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IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE KADUNA JUDICIAL DIVISION  
HOLDEN AT KADUNA

ON TUESDAY THE 4<sup>TH</sup> DAY OF JULY, 2017 BEFORE HIS LORDSHIP,  
THE HONOURABLE JUSTICE S. M. SHUAIBU  
JUDGE

SUIT NO: FHC/KD/CS/20/2017

**BETWEEN:**

ECONOMIC AND FINANCIAL CRIMES  
COMMISSION - **APPLICANT/RESPONDENT**

**AND**

ABDULLAHI DIKKO INDE - **RESPONDENT/APPLICANT**

**RULING**

On the 24<sup>th</sup> day of February, 2017 and at the instance of the Economic and Financial Crimes Commission (EFCC), this Court made an interim order of forfeiture in relation to seventeen (17) vehicles belonging to the Respondent/Applicant herein, **ABDULLAHI DIKKO INDE**. The Court in the interim, made an order forfeiting the vehicles to the Federal Government of Nigeria, pending the conclusion of investigation already initiated by the Economic and Financial Crimes Commission (EFCC) against the Respondent/Applicant.

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In the affidavit in support of the Ex-parte Application by the Economic and Financial Crimes Commission (EFCC), pursuant to which the interim order of forfeiture was made, the Deponent, **ADAMU WAZIRI**, an investigation officer with the Economic and Financial Crimes Commission (EFCC), deposed that the Respondent/Applicant herein, **ABDULLAHI DIKKO INDE**, the immediate past comptroller-General of the Nigeria Customs Service, is being investigated by the Commission for Financial Crimes.

That in the course of the investigation, the operatives of the Economic and Financial Crimes Commission (EFCC), were able to recover seventeen (17) vehicles from a warehouse located at Dr. Nnamdi Azikiwe Road, (close to Advance Filling Station off Bypass), Kaduna. That investigation further revealed based on the statements of one **AHMED BALARABE** and **DANTATA MOHAMMED**, who were in charge of the warehouse at the time, that the warehouse and indeed the seventeen (17) vehicles belong to the Respondent/Applicant, **ABDULLAHI DIKKO INDE**.

The Deponent, **ADAMU WAZIRI** further deposed that the Economic and Financial Crimes Commission (EFCC) reasonably

suspected that the vehicles were purchased with proceeds of financial crimes for which the Commission is already investigating the Respondent/Applicant. Consequently the Economic and Financial Crimes Commission (EFCC) seized and took custody of the seventeen (17) vehicles and filed an Ex-parte Application before the Court dated 22<sup>nd</sup> and filed on the 23<sup>rd</sup> day of February, 2017 seeking for an interim order forfeiting the vehicles to the Federal Government of Nigeria pending the conclusion of Investigation. The interim order sought by the Economic and Financial Crimes Commission (EFCC) was granted on the 24<sup>th</sup> day of February, 2017,

By a motion dated 1<sup>st</sup> and filed on the 7<sup>th</sup> day of March, 2017, the Respondent/Applicant herein, **ABDULLAHI DIKKO INDE** through his Learned Senior Counsel, **MAHMUD ABUBAKAR MAGAJI, SAN**, filed a Motion on Notice, seeking the following reliefs:-

1. *An order dismissing this Suit or action; Alternatively.*
2. *An order striking out this Suit or action. Or in the alternative.*

3. *An order setting aside, discharging or vacating the interim order made by this Honourable Court on the 24<sup>th</sup> February, 2017 granting interim forfeiture to the Federal Government of Nigeria of seventeen (17) vehicles pending the conclusion of investigation.*
4. *An order staying, injuncting or suspending the effect of the interim order made by this Honourable Court on the 24<sup>th</sup> day of February, 2017, granting interim forfeiture to the Federal Government of Nigeria of seventeen (17) vehicles pending the conclusion of investigation.*
5. *Declaration that the provisions of **Sections 24, 25, 26, 27 and 28** of the Economic and Financial Crimes Commission (Establishment etc) Act, Cap. E1, Laws of the Federation of Nigeria 2004 is (sic) unconstitutional, null and void for conflicting the provisions of **Sections 32, 36(5), 43 and 44** of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*



6. *And for such further order(s) as this Honourable Court may deem fit to make in the circumstance.*

The grounds upon which the reliefs are sought are given on the body of the motion paper as follows:-

1. *Sections 28 and 29 of the Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1, LFN 2004 are inoperative, the Attorney-General of the Federation having not enacted any prescribed rules to bring the said provisions into effect. Consequently this Honourable Court lacks jurisdiction to make any orders under those provisions.*
2. *Section 29 of the Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1, LFN 2004, upon which the Ex-parte Application was predicated conflicts with Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and has been declared to be (for that reason) null and void. Consequently, the Ex-parte Application, and by extension, the order*

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ought not to have been made and are incompetent; and having been made on the basis of a null provision, the order is itself null and void.

3. The provision of **Sections 24, 25, 26, 27 and 28** of the Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1, LFN 2004 is (sic) unconstitutional, null and void for conflicting the provision of **Sections 32, 36(5), 43 and 44** of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. To the extent that Ex-parte Application purports to have been made pursuant to **Section 28** of the Economic and Financial Crimes Commission (EFCC) Act, ought to have been brought by way of a Motion on Notice. **Section 28** does not authorise the application for interim attachment to be by way of Ex-parte Application. In the absence of express statutory authorization, an Ex-parte Application brought pursuant to **Section 28** violates **Section 36** of the Constitution and is therefore null and void;



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5. *In making the Ex-parte Application, the Economic and Financial Crimes Commission (EFCC) failed to disclose to this Honourable Court facts which, to its knowledge defeat the depositions contained in the affidavits of **ADAMU WAZIRI** and deposed to in support of the Ex-parte Application. This being the case, the order ought to be discharged; and*
  
