentally defective and was made without jurisdiction. We respectfully refer this Honourable Court to the arguments contained at **paragraphs 22 to 43** of the Applicant's Written Address.

13. We urge your Lordship therefore, to hold that this Honourable Court is entitled to determine the Applicant's Motion to Discharge, and to set aside the Order.

*The EFCC Act does not preclude the Motion to Discharge*

14. In addition to the above, we respectfully submit that the EFCC Act does not in any way limit the Applicant's right of action to challenge an application by the Respondent or to seek to discharge the Order.

15. The Respondent seeks to imply, from the absence of any express procedural rules directing the filing of an application to discharge the ex-parte order, that the statute does not permit such an application. This line of argument is, with the greatest respect, misguided.

16. As your Lordship is no doubt aware:

    a. it is the Applicant's contention, set out at **paragraphs 6 to 21** of the Applicant's Written Address that, by reason of the absence of procedural rules (which the Respondent admits at **paragraph 3.6** of the Respondent's Written Address), the process by which the Order was obtained is inchoate, and

    b. the jurisdiction of this Honourable Court, and the constitutional right of access to this Honourable Court and to any other court cannot be limited other than by the express wording of statute.

17. As to the Applicants' constitutional right to access the courts, the Supreme Court has held, in **Ugwu v Ararume** (2007) ALL FWLR (Pt. 377) 807 at 865 Paras. G- H that:

*"Right of access to court is a **constitutional right which is guaranteed in the Constitution and no law, including that of a political party, can subtract from or deviate from it or deny any person of it.** Such a law will be declared a nullity by virtue of section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria."*

18. Even where a provision may be interpreted as limiting the jurisdiction of the courts or as restricting an applicant's right of access to the courts, the courts are required to interpret such provisions strictly and in favour of allowing the applicant his day in Court. We commend to your Lordship the decision of the Supreme Court in **Tyonzughul v AG Benue State** (2005) 5 NWLR (pt. 918) 226 at 248 A – C.

19. It is certainly the case therefore that where, as in the instant case, a statute is silent on a point, it cannot be interpreted as limiting the jurisdiction of the court or of restricting an applicant's right of access to the courts.

20. In **Global Excellence Communications Limited v Mr. Donald Duke** (2007) 16 NWLR (pt.1059) 22, the Appellant challenged the jurisdiction of the trial court to determine an action filed by the Respondent (who was Governor of Cross River State) on the basis that Section 308 of the 1999 Constitution limited the right of the Respondent to institute any proceedings in his personal capacity.

21. **Section 308 (1)** of the Constitution states as follows:

*(1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section:*

*(a) **no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;***

*(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and*

*(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued. Provided that in ascertaining whether any period of limitation has expired for the purpose of any*

*proceedings against a person to whom this section applies, no account shall be taken of his period of office.*

*(2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.*

*(3) This section applies to a person holding the office of President or Vice-President, **Governor** or Deputy Governor; and the reference in this section to period of office' is a reference to the period during which the person holding such office is required to perform the functions of the office."*

22. As is clear from the wording of the provision, **Section 308** does not, of itself, limit the right of the Respondent in **Global Excellence v Duke** to commence an action in his personal capacity. The Appellant in that case sought to imply that restriction into the provisions of **Section 308**. In much the same way, Respondent herein seeks to imply (despite the absence of any provision of the EFCC Act to that effect) that the Applicant is not entitled to challenge the validity of the Order or seek to have it set aside.

23. The learned justices of the Supreme Court, in determining whether such a limitation could be implied, held at page **48 C – F** as follows:

*"What does section 308 say? What is the real meaning of the section? Section 308 only bars or prohibits a person from instituting civil or criminal proceedings against the respondent. **The section does not say that the respondent, who comes under subsection (3) cannot sue for any wrong done him**. In other words, while the section bars any person to sue the respondent, **it is silent in respect of the right of the respondent to sue for a wrong done him. It will be wrong to say that the silence of the section anticipates that the respondent cannot sue. In my view, if the Constitution does not specifically provide for a situation or** [is] **silent on a situation, it will not be right for the courts to read into the Constitution a particular meaning, as submitted by counsel for the appellants, barring the respondent from suing. Access to court is a constitutional right which can only be taken away by a provision in the Constitution. It cannot be taken away by implication or speculation by the courts**."*





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24. It is clear therefore that it is improper for the Respondent to imply, in the absence of any clear provisions to that effect, that the EFCC Act in any way restrains the Applicant's rights to seek to discharge the Order. Any suggestion to the contrary clearly flies in the face of the settled principles of law as stated by the Supreme Court in the decisions cited above. We urge your Lordship to so hold.

