

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

HOLDEN AT COURT NO. 9 GARKI, ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE S.B. BELGORE

SUIT NO.: FCT/HC/CV/079/2021

DATE: 8/7/2025

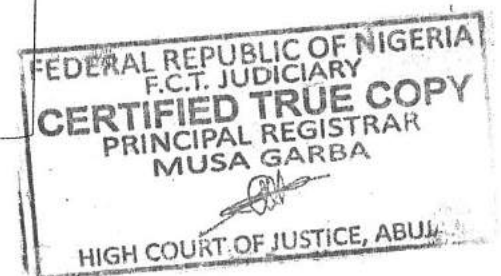
BETWEEN:

TEMPO ENERGY NIGERIA LIMITED..... CLAIMANT

AND

1. AITEO EASTERN E & P COMPANY LIMITED
2. AFRICA FINANCE CORPORATION
3. ECOBANK NIGERIA LIMITED
4. FIRST BANK OF NIGERIA LIMITED
5. GUARANTY TRUST BANK PLC
6. FIDELITY BANK PLC
7. SHELL WESTERN SUPPLY AND TRADING LIMITED
8. SHELL INTERNATIONAL TRADING AND SHIPPING COMPANY LIMITED
9. CITIBANK EUROPE PLC, U.K. BRANCH
10. CITIBANK N.A. LONDON BRANCH
11. FBN TRUSTEES LIMITED
12. ZENITH TRUSTEES LIMITED
13. FBN MERCHANT BANK LIMITED
14. STERLING BANK PLC
15. UNION BANK OF NIGERIA PLC
16. ZENITH BANK PLC
17. DAME ELIZABETH GLOSTER

DEFENDANTS



RULING

On the 20th day of June, 2025, the Claimant made an oral application to this Court seeking to invoke the disciplinary powers

of the Court to punish the 2nd to 16th Defendants by undoing or setting aside all or any act and/or action taken in utter disregard of the orders of this Court. Specifically, the Learned Silk implored this Honourable Court to nullify and set aside all the arbitration proceedings identified in Exhibit 1 in the affidavit of facts and for those which the 1st defendant Learned senior counsel admitted which I rehashed somewhere in this ruling.

The background to the instant application is the interim order of this Court made on 20th January 2021 in favour of the Claimant, pending the hearing and determination of the Claimant's motion on notice after which this Court adjourned the matter to 22nd January, 2021.

On the said 22nd day of January, 2021, when this matter came up for the hearing of the Claimant's motion on notice for interlocutory injunction, this Court rendered two decisions, firstly, this Court consolidated the preliminary objections of the Defendants and that of the 1st Defendant, which was not ripe for hearing, and adjourned same for hearing. Secondly, this Court, after hearing the Defendant's oral application for the discharge of the ex parte injunctive orders adjourned proceedings to 14th April, 2021 for Ruling.

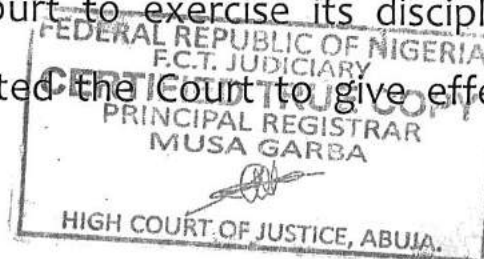
It was in dissatisfaction with these rulings that some of the defendants herein filed a Notice of Appeal on the 8th of March 2021. Alongside their appeal, they also brought an application seeking a



stay of proceedings pending the determination of their appeal before the Court of Appeal. As a result of the said application and the appeal process, proceedings before this Court were effectively stayed until the appellate process was concluded.

Following the delivery of judgment by the Court of Appeal on the 25th of April 2025, the Claimant brought to the attention of this Court a certified true copy of the appellate decision vide an affidavit. The said judgment not only dismissed the Defendants' appeal but did so in strong terms, describing the appeal as hopeless and constituting a reckless abuse of court process. In consequence of the appellate Court's judgment and the failure of the appeal, Learned Senior Advocate for the Claimant, at the resumed hearing, invited this Court to take judicial notice of the fact that the Defendants had, during the pendency of the Court's injunctive orders, proceeded with the arbitration proceedings in violation of the express terms of the said orders. He accordingly urged the Court to invalidate all acts and proceedings taken in breach of its orders. The Learned Senior Counsel was careful to clarify that the Claimant was not seeking the committal of any of the Defendants for contempt but rather sought judicial censure by way of nullification of the offending acts undertaken in defiance of the Court's authority.

In urging the Court to exercise its disciplinary jurisdiction, the Learned Silk invited the Court to give effect to the concurring



judgment of **His Lordship D.U. Okorowo, JCA**, as delivered in the Court of Appeal's decision, particularly where His Lordship directed an accelerated hearing and determination of the consolidated pending applications before this Court.

The oral application, however, provoked strong objection from the Defendants. On behalf of the 1st Defendant, Learned Senior Counsel explained that his client had been dragged into arbitration proceedings before the International Chamber of Commerce (ICC) under reference numbers **25880/AZR** and **25881/AZR**, which had been consolidated. He submitted that the 1st Defendant's participation in the arbitration was strictly under protest and that the Arbitral Tribunal had been informed of the interim orders of this Court but chose to discountenance same. He confirmed that the arbitration proceedings had since been concluded and that the arbitral award was now pending. He was emphatic in asserting that, given that the 1st Defendant participated under protest, it could not be said to be in contempt of this Court. He also noted that the 1st Defendant did not file a counter-affidavit in opposition to the Claimant's affidavit and indeed conceded to the facts deposed therein.