6. *Without prejudice to (a) and (b) above the Economic and Financial Crimes Commission (EFCC) has failed to satisfied (sic) the pre-conditions to the making of an application for interim attachment, as provided for by the Economic and Financial Crimes Commission (EFCC) Act. That is showing (a) that the asset sought to be attached is one which has been seized by the Economic and Financial Crimes Commission (EFCC) prior to making the application, and (b) that the asset sought to be attached is one liable to forfeiture within the meaning of the Economic and Financial Crimes*

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*Commission (EFCC) Act. Having failed to meet these pre-conditions, the Ex-parte Application was irregular, and the order granted on the basis of that application ought to be discharged.*

The application is supported by an affidavit of **12 Paragraphs** deposed to by **UDZAHU MEDUGU**, a Legal Practitioner in the Law Firm of the Learned Counsel for the Respondent/Applicant. The affidavit has one (1) annexure referred to in **Paragraph 5** and marked **Exhibit "MAM 1"**. **Exhibit "MAM 1"** is the Certified True Copy of the order of this Court made on the 24<sup>th</sup> and dated 27<sup>th</sup> day of February, 2017.

Finally, there is a written address being the argument in support of the grounds of the application. The written address was settled by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN.**

Let me point out at this stage, that this application was originally filed for and on behalf of **ABDULLAHI DIKKO INDE, AHMED BALARABE** and **DANTATA MOHAMMED** as Respondents/Applicants. However on the 23<sup>rd</sup> day of May, 2017, a Counsel, **ABDUL ALIYU ESQ.** appeared for the 2<sup>nd</sup> and 3<sup>rd</sup>

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Respondents/Applicants i.e. **AHMED BALARABE** and **DANTATA MOHAMMED**. On that day, the Learned Counsel drew attention of the Court to a notice filed on the 18<sup>th</sup> day of May, 2017 indicating that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants are not interested in the pursuit of the claim and that same was filed or commenced without their authorisation or consent. Accordingly the names of the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents/Applicants were struck out, leaving **ABDULLAHI DIKKO INDE** as the only Respondent/Applicant in the proceedings.

In line with the notice filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants each filed a Counter-Affidavit on the 13<sup>th</sup> day of March, 2017. In each case, the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents dissociated themselves from the motion filed on the 7<sup>th</sup> day of March, 2017. In each of the affidavits, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants, i.e. **AHMED BALARABE** and **DANTATA MOHAMMED** respectively, deposed that **UDZAHU MEDUGU**, lied under Oath when she deposed in **Paragraph 3** of the affidavit in support of the motion, that she has their consent and authority to depose to the affidavit.



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On the 18<sup>th</sup> day of May, 2017 the Applicant/Respondent, the Economic and Financial Crimes Commission (EFCC) filed a Counter-Affidavit opposing the application by the Respondent/Applicant dated 1<sup>st</sup> and filed on the 7<sup>th</sup> day of March, 2017. The Counter-Affidavit was deposed by **ADAMU WAZIRI**, an operative of the Economic and Financial Crimes Commission (EFCC). It consists of **14 Paragraphs**. It has three (3) annextures marked **Exhibits "EFCC 1", "EFFCC 2" and "EFCC FORM CCB1"**.

**Exhibit EFCC 1** is a copy of a Regulations made by the Attorney-General of the Federation, pursuant to **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act. **Exhibit EFCC 2** are the extra judicial statements of **AHMED BALARABE** and **DANTATA MOHAMMED** in which they confirmed to the Economic and Financial Crimes Commission (EFCC) that the seventeen (17) vehicles recovered from the warehouse belong to **ABDULLAHI DIKKO INDE**. **Exhibit EFCC FORM CCB1**, is a copy of Assets Declaration Form of **ABDULLAHI DIKKO INDE**. The Economic and Financial Crimes Commission (EFCC) said that the seventeen (17) vehicles, the Subject-Matter of the

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present proceedings, were not declared by the Respondent/Applicant.

The Counter-Affidavit by the Economic and Financial Crimes Commission (EFCC), was filed along with a written address in support. The written address was settled by the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.**

Before then, the Respondent/Applicant had filed on the 4<sup>th</sup> day of April, 2017, a composite further affidavit to the Applicant/Respondent's Counter-Affidavits dated 13<sup>th</sup> day of March, 2017 respectively. The composite further affidavit was deposed to by **UDZAHU MEDUGU**. It consists of **10 Paragraphs**. The composite further affidavit was filed along with a written address in support. The written address was settled by the Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN.**

Now, this is a review of the processes filed in this proceedings. On the 22<sup>nd</sup> day May, 2017, therefore, the respective Learned Counsel adopted their written addresses.

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I need to point out that the composite further affidavit and the written address filed for **ABDULLAHI DIKKO INDE** as Respondent/Applicant is in response to the Counter-Affidavits filed by **AHMED BALARABE** and **DANTATA MOHAMMED**, hitherto 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants respectively. However at the instance of their Learned Counsel and pursuant to a notice filed and taken, **AHMED BALARABE** and **DANTATA MOHAMMED** by order of Court made on the 23<sup>rd</sup> day of May, 2017, ceased to be parties in the proceedings. On that day the Court made an order striking out their names as 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Applicants in the proceedings. That being the case, their Counter-Affidavits filed on the 13<sup>th</sup> day of March, 2017 therefore, cannot be countenanced by the Court. The contents of those Counter-Affidavits by **AHMED BALARABE** and **DANTATA MOHAMMED** cannot be a basis upon which the Court can reach a decision in this matter or resolve any issue arising in the proceedings since they are no longer parties thereto.

