IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE WARRI JUDICIAL DIVISION
HOLDEN AT WARRI
BEFORE HIS LORDSHIP HON. JUSTICE ANTHONY OLOTU AKPOVI (JUDGE)
ON THE 8TH DAY OF FEBRUARY, 2022
IN THE MATTER OF THE APPLICATION BY CHIEF (DR) MICHAEL EDEMATIE IKUKU FOR AN ORDER FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN: **SUIT NO: W/207/FHR/2020**

CHIEF (DR) MICHAEL EDEMATIE IKUKU ... ... APPLICANT

=AND=

1. ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC)
2. IDRIS ABDULLAHI ABUBAKAR (Head, Extractive Industry Fraud Section (EIFS) Team, EFCC)
3. OIS INTERNATIONAL LIMITED

} RESPONDENTS

COUNSEL

CHIEF E. L. AKPOFURE SAN with V. O. IDIAPHO ESQ, OKIEMUTE AKPOFURE ESQ., A. OBAKPONOVWE ESQ. AND CHIEF E. E. ESOSUAKPOR (FOR THE APPLICANT)

E. S. OKONGWU ESQ. with him M. S. OWEDE ESQ and ANITA IMO CHIDINMA (FOR 1ST AND 2ND RESPONDENTS)

BABAJIDE KOKU ESQ, A. I. ONODJEFEMUE ESQ. with him A. E. OGHOUNU (FOR 3RD RESPONDENT)

JUDGMENT

By a motion on notice dated 29/9/2020 and filed 5/10/2020, the Applicant seeks the enforcement of his fundamental human rights. Attached to the motion on notice is a 51-paragraph affidavit, exhibits ELA "1-6" and written address.

The Applicant seeks the following reliefs,

1. A declaration that the invitation of the Applicant by the 2nd Respondent on be\half of the 1st Respondent over a petition written at the instance of the 3rd Respondent, alleging falsification/alteration of the settlement Agreement dated 14th September, 2017 which said settlement Agreement is the subject

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ASST DIRECTOR OF COURTS
DATE: 23/8/2022

matter of Suit No. FHC/L/CS/688/2018: MICHHARRY & COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED pending before the Federal High Court, Ikoyi, is unlawful, unconstitutional, illegal and an affront to the Constitutional right of the Applicant to personal liberty and fair hearing, as guaranteed by Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

2. AN ORDER of injunction restraining the Respondents, their agents, privies, officers, surrogates or whosoever acting on either the individual or collective instructions of the Respondents from further inviting the Applicant in connection with the purported petition written at the instance of the 3rd Respondent, alleging falsification/alteration of the settlement Agreement dated 14th September, 2017 which said settlement Agreement is the subject matter of Suit No. FHC/L/CS/688/2018: MICHHARRY & COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED pending before the Federal High Court, Ikoyi, or carrying out any act that is inconsistent with the fundamental rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).
3. The sum of #1,000,000,000.00 (one billion Naira) as General damages against the Respondents for the infringement on the Applicant's fundamental right.

Counsel to the Applicant **Chief E. L. Akpofure SAN** raised a sole issue for determination:

> Whether the invitation of the Applicant by the 2nd Respondent on behalf of the 1st Respondent over a petition written at the instance of the 3rd Respondent, alleging falsification/alteration of the settlement agreement dated 14th September, 2017 which agreement is the subject matter of suit No. FHC/L/CS/688/2018: MICHHARRY & COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED pending before the Federal High Court, Ikoyi, does not amount to an infringement on the Applicant's fundamental right to personal liberty and fair hearing, as guaranteed by chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

Counsel to the Applicant relied on the provision of Order 11 Rule 1 of the fundamental Right (Enforcement procedure) Rules, 2009 which provides thus:

> **"Any person who alleges that any of the fundamental rights provided for in the Constitution or African charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been is being, or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress."**

He stated that the above provision is clear that the Applicant does not need to wait for his rights to be infringed before he can apply for redress. It is the contention of the Applicant that his right to personal liberty and fair hearing are likely to be infringed upon by the Respondents. He cited the case of **BENSON V C.O.P (2016 LPELR @ PAGE 24, paragraphs B-D.** Counsel further stated that the grievance of the Applicant is not based on the mere invitation of the 1st Respondent but that the anxiety and apprehension of the Applicant is that the content of the petition on which the invitation of the 1st Respondent is predicated is the subject matter of Suit No. FHC/L/CS/688/2018: MICHHARRY AND COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED, pending before the Federal High Court, Ikoyi, Lagos.

Counsel submitted that,

1. **"The position of the Applicant is that, having informed the 1st and 2nd Respondents via his solicitor's letter dated 16th July, 2019 (Exhibit "ELA 6") that the issues contained in the petition are already before a court of competent jurisdiction to adjudicate over, the 1st and 2nd Respondents ought to have carefully scrutinized the complaint and be bold enough to advise the 3rd Respondent to await the outcome of the said suit and decline to take any further step on the petition.**

Counsel stated that;

> **the above suit is purely a civil action devoid of any criminal element. The 3rd Respondent ought to and must wait for the outcome of the suit and not harass and intimidate the Applicant with the instrumentality of all 1st Respondent to coerce the Applicant to cough out the said debt at all cost.**

He submitted that the procedure adopted by the 3rd Respondent is not only alien to our legal jurisprudence but a clear abuse of the process of law. The 1st Respondent on her part also has an inherent duty to advise the 3rd Respondent on the element of the abuse of legal process. In the case of DIAMOND BANK PLC VS. OPARA (2018) 7NWLR (PT. 1617) pg. 92 @ 114, paragraphs B-D, the Supreme Court per BAGE, JSC, in deprecating the actions of the Economic and Financial Crimes Commission concerning a letter of invitation it sent to the 1st Respondent in the appeal while the issue in respect of which the invitation was predicated was already subjudice held thus:

> *"it is important for me to pause and say here that the powers conferred on the 3rd Respondent i.e the EFCC to receive complaints and prevent and/or fight the commission of Financial Crimes in Nigeria Pursuant to section 6(b) of the EFCC Act (supra) does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions.*

Relying further on the case of Diamond Bank Plc. Vs. Opara (supra), the Supreme Court at page 115, paragraphs D-H further held thus;

As I have stated earlier, the multiple actions by the Appellant were nothing but abuse of the process of law. However, the actions also constituted a breach of fundamental right. Exhibit v, which is the letter of invitation from Economic and Financial Crimes Commission inviting 1st Respondent also constitutes likelihood of an infringement to the fundamental right of the 1st and 2nd Respondents

Furthermore, Hon. Justice GALINJE JSC in his concurring judgement in the said case of Diamond Bank Plc. Vs. Opara (Supra) at page 120, paragraphs C-F, concluded thus:

> "By Section 35(1) of the 1999 Constitution of Nigeria, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with the procedure permitted by law. Order 11 Rule 1of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides as follows:
>
> *"Any person who alleges that any of the fundamental rights provided for*

in the Constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress."

Having had the experience in the hands of the police, the 1st and 2nd Respondents did not have to wait for their right to be abused when they received the letter, Exhibit "V" from the EFCC. Exhibit "V" constituted a likelihood of the infringement of the fundamental right of the 1st and 2nd Respondents. The 1st and 2nd Respondents rightly went to court when they perceived that their right was likely to be infringed."

Counsel urged the court to hold that the invitation of the Applicant by the 1st and 2nd Respondents at the instance of the 3rd Respondent over a petition the substance of which is the subject matter of a suit which is already pending in court and awaiting the resolution of the court, is likely to infringe on the fundamental right of the personal liberty of the Applicant.
He submitted further that if 1st and 2nd Respondents are allowed to investigate the substance of the petition and take a decision on same, one way or the other, they will certainly meddle with the substance of the Applicant's cause of action in the civil suit pending at the Federal High Court. This will certainly hamper the Applicant's right to fair hearing in the case at the Federal High Court.

It is against this backdrop that the Applicant's counsel urged the court to grant reliefs 1 and 2 of the application.

Counsel submitted that in the case of JIM-JAJA VS. COP, RIVERS STATE (2013) 6 NWLR (PT. 1350) 225 @ 254, paragraphs E-F, the Supreme Court held thus:

"by the provisions of Section 35 and 46 of the 1999 Constitution, Fundamental right matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from a proven injury has to be made specifically and proven. In the instance case, once the Applicant proved the violation, a form of compensation and even apology should be followed."

Counsel finally submitted that the Applicant is entitled to the relief sought as he has been able to prove that his fundamental rights are in the likelihood of being violated by the Respondents.

Counsel to the 1st and 2nd Respondents M. S. OWEDE Esq. filed a counter affidavit of 30 paragraphs in opposition to Applicant's originating motion dated and filed 13-11-2020. Attached to the counter affidavit, are Exhibit EFCC "1-5" and a written address dated 19-10-20 and filed 13-11-20. Counsel to the 1st and 2nd Respondents raised 4 issues for determination:

1. **"Whether having received the criminal petition against the Applicant and others dated 17th December 2018 (exhibit EFCC1) the Respondent is empowered by law to investigate same?**
2. **If issue 1 above is answered in the affirmative, whether the 1st Respondent in the course of investigating the said petition is empowered by law to invite and interview the Applicant?**
3. **Whether suit No. FHC/L/CS/688/2018: MICHHARRY AND COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED being a civil suit is a barred for the criminal investigation of the petition received by the 1st Respondent?**
4. **Whether having regards to the facts presented before this Honourable Court, the provisions of Sections 6, 7, 8 (5), 13 and 41 of the EFCC (Establishment) Act, Applicant is entitled to the reliefs sought against the 3rd Respondent?**

ISSUES ONE AND TWO:

Counsel submitted that 1st and 2nd Respondents are vested with the legal power to investigate any complaint submitted to it bordering on economic and financial crime to which the petition in the instance relates. He cited SECTION 6(n) OF THE EFCC ACT which provides as follows:

> *"The commission shall be responsible for the examination and investigation of all reported cases of economic and financial crimes with a view to identify individual, corporate bodies or groups involved"*

see also **Section 6(1) and 7(1)(a) of the EFCC Act.** That the above powers were given judicial backing in **Federal Republic of Nigeria v Nyame (2005-2010)**

ECLR 240; Amadi v Federal Republic of Nigeria (2008) 2 S. C (PT 111) 55; Nweke vs FRN (2019) LPELR- 46946 (SC).

Counsel to the 1st and 2nd Respondents further stated that the counter affidavit in opposition to this application revealed that the 1st Respondent did not act arbitrarily in inviting the Applicant. That the petition wherein the 3rd Respondent alleged the Applicant forged the settlement Agreement dated 14th September, 2017 and that the 1st Respondent's mandate is to investigate and prosecute the culprits if a prima facie case is established. He cited **Section** 7 of the EFCC Establishment Act 2004.

Counsel also cited the case of **JOSHUA V STATE (2009) ALL FWLR (PT. 475) 1626 at 1651** where it was held that;

> *"when a police officer is trying to discover whether or by whom an offence has been committed he is entitled to question any person whether suspected or not from whom he thinks useful information may be obtained"*

Counsel argued that, a perusal of the Applicant's Affidavit in support revealed that Applicant's case against the 1st and 2nd Respondents is solely centered on Exhibit "ELA4" annexed thereto. Exhibit "ELA4" attached to Applicant's Affidavit is an invitation letter extended to the Applicant as a result of the petition written against him and others. Apart from the invitation, the Applicant has no other complaint of violation of his fundamental rights against the 1st and 2nd Respondents. The question is whether an invitation by the police and by extension the EFCC for the purposes of investigating an allegation would amount to a breach of fundamental right of the individual concerned. The answer is no. In **AYANAM V COMMISIONER OF POLICE BENUE STATE (2019) LPELR- 47283 (CA)** the Applicant urged the court to among others declare that his invitation by the police amounts to a violation of his fundamental rights on grounds that the alleged offence upon which he was invited to make clarification is unknown to law. In dismissing the application, the appellate court held inter alia as follows:

> "Only an investigation of the complaint by the Respondent would reveal whether a crime had been committed or not"

Counsel also cited the case of **Ihua-Maduenyi v Robinson & Ors (2019) LPELR-47252 (CA).**

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On issue 3, counsel to the 1st and 2nd Respondents submitted that the Applicant's Affidavit in support and the accompanied written address revealed that the kernel of the Applicant's case is that there is a pending civil suit. Suit No. FHC/L/CS/688/2018: MICHHARRY AND COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED, in respect of the subject matter of the 1st and 2nd Respondents investigation. Counsel stated that the reason why the Applicant was invited was to explain his side of the story. That suit No. FHC/L/CS/688/2018: MICHHARRY AND COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED is not only civil but the issues therein have nothing what so ever to do with the offence of forgery. Counsel referred Court to the reliefs sought in Suit No. FHC/L/CS/688/2018 and argued that Michharry &Company Nigeria Limited is not the Applicant herein, that the Applicant cannot hide under the pending of the said Suit to evade investigation and possible prosecution for the offence of forgery, that the Applicant and EFCC are not parties to the said suit.