*A limitation to jurisdiction does not limit the Court's jurisdiction to determine whether the right in respect of which the limitation is made was properly exercised*

25. Without prejudice to the above, we respectfully submit that, even if the EFCC Act had in some way limited the Applicant's right to seek to discharge the Order or this Honourable Court's jurisdiction, this Honourable Court would be, as a matter of law, entitled to the jurisdiction to determine whether or not the Order was properly made.

26. We commend to your Lordship the decision of the Supreme Court in **Inakoju v Adeleke** (2007) 4 NWLR (pt. 1025) 427, and the statement at page 688 paragraphs A – G, as follows:

> *"The attitude of the courts to such provisions is that they are regarded as an aberration, outrageous provision and one that should be treated with extreme caution since they are regarded as unwarranted affront and unnecessary challenge to the jurisdiction of the courts which the courts guard jealously.* ***Where, therefore, a person's right of access to court is taken away or restricted by either the Constitution or any statute, the language of any such provision is usually construed very cautiously and strictly. In the course of interpreting such provisions, the language of any such statute or provision will not be extended beyond its least onerous meaning unless clear words are used to justify such extension.*** *This is mainly because it is the practice of the courts to guard its jurisdiction jealously: See Barclays Bank Nig. Ltd v. Central Bank of Nigeria (1976) 1 All NLR 409; Agwuna v. Attorney-General of Federation (1995) 5 NWLR (Pt. 396) 418; Osadebey v. Attorney-General of Bendel State (1991) 1 NWLR (Pt. 169) 525; Attorney-General of Bendel State. v. Agbofodo (1999) 2 NWLR (Pt. 592) 476; and Attorney-General of Federation v. Sode (1990) 1 NWLR (Pt. 128) 500.*
>
> *Thus when interpreting the provisions of an ouster clause in a statute, including that of the Constitution,* ***the courts usually scrutinize every aspect of such***

*provision with a view to ensuring that everything done under such statute is done strictly in compliance with the provisions of the statute. This is because where the court finds that there is a failure to strictly comply with what the statute provides for, such act purported to be done under the statute would be ultra vires, and would be declared null and void as such action would be regarded not to have been carried out under the said provisions of the statute or Constitution. See Ekpo v. Calabar Local Government (1993) 3 NWLR (Pt. 281)324."*

27. We refer, with the greatest respect to the arguments contained in the Applicant's Written Address at **paragraphs 6 - 21** to the effect that the provisions upon which the Respondent sought the grant of the Order are inchoate; at **paragraphs 44 – 52** to the effect that the Respondent failed to disclose to the Court facts relevant to the grant of the Order; at **paragraphs 53 – 62** to the effect that the Respondent has failed to satisfy the pre-conditions to the grant of the Order, and at **paragraphs 63 – 73** to the effect that the Respondent's ex-parte application for the grant of the Order was an abuse of process.

28. The Respondent argues, on the one hand, that its application was for the interim forfeiture and management of OPL 245 (see **paragraph 3.5** of the Respondent's Written Address) and that the most relevant provisions for the grant of the Order were **Sections 24 and 26** of the EFCC Act and **Section 44(2)(k)** of the Constitution (see **paragraphs 3.7 and 3.10** of the Respondent's Written Address).

29. We note in this respect that (a) the only Section of the EFCC Act which permits an application for the interim forfeiture of assets is **Section 29** of the EFCC Act, likewise (b) only **Section 29** permits an application for an interim order to be made ex-parte, and (c) **Section 29** has been expressly repealed by the Court of Appeal and is therefore, non-existent (see paragraphs **22 – 43** of the Applicant's Written Address).

30. This Honourable Court is entitled to determine, notwithstanding any provision in the EFCC Act to the contrary, whether the Order was properly made within the confines of the EFCC Act (whether under Section 29 or otherwise). Further, that any limitation in the EFCC Act (and we submit that none exists) would only apply if the Order is properly made. We urge your Lordship to so hold.





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***B. The Order was not, and cannot be properly made on the basis of Section 44(2)(k) of the Constitution and Sections 24 and 26 of the EFCC Act***

31. The Respondent contends at **paragraph 3.10** of the Respondent's Written Address that the most relevant provisions for the grant of the Order are **Sections 24 and 26** of the EFCC Act, and **Section 44(2)(k)** of the Constitution, and that on the basis of these provisions, the Order was validly made.