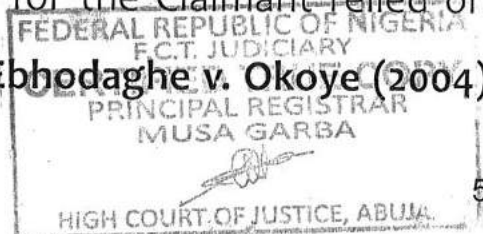


On the part of the 2nd to 16th Defendants, **Joke Aliu Esq.** raised procedural objections to the oral application. She submitted that the Claimant's application amounted to an ambush, and was procedurally improper, having not been brought formally by way

of motion on notice. He argued that the nature and seriousness of the reliefs sought necessitated service of a proper motion to afford the affected parties an opportunity to respond. She further contended that although the Claimant's affidavit of facts was served on the Defendants the previous Friday, it contained no indication that it would form the basis of an application in Court. She accordingly applied for an adjournment to enable the 2nd to 16th Defendants to file a counter-affidavit, should the Court be inclined to entertain the Claimant's oral application.

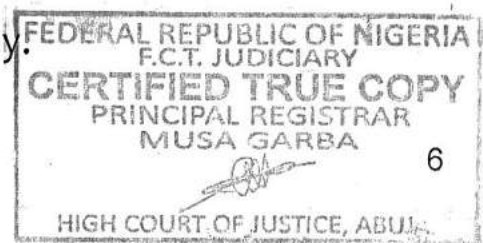
In addition to the procedural objection, the Learned Defendants counsel cited the Court of Appeal decision in **Brittania-U Nigeria Ltd v. Seplat Petroleum Development Company Ltd (2016) 4 NWLR (Pt. 1503) 541**. Relying on the said authority, he submitted that Nigerian courts lack jurisdiction to adjudicate upon or make binding pronouncements affecting foreign arbitral proceedings, particularly those seated outside Nigeria. He contended that this Honourable Court lacks the territorial competence to entertain the Claimant's request for the invalidation of the referenced arbitration proceedings. He further argued that the issue of jurisdiction is fundamental and must be determined before any other issues, including the contempt-related application.

In reply, the Learned Senior Advocate for the Claimant relied on the decision of the Court of Appeal in **Ebhodaghe v. Okoye (2004)**



18 NWLR (Pt. 905), where it was held that the issue of contempt may be raised orally. He also cited the decision in **Dangote v. APC PLC (2012) LPELR-7981(CA)** to contend that where both jurisdictional objections and issues of contempt are before the Court, the contempt issue must be addressed first to preserve the sanctity of the Court and its orders. Given the arguments canvassed and in deference to the demands of fair hearing, this Honourable Court adjourned the matter to the next day to allow the 2nd to 16th Defendants time to file their counter-affidavit.

At the resumed hearing, the 3rd to 16th Defendants brought a formal preliminary objection challenging the jurisdiction of this Court to grant reliefs that may impact foreign arbitration proceedings and filed a counter affidavit to rebut the affidavit of fact. The preliminary objection was supported by a 4-ground motion and an 18-paragraph affidavit and a counter affidavit. In response, the Learned Senior Advocate for the Claimant indicated that he would not be filing a further affidavit but would respond on points of law. Thereafter, Counsel to the 3rd to 16th Defendants applied for time to file a reply address in support of the preliminary objection, particularly in respect of Motion No. **M/7044/2025**. This Court accordingly adjourned the matter to the **28th of June 2025** for the filing and adoption of written addresses. On the said date, the respective parties adopted their written addresses, and this Honourable Court reserved ruling for today.



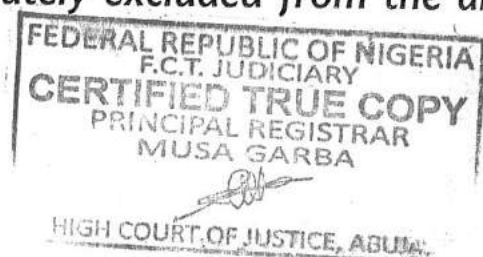
RESOLUTION

As a remark, the proceedings before this court is one seeking the exercise of the inherent powers endowed in a court of law to ensure that its orders are not flouted. It's a settled principle of law recognized in all foreign jurisdiction that once there is a pendency of a suit seeking injunction, parties must respect the authority of the court to take a decision one way or the other, and act at their peril. Courts are not to be beclouded that the acts sought to be restrained are concluded.

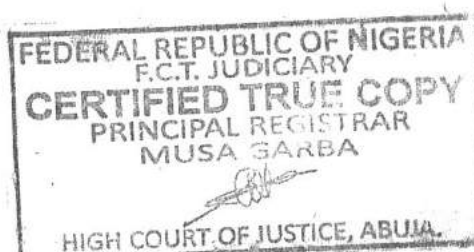
In the instant case the Claimant's application is that there is a complete disobedience of the interim injunction made by this Honourable Court. Suffice it to reproduce paragraph 4(a-x) of the Claimant's affidavit of fact thus:

"4. On 2nd May 2025, I was informed by the Claimant's counsel, Kehinde Ogunwumiju, S.A.N., in our office at 24 Madeira Street, Imani Estate, Maitama, Abuja, at about 10 am of the following facts which I verily believe to be true as follows:

- a. An arbitral proceeding was commenced at the International Chamber of Commerce (IC) in respect of a dispute on a Contract to which the Claimant was a party.*
- b. The Claimant was deliberately excluded from the arbitral proceedings.*