Counsel submitted that, the Applicant himself admitted that he has nothing to do with suit No. FHC/L/CS/688/2018 when he stated in paragraph 35 of his affidavit as follows:

> "That I do not have any business with the content of either Exhibit "ELA1" or exhibit "ELA3" as the dispute is between Michharry and company Nigeria Limited and the 3rd Respondent herein at the Federal High Court, Ikoyi, Lagos"

In paragraph 46 of his affidavit in support of his fundamental right suit, the Applicant emphatically distanced himself from the suit pending at the Federal High Court when he stated as follows:

> "That Michharry and company Nigeria Limited is a different entity from my humble self."

Counsel stated that it is trite law that a civil and criminal proceedings in respect of the same transaction can proceed simultaneously, and investigation being a precursor to criminal proceeding can be carried out even if there is a pending civil suit in respect of the same transaction. In paragraph 3.36 of his written address, the learned silk for the Applicant submitted that it is alien to our legal jurisprudence for the 3rd Respondent to write a petition to the 1st Respondent during the pendency of Suit No. FHC/L/CS/688/2018. This argument, with utmost respect, is erroneous and misconceived. In Federal Republic of Nigeria vs. Lawani (2013) LPELR-20376 CA, the appellate court was called upon to determine whether a victim of an action can both maintain a civil suit and also report the criminal aspect

of the wrong to the police. Delivering the lead judgement, per Mbaba JCA held as follows:

> *"There is obviously nothing judicially oppressive, in my view, for a victim of criminal action to maintain a civil claim for recovery of pecuniary or personal relief from the suspect of the criminal action, which gave rise to the criminal trial, and the civil claim can go on, side by side without clashes on dates of hearing, which the counsel concerned can always arrange with the consent of the court(s) trying the cases. It cannot be imagined that a criminal trial is a statutory bar to civil prosecution over a civil liability where the criminal conduct also give rise to civil remedy"*

He also relied on the case of **AHMED VS DANPASS (2014) LPELR-24620 (CA)**

ISSUE FOUR:

On issue 4, counsel submitted that the Applicant has woefully failed to show how the 1st and 2nd Respondents violated, violating or likely to violate his fundamental rights. Counsel stated that the following are the incontestable facts in the case as it relates to the 1st and 2nd Respondents,

a. **The 1st Respondent on 18th December, 2018 received a criminal petition against the Applicant and others. The Petitioner is OIS international Limited, the 3rd Respondent. See exhibit EFCC 1.**
b. **The petition summarily alleged that the Applicant in connivance with other suspects forged a settlement Agreement dated 14th September, 2017.**
c. **The petition was analyzed and found worthy of being investigated.**
d. **Preliminary investigation was concluded and it became pertinent for the Applicant to be invited for clarification.**
e. **On 5th July, Exhibit "EFCC 4" (invitation letter) was sent to the Applicant but he refused to honour same.**
f. **On 3rd September, 2019 another invitation letter, Exhibit "EFCC 5" was again sent to the Applicant but again he refused to honour. Instead, Applicant caused his counsel to write a letter to the 1st Respondent explaining why he cannot honour the invitation on grounds that there is a pending civil suit.**
g. **That the civil suit pending at the Federal High Court which was commenced by Originating Summons is on interpretation of document simpliciter while the petition borders on the offence of forgery.**

h. **That Applicant is not a party to the said civil suit.**
i. **That 1st and 2nd Respondents are also not parties to the said civil suit.**
j. **Applicant has refused to report till date.**

Counsel stated "that there is absolutely nothing in the affidavit in support to substantiate this assertion apart from the fact that Applicant was invited but refused to report. It is elementary law that address of counsel no matter how sound, convincing and brilliant cannot take the place of evidence. See UKPAI V OMOREGIE & ORS (2019) LPELR-47206(CA).

Counsel further submitted that, in prayer two (2) on the motion paper, the Applicant is seeking for a perpetual injunction restraining the 1st and 2nd Respondents from investigating him on grounds that there is a pending civil suit. Counsel did not hesitate to state that the Applicant and the EFCC are not parties to the said suit. The question is whether this honourable court can restrain a law enforcement agency from carrying out its Constitutional duties? The courts have always answered the above question in the negative. In **ATTORNEY GENERAL OF POLICE ANAMBRA STATE V UBA PLC (2005) 15 NWLR (PT. 947) 14 AT PAGES 50 & 53**, the court of Appeal held as follows:

> "for a person to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to law officers in the control of criminal investigation. In effect, the 1st Applicant is asking the court to shield him from criminal investigation and prosecution. A person cannot by injunctive relief be shielded from criminal investigation and prosecution."

Counsel also cited the case of **IGP & ANOR VS. PATRICK IFEANYI UBAH & ORS (2014) LPELR-23968 (CA) pages 54-55 paragraphs F-D**

Counsel finally stated that the Applicant is not entitled to the award of damages of ₦1 billion Naira against the Respondent because his rights have not been violated. That it is trite law that general damages and indeed any other damages can only be awarded in favour of a party if he is able to prove his case. He cited the case of **CAMEROON AIRLINES VS. OTUTUIZU (2011) LPELR-827(SC)** Counsel urged the Court to dismiss the suit with substantial cost.

3rd Respondent, OIS International limited filed a 9 paragraphs counter Affidavit counsel through his counsel **A. I. ONODJEFEMUE ESQ.** dated and filed on 16/11/2020, attached to it is Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D", Exhibit "E" and a written address.

Counsel to the 3rd Respondent, raised two issues for determination,

1. **Whether or not any of the right of the Applicant guaranteed by Sections 35 and 36(1) and 46(1) of the Constitution of the Federal Republic of Nigeria (1999) has been violated or threatened?**
2. **Whether the Applicant is entitled to the reliefs sought.**

Counsel submitted that the essence of the Applicant's claim herein is that the invitation issued by the 1st & 2nd Respondents are a violation of his fundamental human right and have caused him damages to the tune of 1 billion naira. Counsel submitted that an invitation to the Applicant cannot be classified as an infringement of the Applicant's fundamental rights. He cited the case of **EFCC VS. DIAMOND BANK PLC (2018) FWLR. (PT. 1620) 61** where the court held on when letter of invitation from the Economic and Financial Crimes Commission to a person constitutes abuse of the process of law.

Counsel submitted that by virtue of Section 35 of the Constitution of the Federal Republic of Nigeria, the Applicant has the right to liberty but it can be derogated when there is a reasonable suspicion of commission of crime. He cited the case of **DUKUBO ASARI VS. FRN (2007) 5-6 S. C. 150 ALL FWLR (PT. 375).**

He also relied on the case of **Olutide & Ors Vs. Hamzat & Ors (2016) LPELR-26047 p. 26 paragraph C-O, where the court held that**

> ***"let me clarify this, the right to liberty as enshrined in Section 35 of our Constitution and Article 6 of the African Charter that nobody shall have right to liberty taken away, abridged or violated is not absolute, especially when there is reasonable suspicion that a criminal offence had been committed as in this instant case."***

Counsel submitted that where an offence has been committed or there is a reasonable suspicion that an offence has been committed, every citizen including the 3rd Respondent has the right or even a duty to report to the 1st Respondent by way of complaint. He cited the case of **Fajemirokun vs. Commercial Bank (Credit lyonnais) Nigeria Limited (2009) 5 NWLR (PT 1135) 558.**

Counsel submitted that, the report/petition of suspicion of a crime by the 3rd Respondent to the 1st Respondent that led to the investigation and invitation of

the Applicant cannot place any criminal responsibility or a claim for the breach of fundamental rights on the Applicant.
The security agencies including the 1st Respondent have the duty to investigate reported offences. But the person who reports a matter or draws the attention of the security agency to the commission of crime or its imminent commission has no control over the method or manner of investigation, invitation or even the prosecution of the person suspected to have committed or planning to commit such an offence. He relied on **KEYAMO V DIRECTOR GENERAL, S.S.S. (2020) 14 NWLR (pt. 1744) 306.**

Counsel submitted that the Applicant has not placed before the court any evidence which shows that the 3rd Respondent was malicious in presenting its petition to the 1st Respondent. He stated that the document relied on by the Applicant purportedly contains the signature of the 3rd Respondent's representative who denies ever signing such a document.

Counsel finally submitted that when any allegation of fundamental right violation is made, it must be proved even if it is on the balance of probabilities for it to be resolved. He cited the case of **BASSEY & ANOR VS. AKPAN & ORS (2018) LPELR-44341 (CA).** He stated that the court should strike out the application for being devoid of merit.

Having read through the affidavit evidence, exhibits and written addresses of parties, a sole issue stands out for determination:

> **"whether the Applicant's fundamental rights are about to be breached."**

The fundamental human rights of any Nigerian citizen as provided for in chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are very important, of high value and should not be trivialized. It guarantees the right to personal liberty of every person within Nigeria and prohibits any arbitrary or unlawful arrest and detention.
See **Section 33- Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

Any citizen whose right has been breached or is about to be breached has a right to file a claim for the enforcement of his fundamental rights. See the case of

ODOGU VS A.G FEDERATION (1996) 6 (pt. 456) 508 @ 522, EKANEM VS A. I.G (2008) NWLR (pt. 1079).

From the affidavit evidence of the Applicant, I shall rely on the following paragraphs;

7. That on the 14th day of February, 2017, the Applicant's Company (Michharry and Company Nigeria Limited) and the 3rd Respondent herein filed Terms of Settlement in suit No. FHC/L/CP/730/2015: Between OIS International Limited Vs Michharry and Company Nigeria Limited.
8. That on the 16th day of February, 2017, the Federal High court, Ikoyi, Lagos Per Hon. Justice Aikawa made the terms of settlement the judgement of court.
9. That the terms of Settlement were in respect of four Final Partial Arbitral Award made by Mr. Alan Oakley in an Arbitration in London directing Michharry and Company Nigeria Limited to pay to the 3rd Respondent the sum of USD $3,486,712.73 (Three Million, Four Hundred and Eighty-six Thousand, Seven Hundred and Twelve dollars, Seventy-three cents) being unpaid hire sum and interest as well as sum of GBP €18,300 (Eighteen Thousand Three Hundred pounds) being Arbitration tribunal fee.
10. That in the terms of Settlement, Michharry and Company Nigeria Limited agreed to pay the 3rd Respondent a total sum of $4,133,695.36(Four Million, One Hundred and Thirty-three Thousand, Six Hundred and Ninety-Five dollars, Thirty-six cents) and GBP €20,191.67 (Twenty Thousand, One Hundred and Ninety-One Pounds, Sixty-Seven pence) in thirteen (13) quarterly instalments for a period of three years.
11. That in demonstration of utmost good faith, sincere intentions and commitment to comply with the terms of settlement, Michharry and Company Nigeria Limited started liquidating the judgment debt in line with the terms of settlement.
12. That as at the 14th day of March, 2017, Michharry and Company Nigeria Limited had paid a total sum of USD $537,175.15 (Five Hundred and Thirty-Seven Thousand, One Hundred and Seventy-Five US Dollars, Fifteen cents) from the said judgement sum.
13. That despite its effort in keeping with the terms of Settlement, the 3rd Respondent initiated another medium of getting the said judgment

sum from Michharry and Company Nigeria Limited at all cost by calling for a meeting with Michharry and Company Nigeria Limited to discuss about a purported sum of money (USD $14,813,023.00 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight US dollars) it allegedly claimed that Mobil producing Nigeria Limited was owing Michharry and Company Nigeria Limited.

14. That the intention of the 3rd Respondent was to claim 70% of the said sum of $14,813,023.00 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight US dollars) purportedly owed Michharry and Company Nigeria Limited by Mobil Producing Nigeria (MPN) as full and final satisfaction of all the awarded sums, court cost orders and all pending actions in the United Kingdom either in court or Arbitration Tribunal.
15. That in furtherance of the dogged efforts of the 3rd Respondent to claim the purported sum, it prepared a Settlement Agreement and Release dated 14th September, 2017. The said Agreement was duly signed by both parties' representatives on 10th October, 2017. Attached hereto and marked as Exhibit "ELA1" is the said Settlement Agreement dated 14th September, 2017 but executed on the 10th day of October, 2017.
16. That in the said Settlement Agreement (Exhibit "ELA1"), both parties irrevocably agreed that it is the ARBITRATION TRIBUNAL IN NIGERIA that shall have exclusive jurisdiction to settle any dispute or claim arising out of the said agreement.
17. That unfortunately, it turned out to be that the money which the 3rd Respondent allegedly claimed that Mobil Producing Nigeria was owing Michharry and Company Nigeria Limited was unrealistic and it was impossible for Michharry and Company Nigeria Limited to pay the 3rd Respondent the 70% claim on or before the 30th day of April, 2018.
18. That on realizing the above state of affairs, the 3rd Respondent wrote an email dated the 1st day of May, 2018 to Michharry and Company Nigeria Limited threatening to invoke the provision of Clause 3.5 of Exhibit "ELA1".
19. That on the basis of the above, Michharry and Company Nigeria Limited filed an Originating summons in Suit No. FHC/L/CS/688/2018: Michharry and Company Nigeria Limited vs. OIS International Limited calling on the court to interpret the provisions of Clause 12.1 of Exhibit

"ELA1". Attached hereto and marked as Exhibit "ELA2" is a copy of the Originating summons filed by Michharry and Company Nigeria Limited against the 3rd Respondent.