On the 22<sup>nd</sup> day of May, 2017 when the respective Learned Counsel in the matter adopted their written addresses, the Learned Counsel for the Economic and Financial Crimes, placed reliance on the Counter-Affidavits of **AHMED BALARABE** and

**DANTATA MOHAMMED**. That cannot be. **AHMED BALARABE** and **DANTATA MOHAMMED** are no longer parties in the proceedings. Any processes they filed before they ceased to be parties cannot be countenanced by the Court.

Consequently, reliance by the Learned Counsel for the Economic and Financial Crimes Commission (EFCC), on the Counter-Affidavits of **AHMED BALARABE** and **DANTATA MOHAMMED**, is misplaced. Similarly the Court shall and I hereby discountenance the Counter-Affidavits filed by **AHMED BALARABE** and **DANTATA MOHAMMED** on the 13<sup>th</sup> day of March, 2017. I also discountenance the composite further affidavit and the written address filed by the Respondent/Applicant on the 4<sup>th</sup> day of April, 2017 in response to the Counter-Affidavits of **AHMED BALARABE** and **DANTATA MOHAMMED** filed on the 13<sup>th</sup> day of March, 2017.

In the written address in support of the application, the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN**, argued along the five (5) grounds upon which the application is brought as the issues

arising for determination. I have already before now re-produced those grounds fully somewhere in this Ruling.

On the first ground, the Learned Senior Advocate submitted that the Law is settled that the Constitution is the **fundnorm** and Bed rock of all Statutes, Acts and Legislation in Nigeria. That it is equally settled that any provisions of any statute that conflict with any Constitutional provisions stand null and void to the extent of its inconsistency. He referred the Court to the provisions of **Sections 1(1) and (3)** of the Constitution, 1999 (as amended) as well as the case of **A.G. ABIA STATE VS. A.G. FEDERATION (2003) FWLR PART 152 AT PAGE 131.**

The Learned Senior Advocate then submitted that the combined effect of the provisions of **Sections 24, 25, 26, 27 and 28** of the Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1, LFN 2004 seek to deprive an individual the right to own property arbitrarily without the opportunity of been heard in the determination of his civil right and obligation contrary to the Letters and spirit of the Constitution.

That those provisions of the Economic and Financial Crimes Commission (EFCC) Act do not make provisions for the final



determination of the right of an individual before a competent Court of Law as regard to his culpability or otherwise before his property is forfeited to the Federal Government. That this is a direct affront on the Constitutional presumption of innocence as contained in **Section 36(5)** of the Constitution which inures in favour of any person accused of the commission of any offence.

He further submitted that **Sections 43** and **44** of the Constitution guarantees to every citizen the right to own property in any part of Nigeria. That the Constitution also protect ownership of the property from arbitrary deprivation, save in accordance with the provisions of the Law. That the only recognizable exception is as provided for under **Section 44(2) (b)** of the Constitution, which requires that properties can only be forfeited upon conviction for an offence.

That in the instant case, the Respondent/Applicant, **ABDULLAHI DIKKO INDE** was not charged or arraigned before any Court before the interim order of forfeiture was granted or made on the 24<sup>th</sup> day of February, 2017. That indeed the Respondent/Applicant is not being investigated as he was neither



invited nor was any petition submitted to the Economic and Financial Crimes Commission (EFCC) against him.

The Learned Senior advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI SAN**, urged the Court to declare **Sections 24, 25, 26, 27 and 28** of the Economic and Financial Crimes Commission (EFCC) Act, unconstitutional, null and void for conflicting with the provision of **Sections 32, 36(5), 43 and 44** of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). He urged the Court to resolve the first issue in favour of the Respondent/Applicant.

On the second issue as formulated by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, Counsel argued that the application leading to the interim order of forfeiture was made by the Economic and Financial Crimes Commission (EFCC), pursuant to **Sections 24(a), 26(1) (a) and 28 and 29(a) and (b)** of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004.

That an application under **Sections 28 and 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, could

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only be made in accordance with prescribed Rules as provided in **Section 26(1) (b)** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004. Learned Counsel therefore argued that the existence of the prescribed Rules is a condition precedent to bringing the application. That where the prescribed Rules under **Section 26(1) (b)** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, have not been made, as in the instant case, it means the provisions of **Sections 28 and 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 are inoperative and inchoate, as the condition precedent to activate their application does not exist. Learned Senior Counsel cited the case of **NIGERCARE DEVELOPMENT COMPANY LIMITED VS. ADAMAWA STATE WATER BOARD (2008) 9 NWLR PART 1093 PAGE 498**, the case of **OSAFIRE VS. ODI (1990) 3 NWLR PART 137 PAGE 130 AT 160** as well as the case of **OLANIYAN VS. UNILAG (1985) 2 NWLR PART 9 PAGE 59 AT 63**.

The Learned Senior Advocate argued that the relevant provisions of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, on seizure and interim attachment or forfeiture of property, is a penal provision. That consequently, the Court is

enjoined to construe them strictly to ensure that every procedural steps prescribed by Law are duly followed and complied with. The case of **OGBONI VS. OJAH (1989) 1 NWLR PART 100 PAGE 725** was cited in support of this submissions.

Learned Senior Advocate then submitted that **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 confers on the Attorney-General of the Federation the powers to make Rules and Regulations with respect to the exercise of any of the duties, functions or powers of the Commission. That to date, no such Rules and Regulations have been made. That consequently the provision of **Sections 28 and 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 is inchoate and inoperative, as a condition precedent for their application does not exist. For this reason therefore, the Learned Senior Advocate, **MAHMUD ABUBAKAR MAGAJI, SAN**, argued that the Court lacked the jurisdiction it exercised on the application by the Economic and Financial Crimes Commission (EFCC) leading to the interim forfeiture order the Court made on the 24<sup>th</sup> February, 2017. He urged the Court to discharge the order on this ground.