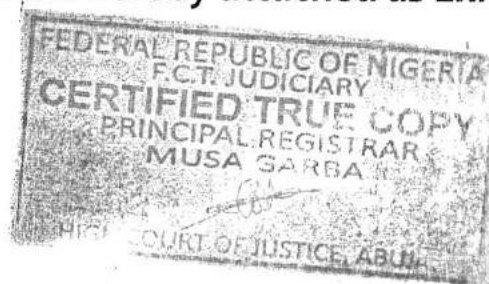
- c. The 1st Defendant also filed a suit before the Federal High Court, Abuja Judicial Division.
- d. There was another suit filed before the High Court of Justice of England and Wales.
- e. On 14th January 2021, the Claimant filed before this Honourable Court this suit via a Writ of Summons.
- f. The Claimant also filed a motion ex parte for an interim injunction to restrain the Defendants and their privies from continuing the proceedings before ICC, the Federal High Court and the High Court of Justice of England and Wales.
- g. The motion exparte was moved on 20th January 2021 but granted by this Honourable Court on 22nd January 2021.
- h. The interim order was to lapse on the date for the hearing of the Motion on Notice for Interlocutory Injunction, which was adjourned to 22nd February 2021.
- i. On 22nd February 2021, the matter came up for hearing of the Motion on Notice for Interlocutory Injunction.
- j. However, counsel for the 1st Defendant informed the Court that it had filed an application for the dismissal of the suit, but the application was not ripe for hearing.
- k. Counsel for the 3rd - 6th, 11th, 14th - 16th Defendants also informed the Court that he had an application for an order to strike out the matter and to discharge the interim orders.



- l. This Honourable Court adjourned all three (3) pending applications to be taken on the same day.
- m. Thereafter, counsel for the 3rd - 6th, 11th, 14th - 16th Defendants stated that the Court lacks jurisdiction to proceed further in the case and urged for the suit to be struck out.
- n. This Honourable Court ruled that it has the jurisdiction to proceed with the suit and hear all pending applications.
- o. On 8th March 2021, the 3rd - 6th, 11th, 14th - 16th Defendants filed a Notice of Appeal to the Court of Appeal.
- p. On 22nd March 2021, the 3rd - 6th, 11th, 14th - 16th Defendants compiled the Record of Appeal from this Honourable Court to the Court of Appeal.
- q. On 26th March 2021, the 3rd - 6th, 11th, 14th - 16th Defendants filed an application before the Court of Appeal, seeking to stay proceedings before this Honourable Court pending the determination of the appeal.
- r. The 3rd - 6th, 11th, 14th - 16th Defendants also filed an application for Stay of Execution of the ex parte orders of this Honourable Court, pending the determination of the appeal before the Court of Appeal.
- s. On 23rd June 2021, the matter came up, and the 3rd - 6th, 11th, 14th - 16th Defendants applied for the matter to be adjourned sine die, having filed an Affidavit of Record, which was not before the Court. The matter was then adjourned to 24th June 2021.



- t. On 24th June 2021, counsel for the 3rd - 6th, 11th, 14th - 16th Defendants made an oral application for the matter to be adjourned sine die as there was an appeal and a motion for stay of proceedings and stay of execution pending before the Court of Appeal.
- u. This Honourable Court, therefore, adjourned the matter sine die, pending the outcome of the appeal.
- v. During the proceedings of 6th June 2024 at the Court of Appeal, the 3rd - 6th, 11th, 14th to 16th Defendants withdrew their applications for stay of proceedings and stay of execution.
- w. During the pendency of the orders of this Honourable Court and despite the withdrawal of their applications for stay of proceedings and stay of execution, the Defendants proceeded with the arbitration before the ICC Arbitration Panel comprising Geoffrey Ma, Mr. Colin Edelman KC and the Rt. Hon. Lord Neuberger of Abbotsbury. Please find attached as Exhibit 1 a letter issued by the Tribunal on 21st August 2024 regarding a hearing slated for 5th and 6th September 2024.
- x. On 25th April 2025, the Court of Appeal delivered the judgment in respect of the said appeal and the appeal was dismissed. The judgment is hereby attached as Exhibit 2."



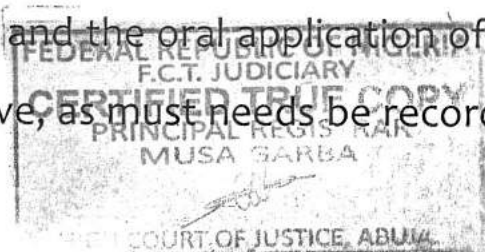
The 3rd-16th defendants filed a counter affidavit on 21/05/2025. Suffice it to reproduce **paragraphs 8 and 9** of the said counter affidavit:

“8. The Applicant does not allege in this Suit that it was prevented in any way from taking steps to be joined as a party to Suit No. FHC/1310, the Arbitrations and the ASI Proceedings nor does the Arbitration Agreement in either Facility Agreement require that all parties to that agreement be party to any arbitration commenced under that agreement. The Respondents' Legal Right to Commence Legal Proceedings Pursuant to the Facility Agreement.

9. In response to paragraphs 16 to 41 of the Applicant's Affidavit, I verily believe that the Respondents have validly exercised their legal right to commence an action against a party they deemed to have breached their Agreement.”

The 3rd -16th defendants thereafter argued their notice of preliminary objection and equally in the proceedings of 25/5/2025 adopted their reply on point of law dated and filed 27/6/2025, in urging me to uphold the objection.

I have with scrupulous care perused the affidavit and Counter affidavits filed by respective parties, studied dutifully the notice of preliminary objection of the 3rd -16th defendants, together with their reply on points of law and the oral application of the learned counsel for all sides. I observe, as must needs be recorded that the



claimant has discontinued this proceeding in so far they concern the 17th defendant, Dame Elizabeth Gloster.