20. That on being served with the summons, the 3rd Respondent filed a Counter affidavit to which it attached various exhibits on 3rd May, 2019. Attached hereto and marked as Exhibit "ELA2A" is the said Counter affidavit.
21. That one of the documents attached to the Counter affidavit is also a Settlement Agreement dated 14th September, 2017 but executed on 13th October, 2017. Attached hereto and marked as Exhibit "ELA3" is the said Settlement Agreement.
22. That Clause 12.1 of Exhibit "ELA3" states that any dispute arising from the Settlement Agreement would be resolved by the NIGERIAN COURT.
23. That the contention of the 3rd Respondent is that Exhibit "ELA3" is the true Settlement Agreement and not Exhibit "ELA1".
24. That the above suit is still pending before Hon. Justice R. M. Aikawa of the Federal High Court, Ikoyi, Lagos.
25. That surprisingly, the 2nd Respondent, acting on behalf of the 1st Respondent sent an Invitation Letter dated 5th July, 2019 to me requesting me to appear at the Commission's office on 10th July, 2019 at 10:00am. Attached hereto and marked as Exhibit "ELA4" is the 1st Respondent's letter dated 5th July, 2019 to the Applicant.
26. That I immediately briefed my solicitors, who wrote a letter dated 8th July, 2019 wherein they demanded for a copy of the petition/complaint that gave rise to my invitation by 1st Respondent. Attached hereto and marked as exhibit "ELAS5" is my Solicitor s letter dated 8th July, 2019.
27. That my counsel, V. O. Idiapho, Esq. of E. L. Akpofure, SAN & CO. who went to deliver exhibit "ELAS5" in the 1st Respondent's office on 10th July 2019 was only shown (but not given) the 3rd Respondent's petition on which the 1st Respondent's Invitation letter was predicted, so he informed me in the law firm of E. L. Akpofure, SAN & Co. on 11th July, 2019 at about 3.00pm and I verily believed him.
28. That V. O. Idiapho, Esq. also informed me and I verily believe him that the crux of the petition is that I falsified/altered Clause 12.1 of Exhibit ELA1 by erasing NIGERIAN COURT and inserting ARBITRATION TRIBUNAL IN NIGERIA.

29. That the 3rd Respondent is, by the petition, calling on the 1st Respondent to investigate the purported falsification and alterations made by me in Exhibit "ELA1"
30. That consequent on the above, I instructed my solicitors to write another letter dated 16th July, 2019 in which they informed the 1st Respondents that the content of the petition is the subject matter in Suit No. FHC/L/688/2018: MICHHARRY & COMPANY NIGERIA LIMITED vs. OIS INTERNATIONAL LIMITED pending before the Federal High Court, Ikoyi, Lagos. Attached hereto and marked as Exhibit "ELA6" is my Solicitor's letter dated 16th July, 2019.
31. That after receipt of the above letter by the 1st and 2nd Respondents, they stayed action and never bothered me again.
32. That at about 1:00pm, on Thursday, 24th day of September, 2020, I got a call from the Security/Gateman by name Happy Onaemo at No. 1/3, Peter King Road Edjeba, Warri, that an official from the 1st Respondent's office was around to serve me another Invitation letter from the 1 Respondent.
33. That since I was not around, the 1st Respondent's official could not deliver the letter but he dropped a verbal message with my Security/Gateman who informed me and I verily believed him that the 1st Respondent needs my presence in their Lagos office in connection with the petition written at the instance of the 3rd Respondent to the 1st Respondent.
34. That I am very surprised that the 1st Respondent is still bent on inviting me all cost over a petition in respect of which I have responded through my lawyer that the matter is in court as shown in Exhibit "ELA6".
35. That I know as a fact that Suit No. FHC/L/CS/688/2018 was filed first (i.e. on 3rd May, 2018) before the 3rd Respondent wrote the petition which gave rise to my invitation by the 1st Respondent vide the letter dated 5 July, 2019.
36. That I do not have any business with the content of either Exhibit "ELA1" or Exhibit ELA3" as the dispute is between Michharry and Company Nigeria Limited and the 3rd Respondent herein at the Federal High Court, Ikoyi, Lagos.
37. That Exhibit "ELA1" was prepared by the 3rd Respondent and sent to Michharry and Company Nigeria Limited for its signature.

38. That I know as a fact that Exhibits "ELA1" and "ELA3" are two separate documents which are already before a court of competent jurisdiction to interpret and resolve.
39. That the case pending before the Federal High Court, Ikoyi, Lagos, between Michharry and Company Nigeria Limited and the 3rd Respondent is a civil action arising from a civil transaction (i.e, the Settlement Agreement dated 14th September, 2017).
40. That it is for the court to decide which of the Settlement Agreement is the true agreement between Michharry and Company Nigeria Limited and the 3rd Respondent herein and not the 1st and 2nd Respondents.
41. That the invitation letter issued to me by the 2nd Respondent on behalf of the 1st Respondent at the instance of the 3rd Respondent over an issue which is already pending before a competent court of law is an abuse of the process of law and an infringement of my fundamental rights.
42. That if the 1st and 2nd Respondents are allowed to act on the 3rd Respondent's petition, it will prejudice the outcome of Suit No. FHC/L/CS/688/2018.
43. That I know as a fact that the said petition written at the instance of the 3rd Respondent is meant to harass, embarrass and intimidate me.
44. That I know as a fact that the 1st and 2nd Respondents have an inherent duty to carefully scrutinize all complaint it receives and be bold enough to advise such complainants to seek appropriate lawful means to resolve their dispute.
45. That it is a violation of my fundamental right for the 3rd Respondent to use the instrumentality of the 1st Respondent to oppress, harass and intimidate me on account of a matter which is subjudice.
46. That Michharry and Company Nigeria Limited is a different entity from my humble self.
47. That my fundamental rights are being threatened by the Respondents
48. That I know as a fact that the Respondents especially the 1st and 2nd Respondents have the capacity to arrest and detain me unless this application is granted.
49. That unless the Respondents are restrained from their present act, the 1st Respondent might arbitrarily use its might to arrest and detain me.

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HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 22/02/23

50. That the 3rd Respondent's petition is a tacit attempt/ploy to have the 1st Respondent recover the alleged debt, subject matter of the Settlement Agreement from me on behalf of Michharry and Company Nigeria Limited.
51. That I know as a fact that debt recovery is not part of the duties of the 1st Respondent under the Act establishing her.

Attached below are Exhibits "ELA1" and "ELA2."

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HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE 23/2/23

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CERTIFIED TRUE COPY
HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE 23-2-23

10.1 The terms of this Agreement, and the substance of all negotiations in connection with it, are confidential to the parties and their advisers, who shall not disclose them to, or otherwise communicate them to, any third party without the written consent of the other party other than:

10.1.1 to the parties' respective auditors, insurers and lawyers on terms which preserve confidentiality;

10.1.2 pursuant to an order of a court of competent jurisdiction, or pursuant to any proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure; and,

10.1.3 as far as necessary to implement and enforce any of the terms of this Agreement.

10.2 The parties are entitled to confirm the fact of, but not the terms of, settlement of the Dispute.

11. GOVERNING LAW

11.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Nigeria.

12. JURISDICTION

12.1 Each party irrevocably agrees that the Arbitration Tribunal in Nigeria shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

13. RIGHTS OF THIRD PARTIES

13.1 The parties agree that the terms of this Agreement are not enforceable by any third party.

14. CO-OPERATION

14.1 The parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary or desirable, and shall take any other action reasonably requested by the other party for the purpose of putting this Agreement into effect.

15. COUNTERPARTS

(47)

6.2 Clauses 4 and 5 supersede and override any and all previous agreements between the parties and any court order regarding the legal costs in relation to the Dispute, and in relation to this Agreement (including the implementation of all matters provided by this Agreement).

6. WARRANTIES AND AUTHORITY

6.1 Each party warrants and represents that it has not sold, transferred, assigned or otherwise disposed of its interest in the Released Claims.

6.2 Each party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform this Agreement.

7. NO ADMISSION

7.1 This Agreement is entered into in connection with the compromise of disputed matters and in the light of other considerations. It is not, and shall not be represented or construed by the parties as, an admission of liability or wrongdoing on the part of either party to this Agreement or any other person or entity.

8. SEVERABILITY

8.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

9. ENTIRE AGREEMENT

9.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

9.2 Each party agrees that it shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

10. CONFIDENTIALITY

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3.1.2 The remaining 30% of US $14,813,028.00 less local taxes (if any) will be paid to Michharry's bank account;

3.1.3 Michharry will send a copy of their request to MPN (as referred to in 3.1.1 above), to OIS and to the Nigerian Minister of State for Petroleum Resources;

3.1.4 When MPN makes payment (either to OIS or to Michharry), then the parties also agree that the Escrow Amount of £136,000 paid by Michharry will be released to Michharry in full.

3.2 Upon receipt in full by OIS of 70% of US $14,813,028.00 less local taxes (if any), the Parties agree that all the Claims, the Awarded Sums, the Court Costs Orders and the Counterclaims and other claims and counterclaims arising out of or related to the Charterparties, are deemed to have been settled on a full and final basis including costs and interest (collectively the "Released Claims").

3.3 The parties agree that the arbitration is hereby stayed until the 30th of April 2018 and arbitration hearing scheduled for March 2018 is hereby vacated with no order as to costs, and any costs of the Tribunal being shared 50/50.

3.4 If contrary to the instructions in the request at 3.1.1, MPN makes payment of 100% of US $14,813,028.00 less local taxes (if any) to Michharry only, Michharry agrees to immediately transfer 70% of US $14,813,028.00 less local taxes (if any) to OIS;

3.5 For the avoidance of doubt, if OIS does not receive 70% of US $14,813,028.00 less local taxes (if any) on or before 30th April 2018 then OIS shall have option of enforcing the terms of this Agreement or treating the Agreement as null and void and pursuing its full claim in the arbitration.

4. AGREEMENT NOT TO SUE

4.1 After OIS receives full settlement, each party agrees, on behalf of itself not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other party any action, suit or other proceeding concerning the Released Claims, in this jurisdiction or any other jurisdiction.

4.2 Clause 4 and clause 5 shall not apply to, and the Released Claims shall not include, any claims in respect of any breach of this Agreement by any of the parties.

5. COSTS

5.1 Other than provided for within this Agreement the parties shall each bear their own legal costs in relation to the Dispute and this Agreement.

Michharry of US $14,813,028.00 (Fourteen Million, Eight Hundred and Thirteen Thousand and Twenty Eight United States Dollars).

(I) The parties have reached agreement on a proposal to settle the Claims, the Awarded Sums, the Court Costs Orders and all pending actions in the United Kingdom either in Court or Arbitration Tribunal and the Counterclaims and wish to record those terms of settlement on a binding basis in this Agreement.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

Parties	OIS International Limited (Party) and Michharry & Company Nigeria Limited (Party)

2. EFFECT OF THIS AGREEMENT

2.1 The Parties hereby agree that on signing, this Agreement shall immediately be fully and effectively binding on them.

3. CONSIDERATION

3.1 The Parties have agreed as follows:

3.1.1 Within 14 days of this Agreement, Michharry will write to MPN requesting immediate payment of US $14,813,028.00 less local taxes (if any), with 70% of this payment being made directly by MPN to OIS' bank account, details of which are set out below:

Bank Name: Access Bank (UK) Limited.

Bank Address: 1, Cornhill, London. EC3V 3ND, United Kingdom

USD ACCOUNT NO. 00093701

SORT CODE: 406245

IBAN: GB85ABNG40624500093701

BENEFICIARY: OIS INTERNATIONAL LIMITED

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HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 29/3/23

THIS AGREEMENT is made on the 14th day of September 2017.

Parties:

(1) OIS INTERNATIONAL LTD whose registered office is Suite E – 2 Union Court Building, Elizabeth Avenue and Shirley Street, Nassau, the Bahamas ("OIS").

(2) MICHHARRY & CO. NIGERIA LTD whose registered office is Block 58 B Plot 20 Hunponu Wosu Road, by Omoinre Johnson Street 2nd Roundabout, Lekki, Phase 1, Lagos State, Nigeria ("Michharry").

Together ("the Parties")

WHEREAS

(A) By two charterparties dated 10 September 2013, ("the Charterparties") OIS chartered the Work Barge "OCEAN TREASURE" and Anchor Handling Tug "DELTA SKY" ("the Vessels") to Michharry.

(B) Disputes have arisen between the Parties and have been referred to Arbitration before Mr Alan Oakley as Sole Arbitrator ("the Tribunal").