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On the third issue as formulated by the Learned Senior Counsel for the Respondent/Applicant, Counsel argued that **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, upon which the Ex-parte Application was predicated, conflicts with the provision of **Section 36** of the Constitution, 1999 (as amended), on Right to Fair Hearing. That consequently, this Court lacked the jurisdiction it exercised leading to the interim forfeiture order the Court made on the 24<sup>th</sup> day of February, 2017. Counsel argued that at the time the Ex-parte Application was filed, **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 had been declared by the Court of Appeal, pursuant to **Section 1(3)** of the Constitution, 1999 (as amended), to be unconstitutional and consequently null and void. That the basis for such a declaration by the Court of Appeal is that the said **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, contravenes the provision of **Section 36(5)** of the Constitution, 1999 (as amended) which guarantees that every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty. The Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN**, cited the case of

**NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (2009) 26  
NWLR PART 1166 PAGE 169 AT 201 PARAGRAPHS B - C.**

Counsel quoted extensively from that decision.

It is the further argument of the Learned Senior Counsel on the issue, that outside the express declaration made by the Court of Appeal in respect of **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 in the case of **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**, the fact that the interim order of forfeiture was made by Court without first affording the Respondent/Applicant a hearing, then the application upon which the order was made and the order itself are unconstitutional for violating the right of the Respondent/Applicant to Fair Hearing as guaranteed to him by the provisions of **Section 36** of the Constitution, 1999 (as amended). He cited the case of **ADIGUN VS. A.G. AYO STATE (1987) 1 NWLR PART 53 PAGE 678** and submitted that any proceedings conducted in breach of the Constitutional Right to Fair hearing is a nullity *ab initio*.

Counsel further submitted that even **Section 44(2) (k)** of the Constitution, 1999 (as amended), which allows for the temporary



taking of possession of property for the purpose of any examination, investigation or enquiry, does not permit the making of such application on an Ex-parte basis.

On the necessity of notice in proceedings affecting the rights and obligation of a citizen, the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant cited the case of **LEEDO PRESIDENTIAL MOTEL VS. BANK OF THE NORTH LIMITED (1998) 10 NWLR PART 570 PAGE 353 AT 380-381**, wherein the Supreme Court:-

*I should myself think that an Ex-parte 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.*

Finally, on this issue, the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN**, argued that in so far as the interim order of forfeiture made by this Court, is made to last until the conclusion of investigation, it means the order has no time frame. That it is an order of unlimited duration. That this being the case, it violates the principle of Law on interim orders as enunciated by the Supreme Court in the case of **KOTOYE VS. C.B.N. (1989) 1 NSCC PAGE 238 AT 250 and 255.**

The Learned Senior Advocate urged the Court to resolve this issue in favour of the Respondent/Applicant.

On the fourth issue as formulated by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, Counsel argued that the order for interim forfeiture made by this Court on the 24<sup>th</sup> day February, 2017 is bound or liable to be set aside because, the Economic and Financial Crimes Commission (EFCC) had failed to satisfy the condition precedent for the grant of such an order as mandated by the Law setting up the

Commission. That by **Sections 28** and **29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, the order could only be made if the property, the Subject-Matter of the proceedings have been legally seized by the Commission and secondly the Commission had shown that the property in question were proceeds of crime. That in the instant case, Learned Counsel submitted, that those pre-conditions were not met before the Court made the interim forfeiture order of 24<sup>th</sup> day of February, 2017.

Learned Senior Counsel therefore urged the Court to vacate the Ex-parte Order on the ground that the preconditions for the grant of the interim forfeiture order were not met.

On the fifth and final issue, the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, argued that the proceedings by the Economic and Financial Crimes Commission (EFCC) against the Respondent/Applicant, qualify as an abuse of judicial process. That the proceedings is oppressive to the person of **ABDULLAHI DIKKO INDE**, against whom the process is applied. Learned Counsel cited the case of **DINGYADI VS. INEC**

**PARAGRAPHS E G.**

That the purpose of the power of interim attachment provided for in the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 is to prevent assets believed to be proceeds of crime from being dissipated during investigation or trial so as not to render the final Judgment of the Court nugatory. Counsel cited the case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (2012) LPELR 19732 (CA)**.

Learned Counsel submitted that in the instant case, there is absolutely no risk that the seventeen (17) vehicles could be destroyed or dissipated before conclusion of investigation and or trial. That the vehicles are not perishable goods capable of destruction or dissipation. He argued that there is no basis for the pre-emptive and unnecessary imposition of punitive measures on the Respondent/Applicant, when the mischief that the power of interim forfeiture seeks to remedy does not exist.

The Learned Senior Advocate added that the Economic and Financial Crimes Commission (EFCC) is not entitled to exercise the statutory powers in the Act establishing it at the whim of the

Commission to needlessly trigger judicial process to the prejudice and annoyance of the Respondent/Applicant, when there is no risk that the property will dissipate or perish.

In conclusion, the Learned Senior Advocate urged the Court to grant the reliefs sought by the application.

While adopting his written address on the 23<sup>rd</sup> day of May, 2017, the Learned Senior Advocate, placed reliance on the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009. In relation to those provisions, Counsel also referred the Court to the case of **OLIVER VS. DANGOTE (2009) 10 NWLR PART 1150 PAGE 467 AT PAGES 489 - 490.**

In the written address by the Learned Counsel for the Economic and Financial Crimes Commission (EFCC), its Learned Counsel, **B.M. BUHARI ESQ.** adopted the issues formulated by the Learned Senior Counsel for the Respondent/Applicant. Learned Counsel for the Applicant/Respondent, responded to the five (5) issues as serially raised and argued by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant.