32. The Applicant submits that none of these sections permit the taking of possession even on an interim basis without notice to the other side. **Section 44(2)(k)** of the Constitution in particular permits the "*temporary taking of possession of property for the purpose of any examination, investigation or enquiry*".

33. It is not the Applicant's position that any order made for the preservation of property on an interim basis is null and void. What the Applicant submits, is that the application seeking the Order granted herein, to the extent that it is purported to have been made pursuant to **Section 44(2)(k)** of the Constitution, ought to have been brought by way of a Motion on Notice.

34. It is a fundamental principle of the interpretation of the Constitution that all the provisions therein are to be read together, given their ordinary meaning unless it would be in conflict with some other provision of the Constitution and to be interpreted in a way as to give effect to the intention of the framers of the Constitution. We commend the decision of the Supreme Court in **Kalu v. State** (1998) LPELR-1655 (SC) to your Lordship.

35. Here, to interpret **Section 44(2)(k)** according to its literal meaning is to permit the grant of a preservative order, NOT the grant of an ex-parte order. To interpret it as permitting the deprivation of property on an ex-parte basis brings it in conflict with Section 36 of the Constitution and leads to the absurd circumstance where a decision affecting the right of a party is made in that party's absence, and the person being investigated is not given the opportunity to show, even on a prima facie basis, that the property sought to be attached, is not the proceeds of the crime. This absurdity cannot be the intendment of the drafters of the Constitution. We urge your Lordship to so hold.

36. It is in consideration of this absurdity that the Court of Appeal in **Nwaigwe v FRN** (2009) 16 NWLR (pt. 1166) 169 at 201 paragraphs B – C expressly revoked Section 29 of the EFCC Act which, while it subsisted, purported to permit the application for and grant of an interim forfeiture order on an ex-parte basis (see paragraph 30 of the Applicant's Written Address). The Respondent seeks to contend that this is no longer the law, and that Section 29 is valid by reason of the decision of the Court of Appeal in **Dangabar v FRN** (2012) LPELR-19732(CA).

37. The law is as stated by the Supreme Court in **Adesanoye v Adewole** (2006) 14 NWLR (pt. 1000) 242 at 272 A - C, thus:

> *"Where a subsequent legislation or order revokes an earlier legislation or order, courts of law do not have the jurisdiction to still rely on the revoked legislation or order. **It is trite law that a revoked legislation or order has no more force of law from the date of the revocation and a court cannot by its interpretative jurisdiction revive the revoked legislation because it is moribund or dead from the date of the revocation**."*

38. The Court of Appeal in **Dangabar v FRN** did not address the earlier revocation of **Section 29** of the EFCC Act. Notwithstanding, having been expressly revoked by the Court in **Nwaigwe v FRN**, the Court of Appeal could not have, and did not express any intention to, revive **Section 29** of the EFCC Act simply by the exercise of its interpretative jurisdiction. **Section 29** of the EFCC Act is dead, and nothing put upon it, can stand.

39. The result, your Lordship, with the greatest respect, is that if the Respondent's application was brought pursuant to **Section 29** of the EFCC Act, then it is unconstitutional, **Section 29** having been revoked on that basis. If it is brought on the basis of any other provision of the EFCC Act, or the Constitution, then it conflicts with the principles of fair hearing expressed in **Section 36** of the Constitution, and is, as before, unconstitutional.

40. We repeat here the dictum of the Supreme Court, set out at paragraph 41 of the Applicant's Written Address in **Leedo Presidential Motel v Bank of the North Limited** (1998) 10 NWLR (pt. 570) 353 at 380 – 381 as follows:

> *"I should myself think that **an exparte motion is inappropriate where the interests of the other party will be adversely affected except in a case of***

> ***extreme urgency and for a limited period only.*** *Justice demands that both sides are heard or given an opportunity to be heard before an order affecting the rights and obligations of one of them is made.* ***This is in accord with the provisions of the Constitution. Natural justice also demands it.***
>
> ...
>
> *Where a party is entitled to notice of a proceeding and there is failure to serve him,* ***the failure is a fundamental defect which goes to the root of the competence (or jurisdiction) of the court to deal with the matter...***" (Emphasis ours)

41. We respectfully submit that, having been made ex-parte, in the absence of any enabling statute, the Respondent's ex-parte application and the Order granted violate the Applicant's right to a fair hearing, are unconstitutional and on that basis, were made without jurisdiction. We urge your Lordship to so hold.