(C) OIS has made various claims against Michharry relating to both Vessels ("the Claims");

(D) In addition, the Tribunal has made Four Final Partial Awards directing Michharry to pay to OIS unpaid hire and interest totalling US$ 3,486,712.73 (Three Million, Four Hundred and Eighty, Six Thousand Seven Hundred United States Dollars) together with £18,300 (Eighteen Thousand Five Hundred GB Pounds Sterling) Tribunal Fees ("the Awarded Sums").

(E) Michharry has denied liability for unpaid hire and/or sought set-off against hire for damages suffered by reason of breach of the Charterparty by way of a number of substantial Counterclaims ("the Counterclaims").

(F) The London High Court has ordered Michharry to make payment of £18,500 (Eighteen Thousand Five Hundred GB Pounds) by way of costs of various court applications ("the Court Costs Orders").

(G) Michharry has paid into escrow the sum of £136,000 (One Hundred and Thirty Six Thousand GB Pounds) pursuant to an agreement dated 20th August 2015 ("the Escrow Amount").

(H) On 9th February 2015, the Nigerian National Petroleum Corporation ("NNPC") sent a letter to Mobil Producing Nigeria ("MPN") ordering MPN to make payment to

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(49)

15.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. For the purposes of completion, signatures by the parties' legal advisers shall be binding.

16. VARIATION

16.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

This Agreement has been executed and delivered by the parties hereto on the date stated at the beginning of it.

Signed by for and on behalf of OIS International Ltd Bahamas

Dudley J Simms
Director UK Representative Office

OIS International Limited
D.J.Simms
Authorised Signatory

Signed by Chief Michael Edematie Ikuku Chairman / CEO for and on behalf of Michharry & Co Nigeria Ltd.

Director

10/10/2017

Initialled by OIS only (1)

Exh "ELA-2"
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ORIGINATING SUMMONS

IN THE FEDERAL HIGH COURT

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

CS/688

SUIT NO.FHC/L/ /2018

BETWEEN

MICHHARRY & COMPANY NIGERIA LIMITED--- PLAINTIFF

AND

OIS INTERNATIONAL LIMITED --- DEFENDANT

LET **OIS INTERNATIONAL LIMITED** of Suite E-2, Union Court Building, Elizabeth Avenue and Shirley Street, Nassau, the Bahamas, United States of America within thirty (30) days after service of this Summons on her, inclusive of the day of such service cause appearance to be entered for her to this summons which is issued upon the application of **MICHHARRY & COMPANY NIGERIA LIMITED** of Block 5B, Plot 20, Hunponu Wosu Road, by Omorinre Johnson Street, 2nd Roundabout, Lekki, Phase 1, Lagos State, Nigeria, who claims Declaratory Orders and Injunctive reliefs against the Defendant for the determination of the following questions:

1. *WHETHER in view of the subsistence of the Settlement Agreement executed on the 14th day of September, 2017 between the Plaintiff and the Defendant, the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is still VALID.*

2. *IF THE ANSWER TO QUESTION 1 ABOVE IS IN THE NEGATIVE, WHETHER the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is still capable of being enforced by the Defendant.*

3. *WHETHER by virtue of the provisions of Clause 12.1 of the said Settlement Agreement made on the 14th day of September, 2017 between the Plaintiff and the Defendant, this Honourable Court has the requisite jurisdiction to entertain and/or adjudicate over any dispute arising therefrom.*

4. *WHETHER by virtue of the provisions of Clause 12.1 of the said Settlement Agreement made on the 14th day of September, 2017, it is not only an Arbitration Tribunal in Nigeria that has the exclusive jurisdiction to settle any dispute or claim arising therefrom.*

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/2/23

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CONCLUSION:

Based on the arguments canvassed above as well as the authorities cited in support of our submissions, we humbly urge your Lordship to resolve all the questions formulated in the Originating summons in favour of the Plaintiff and grant the reliefs sought therein.

Dated this 2nd day of May, 2018.

CHIEF E. L. AKPOFURE, SAN, FCIArb
PLAINTIFF'S SOLICITORS,
E. L. AKPOFURE, SAN & CO.
NO. 45 NNPC HOUSING COMPLEX
ROAD, EKPAN.
DELTA STATE.
08033613881.

OR

2ND FLOOR, WING B, 191 IGBOSERE ,
LAGOS ISLAND, LAGOS STATE

FOR SERVICE ON:
THE DEFENDANT
SUITE E-2, UNION COURT BUILDING,
ELIZABETH AVENUE AND SHIRLEY STREET,
NASSAU, THE BAHAMAS,
UNITED STATES OF AMERICA.

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DATE

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We submit that it is not mandatory to obtain the consent of the Defendant before an Order of a stay of execution can be made in favour of the Plaintiff.

The above was the position taken by the Supreme Court in the case of AJUWA vs. SPDCN (SUPRA) @ PG. 830, PARAS. F - A, where the court Per FABIYI, JSC, held thus:

> *"Let me say it in passing that this court does not condone a situation where an earlier decision is capable of fettering the exercise of judicial discretion. Judicial discretion is a vital tool in the administration of justice...*
>
> *It is my considered opinion that the decision of this court in UBN vs. Odusote Bookstore Limited (supra) did not lay it down as a general principle of law that in all money judgments, the consent of judgment creditors must be secured to enable judges make an order of stay of execution. It is when the judgment debtor is a bank or a financial institution and a proposal is being made as to where the judgment debt will be kept pending determination of the appeal that parties, but more especially the judgment creditor, will have an input.*
>
> *In effect, I agree with the stance of the court below that it is not a must that the consent of a judgment creditor must be had and obtained in all applications for stay of monetary judgment. Such is only required where judgment debtor is a bank or financial institution which has to keep the judgment debt in its bank where same is employed to its advantage."* (Underlining for emphasis).

3.54 There is no gainsaying the fact that the Plaintiff herein is neither a bank nor a financial institution. Thus, the consent of the Defendant herein is not required before your Lordship can exercise your discretion. This is because according to the Honourable Justice Fabiyi, JSC, in the case of AJUWA vs. SPDCN (SUPRA) @ 829, PARAS. B - C,:

> *"Judicial discretion is a sacred power which inheres to a judge. It is an amour which the Judge should employ judicially and judiciously to arrive at a just decision. Same should not be left to the whims and caprices of a party to the action: It is not in tandem with the dictates of public policy which demands, inter alia, that administration of justice should be discharged without any form of prompting by the parties."*

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/9/25

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the court to do so in its favour otherwise it is a non-starter being a relief predicated upon equitable principles."

It is submitted that the Applicant has placed before this Honourable Court all the necessary materials that will enable the court to grant a stay of execution of Exhibit "ELA1".

Thus, it will certainly work serious hardship on the Plaintiff if the Defendant is allowed to execute the Terms of Settlement.

3.46 It is submitted that the Defendant's threat to initiate the enforcement of the Terms of Exhibit "ELA1" is imminent and apparent. Thus, it is necessary with the greatest respect that a stay of execution be granted.

3.47 In the same case of ALAWIYE vs. OGUNSANYA (SUPRA), His Lordship also stated at paragraphs B - D thus :

> *"The essence of stay of execution is to prevent the threat of the Judgment Creditor igniting a process to realize the fruit of the judgment declared in his favour. In that wise it is my view as informed by decided authorities that stay of execution ought not to be granted merely for the sake of putting the court to the exercise of granting it as a matter of course as it must be aimed at rightly suspending the plaintiff's right where the threat to initiate the enforcement of the Judgment Creditor's right as declared in his favour in the suit is imminent and real."*

3.48 It is further submitted that the Plaintiff has shown special and exceptional circumstances that will warrant this Honourable Court to grant a stay of execution of Exhibit "ELA1" pending the hearing and determination of this suit.

3.49 See the case of AMADI vs. CHUKWU (2013) 5 NWLR (PT. 1347) PG. 301 @ 310, PARAS. C - E, where the Supreme Court Per ARIWOOLA, JSC, stated thus:

> *"It is already settled that a stay of execution will only be granted by the court if and only if it is satisfied that there are special and exceptional circumstances to warrant doing so."*

3.50 We humbly urge your Lordship to hold that the Plaintiff has shown special and exceptional circumstances to warrant the grant of relief 5 in this suit.

3.51 Another agitating question that needs an answer is whether it is mandatory for this Honourable Court to obtain the consent of the Defendant before it can exercise its judicial discretion to grant a stay of execution in favour of the Plaintiff.

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DATE: 22/8/23

section 2 of the Arbitration and Conciliation Act which provides that

> *"Unless a contrary intention is expressed therein, an arbitration agreement shall be irrevocable except by an agreement of the parties or by leave of the court or a Judge."*

There is nothing before us to show that the parties agreed to the rescission of exhibit AO2 or that it was done with the leave of the court or a Judge. I therefore find it impossible to flow with that line of contention."

3.39 It is therefore submitted that the Defendant cannot enforce either the Settlement Agreement or the Terms of Settlement filed on 14th February, 2017 without reference to an Arbitration Tribunal in Nigeria in line with Clause 12.1 of Exhibit "ELA7".

3.40 Furthermore, on the effect of Clause 3.5 and Clause 12.1 of Exhibit "ELA7", we submit that apart from the fact the Clause 12.1 is irrevocable by virtue of Section 2 of the Arbitration and Conciliation Act CAP A18 LFN 2004 and as mutually agreed upon by the parties, it is also a specific provision which supersedes or overrides Clause 3.5 which is a general provision.

3.41 It is the law that where an agreement or statute contains a general provision as well as a specific provision, the specific provision prevails over the general provision. See the case of INAKOJU vs. ADELEKE (2007) 4 NWLR (PT. 1025) PG. 423 @ 629, PARAS. C - E.

3.42 It is further submitted that this Honourable Court also has the judicial powers to grant or order a stay of execution of Exhibit "ELA1" in the interest of justice.

3.43 In the case of ALAWIYE vs. OGUNSANYA (2013) 5 NWLR (PT. 1348) PG. 570 @ 597 PARAS. B -D, the Supreme Court Per CHUKWUMA-ENEH, JSC, held thus:

> *"... and having given the foregoing due consideration, I venture to say in principle that the applicant in this application has invoked the court's exercise of its discretion in its favour, firstly to grant a stay of execution in this matter. I must again say that it is trite that the court's discretionary power in this regard has to be exercised judicially and judiciously in essence based on the applicant placing before the court all the necessary materials to enable*

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DATE 23/02/23

"ELA7" sent an email to the Plaintiff threatening to invoke the provision of Clause 3.5 of Exhibit "ELA7".

For the purpose of clarity, Clause 3.5 of Exhibit "ELA7" provides thus:

> *"For the avoidance of doubt, if OIS does not receive 70% of $14,813,028.00 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight US dollars) less Local taxes (if any) on or before 30th April then OIS shall have option of enforcing the terms of this agreement or treating the agreement as null and void and pursuing its full claim in the Arbitration."*

3.35 It is submitted that from the provision of the above clause, the Defendant can only enforce the terms of Exhibit "ELA7" by referring the dispute to an Arbitration Tribunal in Nigeria in line with Clause 12.1. To do otherwise will amount to a flagrant breach of the Terms of Exhibit "ELA7" particularly Clauses 11.1 and 12.1.

3.36 The stance of the Plaintiff is that the Defendant cannot unilaterally revoke the arbitration clause (i.e, Clause 12.1) contained in Exhibit "ELA7" especially when both parties IRREVOCABLY agreed that the Arbitration Tribunal in Nigeria shall have EXCLUSIVE jurisdiction to settle any dispute or claim arising from the said settlement agreement.