On the first issue, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued in reply that the provisions of **Section 36(5)** of the Constitution, 1999 (as amended) is inapplicable at this stage. That there is no charge yet before the Court against **ABDULLAHI DIKKO INDE**, the Respondent/Applicant in this proceedings. Learned Counsel also argued that the provisions of **Sections 43** and **44(1)** of the Constitution, 1999 (as amended) are subject to the provision of **Section 44(2) (k) (Supra)**. On this point, Learned Counsel for the Applicant/Respondent, **B.M BUHARI ESQ.** cited the case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (2014) 12 NLWR PART 1422 PAGE 607 - 608, PARAGRAPHS F - B; 609 - 610 PARAGRAPHS H - A.**

Counsel submitted that an application for interim order of forfeiture or attachment of suspected proceeds of crime under **Sections 28** and **29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 is not a criminal proceeding. That such application is a procedural step in the investigation process and the order sought is preservatory.

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Learned Counsel, **B.M. BUHARI ESQ.** cited the case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** where the Court of Appeal said that:-

*An interim order for the preservation of assets is obtainable immediately after the commencement of investigation and to last till final determination of the criminal charge that may be initiated against the accused person.*

Learned Counsel for the Applicant/Respondent argued that the interim order made by this Court on the 24<sup>th</sup> day of February, 2017 did not finally determined the right of the Respondent/Applicant to the property, the Subject-Matter of the interim order. Counsel therefore submitted that the case of **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** cited by the Learned Senior Counsel for the Respondent/Applicant, is not applicable to the present proceedings.

On the second issue as raised and argued by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, that the provisions of **Sections 28** and **29** of the Economic and



Financial Crimes Commission (EFCC) Act, LFN 2004 are inoperative, as the Attorney-General of the Federation has not made Rules and Regulations for their application as required by **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued in reply that the provision of **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 is not couched in mandatory terms.

The Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** submitted that the operative word in **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 is may. That the use of that word connotes that the Attorney-General of the Federation is not mandated to make those Rules and Regulations before the Application of the provision of **Sections 28** and **29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004. The Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ** cited the case of **ORAKUL RESOURCES LIMITED VS. NCC (2007) 16 NWLR PART 1060 PAGE 270**, on the construction to place on the word may, when used in a statute.

Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** further argued in reply that in any case, the Attorney-General of the Federation had already made enforcement Rules for the Applicant/Respondent, pursuant to **Section 43** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004. Counsel referred to the *Federal Republic of Nigeria official gazette No. 61 of 2010 in volume 97 and cited as Economic and Financial Crimes Commission (Enforcement) Regulations, 2010.* Learned Counsel argued that the Regulations have been in existence since 2010.

On the third issue as argued by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, that **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, has been declared unconstitutional, null and void for being in conflict with the provision of **Section 36** of the Constitution, 1999 (as amended) on Fair Hearing, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued in reply that the case of **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**, relied upon by the Learned Senior Advocate to canvass such argument, is no longer good Law. That the Court of Appeal has since departed from its decision in **NWAIGWE VS. FEDERAL**

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**REPUBLIC OF NIGERIA (SUPRA)** as could be seen in subsequent decisions of that Court on the point. Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** cited the cases of **FELIMON ENTERPRISES VS. CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION (2013) LPELR 20366 (CA) AND GANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** which were decided subsequent to the decision in **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**.

That the decisions of the Court of Appeal subsequent to its decision in **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** upheld the Constitutionality of **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004. The Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued that the Court of Appeal is entitled to depart from its previous decision reached *per incuriam*. He cited the case of **EKPEYONG VS. DUKE (2008) LPELR - 4091**.

On the submissions of the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, that the application leading to the interim attachment order, ought not to have been

made Ex-parte, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued in reply that such application for a preservative order is allowed by Law to be brought Ex-parte. Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** again placed reliance on the case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA).**

That in that case, the Court of Appeal held that an application for a preservative order is to be made Ex-parte and that the procedure does not constitute a Breach of the Right to Fair Hearing of the person affected by such order.

On the issue that the Economic and Financial Crimes Commission (EFCC), obtained the interim preservative order of 24<sup>th</sup> day of February, 2017, based on misrepresentation and suppression of facts, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** placed reliance on the affidavit of **ADAMU WAZIRI** in support of the motion for the interim forfeiture order, particularly **Paragraphs 4 – 14**, which the Learned Counsel reproduced in full in his written address. Learned Counsel also placed reliance on **Exhibit EFCC FORM**

**CCB1** to the Counter-Affidavit opposing the application by the Respondent/Applicant.

The Learned Counsel for the Applicant/Respondent, therefore, argued that there has been no concealment or suppression of material facts by the Economic and Financial Crimes Commission (EFCC) in the application leading to the grant of the interim order of forfeiture of the seventeen (17) vehicles recovered from the warehouse of the Respondent/Applicant.

The Learned Counsel for the Applicant/Respondent submitted that the Court made the interim forfeiture order of the 24<sup>th</sup> day February, 2017 based on the materials placed before the Court which established *prima facie* that the vehicles in question and the Subject-Matter of the application were proceeds of crime. That this is more so as the Respondent/Applicant, **ABDULLAHI DIKKO INDE**, failed to declare those vehicles in his Declaration of Assets Form, now **Exhibit EFCC FORM CCB1** before the Court.

Learned Counsel submitted, that the Economic and Financial Crimes Commission (EFCC) had satisfied all the conditions for the grant of the interim forfeiture order in the instant case and



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that the order was rightly made and granted. He urged the Court to so hold.

Finally, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** argued in reply, that the proceedings initiated by the Economic and Financial Crimes Commission (EFCC) leading to the interim order of attachment is not an abuse of judicial process. That it was not initiated to oppress, harass or intimidate the Respondent/Applicant. That in spite of that order, **ABDULLAHI DIKKO INDE**, the Respondent/Applicant is yet to report to the office of the Economic and Financial Crimes Commission (EFCC) to give his side of the story in the ongoing investigation. That he was invited in February, 2017. He promised to come within two weeks of the invitation but failed to honour the invitation to date.