The 3rd -16th defendants' Notice of Preliminary Objection was argued on the **21/05/2025**, with motion number **M/7044/25**. The following facts can be observed in the said Notice of Preliminary Objection and its hearing. The notice of preliminary objection was signed by **Imaobong Haastrup** as counsel for the 3rd - 16th defendants in the chambers of Aluko & Oyeboade of Plot 1348A Agulu Lake Street Maitama, Abuja. Then at the hearing the objection, parties split representations in court as follows:

K. Ogunwunmiju SAN, Ademola Abimbola SAN with Opemipo V.O, Uchechi E.C and Elizabeth B.O for the Claimant.

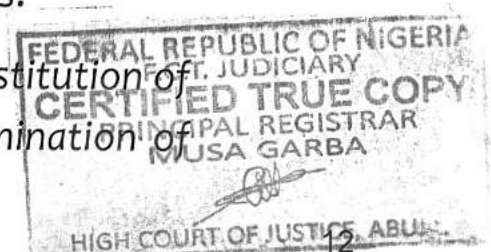
C.N Ayo with D.I Kolade for the 1st Defendant

Babatunde Fagbohunlu SAN for the 3rd -6th & 11th -16th Defendants with **OkeiteOluwawa**.

Imaobong Haastrup for the 2nd & 7th Defendants (under protest).

Certainly, it is the decision of the apex court that the right of counsel goes to issue of fair hearing, they are both natural and constitutional right, I failure to afford a party right of counsel is a failure of justice. In the case of **ALL PURPOSE SHELTERS LTD v. DENNIS & ORS (2022) LPELR-56865 (SC)**, Tijani Abubakar JSC delivering the leading judgment, on the right of a litigant to a counsel of his choice, stated inter alia as follows:

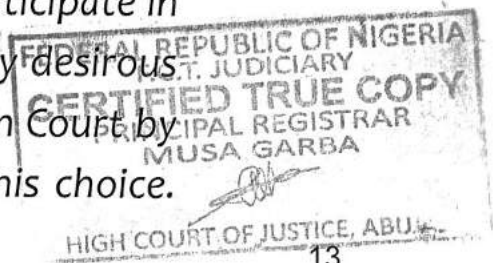
"By the provisions of Section 36 of the Constitution of Nigeria, 1999 (as amended) in the determination of



his civil rights and obligations, a citizen has the fundamental right to a Counsel of his own choice. In MARCEL NNAKWE v. THE STATE (2013) LPELR-20941(SC) this Court held as follows: "with reference to Section 36 of the Constitution of the Federal Republic of Nigeria, 1999, the law is wellsettled that every party to a case has an unfettered right of representation by counsel of his choice. See Nwambe v. The State (1995) 3 NWLR (Pt.384) 358." See also; SEBASTIAN ADIGWE v. FEDERAL REPUBLIC OF NIGERIA (2015) LPELR-24694 (SC). It is the law, that a party in litigation has the right and freedom to engage Counsel of his Choice without interference or hindrance at any stage of the matter, this Court in ISIAKA & ORS V. OGUNDIMU & ORS (2006) LPELR-1552 (SC) per KUTIGI JSC (CJN) (of blessed memory) held as follows:

"A litigant is free to engage counsel of his choice at any time and may equally terminate such engagement at any time."

From the foregoing therefore, it is well settled that a litigant is free and at liberty to change his counsel, and where parties agree to engage one Counsel and along the line some irreconcilable or other differences occur, any party that is not satisfied is at liberty to pull out of any prior arrangement and engage Counsel of his choice, a party may decide to change Counsel at any time for any reason or without reason at all, the Court cannot participate in the choice of Counsel for a litigant. A party desirous of changing Counsel can do so personally in Court by announcing it or through any counsel of his choice.



The Court cannot intervene in any form under the guise of exercising its discretion, the entire decision is that of the party. The Court has no discretion to grant or refuse leave to a litigant to change his counsel. If such discretion were to exist, it would also imply that the Court could refuse such leave and that would be odious in the extreme, both to the litigant and the legal profession. May this day never come.

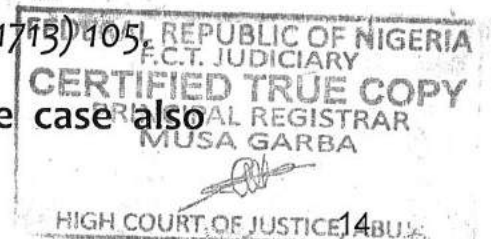
This Court in its recent decision in *FESTUS V. A.A.C & ORS* - SC. (2020) 4 NWLR (Pt. 1713) 105 re-stated the settled position of the law, when the Court held as follows:

“Parties are entitled to counsel of their choice without interference from the Court or any other party..”

My Lord, KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C (Now C.J.N) in his concurring judgment in **ALL PURPOSE SHELTERS LTD v. DENNIS & ORS** (SUPRA) stated as follows:

“The unfettered right of a litigant to engage counsel of his choice is firmly entrenched in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, as amended. No one, neither the Court nor any other party in the litigation has the authority to interfere with the exercise of that right under any guise whatsoever. See: *P.D.P Vs Ezeonwuka* (2018) 3 NWLR (Pt. 1606) 187; (2017) LPELR - 42463 (SC) @ 86 B - E; *Festus vs A.A.C. & Ors.* (2020) 4 NWLR (Pt.1713) 105.

EJEMBI EKO, JSC (as he then was) in same case also stated as follows:



"The right to fair hearing is both a natural right and a constitutional right. In this country the Apex Court has laid to rest the principle: that a party in litigation in a Court of law has unfettered constitutional right to be represented by a Counsel of his choice: ISIAKA & ORS. v. OGUNDIMU & ORS. (2006) LPELR - 1552 (SC) where Kutigi, JSC (as he then was) made it very clear that the exercise of that right includes, not only his freedom to engage a Counsel of his choice to represent, but also the right at any time in course of the proceedings, to terminate such engagement.