***C. The documents before this Honourable Court are sufficient to show, as a matter of law, that the asset is not in danger of dissipation.***

42. We respectfully submit in response to **paragraphs 3.4, 3.4 and 3.9** of the Respondent's Written Address that to the extent that the purpose for which the Order was granted was to prevent the dissipation of OPL 245, then (a) there was no risk at the time of the Respondent's application, nor is there now, that the res will be lost, (b) the Respondent misrepresented to this Honourable Court that the Order was necessary for the purpose of preserving the res – OPL 245, and (c) the Applicant has put before the Court, by way of the Supporting Affidavit, sufficient material to establish or at the very least upon which the Court may take judicial notice of the fact that the asset is not in danger of being dissipated.

43. At **paragraphs 16 and 17** of the Supporting Affidavit, Zainab Ndanusa avers to facts which show that, among other things, production has not commenced from OPL 245 and the Applicant cannot transfer its rights in OPL 245 to a third party without the consent of the FGN.

44. Among the documents exhibited by the Supporting Affidavit is the Letter of Award dated 11 May 2011, **Exhibit A1**.

45. By virtue of **Section 122** of the Evidence Act, this Honourable Court is entitled to take judicial notice of the provisions of Nigerian law which limit the exercise of the rights conferred by **Exhibit A1**. In this regard, we humbly refer your Lordship to the Arguments contained at paragraphs 68 to 70 of the Applicant's Written Address.

46. Also before this Honourable Court, and attached as **Exhibits A6A and A6B,** referred to in paragraph 8.18 of the Affidavit of Abubakar Ahmed deposed to on 1 February 2017, on behalf of Shell Nigeria Exploration and Production Company Limited.

47. **Exhibits A6A and A6B are letters dated 31 August 2016 and 6 October 2016**, and they confirm that (a) production has not commenced from OPL 245, and (b) the FGN will be entitled to monitor production from OPL 245.

48. We respectfully submit, by reason of the above, that the res herein, OPL 245, faces no risk of dissipation and the Order ought not to have been granted. We urge your Lordship to so hold.

***D. Whether the existence of and the compliance with procedural rules are a mandatory provision of the EFCC Act.***

49. The Respondent also argues, at **paragraph 3.5** of the Respondent's Written Address that the prescription of rules by the Attorney General is not a pre-condition to the validity of any exercise of the provisions of **Sections 28 and 29** of the EFCC Act.

50. It is common ground, as between the parties, that no rules currently exist which state the procedure by which the powers created by **Sections 28 and 29** are to be exercised (see **paragraph 3.6** of the Respondent's Written Address. The Respondent however takes the position that the use of the word "*may*" in **Section 26(1)** of the EFCC Act, is permissive and would allow for the exercise of the rights created by those provisions in the absence of any procedural rules.

51. Respectfully, it cannot be correct to suggest that the word "*may*" within the realm of statutory interpretation, and in the context of the EFCC Act, is compulsorily permissive. As was decided in **Ude v Nwara** (1993) 2 NWLR (pt. 278) 638 at 661 E – F:

> ***"I believe that it is now the invariable practice of the courts to interpret "may" as mandatory whenever it is used to impose a duty upon a public***

***functionary the benefit of which enures to a private citizen***. *See on this Chief J.O. Edewor v. Chief M. Uwegba & Ors. (1987) 1 NWLR (Pt.50) 313, at p.339; Mokelu v. Federal Commissioner of Works & Housing (1976) 1 All NLR (Pt.1) 276 at p.282; Aluminium Manufacturing Co. (Nig) Ltd. v. Nigerian Ports Authority (1987) 1 NWLR (Pt.51) 475, at p.487. Kotoye v. Central Bank of Nigeria & Ors. (1989) 1 NWLR (Pt.98) 419. It would be wrong, therefore, to hold that the duty to apply to court for possession was merely permissive or directory as the respondents have urged. Indeed in view of the state of the general law as to the position and right of a former tenant or lessee who holds over, such an interpretation will lead to absurdity and inconsistency as well as to injustice."*

52. Here, the EFCC Act creates a duty to obtain the attachment or forfeiture of an asset suspected to be the proceeds of a crime in accordance with prescribed rules. This duty is not permissive, notwithstanding the use of the word "*may*".

53. The absurdity which arises from interpreting the provisions of **Section 26(1)** permissively is that, even if rules had been prescribed, the Respondent's interpretation would mean that the EFCC would be entitled to choose whether or not to comply with those rules. This clearly cannot be the intention of the legislature. In the same way, applied to **Section 26(1)(a)**, the Respondent's interpretation would give to the EFCC the choice to seize property whether or not that seizure is incidental to an arrest or a search.