In conclusion, the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** urged the Court to resolve all the issues against the respondent/Applicant and dismiss the application for being frivolous and misconceived.

Now, there is a sister case registered as Suit No. **FHC/KD/CS/23/2017, CHAIRMAN, ECONOMIC AND**



**FINANCIAL CRIMES COMMISSION VS. ABDULLAHI DIKKO**

**INDE.** This Court also made an interim order of forfeiture of assets belonging to **ABDULLAHI DIKKO INDE**, on the 8<sup>th</sup> day of March, 2017, at the instance of the Economic and Financial Crimes Commission (EFCC), pending the conclusion of investigation initiated by the Commission against **ABDULLAHI DIKKO INDE** for alleged Economic and Financial Crimes.

An application has been filed by the Learned Senior Advocate, **MAHMUD ABUBAKAR MAGAJI, SAN**, for an order setting aside or discharging the interim order of attachment made on the 8<sup>th</sup> day of March, 2017 in that case. The grounds for the application in that case are the same as in the instant case. The parties are also the same.

However, in addition, the Learned Senior Advocate had contended that the assets, the Subject-Matter of the interim order of forfeiture, made on the 8<sup>th</sup> day of March, 2017, in Suit No. **FHC/KD/CS/23/2017** does not belong to **ABDULLAHI DIKKO INDE**. That the assets belong to **SVISTOV FARMS LIMITED**.

On the 25<sup>th</sup> day of May, 2017 therefore, I adjourned Suit No. **FHC/KD/CS/23/2017, CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION VS. ABDULLAHI DIKKO INDE**, to abide the outcome of the proceedings in the instant case.

Now, those are the various legal submissions of the respective Learned Counsel in this proceedings. I have already given the background facts leading to the proceedings. I have re-produced the reliefs sought by the application and the grounds upon which the reliefs are sought. I have captured substantially the substance of the various legal submissions of the respective Learned Counsel as contained in their written addresses.

As I have already pointed out, on the 22<sup>nd</sup> day of May, 2017, the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, **MAHMUD ABUBAKAR MAGAJI, SAN**, while adopting his written address placed reliance for the first time on the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009. Learned Senior Counsel also cited in support the case of **OLIVER VS. DANGOTE (SUPRA)**.

The Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** urged the Court to discountenance that submissions on the ground that it was being made as a new issue or point raised for the first time at the stage of adoption of written addresses. That the manner the point is raised is prejudicial to the Applicant/Respondent for being in breach of Right to Fair Hearing as guaranteed to the Applicant/Respondent by **Section 36** of the Constitution, 1999 (as amended).

There is merit in the point raised by the Learned Counsel for the Applicant/Respondent. However, I am disposed to consider the issue raised by the Learned Senior Advocate to fulfil all righteousness.

Now, **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009 provides:-

*(1) No order made on Motion Ex-parte shall last for more than fourteen (14) days after the party or person affected by the order has applied for the order to be varied or discharged or last for another fourteen (14) days after application to vary or discharge it has been argued.*

(2) If a motion to vary or discharge an Ex-parte Order is not taken within fourteen days of its being filed, the Ex-parte Order shall lapse.

The Learned Senior Advocate then placed reliance on the case of **NICO OLIVER VS. DANGOTE (SUPRA)**, where the Court of Appeal considered and gave effect to the provisions of **Order 9 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2000, which is in *pari materia* with the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009.

In my view, this argument is relevant to the extent that the interim order is one made in the regular and ordinary civil Suits. In that case the famous legal principle enunciated in the case of **KOTOYE VS. CBN (SUPRA)** that an *interim order must be interim in nature* shall apply. Where the interim order however is made pursuant to the provision of **Sections 28 and 29** of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004 as in the instant case, the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009, shall not apply. In such a case the

interim order shall last until investigation or trial is concluded,  
no matter how long it takes.

In the case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**, the Court of Appeal, Abuja Division said:-

*The Power conferred on the Court under **Sections 28 and 29** of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004, is a special jurisdiction. It is a statutory power which is superior to the rules of the Court.*

Again the Court of Appeal further held in the same case that:-

*By virtue of **Sections 26, 27, 28, 29 and 30** of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004, an interim order for the preservation of assets is obtainable immediately after the commencement of the investigation and to last till final determination of the criminal charge that may be preferred against the accused person.*

I therefore, find that reliance on the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the Federal High Court (Civil Procedure) Rules 2009 by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, is with respect, misplaced. Consequently, I am not bound to follow and apply the decision of the Court of Appeal in the case of **NICO OLIVER VS. DANGOTE (SUPRA)** in this case. This is because the circumstances in that case are different and distinct from the present proceedings. The facts and circumstances are distinguishable.

In the case of **EMEKA VS. OKADIGBO (2012) LPELR - 9338 (SC)**, The Supreme Court per **RHODES - VIVOUR, JSC** said on the doctrine of stare decisis or judicial precedent:-

*Facts have no views. A Judgment should always be read in the light of the facts on which the case was decided. The rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them.*



Perhaps, the point is made clearer by the now famous dictum of Oputa, JSC in **FAWEHINMI VS. NBA (1989) 4 S.C. PAGE 63**, where he said:-

*Our Law is the Law of the practitioner rather than the Law of the Philosopher. Decisions have drawn their inspirations and their strength from the very facts which formed the issues for decision. Once made, these decisions control future Judgments of the Courts in like or similar cases. The facts of two cases must either be the same or at least similar before the decision in the earlier case can be used in a latter case, and even then, merely as a guide.*

In the case of **OLIVER VS. DANGOTE (SUPRA)**, the interim order was made in the regular and ordinary civil Suit. It was not made pursuant to the provisions of **Sections 28** and **29** of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004.