3.37 It is the law that an Arbitration clause is irrevocable as clearly stipulated in Section 2 of the Arbitration and Conciliation Act CAP A18 LFN 2004 which provides thus:

> *"Unless a contrary intention is expressed therein, an arbitration agreement shall be IRREVOCABLE except by agreement of the parties or by leave of the court or a Judge."*

3.38 The provision of the above Section was also given an affirmation by the Court of Appeal in the case of FOLARIN ROTIMI ABIOLA WILLIAMS vs. CHIEF OLADIPUPO AKANNI OLUMUYIWA WILLIAMS, SAN & ORS (2014) 15 NWLR (PT. 1430) P. 213 @ PP. 239 - 240, PARAS. H - B, where the Court Per OSEJI, JCA, held thus:

> *"It was also strenuously argued by the 1st and 2nd respondents that the said exhibit AO2 had been rescinded by both of them on grounds of misrepresentation and concealment of material facts. Though the argument does not emanate from any issue formulated by the parties or the grounds of appeal or respondent notice, my simple answer to that is found in*

reason for encouraging arbitration is that it reduces the burden on court system to resolve parties. 39

The courts have enumerated notable reasons for arbitration in an avalanche of cases one of which is the case of SINO-AFRIC AGRICULTURAL & IND. CO. LTD vs. MIN. OF FINANCE INCORPORATION (2014) 10 NWLR (PT. 1416) P. 515 @ 536, PARAS. A - B, where the Court of Appeal Per ORJI-ABADUA, JCA, held thus:

> *"Other notable reasons are that it may lessen the risk of punitive damages awards, may decrease exposure to class actions or other forms of aggregate litigation, may result in more accurate outcomes because of arbitrator expertise and incentives, may better protect confidential information from disclosure, enhance the ability of the parties to have their disputes resolved using trade rules and it may enable the parties to better preserve their relationship. It may also provide a neutral forum."*

3.29 It is the law that the terms of any agreement are sacrosanct. Thus, where parties mutually manifest their respective intention to refer any dispute arising therefrom to an arbitration, no one is allowed to circumvent the arbitration agreement. We humbly refer your Lordship to the same case of SINO-AFRIC AGRICULTURAL & IND. CO. LTD vs. MIN. OF FINANCE INCORPORATION (SUPRA) at Page 534, Paragraphs B - C, where the court held thus:

> *"It needs to be echoed that parties generally should not be encouraged to circumvent arbitration agreement since both parties manifested their respective intention in the contract agreement signed by them to refer the matter to arbitration when dispute arises. Therefore, arbitration agreements are enforceable even if vague, so long as the parties' intention to arbitrate as a final and binding mechanism for the resolution of their dispute is evinced therein..."*

3.30 It is submitted that where parties to an agreement have chosen to determine for themselves that they would refer any of their dispute to an Arbitration instead of resorting to a regular court, the court has a duty to act upon the agreement. The courts are therefore enjoined not to encourage the breach of a valid arbitration agreement voluntarily entered into by the parties. This much was said by the Court of Appeal Per OKORO, J.C.A (as he then was) in the case of

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE 22/11/17

dollars, Thirty-three cents) and GBP £20,191.67 (Twenty Thousand, One Hundred and Ninety-one Pounds, Seventy-seven pence) on instalmental basis for a period of three (3) years to payment of a lump sum (i.e, 70% of $14,813,028.00 US Dollars (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight dollars) in satisfaction of all claims, awarded sums, court's cost and all pending actions in the United Kingdom. 3.

3.17 The parties, by signing Exhibit "ELA7" mutually abandoned their existing rights in Exhibit "ELA1".

3.18 It is also clear from Exhibit "ELA7" that the Defendant intended to derive a super added benefit from the said agreement.

3.19 It is therefore submitted that the Plaintiff and Defendant mutually agreed to abandon the Term of Settlement (Exhibit "ELA1") when they signed Exhibit "ELA7".

3.20 It is therefore clear from the affidavit evidence of the Plaintiff setting out the facts relied upon that the overriding agreement between the Plaintiff and the Defendant in respect of the Four Awards, subject matter of the Terms of Settlement dated 6/2/2017 but filed on 14/2/2017 (Exhibit "ELA1" herein) is the Settlement Agreement made between the Plaintiff and the Defendant on the 14th day of September, 2017 (Exhibit "ELA7").

3.21 It is submitted that by virtue of the provisions of Clause 12.1 of the said Agreement, the proper body that can entertain any dispute arising from the said agreement is an Arbitration Tribunal in Nigeria as mutually agreed upon by both parties.

3.22 For the avoidance of doubt, the said Clause 12.1 of Exhibit "ELA7" provides thus:

> *"Each party IRREVOCABLY agrees that the Arbitration Tribunal in Nigeria shall have EXCLUSIVE jurisdiction to settle "any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation."*

3.23 The above clause was mutually agreed upon by the parties at the time of entering into the Settlement Agreement (Exhibit "ELA7").

3.24 It is submitted that the content of Clause 12.1 of the Agreement is clear, simple and unambiguous and should be accorded its ordinary/grammatical meaning by this Honourable Court as admonished by the Court of Appeal in the case of FOLARIN ROTIMI

It is submitted that the parties herein, having entered into a fresh agreement in respect of issues/matter contained in an existing Agreement/Terms i.e., the Terms of Settlement filed on 14th February 2017 (Exhibit "ELA1" herein) is tantamount to a variation of contract.

3.14 What amounts to a variation of contract has been pronounced upon by the courts in a plethora of cases, one of which is the case of **UNITY BANK PLC. vs. OLATUNJI (2015) 5 NWLR (PT. 1452) P. 203 @ 242 - 243, PARAS. D - A**, where the Court of Appeal Per ABURU, JCA, held thus:

> *"The principle of variation of contract involves a definite alteration of contractual obligations by the mutual agreement of both parties. Variation is analogous to the entry by the parties into a new contract. The requirements of offer, acceptance and consideration are thus imposed...*
>
> *For a variation to be upheld, there must be a valid and subsisting contract on foot between the parties; there must be some form of consensus between the parties as to the obligations which are to be altered; and the parties must have acted in some way to their benefit or detriment in either agreeing the variation or as a result of the variation. A mutual abandonment of the existing rights of the parties under the agreement between them is sufficient consideration to support a variation of the agreement - Ekwunife v. Wayne (WA) Ltd. (1989) 5 NWLR (Pt. 122) 422 and Prospect Textile Mills Ltd v. Imperial Chemical Industries Plc. England (1996) 6 NWLR (Pt. 457) 668. Also, consideration will be said to have been provided where a party would derive a superadded benefit from the contract by reason of the variation - Williams v. Roffrey Bros & Nicholas (Contractors) Ltd. (1991) 1 QB 1.*
>
> *Further, the fact that, as matters turned out, only one party benefits from the variation is irrelevant."* (Underlining for emphasis).

3.15 In the instant case, the parties entered into a new agreement in Exhibit "ELA7" in the face of the existence of the Terms of Settlement (Exhibit "ELA1") filed by them on the 14th day of February, 2017.

3.16 There was also a consensus between the Plaintiff and the Defendant to alter the obligations/terms contained in the existing agreement from payment of the total sum of USD $4,133,695.36 (Four Million, One Hundred and Thirty-three Thousand, Six Hundred and Ninety-five

13: That on the 14th day of March, 2017 (i.e, 6 days after the payment of the first instalment sum), the Plaintiff paid the second instalment sum of $327,471.18 US Dollar (Three Hundred and Twenty-seven Thousand, Four Hundred and Seventy-one dollars, Eighteen cents). The said payment was made about 44 days before the due date of 27/4/2017 stated in Schedule "A" to the Terms of Settlement for the Plaintiff to pay the second instalment. Attached hereto and marked as Exhibit "ELA6" is the evidence of payment of the second instalment sum by the Plaintiff.

14: That as at the 14th day of March, 2017, Plaintiff had paid a total sum of USD $537,175.15 (Five Hundred and Thirty-seven Thousand, One Hundred and Seventy-five US Dollars, Fifteen cents) from the said judgment sum."

3.08 Curiously, however, in spite of the Plaintiff's determined effort to keep the terms in Exhibit "ELA1", the Defendant initiated/introduced another medium of recovering the judgment sum, subject matter of Exhibit "ELA1" from the Plaintiff at all cost.

3.09 The Defendant called for a meeting with the Plaintiff to discuss about a purported sum of money ($14,813,028.00 US Dollars [Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight dollars]) it allegedly claimed that Mobil Producing Nigeria Limited was owing the Plaintiff.

3.10 The Defendant's intention is to claim 70% of the said sum of USD $14,813,028.00 US Dollars (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight dollars) and a Settlement Agreement and Release dated 14th day of September, 2017 (Exhibit "ELA7") was eventually prepared by the Defendant and signed by both parties.

3.11 The essence of the Settlement Agreement (Exhibit "ELA7") was to fully and finally settle the awarded sums and court's cost (subject matter of the Terms of Settlement, Exhibit "ELA1") as well as all pending actions in the United Kingdom either in court or Arbitration Tribunal. We humbly refer your Lordship to recital (1) at page 2 of Exhibit "ELA7".

3.12 Furthermore, in Clause 2.1 at page 2 of Exhibit "ELA7", the parties mutually agreed that on signing the said Agreement, it shall immediately be fully and effectively binding on both parties.

CERTIFIED TRUE COPY
HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/2/23

$4,133,695.36 (Four Million, One Hundred and Thirty-three Thousand, Six Hundred and Ninety-five dollars, Thirty-three cents) and GBP £20,191.67 (Twenty Thousand, One Hundred and Ninety-one Pounds, Seventy-seven pence) in thirteen (13) quarterly instalments for a period of three years as shown in Schedules "A" and "B" attached to the Terms of Settlement (Exhibit "ELA1").

8: That in Exhibit "ELA1", the Plaintiff also agreed amongst others, to immediately withdraw/discontinue Suit Nos: FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which it filed against the Defendant at the Uyo Judicial division of this Honourable Court in respect of the subject matter on which the Terms of Settlement was predicated.

9: That it was also agreed by the Plaintiff that it would withdraw its Appeal in CA/L/1325M/2016 which it filed against the Order of this Honourable Court made on 30th June, 2015 in respect of the subject matter on which the subject matter was predicated.

10: That the Plaintiff has withdrawn/discontinued Suit Nos. FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which were pending at the Uyo division of this Honourable Court. The said suits have been struck out. Attached hereto as Exhibits "ELA3A" and "ELA3B" respectively are the applications to withdraw/discontinue the said suits at the Federal High Court, Uyo.

11: That the Plaintiff has also filed Notice of withdrawal of its Appeal No. CA/L/1325M/2016. Attached hereto and marked as Exhibit "ELA4" is the Notice of withdrawal of the appeal dated 24/2/2017 and filed on 07/03/2017.

12: That in further demonstration of the Plaintiff's utmost good faith, sincere intentions and commitment to comply with the Terms of Settlement, it paid the first instalment sum of $209,703.97 US Dollar (Two Hundred and Nine Thousand, Seven Hundred and Three dollars, Ninety-seven cents) on the 8th day of March, 2017 i.e, 18 days before the due date of 26/03/2017 stated in Schedule "A" to the Terms of Settlement. Attached hereto as Exhibit "ELA5" is the evidence of payment of the first instalment by the Plaintiff.

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ASST DIRECTOR OF COURTS
DATE

Order of court in Suit No. FHC/L/CP/730/2015 is no longer valid and capable of being enforced by the Defendant.

3.04 It is in evidence that sometime on the 14th day of February, 2017 the Plaintiff and Defendant filed Terms of Settlement in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited (Exhibit "ELA1" herein).

3.05 The said Terms of Settlement was predicated on Four Final Partial Arbitral Award made by Mr. Alan Oakley in an Arbitration in London in respect of a contract of hire between the parties.

3.06 On the 16th day of February, 2017, this Honourable Court Per Hon. Justice Aikawa made the Terms of Settlement an Order of this Honourable Court (See Exhibit "ELA2").

3.07 Upon the coming into effect of Exhibit "ELA1", the Plaintiff herein commenced immediate compliance with the terms contained therein. We humbly refer your Lordship to paragraphs 4 - 14 wherein the Plaintiff's deponent stated as follows:

"4: That I know as a fact that the Plaintiff and Defendant herein filed Terms of Settlement on the 14th day of February, 2017 in Suit No. FHC/L/CP/730/2015 between OIS International Limited vs. Michharry & Company Nigeria Limited. Attached hereto and marked as Exhibit "ELA1" is the said Terms of Settlement dated the 6th day of February, 2017.

5: That I know as a fact that on the 16th day of February, 2017, this Honourable Court Per Hon. Justice Aikawa made the Terms of Settlement an Order of Court. Attached hereto and marked as Exhibit "ELA2" is the Enrolled Order of the court.

6: That the said Terms of Settlement was in respect of Four Final Partial Arbitral Awards made by Mr. Alan Oakley in an Arbitration in London directing the Plaintiff to pay to the Defendant the sum of USD $3,486,712.73 (Three Million, Four Hundred and Eighty-six Thousand, Seven Hundred and Twelve dollars, Seventy-three cents) being unpaid hire sum and interest as well as the sum of GBP £18,300 (Eighteen Thousand, Three Hundred pounds) being Arbitration Tribunal Fee.

7: That by virtue of the Terms of Settlement, the Plaintiff agreed to pay the Defendant a total sum of USD

We rely on all the depositions in the affidavit, the exhibits attached thereto and adopt the arguments canvassed herein as the Plaintiff's argument in support of this Originating summons.