54. We refer the Court, respectfully, to the arguments contained at **paragraphs 6 – 21** of the Applicant's Written Address, and in particular at **paragraphs 17 to 20** which have not been met by the Respondent.

55. Further, we restate the importance of procedural rules particularly where prescribed by statute, and refer to the clear assessment provided by the Honourable Justice Nnaemeka-Agu, JSC in **Kalu v Odili** (1992) 5 NWLR (pt. 240) 130 at 169 – 170 E – D as follows:

> *"**It is my view that abstract statements of legal principles without effective rules of practice and procedure usually avail little or nothing.** In terms of dry statements of legal norms, the African Charter of Human and Peoples Rights, for example, is at least as good, if not better, than the European Convention on Human Rights. But because of the presence of rules of practice and effective machinery for enforcement of the latter, it has been such a big success whereas*

*the former is virtually a dead letter because of the absence of both rules of practice and machinery for enforcement. Coming home, between 1960, when fundamental human rights were introduced into the Nigerian Constitution, and 1979, when the Fundamental Rights (Enforcement Procedure) Rules were promulgated, cases on human rights were few and far between. There has been a phenomenal increase in such cases since 1979. Rules of practice and procedure have, therefore, usually been introduced and applied to make determination and enforcement of human and civil rights and obligations possible and effective.*

*Obviously conscious of the importance of rules of practice and procedure, if rights and obligations intended to be enforced under the Constitution can be real and effective, the Constitution itself has provided for and contemplated the making of such rules for, among, others, the Court of Appeal. Hence it is provided in sections 222(b) and 227 of the Constitution 1979 as follows:*

*"222. Any right of appeal to the Court of Appeal from the decisions of a High Court conferred by this Constitution*

*(b) shall be exercised in accordance with any Act of the National Assembly or Decree and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.*

(...)

*227. Subject to the provisions of any Act of the National Assembly or Decree, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal."*

*So, contrary to the attempt of learned counsel for the appellant to belittle the importance of the Court of Appeal Rules, 1981, for the determination and enforcement of rights and obligations, those Rules though made by the President of the Court of Appeal as a delegated legislation, have a constitutional flavour and were in fact contemplated by the Constitution itself. **They prescribe the procedure for the determination and enforcement of rights. Without them those rights could be useless and ineffective. They also regulate how those rights can properly be exercised. A claimant or applicant for those rights is***

*expected to ask for them in accordance with the rules of practice and procedure made for the purpose. Failure to follow those rules may spell a disaster for the application or claim for the right.*"

56. As to the effect where rules are not expressly prescribed, the Court of Appeal has held in **Onagoruwa & Anor v Inspector General of Police & 5 Ors** (1991) 5 NWLR (pt. 193) 593 at 634$^{A-D}$, in relation to grant of a freezing order on the basis of an ex-parte application, as follows:

> *"In other words, before a Judge can give an order under the section, there must be in existence, legal proceeding. And in our context, the legal proceeding must be commenced in accordance with the High Court of Lagos State (Civil Procedure) Rules, 1972 or any other enabling rules, such as the Fundamental Rights (Enforcement Procedure) Rules,1979.* ***It is never the intention of the draftsman that an action is initiated by invoking the section itself.***"

57. We respectfully submit therefore that the exercise of the rights under Section 28 and 29 of the EFCC Act is subject to the mandatory requirement that those rights be exercised in accordance with the prescribed rules. Here, in the absence of prescribed rules, those provisions are inchoate. We urge your Lordship to so hold.

**CONCLUSION**

58. We humbly urge Your Lordship therefore to grant the Motion to Discharge dated 31 January 2017.

DATED THIS 27th DAY OF FEBRUARY 2017

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NIGERIAN BAR ASSOCIATION NBA DANIEL D. KILLI SCN051302 No 03700880

BABATUNDE FAGBOHUNLU, SAN
CHUKWUKA IKWUAZOM
OLUJOKE ALIU
DD KILLI (signed)
HAMID ABDULKAREEM
OLADIMEJI OJO

FEDERAL HIGH COURT
ABUJA
CASHIER
Signature
Date



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ALUKO & OYEBODE
1, MURTALA MUHAMMED DRIVE,
IKOYI, LAGOS
Email tunde.fagbohunlu@aluko-oyebode.com

FOR SERVICE ON:

CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION
C/O
ALIYU M. YUSUF
JONSON OJOGBANE (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

DEPARTMENT OF PETROLEUM RESOURCES
7, KOFO ABAYOMI STREET
VICTORIA ISLAND
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