Consequently, the argument of the Learned Senior Advocate on the provisions of **Order 26 Rule (12) Sub-Rules (1) and (2)** of the

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Federal High Court (Civil Procedure) Rules 2009, fail as misconceived.

The Learned Senior Advocate has argued that the interim forfeiture order made on the 24<sup>th</sup> day of February, 2017 based on an Ex-parte Application, violates the Fundamental Rights of the Respondent/Applicant to Fair Hearing as guaranteed to him by the provision of **Section 36** of the Constitution, 1999 (as amended). That where a violation of the Right to Fair Hearing is established in any judicial or administrative proceedings, as it has been established in the instant case, the legal effect is to render the proceedings a nullity as well as any order made or decision reached thereat.

The Learned Senior Advocate and Lead Counsel for the Respondent/Applicant cited the cases of **ANAMUTHODO VS. OILFIELDS WORKERS TRADE UNION (1961) AC 945, RIDGE VS. BALDWIN (1964) CA-40 AT 128**, as well as the case of **ADIGUN VS. A.G. OYO STATE (SUPRA)**.

Learned Senior Counsel further argued that indeed the Court of Appeal in the case of **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** had declared **Section 29** of the Economic and

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Financial Crimes Commission (EFCC) Act, LFN 2004, unconstitutional, null and void for conflicting with the Constitutional Right to Fair Hearing as guaranteed by the provision of **Section 36** of the Constitution, 1999 (as amended).

Now, **Section 36** of the Constitution, 1999 (as amended) provides that:-

*(1) In the determination of his civil rights and obligations, including any question or determination by or against any Government or authority, a person shall be entitled to a Fair Hearing within a reasonable time by a Court or other Tribunal established by Law and constituted in such manner as to secure its independence and impartially.*

It is clear to me that the issue of breach of Fair Hearing arise and is only relevant where the proceedings is one conducted for the determination of the civil rights and obligations of a person or citizen. Consequently, where the proceedings, judicial or Administrative does not involve a determination of the civil rights

and obligations of a person, the issue of Fair Hearing does not arise and is irrelevant at that stage.

Perhaps, the position is better explained by the Supreme Court in the case of **AHAJI ABDULLAHI BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE, ZARIA (1991) 5 NWLR PART 192 PAGE 388**. In that case, the Supreme Court while considering the provision of **Section 33(1)** of the 1979 Constitution, which is in *pari materia* with **Section 36(1)** of the Constitution, 1999 (as amended), per **KARIBI -WHYTE, JSC** said:-

*The words of the above provisions seem to me relevant and the section can only be successfully invoked only where the determination of the civil rights and obligations of the person complaining of the violation are in issue. Hence when no such determination of the civil rights and obligations of the complainant are in issue, it seems to me that the section cannot be infringed. It is therefore erroneous to assume, as Counsel has done, that the observance of the provisions of **Section 33(1)** of the 1979*

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Constitution is a sine quo non to every situation involving a hearing. This is clearly not so.

Now, it is clear to me and I so hold that the proceedings of this Court conducted on the 24<sup>th</sup> day of February, 2017<sup>f</sup> leading to the grant of the interim order of forfeiture, was not a proceedings for the determination of the civil rights and obligations of **ALHAJI ABDULLAHI DIKKO INDE**, the Respondent/Applicant herein. The issue of violation of the Fundamental Rights of the Respondent/Applicant as raised and argued is therefore premature and misconceived.

The issue could only be properly raised in the proceedings in determination of the application to make the interim order of forfeiture a final order. At that stage, the Respondent/Applicant, **ABDULLAHI DIKKO INDE**, must be put on notice and afforded opportunity to be heard on the application as provided in **Section 36(1)** of the Constitution, 1999 (as amended).

Now, it is true as argued by the Learned Senior Advocate and Lead Counsel for the Respondent/Applicant, that the Court of Appeal has declared **Section 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004 unconstitutional, null

void for conflicting with **Section 36** of the Constitution on the Right to Fair Hearing in the case of **NWAIGWE VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**.

However, it is equally true and I so find that the Court of Appeal has since departed from its decision in that case. This is clearly illustrated by the decision of that Court in the subsequent case of **DANGABAR VS. FEDERAL REPUBLIC OF NIGERIA (SUPRA)**.

In the case of **DARU VS. UMAR (2013) LPELR 21905 (CA)** the Court of Appeal has this to say on the point:-

*It is now settled that where there are conflicting Judgment of this Court, the lower Court or Courts, is or are bound by the latter decision and must follow and apply it.*

See also the case of **CHIEF OKPOZO VS. BENDEL NEWSPAPERS CORPORATION (1990) 5 NWLR PART 153 PAGE 652 AT 663.**

I accept the argument of the Learned Counsel for the Applicant/Respondent, **B.M. BUHARI ESQ.** that the decision of the Court of Appeal in **NWAIGWE VS. FEDERAL REPUBLIC OF**



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**NIGERIA (SUPRA)** was reached *per incuriam* and that consequently that Court is entitled to depart from it, as the Court has done in its subsequent decisions.

I therefore, find that the decision in the case of **NWAIGWE VS. FEDERAL REPUBLIC (SUPRA)** is no longer good Law. In the case of **UDOGWU ONYEKWELI VS. INEC (2009) 6 NWLR PART 1136 PAGE 13**, the Court of Appeal said:-

*The remedy of setting aside is not appropriate for a decision reached per incuriam which can always be appealed against and can be avoided as authority or precedent for subsequent cases. When the judgment is deemed per incuriam, the implication is that it cannot be used as authority or precedents by Court of concurrent or inferior jurisdiction.*

I find therefore that, reliance on the decision in **NWAIGWE VS. FEDERAL REPUBLIC NIGERIA (SUPRA)** in the matter is misplaced. I resolve the issue against the Respondent/Applicant.