The legal representation in this proceedings is materially in conflict with the motion on notice filed and argued for the joint 3rd-16th defendant at the hearing of this application; the motion was signed by **Imaobong Haastrup** who is representing on record the 2nd & 7th Defendants in this proceeding under protest and then argued by the Learned Silk who is representing the 3rd -6th and the 11th -16th Defendants. I hold the view that the motion number **M/7044/25** filed on behalf of the 3rd to 16th Defendants cannot be argued on their behalf by one counsel while they are represented by a different counsel in the same proceedings. It is the parties who have right to choose counsel of their choice but in doing so, applications must be bifurcated after splitting representation as should have been done in the instant case. The parties by their own acts or conduct rendered their own motion number **M/7044/25** incurably defective as this court cannot begin to perform a judicial surgery to separate the co-joined parties. The resultant effect is that the application is in breach of the right to



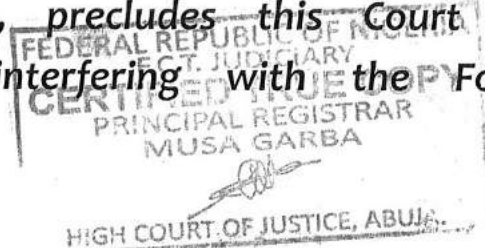
fair hearing and due process. Any party before the court is entitled to be represented at the hearing by a counsel of its choice, a failure of same is a denial of that right and the hearing of the resultant application is equally vitiated, this is the situation in the instant case. The preliminary objection, in the manner in which counsel has adopted representation in this proceeding, is both an abuse of the processes of this court and incompetent. The sum total is that its incompetence and abusive render it liable to dismissal, so be it.

My finding that the Preliminary Objection is incompetent and an abuse of the court's process would ordinarily have disposed of the objection. However, to afford the appellate court my view, should it come to the unlikely conclusion that I am wrong, I shall in the alternative consider the merits of the objection.

The main ground of the lack of jurisdiction challenge is on any exercise of jurisdiction over the three proceedings namely claim no: CL-2020-000808 Arbitration No:25880/AZR and Arbitration No:25881/AZR according to the 3rd-16th defendant is aptly captured in the grounds namely:

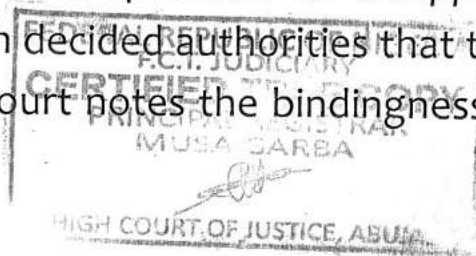
"AND TAKE NOTICE that the grounds of the said objection are as follows:

- (1) Section 6(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the "Constitution"), as interpreted by the Court of Appeal in Ecobank (Nig) Ltd & Ors v. Aiteo Eastern E and P Co. Ltd & Anor (2022) LPELR-56994(CA) (the "Ecobank Case"), precludes this Court from restraining or interfering with the Foreign Proceedings.***



- (2) *In the Ecobank Case, the Court of Appeal, relying on section 6(1) of the Constitution, held that its judicial powers are "for the Federal Republic of Nigeria" and thus, it lacked jurisdiction to restrain or interfere with foreign court or arbitration proceedings.*
- (3) *The foreign proceedings which the Court of Appeal refused to restrain in the Ecobank Case are the very same Foreign Proceedings that the Claimant now requests this court to restrain.*
- (4) *For the reasons in (1) to (3) above, this Honourable Court equally lacks jurisdiction to restrain or interfere with the Foreign Proceedings."*

From the above grounds and the authority in the ruling delivered in **Ecobank (Nig) Ltd & Ors V. Aiteo Eastern E and P Co. Ltd & Anor (2022) LPELR-56994 (CA)** it is the firm position of the 3rd – 16th defendants that the judicial powers of the court under section 6 (c) of the 1999 constitution as amended are for the Federal Republic of Nigeria as such that courts like the High Court of the Federal Capital Territory lacks the jurisdiction to hear , injunct or interfere with the foreign proceedings hereinbefore mentioned. This decision was equally exhibited as Exhibit A4. Counsel expressed worry over the oral application of the claimant counsel to unravel the foreign proceedings notwithstanding the judicial precedent established in *Eco Banks case supra*. The case of **AG Cross River v. AG Federation (2012) 16 NWLR (PT 1327) 425** was cited in respect of the Bakassi Peninsula oil wells wherein the Supreme Court reasoned that it cannot decide ownership of an oil well in Cameroon. The 3rd -16th defendants equally invoked the doctrine of issue estoppel, a components of estoppel per rem *judicatam* and submitted with decided authorities that this court is robbed of jurisdiction. This court notes the bindingness of judicial



precedent of subordinate court. I have equally averted my mind to the reply filed by the 3rd -16th defendants equally signed by Imaobong Haastrup. I must state that the purpose of a reply on point of law is to respond to issues which the 3rd - 16th defendants did not address in their objection, but which arose from the response of the claimant counsel's address. In my view the instant reply is a rehash of various arguments made by the 3rd -16th defendants such as *estoppel per rem judicatam*, injunction restraining a foreign proceeding and the issue as to whether the claimants is a privy of the 1st defendant. I think that the reply on points of law in the instant case runs foul of the purpose of a reply. However, in the interest of justice I have read them and will place reliance on the authorities and arguments canvassed therein where appropriate.

The doctrine of judicial precedents (*stare decisis*) is a cornerstone in our legal system which mandates lower courts to follow the *ratios decidendi* of higher courts in similar cases thereby enhancing the predictability, consistency, and stability of the law. It is captured in the Latin maxim; *stare decisis, et non queta movere*, meaning “**stand by what has been decided and do not unsettle the established**”. See Odi Osafire (1985) 1 NWLR (PT 1) 17. Adegoke Motors Ltd Vs. Adesanya (1989) 3 NWLR (PT109) 250.

The Court is further taught in *INEC Vs. Izeze& Ors* (2018) LPELR - 44284 (SC) that a case is an authority for what it decides (see the dictum of Rhodes Vivour JSC (as he then was).