2.00 BRIEF FACTS OF THIS CASE

2.01 The brief facts of this case are as recounted in the affidavit setting out the facts relied upon by the Plaintiff.

3.00 ISSUES FOR DETERMINATION

1. *WHETHER IN VIEW OF THE SUBSISTENCE OF THE SETTLEMENT AGREEMENT EXECUTED ON THE 14TH DAY OF SEPTEMBER, 2017 BETWEEN THE PLAINTIFF AND THE DEFENDANT, THE TERMS OF SETTLEMENT DATED 6/2/2017 AND FILED ON 14/2/2017 WHICH WAS MADE AN ORDER OF COURT IN SUIT NO. FHC/L/CP/730/2015 BETWEEN OIS INTERNATIONAL LIMITED AND MICHHARRY & COMPANY NIGERIA LIMITED IS STILL VALID.*
2. *IF THE ANSWER TO QUESTION 1 ABOVE IS IN THE NEGATIVE, WHETHER THE TERMS OF SETTLEMENT DATED 6/2/2017 AND FILED ON 14/2/2017 WHICH WAS MADE AN ORDER OF COURT IN SUIT NO. FHC/L/CP/730/2015 BETWEEN OIS INTERNATIONAL LIMITED AND MICHHARRY & COMPANY NIGERIA LIMITED IS STILL CAPABLE OF BEING ENFORCED BY THE DEFENDANT.*
3. *WHETHER BY VIRTUE OF THE PROVISIONS OF CLAUSE 12.1 OF THE SAID SETTLEMENT AGREEMENT MADE ON THE 14TH DAY OF SEPTEMBER, 2017 BETWEEN THE PLAINTIFF AND THE DEFENDANT, THIS HONOURABLE COURT HAS THE REQUISITE JURISDICTION TO ENTERTAIN AND/OR ADJUDICATE OVER ANY DISPUTE ARISING THEREFROM.*
4. *WHETHER BY VIRTUE OF THE PROVISIONS OF CLAUSE 12.1 OF THE SAID SETTLEMENT AGREEMENT MADE ON THE 14TH DAY OF SEPTEMBER, 2017, IT IS NOT ONLY AN ARBITRATION TRIBUNAL IN NIGERIA THAT HAS THE EXCLUSIVE JURISDICTION TO SETTLE ANY DISPUTE OR CLAIM ARISING THEREFROM.*

3.01 ARGUMENT IN SUPPORT OF ISSUES

3.02 We humbly crave your Lordship's indulgence to argue all the issues together as they are all interwoven.

3.03 It is submitted that in view of the subsistence of the Agreement dated the 14th day of September, 2017 (Exhibit "ELA7" herein) the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 7/6/18

IN THE FEDERAL HIGH COURT

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

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SUIT NO. FHC/L/ /CP/ 687 /2018

BETWEEN

MICHHARRY & COMPANY NIGERIA LIMITED--- PLAINTIFF

AND

OIS INTERNATIONAL LIMITED --- DEFENDANT

WRITTEN ADDRESS IN SUPPORT OF ORIGINATING SUMMONS

1.00 INTRODUCTION

1.01 This is the Plaintiff's Written Address in support of the Originating Summons dated the 1st day of May, 2018.

1.02 The said Originating summons is supported by a 27 paragraph affidavit setting out the fact relied upon by the Plaintiff. The said affidavit is deposed to by Mr. Patrick Ehimen, the Finance Manager of the Plaintiff Company.

1.03 Attached to the said affidavit are the following documents marked as Exhibits "ELA1" - "ELA8" viz:

(1) Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 in Suit No. FHC/L/CP/730/2015 - Exhibit "ELA1".

(2) Order of Court made on 16th February, 2017 in Suit No. FHC/L/CP/730/2015 - Exhibit "ELA2".

(3) Applications to withdraw/discontinue said Suits Nos: FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 at the Federal High Court, Uyo - Exhibit "ELA3A" and "ELA3B" respectively.

(4) Notice of Withdrawal of the Appeal No. CA/L/1325M/2016 dated 24/2/2017 and filed on 07/03/2017 - Exhibit "ELA4".

(5) Evidence of Payment of the first instalment of $209,703.97 USD (Two Hundred and Nine Thousand, Seven Hundred and Three dollars, Ninety-seven cents) by the Plaintiff - Exhibit "ELA5".

(6) Evidence of payment of the second instalment of $327,471.18 (Three Hundred and Twenty-seven Thousand, Four Hundred and Seventy-one dollars, Eighteen cents) by the Plaintiff - Exhibit "ELA6".

(7) Settlement Agreement dated 14/09/2017 - Exhibit "ELA7".

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23-5-18

That an Order of this Honourable Court is required to stay execution of the Term of Settlement (Exhibit "ELA1") pending the determination of this suit. 36

That it will be in the interest of justice to resolve the questions in this suit in favour of the Plaintiff.

27. That I, MR. PATRICK EHIMEN do solemnly and sincerely declare that I make this solemn declaration conscientiously believing same to be true and by virtue of the Provision of the Oath Act currently in force.

DEPONENT

CERTIFIED TRUE COPY
HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23-7-18

Sworn to at the Federal High Court Registry,
LAGOS, this 30 day of May 2018.

BEFORE ME

Original Signed
A. M. TOFOWOMO-ADEGBITE (MRS)

COMMISSIONER FOR OATH

FEDERAL HIGH COURT
Cashier's Office
Date
LAGOS

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ing the Plaintiff was unrealistic and it was impossible for the Plaintiff to pay the Defendant the 70% claim on or before the 30th day of April, 2018. 29

That on realizing the above state of affairs, the Defendant wrote an email dated the 1st day of May, 2018 to the Plaintiff threatening to invoke the provision of Clause 3.5 of the said Settlement Agreement (Exhibit "ELA7"). Attached hereto and marked as Exhibit "ELA8" is the Defendant's email dated the 1st day of May, 2018.

23. That I know as a fact that a dispute has arisen from the said Agreement as a result of the Plaintiff's inability to pay the said 70% of $14,813,028.00 US Dollars (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight dollars) to the Defendant on or before the 30th day of April, 2018.

24. That I also know as a fact that the only way the Defendant can enforce the terms of the Settlement Agreement is by referring any/all dispute arising therefrom to an Arbitration Tribunal in Nigeria as stipulated in the Settlement Agreement.

25. That the Plaintiff's counsel, Chief E. L. Akpofure, SAN, FCIArb informed me in his law firm at No. 45, NNPC Housing Complex Road, Ekpan, Delta State on the 1st day of May, 2018 at about 3pm and I verily believed him as follows:

    (a) That in view of the subsistence of the Agreement executed on the 14th day of September, 2017 between the Plaintiff and the Defendant, the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is no longer valid.

    (b) That the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is incapable of being enforced by the Defendant.

    (c) That by virtue of the provisions of Clause 12.1 of the said Agreement made on the 14th day of September, 2017 between the Plaintiff and the Defendant, this Honourable Court does not have the requisite jurisdiction to entertain and/or adjudicate over any dispute arising therefrom.

    (d) That by virtue of the provisions of Clause 12.1 of the said Agreement made on the 14th day of September, 2017, it is ONLY an Arbitration Tribunal in Nigeria that has the exclusive jurisdiction to settle any dispute or claim arising therefrom.

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23-9-23

Hundred and Seventy-one dollars, Eighteen cents). The said ment was made about 44 days before the due date of 27/4/2017 stated Schedule "A" to the Terms of Settlement for the Plaintiff to pay the second instalment. Attached hereto and marked as Exhibit "ELA6" is the evidence of payment of the second instalment sum by the Plaintiff.

14. That as at the 14th day of March, 2017, Plaintiff had paid a total sum of USD $537,175.15 (Five Hundred and Thirty-seven Thousand, One Hundred and Seventy-five US Dollars, Fifteen cents) from the said judgment sum.

15. That despite the Plaintiff's effort in keeping with the Terms of Settlement (Exhibit "ELA1") the Defendant initiated another medium of getting the said judgment sum from the Plaintiff at all cost by calling for a meeting with the Plaintiff to discuss about a purported sum of money (USD $14,813,028.00 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight US dollars) it allegedly claim that Mobil Producing Nigeria Limited was owing the Plaintiff.

16. That the Defendant's intention is to claim 70% of the said sum of USD $14,813,028.00 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight US dollars) purportedly owed the Plaintiff by Mobil Producing Nigeria (MPN) as full and final satisfaction of all the awarded sums, court cost orders and all pending action in the United Kingdom either in court or Arbitration Tribunal.

17. That in furtherance of the Defendant's dogged effort to claim the purported sum, it prepared a Settlement Agreement and Release dated 14th September, 2017. Attached hereto as Exhibit "ELA7" is the said Settlement Agreement and Release dated 14th September, 2017.

18. That in Exhibit "ELA7", the Plaintiff and Defendant mutually agreed to vacate the pending Arbitration proceedings in London scheduled for March 2018 and to stay further Arbitration proceedings till 30th April, 2018.

19. That it is mutually agreed by the parties that any dispute or claims arising from Exhibit "ELA7" shall be governed by and construed in accordance with the laws of Nigeria.

20. That the parties also irrevocably agreed in Exhibit "ELA7" that it is the Arbitration Tribunal in Nigeria that shall have exclusive jurisdiction to settle any dispute or claim arising out of the said agreement.

21. That it turned out to be that the purported sum of $14,813,028.00 US Dollar (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight dollars) which the Defendant allegedly claimed that Mobil Producing Nigeria

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE 28/9/17

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...m and interest as well as the sum of GBP £18,300 (Eighteen ...sand, Three Hundred pounds) being Arbitration Tribunal Fee.

That by virtue of the Terms of Settlement, the Plaintiff agreed to pay the Defendant a total sum of USD $4,133,695.36 (Four Million, One Hundred and Thirty-three Thousand, Six Hundred and Ninety-five dollars, Thirty-three cents) and GBP £20,191.67 (Twenty Thousand, One Hundred and Ninety-one Pounds, Seventy-seven pence) in thirteen (13) quarterly instalments for a period of three years as shown in Schedules "A" and "B" attached to the Terms of Settlement (Exhibit "ELA1").

8. That in Exhibit "ELA1", the Plaintiff also agreed amongst others, to immediately withdraw/discontinue Suit Nos: FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which it filed against the Defendant at the Uyo Judicial division of this Honourable Court in respect of the subject matter on which the Terms of Settlement was predicated.

9. That it was also agreed by the Plaintiff that it would withdraw its Appeal in CA/L/1325M/2016 which it filed against the Order of this Honourable Court made on 30th June, 2015 in respect of the subject matter on which the subject matter was predicated.

10. That the Plaintiff has withdrawn/discontinued Suit Nos. FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which were pending at the Uyo division of this Honourable Court. The said suits have been struck out. Attached hereto as Exhibits "ELA3A" and "ELA3B" respectively are the applications to withdraw/discontinue the said suits at the Federal High Court, Uyo.

11. That the Plaintiff has also filed Notice of withdrawal of its Appeal No. CA/L/1325M/2016. Attached hereto and marked as Exhibit "ELA4" is the Notice of withdrawal of the appeal dated 24/2/2017 and filed on 07/03/2017.

12. That in further demonstration of the Plaintiff's utmost good faith, sincere intentions and commitment to comply with the Terms of Settlement, it paid the first instalment sum of $209,703.97 US Dollar (Two Hundred and Nine Thousand, Seven Hundred and Three dollars, Ninety-seven cents) on the 8th day of March, 2017 i.e, 18 days before the due date of 26/03/2017 stated in Schedule "A" to the Terms of Settlement. Attached hereto as Exhibit "ELA5" is the evidence of payment of the first instalment sum by the Plaintiff.

13. That on the 14th day of March, 2017 (i.e, 6 days after the payment of the first instalmental sum); the Plaintiff paid the second instalment of $327,471.18 US Dollar (Three Hundred and Twenty-seven Thousand,

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE 22.3.17

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...sum and interest as well as the sum of GBP £18,300 (Eighteen ...sand, Three Hundred pounds) being Arbitration Tribunal Fee.

...hat by virtue of the Terms of Settlement, the Plaintiff agreed to pay the Defendant a total sum of USD $4,133,695.36 (Four Million, One Hundred and Thirty-three Thousand, Six Hundred and Ninety-five dollars, Thirty-three cents) and GBP £20,191.67 (Twenty Thousand, One Hundred and Ninety-one Pounds, Seventy-seven pence) in thirteen (13) quarterly instalments for a period of three years as shown in Schedules "A" and "B" attached to the Terms of Settlement (Exhibit "ELA1").

8. That in Exhibit "ELA1", the Plaintiff also agreed amongst others, to immediately withdraw/discontinue Suit Nos: FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which it filed against the Defendant at the Uyo Judicial division of this Honourable Court in respect of the subject matter on which the Terms of Settlement was predicated.

9. That it was also agreed by the Plaintiff that it would withdraw its Appeal in CA/L/1325M/2016 which it filed against the Order of this Honourable Court made on 30th June, 2015 in respect of the subject matter on which the subject matter was predicated.

10. That the Plaintiff has withdrawn/discontinued Suit Nos. FHC/UY/CS/1105/2015 and FHC/UY/CS/1123/2015 which were pending at the Uyo division of this Honourable Court. The said suits have been struck out. Attached hereto as Exhibits "ELA3A" and "ELA3B" respectively are the applications to withdraw/discontinue the said suits at the Federal High Court, Uyo.

11. That the Plaintiff has also filed Notice of withdrawal of its Appeal No. CA/L/1325M/2016. Attached hereto and marked as Exhibit "ELA4" is the Notice of withdrawal of the appeal dated 24/2/2017 and filed on 07/03/2017.