The Learned Senior Advocate and Lead Counsel for the Respondent/Applicant also argued that **Sections 24, 25, 26**,

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27, 28 and 29 of the Economic and Financial Crimes Commission (Establishment, etc) Act, LFN 2004 conflict with the provision of **Sections 43 and 44** of the Constitution, 1999 (as amended). The Learned Senior Counsel therefore urged the Court to declare those sections of the Economic and Financial Crimes Commission (EFCC) Act, unconstitutional, null and void in the light of the provision of **Section 1 Sub-Sections (1) and (3)** of the Constitution, 1999 (as amended). **Section 1(1) and (3) (Supra)** provides for the supremacy of the Constitution over all persons and authorities in Nigeria and over all other Laws.

Now, **Sections 24, 25, 26, 27, 28 and 29** of the Economic and Financial Crimes Commission (EFCC) Act, LFN 2004, make provisions affecting the Right to Property as guaranteed by **Sections 43 and 44** of Constitution, 1999 (as mended). They provide:-

*43. subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.*

Let me say without hesitation, that given the facts and circumstances of this case, **Section 43** of the Constitution, 1999 (as amended) and as reproduced before now is not applicable to this proceedings. It provides for Right to Ownership of Immovable Property. ***Immovable property*** is one that is fixed and incapable of being physically moved. The seventeen (17) vehicles, the Subject-Matter of this proceedings are movable property. They are capable of being physically moved. Indeed they have been physically moved from the warehouse where they were recovered to the premises of the Economic and Financial Crime Commission (EFCC), in Kaduna. I therefore, find that **Section 43** of the Constitution is inapplicable in the circumstance.

This leaves me with the consideration of **Section 44** of the Constitution, 1999 (as amended) it provides:-

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

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- (a) Requires the prompt payment of compensation therefore; and
- (b) Gives to any person claiming such compensation of access for the determination of his interest in the property and the amount of compensation to a Court of Law or Tribunal or body having jurisdiction in that part of Nigeria.

Now, it is settled Law that no right is absolute including Right to Life which is the most important right of all. All Fundamental Rights are subject to derogations. They are subject to exceptions as prescribed by the Constitution that provided for those rights. In the case of the right guaranteed by **Section 44(1) (Supra)** as reproduced above, those exceptions are found in **Sub-Section (2)** therefore and for the purpose of the present proceedings **Paragraph (k)** is relevant. It says:-

- (2) Nothing is **Sub-Section (1)** of this section shall be construed as effecting any general Law:-
- (k) Relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry.

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Now, what **Section 44(2) (K)** of the Constitution, 1999 has done in clear and unambiguous terms is to validate and recognise the efficacy of the provisions of **Sections 24, 25, 26, 27, 28 and 29** of the Economic and Financial Crime Commission (Establishment, etc) Act, LFN 2004, which allows or empowers the Commission to take temporary possession of moveable property for the purpose of investigation as the Commission has done in relation to the seventeen (17) vehicles belonging to **ALHAJI ABDULLAHI DIKKO INDE**, the Respondent/Applicant in this proceedings.

It will therefore be absurd in my view, for this Court to declare **Sections 24, 25, 26, 27, 28 and 29** of the Economic and Financial Crime Commission (EFCC) Act, LFN 2004, unconstitutional, null void, when the Constitution itself has tolerated those provisions by validating and recognising their efficacy or legality. Indeed if not because the Economic and Financial Crimes Commission (EFCC) is so much obsessed with the application of the Law establishing it, application of this nature ought to be brought by the Commission, under **Section 44(2) (K)** of the Constitution, 1999 as (amended) being the **Grundnorm**.

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Consequently, this issue is resolved against the Respondent/Applicant. I am unable to find any merit in the application by the Respondent/Applicant in this proceedings. I have again considered the application Ex-parte dated 22<sup>nd</sup> and filed on the 23<sup>rd</sup> day of February, 2017 leading to the interim forfeiture order made on the 24<sup>th</sup> day of February, 2017. I have in particular considered the affidavit and the written address in support of the grounds of the application and I am not persuaded by the argument that the application did not satisfy the requirements for its grant.


This application therefore, fail and is accordingly dismissed. This order equally apply to the application in Suit No. **FHC/KD/CS/23/2017, CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION VS. ALHAJI ABDULLAHI DIKKO INDE**, founded on the same grounds.

Indeed, in Suit No. **FHC/KD/CS/23/2017**, an additional ground for that application is the claim, that the assets, the Subject-Matter of the interim order of forfeiture made by this Court on the 8<sup>th</sup> day of March, 2017, are not the assets of **AJHAJI ABDULLAHI DIKKO INDE**. That the assets belong to **SVISTOV**



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MS LIMITED, a Limited Liability Company and a Corporate  
Legal Entity. Yet **SVISTOV FARMS LIMITED** is not made a party  
in the proceedings. That application therefore is not properly  
constituted

On the whole, this application and the other one in Suit No.  
**FHC/KD/CS/23/2017, CHAIRMAN, ECONOMIC AND  
FINANCIAL CRIMES COMMISSION VS. ALHAJI ABDULLAHI  
DIKKO INDE**, are hereby dismissed.

  
.....  
**JUSTICE S.M SHUAIBU**  
**JUDGE**  
**4/6/2017**

**Appearances:**

*Mahmud Abubakar Magaji, SAN with Ifeanyi Augustine  
Azuamah Esq, Aliyu D. Husseini Esq, U.M. Medugu Esq. an  
Affis Matanmi Esq.* for the Respondent/Applicant.

*B.M. Buhari Esq.* for the Applicant/Respondent.

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