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

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

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

BETWEEN:
MALABU OIL AND GAS LIMITED ..... **APPLICANT**

AND

1. **SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED**
2. **NIGERIAN AGIP EXPLORATION LIMITED**
3. **CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION**

} **RESPONDENTS**

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 26 RULE 1 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2009, AND UNDER THE INHERENT POWERS AND JURISDICTION OF THE HONOURABLE COURT.

TAKE NOTICE that this Honourable Court will be moved on the ---------- day of ---------- 2017 in the hour of 9 O' clock in the forenoon, or so soon thereafter, as counsel may be heard on behalf of the Applicant praying for the following orders:

1. **AN ORDER** of this Honourable Court staying ruling in the applications of Shell Nigeria Exploration and Production Company Limited and Nigerian Agip Exploration Limited in Suit FCT/ABJ/CS/14/17 dated 1st February, 2017 and 31st January, 2017 respectively pending hearing and determination of the Applicant's Motion on Notice dated 24th February, 2017 and filed on 27th February, 2017.

2. **AND ORDER** of this Honourable Court re-opening the hearing of the said 1st and 2nd Respondents' applications dated 1st February, 2017 and 31st January, 2017 respectively.

GROUNDS UPON WHICH THE APPLICATION IS BROUGHT:

i. The Applicant filed its application to be joined as a Respondent to the 1st and 2nd Respondents' applications dated 1st February, 2017 and 31st January, 2017.

ii. The Registry of the Honourable Court could not have the said applicant's processes in the file of the Honorable Judge filed when the court had started sitting.

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iii. That the Applicant herein shall be greatly prejudiced if a decision is given one way or the other without hearing it's application for joinder.

iv. The tenets of fair hearing dictates that the Applicant's applications dated the 24th day of February and 27th February, 2017 be determined one way or the other before a decision is reached on the said 1st and 2nd Respondents' application.

Dated this 1st day of March, 2017

NIGERIAN BAR ASSOCIATION NBA RUEBEN O. ATABO SCN012576 Valid TO MARCH 2017

Abdullahi Haruna Esq.
Dr. Reuben O. Atabo
Seth Nixon Esq.
H. L. Haruna (Mrs.)
H. S. Bello (Miss)
PP: R.O. ATABO & Co.
(Solicitors to Applicants)
1st Floor, City Plaza
No. 7 Rukuba Close,
Off Nkwere Street,
Off Muhammadu Buhari Way
Garki, Abuja.
Tel: 08033588999
Email:reubenatabo@hotmail.com

M/N- ₦200.00
F/O- ₦200.00
S/O- ₦100.00
W/A- ₦100.00
Service- ₦150.00
₦750.00

FOR SERVICE ON:

1. The 1st Respondent
   C/O its Counsel
   Godswill Iwuajoku,
   OLANIWUN AJAYI LP,
   Lead way House,
   4thFloor, Plot 1061,
   Herbert Macauly way, (Beside NNPC Towers)
   Central Business District, Abuja

2. The 2nd Respondent
   C/O its Counsel
   BabatundeFagbohunlu, SAN
   Aluko & Oyebode
   1, MurtalaMuhammed Drive,
   Ikoyi Lagos

3. The 3rd Respondent
   C/o its Counsel,
   Aliyu M. Yusuf.
   Legal and Prosecution Department,
   Economic and Financial Crimes Commission.
   No. 1, Hombori Street, Off Freetown Street,
   Off AdetokunboAdemolaCresent,
   Wuse II, Abuja.

FEDERAL HIGH COURT
ABUJA
CASHIER
Signature
Date

3301-5214-5314

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7/3/17

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

SUIT NO. FHC/ABJ/CS/14/

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

BETWEEN
MALABU OIL AND GAS LIMITED ..... **APPLICANT**

AND

1. **SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LIMITED**
2. **NIGERIAN AGIP EXPLORATION LIMITED**
3. **CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION**

} **RESPONDENTS**

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Solomon Agada Jacob, Male, Adult, Christian, a Nigerian of No. 7, Rukuba Close, off Nkwere Street, Off Muhammadu Buhari Way, Abuja do hereby make oath and state as follows:

1. That I am a legal practitioner in the office of R. O. Atabo & Co. Counsel to the Applicant herein and by virtue of my said position, I am conversant with the facts of this case.

2. That I have the authority of the Applicant through Mohammed Sani and Otumba Oyewole Fashawe of Pecos Energy limited and that of my employers to depose to this affidavit.