12. That in further demonstration of the Plaintiff's utmost good faith, sincere intentions and commitment to comply with the Terms of Settlement, it paid the first instalment sum of $209,703.97 US Dollar (Two Hundred and Nine Thousand, Seven Hundred and Three dollars, Ninety-seven cents) on the 8th day of March, 2017 i.e, 18 days before the due date of 26/03/2017 stated in Schedule "A" to the Terms of Settlement. Attached hereto as Exhibit "ELA5" is the evidence of payment of the first instalment sum by the Plaintiff.

13. That on the 14th day of March, 2017 (i.e, 6 days after the payment of the first instalmental sum), the Plaintiff paid the second instalment of $327,471.18 US Dollar (Three Hundred and Twenty-seven Thousand,

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/06/2023

IN THE FEDERAL HIGH COURT

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO.FHC/ / /2018

BETWEEN

MICHHARRY & COMPANY NIGERIA LIMITED--- PLAINTIFF

AND

OIS INTERNATIONAL LIMITED --- DEFENDANT

AFFIDAVIT SETTING OUT THE FACTS RELIED UPON BY THE PLAINTIFF

I, MR. PATRICK EHIMEN, Male, Christian, Nigerian Citizen of No. 3. Peter King Road, Edjeba in Warri South Local Government Area of Delta State, Nigeria do hereby make oath and state as follows:

1. That I am the Finance Manager in the Plaintiff company by virtue of which I am conversant with the facts of this case.

2. That I have the consent and authorization of the Plaintiff to depose to this affidavit on its behalf.

3. That the facts deposed to herein are facts within my knowledge and others that I gathered from various documents in my capacity as the Finance Manager in the Plaintiff Company as well as those relayed to me by the Plaintiff's Counsel, Chief E. L. Akpofure, SAN, FCIArb which I verily believed to be true and correct.

4. That I know as a fact that the Plaintiff and Defendant herein filed Terms of Settlement on the 14th day of February, 2017 in Suit No. FHC/L/CP/730/2015 between OIS International Limited vs. Michharry & Company Nigeria Limited. Attached hereto and marked as Exhibit "ELA1" is the said Terms of Settlement dated the 6th day of February, 2017.

5. That I know as a fact that on the 16th day of February, 2017, this Honourable Court Per Hon. Justice Aikawa made the Terms of Settlement an Order of Court. Attached hereto and marked as Exhibit "ELA2" is the Enrolled Order of the court.

6. That the said Terms of Settlement was in respect of Four Final Partial Arbitral Awards made by Mr. Alan Oakley in an Arbitration in London directing the Plaintiff to pay to the Defendant the sum of USD $3,486,712.73 (Three Million, Four Hundred and Eighty-six Thousand, Seven Hundred and Twelve dollars, Seventy-three cents) being unpaid

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HENRY E. OKOTIE

ASST DIRECTOR OF COURTS

DATE 23/2/18

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if the Defendant does not respond within the time and at the place above tioned, such orders will be made and proceedings may be taken as the Judge lay think just and expedient.

THIS ORIGINATING SUMMONS IS TO BE ISSUED OUT OF LAGOS STATE AND SERVED IN THE UNITED STATES OF AMERICA.

CERTIFIED TRUE COPY
HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/9/25

Cashier's Office
Date 3
LAGOS

18

SOUGHT BY THE PLAINTIFF

A DECLARATION that in view of the subsistence of the Settlement Agreement executed on the 14th day of September, 2017 between the Plaintiff and the Defendant, the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is no longer VALID.

2. *A DECLARATION that the Terms of Settlement dated 6/2/2017 and filed on 14/2/2017 which was made an Order of court in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited is incapable of being enforced by the Defendant.*

3. *A DECLARATION that by virtue of the provisions of Clause 12.1 of the said Settlement Agreement made on the 14th day of September, 2017 between the Plaintiff and the Defendant, this Honourable Court DOES NOT have the requisite jurisdiction to entertain and/or adjudicate over any dispute arising therefrom.*

4. *A DECLARATION that by virtue of the provisions of Clause 12.1 of the said Settlement Agreement made on the 14th day of September, 2017, it is ONLY an Arbitration Tribunal in Nigeria that has the exclusive jurisdiction to settle any dispute or claim arising therefrom.*

5. *AN ORDER staying execution of the Terms of Settlement dated the 6th day of February, 2017 and filed on the 14th day of February, 2017 in Suit No. FHC/L/CP/730/2015 between OIS International Limited and Michharry & Company Nigeria Limited pending the determination of this suit.*

Dated this 1st day of May, 2018.

This Originating Summons was taken out by CHIEF E. L. AKPOFURE, SAN, FCIArb of E.L. Akpofure, SAN & Co., of 45, NNPC Housing Complex Road, Ekpan, Delta State, Legal Practitioners for the above named Plaintiff.

The Defendant may appear hereunto by entering appearance personally or by Legal Practitioner either by filing the appropriate processes (as in Order 7) in response at the Registry of the Federal High Court, Lagos where the summons was issued or by sending them to that office by any of the methods allowed by the Rules of Court.

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/7/18

REGISTRAR

From the Affidavit evidence of the 3rd Respondent, he stated that:

I. That the 3rd Respondent and Applicant entered into two Charter Party agreements dated 10th September 2013.

II. That disputes arose based on the Charter Party agreements which became the subject of London Arbitration proceedings in line with the Charter Party agreements.

III. That out of the London Arbitration proceedings, which is still ongoing, several interim arbitral awards were awarded to the Respondent herein by the London Tribunal.

IV. That the Respondent proceeded to register the interim arbitral awards as judgments of the Federal High Court of Nigeria by way of SUIT NO. FHC/CP/730/2015.

V. That ultimately in SUIT NO.FHC/CP/730/2015, the Applicant and 3rd Respondent entered terms of settlement which was entered as a consent judgment of the Federal High Court on the 16th of February 2017.

VI. That the consent judgment required the Applicant herein to pay the entire judgment sum by structured instalments, failing which the 3rd Respondent would be entitled to recover all sums outstanding.

VII. That the Applicant failed to pay the entire judgment sum as directed by the consent judgment of 16th of February 2017.

VIII. That in light of their failure and in a bid to prevent the 3rd Respondent from proceeding to recover all outstanding sums from the Applicant, the Applicant filed a Motion on Notice in SUIT N0: FHC/CP/730/2015 seeking to vary the order of Court by changing the instalment payment timing and structure. Attached and marked EXHIBIT "A" is the Motion on Notice dated 3rd July 2017.

IX. That the Applicant's Motion on Notice dated 3rd May, 2017 also sought to stay execution of the judgment debt in light of the Applicant's failure to satisfy same.

X. That in order to reach an amicable conclusion to the entire dispute and prevent further unnecessary expense by both parties, a meeting to discuss settlement was held by the parties sometime in September 2017.

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HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/07/23

XI. That the above meeting ended in a verbal agreement that parties should settle all disputes relating to the two Charter Parties dated 10th September, 2013.

XII. That subsequent to the above verbal agreement, the parties proceeded to exchange a series of emails negotiating and ultimately agreeing on the express terms of the settlement agreement in writing.

XIII. That attached and marked EXHIBIT B is a 24-page trail of emails containing the discussions and negotiations between the parties from the 14th of September 2017 to the 14th of October 2017.

XIV. That the Applicant was in no way coerced into agreeing to a settlement agreement as the Applicant freely and willingly negotiated terms that were acceptable to it.

XV. That on the 4th of October 2017, the Applicant sent an email to the 3rd Respondent (pages 10 & 11 of Exhibit B) in which the Applicant indicated several changes it desired in the agreement, including that it wanted clause 12.1 of the agreement to read "Arbitration Tribunal in Nigeria".

XVI. That the 3rd Respondent responded in its email of 6th of October, 2017 (pages 8 & 9 of Exhibit B), by accepting all changes requested by the Plaintiff except two items which included the requested change to clause 12.1.

XVII. That further in the Respondent's email of 6th October 2017 the 3rd Respondent stated thus: "12.1 - Deleted Arbitration Tribunal in Nigeria and inserted Nigerian Courts".

XVIII. That after deleting the phrase *Arbitration Tribunal in Nigeria* and inserting *Nigerian Courts* in the agreement, the 3rd Respondent signed the settlement and attached the signed copy to its email of 6th October 2017 for immediate execution by the Applicant.

XIX. That the Applicant did not respond until its email of 10th of October 2017 (Page 7 of Exhibit B), to which it signed and attached an earlier draft of the agreement that the 3rd Respondent had previously rejected and never signed. In this document the Applicant had surreptitiously re-inserted into clause 12.1 the phrase "Arbitration Tribunal in Nigeria".

XX. That the 3rd Respondent responded the next day by an email dated 11th October 2017 (page 6 of Exhibit B), in which it made clear that the Applicant's underhand attempt at switching the documents was

unacceptable. The 3rd Respondent went further to insist that inserting the phrase "Arbitration Tribunal in Nigeria" was not acceptable and only "Nigerian Courts" would be satisfactory.

XXI. That furthermore in the email of 11th October 2017 the 3rd Respondent stated clearly thus: "We have accepted all other alterations you have put forward over the past weeks. Referring to Nigerian Courts in the case of any default or dispute should not be a problem for you if you have no intention to break the Settlement Agreement. OIS have fully accepted the Nigerian Courts jurisdiction."

XXII. That in all further negotiations from that day until the completion of negotiations and final execution of the agreement, the Applicant never raised the issue of clause 12.1 again.

XXIII. That the Applicant sent further emails to the 3rd Respondent on 12/10/17, 13/10/17 & 14/10/17 but never requested that the phrase in clause 12.1 be changed back to "Arbitration Tribunal in Nigeria".

XXIV. That on the 13th of October, 2017, the Applicant's Chairman in an email (page 3 of Exhibit B) to the 3rd Respondent, pointed out that the signatures in the agreement should be dated 13th October, 2017, to which the 3rd Respondent acquiesced.

XXV. That attached and marked EXHIBIT C herein is the resultant Settlement Agreement dated 14th September 2017 agreed to by the Applicant and the 3rd Respondent with both signatures dated 13th October 2017.

XXVI. Thereafter, when the Applicant once again failed to fulfil its repayment obligations as had been agreed and it was clear the 3rd Respondent was ready to return to the Court to enforce its existing judgment against the Applicant, the Applicant proceeded to institute an action in FHC/L/CS/688/2018 via Originating Summons dated 15th May 2018 to stop the enforcement, and relied on a purported Settlement Agreement dated 14th September 2017. Attached and marked EXHIBIT D is the purported Settlement Agreement dated 14th September 2017 relied on by the Applicant in its Originating Summons.

XXVII. That the Settlement Agreement relied on by the Applicant in its Originating Summons in FHC/L/CS/688/2018 contains in paragraph 12.1 the phrase "Arbitration Tribunal in Nigeria", only one of the signatures is undated and the other signature is dated 10th October, 2017.

XXVIII. That Dudley Simms, who at all times was the representative of the 3rd Respondent and signed all contracts on behalf of the 3rd Respondent, has stated in clear terms to the 1st Respondent that he never at any time signed any settlement agreement with the Applicant that contained the phrase "Arbitration Tribunal in Nigeria".

XXIX. That in the reasonable belief of the 3rd Respondent, the production by the Applicant of a purported Settlement Agreement containing the phrase "Arbitration Tribunal in Nigeria" and allegedly signed by Dudley Simms could only be possible through fraudulent means.

XXX. That the effect of the fraudulent Settlement Agreement relied on the Applicant is ultimately to fraudulently deprive the 3rd Respondent of the Momentary Sums Awarded by the Judgement Obtained by the 3rd Respondent against the Applicant.

XXXI. That following the above and the reasonable suspicion of crime the 3rd Respondent being a law abiding citizen wrote a petition to the Applicant alleging fraudulent alteration and forgery of the Settlement Agreement. Attached and marked exhibit E is the petition to the 1st Respondent.

The Applicant in his affidavit evidence paragraph 19 stated that Michharry and Company Nigeria Limited filed an originating summons in Suit No. FHC/L/CS/688/2018: Michharry and Company Nigeria limited vs OIS International Limited calling on the court to interpret the provisions of clause 12.1 of Exhibit "ELA 1" and Exhibit "ELA 2". Also the 3rd Respondent in his affidavit evidence paragraph xxvii stated that the settlement relied on by the Applicant in its originating summons in FHC/L/CS/688/2018 contains in paragraph 12.1 the phrase "Arbitration Tribunal in Nigeria" only one of the signatures is undated and the other signature is dated 10th October 2017.

The Applicant and the 3rd Respondent joined issues. The said originating summons was dated 2/5/2018 which is marked as Exhibit "ELA 2", the EFCC letter of invitation marked as Exhibit "ELA 4" and dated 5/7/2019. This shows that the investigation started at about a year after the suit had been filed.

However, the allegation of forgery was denied by the Applicant in paragraph 7d of Applicant's further affidavit to the 1st and 2nd Respondent's counter affidavit deposed to on 13th November 2020 dated 29/1/21 and it states thus:

"That the settlement agreement dated 14th September, 2017 attached to the 1st and 2nd Respondent's counter affidavit as Exhibit "EFCC 3" was not forged. The said settlement agreement was duly signed by Dudley J. Simms."