In *Skye Bank Vs. Akimnpelu* (2008) 19 NWLR (PT 1120) 179, Adekeye JSC speaking for the Supreme Court held:

“A case is only an authority for what it actually decides and not necessarily what may logically follow from it”

In England the famous case of *Quinn Vs. Leathem* (1901) AC 495 @ 506, Lord Halsbury LC held:



“Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which those expressions are to be found.”

I shall therefore take the authorities referred to this court to ascertain whether their ratios are applicable and their bindingness.

Ecobank (Nig) Ltd &ors vs. Aiteo Eastern E and P Co. Ltd & Anor
CA/A/1067/2019

The above case is a ruling on a motion on notice brought pursuant to section 15 of the Court of Appeal Act, Section 13 of the Federal High Court Act, order 4 Rule 6 and 11 of the Court of Appeal Rules 2016 and under the inherent jurisdiction of the court recognized and preserved by section 6 (6) of the Constitution. The motion sought for several injunctive reliefs which the court refused, in doing so the court held at P12 of the ruling thus:

“I have carefully and painstakingly read through the reliefs sought by the applicants and all processes filed by the parties for and against the instant application, having so done, one is of the considered view and humbly that his application is not granted.....I am afraid no court is so empowered.” See page 14.”

Did the court find as a fact that Tempo Energy Nigeria Ltd is a subsidiary of Aiteo E & P Company Ltd? A careful perusal of the ruling reveals that there is no ratio reached by the court of appeal, in fact this is what is contained in the body of the ruling:

“Tempo Energy Nig. Ltd, a subsidiary of the applicant....”

From the above it is clear that the Court was only summarizing or enumerating facts and circumstances of the application as

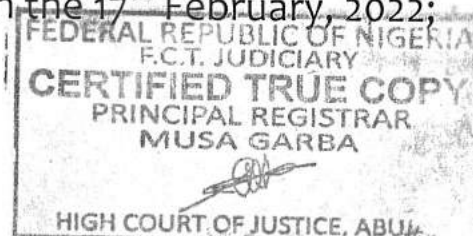


garnered from the processes of parties. It is not a finding of fact as no resolution has been reached to create a ratio *decidendi* in that ruling. The ruling in **Ecobank's case** cannot also be used to affirm the interim injunctions in the instant suit even though the court narrated it in the following words:

.....interim injunction was granted therein restraining the lenders from participating in the two arbitrations, the proceedings at the court in England and suit no: FHC/1310. Two appeals are pending before this court which emanated as a result of the injunctive orders in favor of Tempo Energy Ltd."

The argument canvassed in Paragraph 18 of the written address if taken as correct as the 3rd -16th respondents have pressed on this court it would mean that by the same ruling the court of appeal found, as admitted, that the interim injunction of the High Court of the FCT was subsisting as far back as 17th Feb, 2022 when that ruling was delivered. From all I have said above, in the proceedings before this court, the claimant has not sued in a representative action and the 1st defendant was sued in his capacity. I therefore come to the irresistible conclusion ipso facto and jure that the parties in Eco Banks case and this suit are different. I am clear ipso facto and jure that the case does not constitute res judicata and lacked the requisite factors to sustain a successful plea.

Another factor to be considered is the subject matter decided in respect of the Ecobank's case (supra) vis-à-vis the instant suit considered along the unreported judgment of the Court of Appeal in **Ecobank Nig. Ltd & 7 Ors. vs. Tempo Energy Nig. Ltd & 9 Ors.** in **CA/ABJ/CV/267/2021** delivered on 25th April 2025. It is true that in Ecobank's case in **CA/A/1067/2019**, the Court of Appeal refused the application in the following words, on the 17th February, 2022;



“In the light of the foregoing and having carefully considered the reliefs being sought as aforesaid and for the reason that this court would not act in vain, the applicant application is hereby refused.”

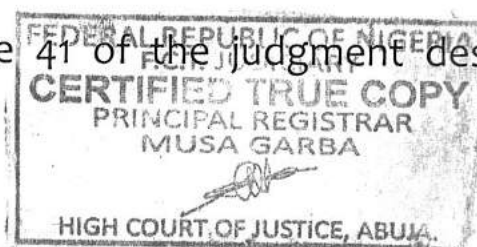
During the hearing of this application, Learned Silk **Babatunde Fagbohun (SAN)** argued strenuously that this court cannot and does not possess the requisite vires to hear and grant an interim or any order that restrains or interferes with the foreign proceedings as decided in Ecobank’s case in **CA/1067/2019**. The very serious point lost on him is that this court has made the order restraining the said arbitration proceedings on the **22nd January, 2021**, the only issue being addressed in this proceedings is whether the defendants blatantly flouted the orders made by this court; I shall return to this anon, as this is another departing point on the bindingness on Ecobank’s case (Supra).

In **CA/ABJ/CV/267/2021**, the Court of Appeal on the **25/04/2025** dismissed the appeal filed by **Eco Bank Nig. Ltd & 7 Ors vs. Tempo Energy Nig. Ltd & 9 Ors**, listen carefully to one of the eloquent justices of that court:

Per **Okon Efreti Abang JCA**:

“The appeal was filed in bad faith. Assuming the appellants did not in an indecent haste rush to this court with the reckless, needless and frivolous appeal maybe the trial court would have before now determine their motion to strike out the suit and decide whether it was proper for the 1st respondent to file this suit or apply to join in several proceedings in respect of a dispute arising out of facility agreement to which it is alleged it was a party.” (See page 38 of the Judgment)

The Court of Appeal at page 41 of the judgment describe the appeal thus:



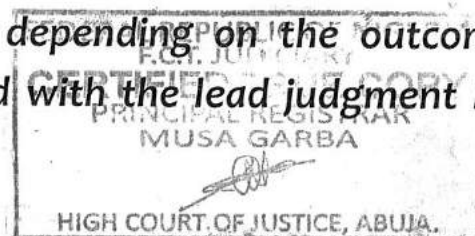
"The appellants filed application for stay of proceedings immediately after initiating this appeal and then obtained an order adjourning the matter sine die at the trial court based on the instant appeal. The suit has been unjustly stayed at the trial court for 4 years. It is settled law without any dispute that an appeal intended to frustrate the hearing of the suit is an abuse of court process"

And in the final analysis the lead judgment held:

"In conclusion the lone issue formulated by the 1st respondent is hereby resolved in favour of the 1st and 2nd respondents against the appellants. The appeal lacks merit. It is accordingly dismissed as being hopeless and reckless abuse of judiciary process..."