3. That the facts deposed to herein are derived from my personal knowledge and documents I have read and worked on as well as from Mohammed Sani and Otumba Oyewole Fashawe on 27th February, 2017 at about 3pm at No. 7, Rukuba Close, Off Nkwere Street, Off Muhammadu Buhari Way, Garki II, Abuja, which I believe to be true.

4. That the Applicant through our law firm on 24th February, 2017 prepared an application for joinder as a 2nd Respondent in the 1st and 2nd Respondents' applications dated 1st February, 2017 and 31st February, 2017 respectively.

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ABUJA

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5. That the process of filing the Applicants' application on 27th February, 2017 took over one hour thirty minutes due to the bulky nature of the documents and officials of the registry had to generate RRR number and a code before payment could be effected.

6. That apart from being bulky, there were many exhibits to the Applicants' application which must be stamped and signed by Commissioner for Oath.

7. That when the Applicant started processing its application in the registry for filing, there was no network to generate RRR and to be given a code before the payment preparatory for filing.

8. That the network resume at about 9:37am.

9. That at the time the Applicant completed the process of filing, the Honourable Judge had started sitting in the open court.

10. That I am aware that in the Federal High Court in Abuja, once a judge starts sitting, no process is allowed to get to the Judge's file for matters listed in the day's cause list except with the permission of the Judge.

11. That the Applicant filed the said application on 27th February, 2017 but could not be placed in the Judge's file as the court had commenced sitting.

12. That an application by Abdullahi Haruna Esq. in open court to stand down Suit No: FHC/ABJ/CS/14/2017 to enable the Applicant bring before the Honourable Court the processes filed was refused in the wisdom of the Honourable Court.

13. That the 1st and 2nd Respondents' applications were eventually heard without hearing the Applicant herein.

14. That the Applicant's application filed on 27th February, 2017 seeking a joinder is to bring out germane issues to be decided by the Honourable Court.

15. That on 27th February, 2017 the Respondents in this application were all served with the Applicant's applications for joinder dated and filed on the 24th and 27th February, 2017 respectively.

16. That it shall serve the greater interest of justice for this application to be heard before final determination of the 1st and 2nd Respondents' application dated 1st February, 2017 and 31st January, 2017 respectively.

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17. That it is in the interest of justice and fair hearing to grant this application.

18. That the grant of this application shall not prejudice the Respondents in any way.

19. That I depose to this affidavit conscientiously believing the contents to be true and correct and in accordance with the oaths Act.

.....
DEPONENT

Sworn to at the Federal High Court Registry,

Abuja this ...1st...day of March, 2017.

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

FEDERAL HIGH COURT
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Signature...
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IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVITION
HOLDEN AT ABUJA

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

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

BETWEEN
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AND

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2. **NIGERIAN AGIP EXPLORATION LIMITED**
3. **CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION**

} **RESPONDENTS**

WRITTEN ADDRESS IN SUPPORT OF MOTION ON NOTICE

1.0 INTRODUCTION

1.1 Before my lord is an application brought Pursuant to Order 26 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2009, and under the inherent powers of the Honourable Court seeking:

1. **AN ORDER** of this Honourable Court staying ruling in the applications of Shell Nigeria Exploration and Production Company Limited and Nigerian Agip Exploration Limited in Suit FCT/ABJ/CS/14/17 dated 1st February, 2017 and 31st January, 2017 respectively pending hearing and determination of the Applicant's Motion on Notice dated 24th February, 2017 and filed on 27th February, 2017.

2. **AND ORDER** of this Honourable Court re-opening the hearing of the said 1st and 2nd Respondents' applications dated 1st February and 31st January, 2017 respectively.

1.2 The grounds for the application are as set out on the face of the motion paper. The application is supported by 13 paragraph affidavit deposed to by one Solomon Agada Jacob. We rely on the contents of the affidavit particularly paragraph 4-19 in urging this Honourable Court to grant this application.

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2.0 **ISSUES FOR DETERMINATION**

2.1 The Applicant views the following issue as apt for the determination of this Honourable Court:

2.2 Whether the Applicant's application has merit and deserve to be granted?

3.0 **ARGUMENT**

3.1 it is our humble submission that the Applicant herein having established its interest in the outcome of the 1st and 2nd Respondents application dated 1st February, 2017 and 31st January, 2017 the court cannot shut it's doors against her.

3.2 We submit that an application of this nature requires the exercise of the discretionary powers of this court which should be exercised judiciously and judicially.

3.3 My Lord, paragraphs 4 to 19 of the Applicant's affidavit in support of the Motion on Notice deposed to by Solomon Jacob Agada has chronicled the reasons why the Applicants application could not be taken into the Judge's file before the court commenced sitting.