QUESTIONS:

Did the 3rd Respondent notice the alteration of clause 12.1 before the originating summons was filed on 2/5/2018 or the 3rd Respondent found out about the alteration in the cause of the pending matter in Suit No. FHC/L/CS/688/2018, **could it be said that the 3rd Respondent is trying to frustrate the matter, which is lis pendens before a Federal High Court thereby chasing after the Applicant with EFCC officers?** These are questions that beg for answers. It is important to note that Order II Rule 1 of the Fundamental Right (Enforcement procedure) Rule 2009 provides thus:

> **"any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed may apply to the court in the state where the infringement occurs or is likely to occur for redress."**

The Applicant perceived that his right to liberty as provided for in Section 35 and his right to fair hearing in Section 36 of the 1999 Constitution is likely to be infringed hence his application for his fundamental right to be protected.

The Applicant for fear of being detained by the EFCC did not honour the invitation but requested that his lawyer write to EFCC as seen in Exhibit "ELA6" where EFCC was duly informed that the said matter was borne out of an agreement which is contractual in nature and that the said agreement is under litigation and pending in the Federal High Court.

It is worthy of note that litigation is not a matter of planting mines to deceive the opponent with a view to destroying his case undeservingly in limine, on the contrary litigation is a process where the parties set out their cases frankly and truly for the determination of the court, a trickish and miserly presentation of a client's case is not part of good advocacy. See the case of **NEWSWATCH COMMUNICATION LTD V ATTA (2006) LPELR-1986 (SC).**

The position of this Court is that the EFCC invitation and possibly detention of the Applicant would in my view as a court of concurrent jurisdiction have an adverse

effect on the pending matter before the Federal High Court, which will border on fair hearing. See **Section 36 of the 1999 Constitution of the Federal Republic of Nigeria.** See also the case of **UKWUYOK & ORS VS OGBULU & ORS (2019) LPELR-48741(SC).**

Looking at the powers of the 1st and 2nd Respondents, it is well settled in a plethora of cases that the EFCC is not a debt recovery agency. See the case of **EFCC VS. DIAMOND BANK PLC (2018) 8 NWLR (pt. 1620) SC 61.**

However, if the facts tilt towards the establishment of an economic crime, the EFCC cannot be shut out by a law court to investigate or further investigate and to prosecute if legal advice is so rendered.

However, again what is at stake here is an alleged crime of forgery within a contractual agreement. The question to answer is whether that is within the jurisdiction of the EFCC. If it is forgery, it is ordinarily more like a case for the police first and foremost. This takes us back to the Supreme Court decision in **DIAMOND BANK PLC V HRH EZE (DR) PETER OPARA & ORS (2018) LPELR-439070 (SC), per BAGE, JSC** where the Court held;

> "It is important for me to pause and say here that powers conferred on the 3rd Respondent i.e the EFCC to receive complaints and prevent and or fight the commission of financial crime in Nigeria pursuant to Section 6(b) of the EFCC Act Supra does not extend to investigation and/or resolution of dispute arising or resulting from simple contract or civil transaction. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully drafted by the complainant to seek appropriate/lawful means to resolve their dispute."

Needless to say that the law from the above authority is to the effect that the EFCC has no power whatsoever to investigate transactions or disputes that are purely civil in nature. However, I am mindful of the fact that a combined reading of Sections 6(h) 7, 8, 13, 38, and 41 of the EFCC Act, 2004 empowers the EFCC to investigate cases that deal with economic and financial crimes.

The Court of Appeal also in **ORJI UZOR KALU VS. FEDERAL REPUBLIC OF NIGERIA & ORS (2012) LPELR 9287** (CA) held that;

"The combined reading of Sections 6(m) and 46 of the Economic and Financial Crimes Commission (Establishment) Act, 2004 clearly shows that the EFCC has powers to investigate and prosecute for all crimes connected with or related to economic and financial crimes, which include various forms of fraud, money laundering, corrupt practices, and drug related offences."

These cases have held that the EFCC only has the power to investigate cases that deal with economic and financial crimes.

The meaning of economic and financial crimes has been provided for in Section 46 of the EFCC ACT (Supra) to mean:

> "The non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individual or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc."

To this end, in my view the alleged act of forgery is clothed with some form of financial implication, taking a clue from the matter in the Federal High Court exhibited before me as Exhibit "E". I find that the purpose of the alleged forgery, EFCC criminal investigation orchestrated by the 3rd Respondent, is to recover the sum of money in dispute which shows clearly that there exists a hidden motive stemming from a financial standpoint.

However, as I have said above and will reiterate for emphasis sake, the EFCC though saddled with the powers to investigate economic and financial crimes cannot interfere in a case subsisting or pending in a court of law touching on same subject matter especially where their investigation or pursuing criminal action pari pasu may hamper or hinder or interfere with the subject of the Applicant's cause of action in the civil suit at the Federal High Court, Lagos. This would be an abuse of their investigative powers. It would have been different if the EFCC started investigations and concluded same and had instituted a criminal matter in court and the party later sought a civil suit in another court. This would have sufficed as

both the civil and criminal matters could have been said to run concurrently as the rule in **Smith v Selwyn** has long been dead and buried. See the case of **ABAVER V ALAGA (2018) LPELR – 46566 (CA).**
It is therefore my view that the EFCC cannot investigate or invite the Applicant in an alleged issue of forgery arising from a simple contract agreement which is already part of a civil suit which is before the Federal High court thereby intending to investigate ***pari pasu*** along with the proceedings in Federal High Court. I think not.

Counsel to the 1st and 2nd Respondents in his written address cited **Sections 6 (h), (j) and 7(1)(a) of the EFCC ACT** which give the EFCC power to investigate financial crimes. In my view, the allegation against the Applicant is falsification/alteration of the settlement agreement which does not fall under the purview of the EFCC directly as it is a mere case of alleged forgery. It is simpliciter not deemed an economic and financial crime but may become so depending on the conclusions of the case at the Federal High Court and may terminate as a simple interpretation of a settlement agreement between two parties and their counsel.

Counsel to the 3rd Respondent submitted that a mere invitation letter does not amount to infringement of the Applicant's fundamental right. It is worthy to note that an invitation letter from EFCC can be intimidating and likely to infringe on the fundamental right of the Applicant. See **Section 46(1) of the 1999 Constitution as amended.**

I must therefore conclude that the issues between the Applicant and the 3rd Respondent as at today and in the present situation is purely a civil contractual transaction and the EFCC does not have any business in it. See the case of **DIAMOND BANK V OPARA & ORS (2018) LPELR-43907(SC).** At this stage, the EFCC investigation of fraud would jeopardize and be in contempt of the proceedings in the Federal High Court.
The outcome of the judgment in that case would determine whether the court suspects or confirms forgery which would lead to the establishment or indication that a crime has been committed and in which case, the relevant prosecuting authority can now prosecute and the police is in my view more qualified but if the EFCC can investigate matters that are of private contractual nature such as the instant case is an academic exercise for another time. **If the Federal High Court**

for example decided or recommended investigation for forgery or finds for forgery and recommended prosecution, it is my holding that this is not such a case that the Applicant should be detained rather he should be invited to defend himself in the prosecuting court as he is not on the run.

It is true that if a crime is perceived the 3rd Respondent can make a formal complaint to the appropriate authority, who will carry out a proper investigation and if a crime is reasonably suspected they would file a complaint in a court of competent jurisdiction. However, the scenario here is different as the issue is part of the sub- stratum in a civil court of concurrent jurisdiction that has to be resolved first so as not to render nuragatory the decision of the Federal High Court or prejudice its decision.

More so, the Applicant filed an additional authority on 25/01/2022 relying on the Supreme Court decision of Nwobike SAN's case (Dr. Joseph Nwobike SAN vs. FGN delivered by Tijani Abubakar JSC on 20/12/21). Counsel to the Applicant submitted that from the December 2021 judgement of the Supreme Court, the Court adopted the ejusdem generis rule of interpretation in construing and explaining in detail, the meaning of economic and financial crimes and the phrase, "*any form of corrupt malpractices*" as used in Section 46 EFCC Act. According to the apex court, the words must be confined to the particular class of offences to wit: "embezzlement" "bribery" and "looting" which the words "any form of corrupt practices" follow. Counsel further submitted that the Apex Court also held that the test for ascertaining if a conduct can be regarded as an economic and financial crime is that such criminal conduct must be non-violent criminal and illicit activity committed with the objective of earning wealth.

In juxtaposing the above cited authority with the instant case, counsel for the Applicant Chief E. L. Akpofure SAN posited that since the alleged forgery and alteration of document contained in Exhibit "**EFCC1**" was not done (if at all) for the purpose of earning wealth, the criminal conduct of forgery and alteration of document is not an economic and financial crime as defined in Section 46 of the EFCC Act.

On the other hand, counsel to the 3rd Respondent filed a response to the Applicant's additional authority on the 27-01-22 wherein counsel submitted that

the ratio of the Supreme Court's decision in Nwobike's case has no bearing on the case before this honourable court on three grounds viz:

a. *The Applicant, in his application has not asked this Court to pronounce or declare that the petition being investigated by the EFCC does not involve an economic and financial crime.*
b. *The grounds upon which the Applicant brought his application for enforcement of his fundamental rights is that the petition being investigated by the EFCC is the subject matter of a suit presently before the Federal High Court Lagos (i.e subjudice).*
c. *The Applicant's application to this honourable court is based on seven (7) grounds and none of these grounds have anything to do with the scope of the powers of the EFCC Act.*

And that the Applicant by its letter is attempting to change its case and it cannot do so at this stage.

Secondly, counsel submitted that if Nwobike's case is taken to be applicable, the Supreme Court held in that case that "the test for ascertaining if a criminal conduct can be regarded as an economic and financial crime is such that must be a non-violent criminal and illicit activity committed with the objective of earning wealth and that in the instant case the petition being investigated by the EFCC against the Applicant clearly states in paragraph 2.13 that;

> "... the purpose of the fraudulent alteration and forgery is to enter benefits to the sum of $14,813,028 (Fourteen Million, Eight Hundred and Thirteen Thousand, Twenty-eight United States Dollars) which therefore amounts to the objective of earning wealth.

Having carefully examined the further arguments by both counsel through their letters discussing the Supreme Court case of Nwobike SAN, I agree that the position of the law is clear as to the test for ascertaining if a criminal conduct can be regarded as an economic and financial crime, that is, it must be an illicit activity committed with the objective of earning wealth.

I am therefore inclined to tilt towards the position of the 3rd Respondent on this legal interpretation that the alleged forgery (if at all) was for the purpose of conferring financial benefits which is tantamount to an objective of earning wealth. This is so as Exhibits "ELA1" and "ELA2A, the written address in support of

originating summons and counter affidavit to originating summons respectively filed at the Federal High Court, all evidenced the fact that, though the contention is the alteration or replacement of the phrase "Nigerian Courts" with the phrase "Arbitration Tribunal" however the reason for the contention is the fact that the payment of a certain sum is in dispute. The whole conflict is not centered on monetary sum directly but on venue of Arbitration. However, it seems that only the Federal High Court where the dispute is can lift the veil to determine the undercurrents in the case not this court of concurrent jurisdiction and definitely not EFCC trying to run a "kangaroo Court" pari pasu with the Federal High Court under the disguise of a Quasi criminal forgery petition which may affect the ongoing case at the Federal High Court under the disguise of a criminal investigation of a contract term and using that disguise to recover debt as that is not the intendment of the EFCC Act.

In lieu of the aforesaid, I hold the firm position that the whole gamut of this matter centers on an objective of earning wealth. However, my earlier position still stands that for the EFCC to continue with investigation activities while the matter is before a competent court of law is an abuse of court process and would not be a good practice of the law and that an invitation, arrest or detention of the Applicant by both the 1st & 2nd Respondents respectively whilst the case of the same subject matter subsists at the Federal High Court would amount to a breach of the Applicant's fundamental rights.

In the light of the above, I order as follows:

1. **Relief one succeeds.**
2. **Relief two succeeds in part pending the outcome and determination of the substantive matter of Suit No. FHC/L/CS/688/2018: MICHHARRY AND COMPANY NIGERIA LIMITED VS OIS INTERNATIONAL LIMITED.**
3. **Relief three for One Billion Naira general damages fails as EFCC invitation letter of 5/7/19 Exhibit "ELA 4" was followed immediately by Applicant filing this suit dated 29/9/20 but filed 5/10/20 and no collateral or imminent damages ensued for Applicant to claim general damages.**
4. **Cost shall be in cause.**

ANTHONY OLOTU AKPOVI
JUDGE
8/02/2022

CERTIFIED TRUE COPY
HENRY .E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 23/02/23

CERTIFICATION ₦500.00
(PROD)(688/2018)
23-2-2023
HIGH COURT OF JUSTICE DELTA STATE NIGERIA DATE WARRI
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