From the above decision, the Court of Appeal refused to vacate the interim order made by this court made *ex parte* pending when the consolidated applications are heard. In **CA/ABJ/CV/267/2021 (Supra) Okorowo JCA** concurring with the lead judgment opined thus:

*"I agree that the present appeal devoid of any merit is an abuse of process of court. And the abusive appeal does not fall outside the doctrine of *lis pendens* as parties are bound to maintain the status quo as ordered by the lower court until this court holds otherwise. Steps must not be initiated in the face of pending process to adopt other measures in resolution of the issues related to the subject matter before the court such as tinkering with arbitration process, as that would be visited with the full implications of the doctrine of *lis pendens*, that any proceeding involving the subject matter during the pendency of litigation maybe deemed void or liable to be set aside, depending on the outcome of the case.....having concurred with the lead judgment I too hold*

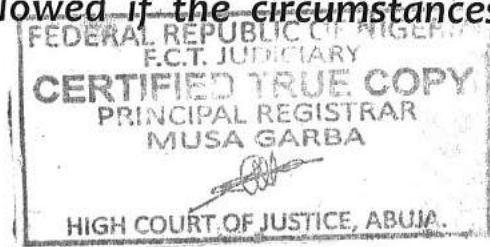


that the appeal lacks merit and is hereby dismissed. In the circumstances the case is remitted to the lower court for accelerated hearing and determination of the already consolidated application as the interim orders of the trial court would only abate after the hearing and determination of all those applications which the lower court consolidated."

Firstly, by the above decisions it is beyond argument that the interim orders of this court is subsisting. It is further clear that this court has powers to restore parties to the positions they were when the interim orders of this court were granted. Thirdly, that the preliminary objections contesting that the court does not have jurisdiction to make any sort of order fails to comprehend that the order it is seeking to stop is already in existence. The horse has bolted while the Learned Silk is seeking to close the stable. Fourthly, by the confirmation of the subsistence of the interim orders of this Court until the hearing and determination of all those consolidated applications, the Court of Appeal's decision in CA/ABJ/CV/267/2021 became the latest judgment in time which I am bound to follow.

In **FCE VS. Osakue (2010) 10 NWLR PT 1201** the Supreme Court per **Ogbuagu JSC @ page 36-37** stated the principle that has guided all courts over a decade and half, His Lordship speaking with authoritative precision and conclusive force held:

".....should please take note and come to terms with the principles or doctrine of stare decisis, precedents, and ambiguous. They are an indispensable foundation. For the umpteen time, where there appear to be conflicting judgments of this court, the latter or latest will or should apply and must be followed if the circumstances are the same."



From the totality of the reasoning which I have adduced, I am of the simple view that the decision in Ecobank's ruling in **CA/A/1067/2019** has no bearing on this application as the interim orders have already issued and the Court of Appeal in a later decision on the **25/04/2025** in **CA/ABJ/CV/2671/2021** held that the interim order subsist until all consolidated application is heard and determined; that been the case the preliminary objection of the 3rd-16th defendants is marooned into the judicial abyss and deserves to be dismissed. It is hereby dismissed. However, my earlier finding that same is incompetent and abusive still afflicts the said objection.

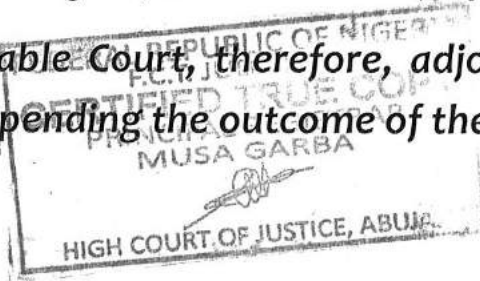
The 3rd-16th respondents counter affidavit has not explained why the interim orders of this court were disobeyed blatantly and I reject the contention that the lenders proceeded to arbitration pursuant to **CA/A/1067/2019**, as same is untenable. I therefore having considered the Counter Affidavit of **21/5/2025** hold that it fails to descend into material particulars to debunk the allegation to wilful disobedience of the orders of this court.

The next question is what should this court do?

In the affidavit of fact filed by the learned senior counsel to the Claimant **Kehinde Ogunwunmiju SAN, OFR**, particularly at paragraph 4(t)-(x) he chronicled the continuing proceedings in the restrained arbitration by the defendants, I take liberty to reproduce the said averment:

"t. On 24th June 2021, counsel for the 3rd - 6th, 11th, 14th - 16th Defendants made an oral application for the matter to be adjourned sine die as there was an appeal and a motion for stay of proceedings and stay of execution pending before the Court of Appeal.

u. This Honourable Court, therefore, adjourned the matter sine die, pending the outcome of the appeal.