3.4 The law is settled that parties (whether necessary or interested) ought to be given opportunity to be heard before the court to make a decision one way or the other in determining the interest of the party. This my lord is empowered to do even after a matter is heard and adjourned for judgment or ruling, given the nature and importance of an application for joinder as in this case.

3.5 It is our humble submission that the nature of this application is one seeking the leave of court to stay its ruling adjourned to 13th March, 2017 and re-open the hearing of the 1st and 2nd Respondents' applications dated 1st February, 2017 and 31st January, 2017 respectively for purpose of hearing the Applicant herein on the 1st and 2nd Respondents' application before the ruling of the Honourable Court, as the interest of the Applicant will certainly be affected by the outcome of my lord's decision on the said application.

3.6 This Honourable Court is enjoined to allow a party interested to join a suit or application at any stage as this accords with the principle of fair hearing protected by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In **IMEGWU V. ASIBELUA (2012) NWLR (Pt. 1289) 119 @ 131-132, paras. H-A,** the above principle was aptly captured thus:

> **"When a suit has been filed, the trial Judge becomes dominus litis and he assumes the duty and responsibility to ensure that the proceedings agree with the justice of the case by joining either as plaintiffs or defendants, all the persons who may be entitled to or who claims some**

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share or interest in the subject matter of the suit or may likely be affected by the results if they had not already be parties."

3.7 Therefore, since joinder of parties is crucially sacrosanct in the administration of justice, the court is empowered to hear all applications before it even after hearing a suit or an application before judgment or ruling. This position the Court of Appeal maintained in **NWANKUDU V. IBETO (2011) 2 NWLR (Pt. 1231) 209 @ 230-231, paras. G-C,** in the following words:

> **"In Newswatch communications Limited V. Atta (supra) @ pg. 168 of the NWLR, the Supreme Court held that any motion filed before the delivery of a judgment must be heard and determined by the court before the judgment is delivered. In Newswatch Communication limited V. Atta supra, the trial court incorporated his decision in respect of the motion to arrest the judgment in the main judgment itself. The Supreme Court held that it was proper so long as he consider the motion and took a decision on it before delivery of the judgment."**

3.8 The Supreme Court reiterated the said position in **F.A.A.N V. W.E.S. (NIG) LTD (2011)ALL FWLR (Pt. 574) 42 @ 56, paras. E-G,** thus:

> **"It is the law that a court of law has neither jurisdiction nor discretionary power to refuse to take a pending process before it, whatever may be its pretrial opinion on it. The process may be a down right abuse of the judicature as an institution. It may be stupid, reckless, irregular, aberrant or unmeritorious but still, the court must hear it and rule on it: Elike V. Nwankwoala (1984) 12 SC 301, cited also by learned counsel for the appellant. Indeed, it is the duty of a court to entertain and decide on the merit or otherwise of any application brought before it by any party notwithstanding the perceived strength or weakness of such application. It is a party's basic and Constitutional right which he cannot be denied of:"**

3.9 In view of the authority cited and the legal position maintained therein, we urge my lord to exercise his discretion favourably in granting this application. This is more so that the Applicant's pending application for joinder as 2nd Respondent to the 1st and 2nd Respondents' application dated 1st February, 2017 and 31st January, 2017 respectively were filed at the registry of the Honourable Court but could not be in my lord's file before the matter was called for the day's business.

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3.10 We urge my lord to grant this application in order to allow the Applicant herein to be heard on the issue of its joinder; this, my lord will bring the germane issues properly before the court, before my lord can conclusively rule on the 1st and 2nd Respondents' applications dated 1st February, 2017 and 31st January, 2017 respectively.
My lord is urged to grant this application in the overall interest of justice by resolving the lone issue for determination in favour of the Applicant.

4.0 **CONCLUSION**

4.1 On the whole, we submit that this application is deserving of the exercise of my lord's discretion in the Applicant's favour as doing so shall aid the justice of the case.

4.2 We urge my lord to tow the line of the Supreme Court and the Court of Appeal in determining this application in favour of the Applicant.

Dated this ...1st..... day of March, 2017.

NIGERIAN BAR ASSOCIATION
NBA
RUBEN O. ATABO
SCN012576
Valid Till MARCH 2017

Abdullahi Haruna Esq.
Dr. R.O. Atabo
Seth Nixon Esq.
H. L. Haruna (Mrs.)
H. S. Bello (Miss)
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FOR SERVICE ON:

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C/O its Counsel
Godswill Iwuajoku,
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Central Business District, Abuja

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2. The 2nd Respondent
   C/O its Counsel
   BabatundeFagbohunlu, SAN
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   1, MurtalaMuhammed Drive,
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(E-O 9th)