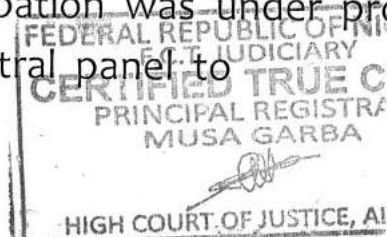


v. During the proceedings of 6th June 2024 at the Court of Appeal, the 3rd - 6th, 11th, 14th to 16th Defendants withdrew their applications for stay of proceedings and stay of execution.

w. During the pendency of the orders of this Honourable Court and despite the withdrawal of their applications for stay of proceedings and stay of execution, the Defendants proceeded with the arbitration before the ICC Arbitration Panel comprising Geoffrey Ma, Mr. Colin Edelman KC and the Rt. Hon. Lord Neuberger of Abbotsbury. Please find attached as Exhibit 1 a letter issued by the Tribunal on 21st August 2024 regarding a hearing slated for 5th and 6th September 2024.

x. On 25th April 2025, the Court of Appeal delivered the judgment in respect of the said appeal and the appeal was dismissed. The judgment is hereby attached as Exhibit 2."

He urges the court to undo what the disobedient party has done relying on **Adejube v. Aduloju (2022) 3 NWLR (PT 186) 131 at 164** amongst others. Learned counsel to the 1st defendant **Abdul Mohammed SAN**, on his part stated that the 1st defendant was dragged to the ICC arbitration No: **25880/AZ** which is a consolidated arbitration with **25881/AZR**. He stated that the 1st defendant participated in the arbitration under protest challenging the jurisdiction of the arbitral tribunal on the grounds including the interim order made by the court and the challenge was overruled. He further confirmed that further proceedings have been concluded that all parties are awaiting is the final award. He stated that since the 1st defendant participation was under protest and to draw the attention of the arbitral panel to



the orders of this court, they do not intend to file a counter affidavit.

On the 22nd January 2021, the court made this following order:

“1. AN ORDER OF INTERIM INJUNCTION restraining all the Defendants whether by themselves, their executives, agents, shareholders, directors, officers, servants, privies, legal representatives, counsel, nominees or any other person or persons howsoever described from continuing, proceeding with or taking any other/further step in respect of **SUIT NO: FHC/ ABJ/CS/1310/2019** between **AITEO EASTERN E & P COMPANY LTD V. AFRIC FINANCE CORPORATION & 12 ORS.** filed at the Federal High Court (Abuja Judicial Division) by the 1st Defendant pending the hearing of the Motion on Notice for Interlocutory Injunction filed in this suit is hereby granted.

2. AN ORDER OF INTERIM INJUNCTION restraining all the Defendants whether, by themselves, their executives, agents, shareholders, directors, officers, servants, privies, legal representatives, counsel, nominees or any other person or persons however described from continuing, proceeding with or taking any other/further step in respect of Claim No. CL- 2020-000808 between **AFRICA FINANCE CORPORATION & 8 ORS. V. AITEO EASTERN E & P COMPANY LTD V. AFRICA FINANCE CORPORATION & 12 ORS.** initiated by the 2nd to 7th and 14th to 16th Defendants at the High Court of Justice of England and Wales pending the hearing of the

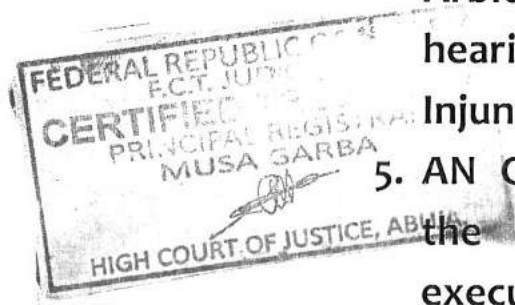


Motion on Notice for Interlocutory Injunction filed in this suit is hereby granted.

3. AN ORDER OF INTERIM INJUNCTION restraining the Defendants whether by themselves, their executives, agents, shareholders, directors, officers, servants, privies, legal representatives, counsel, nominees or any other person or persons howsoever described from continuing, proceeding with or taking any other/further step in respect of the arbitration commenced by the 2nd to 6th and 14th to 16th Defendants against the 1st Defendant at the International Chamber of Commerce (I.C.C.) vide the Request for Arbitration dated 11th December 2020, pending the hearing of the Motion on Notice for Interlocutory Injunction filed in this suit is hereby granted.

4. AN ORDER OF INTERIM INJUNCTION restraining the Defendants whether, by themselves, their executives, agents, shareholders, directors, officers, servants, privies, legal representatives, counsel, nominees or any other person or persons howsoever described from continuing, proceeding with or taking any other/further step in respect of the arbitration commenced by the 7th Defendant against the 1st Defendant at the International Chamber of Commerce (I.C.C) vide the Request for Arbitration dated 11th December 2020, pending the hearing of the Motion on Notice for Interlocutory Injunction filed in this suit is hereby granted.

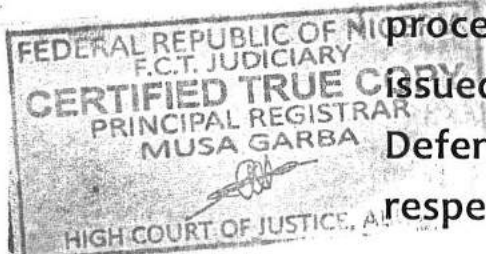
5. AN ORDER OF INTERIM INJUNCTION restraining the Defendants whether by themselves, their executives, agents, shareholders, directors,



officers, servants, privies, legal representatives, counsel, nominees or any other person or persons however described from seeking or obtaining any anti-suit injunction in respect of or touching on any dispute between the parties arising from or in connection with or in relation to the Senior Medium Term Acquisition Facility Agreement dated 2nd September 2014 and restated by an Amendment Restatement Agreement dated 31st December 2016 ('Onshore Facility Agreement') executed by the Claimant, the 1st to 6th and 11th to 16th Defendants to this suit and the Senior Secured Medium Term Acquisition Facility Agreement dated 2nd September 2014 and restated by an Amendment and Restatement and Accession Agreement dated 31st December 2016 ('Offshore Facility Agreement' or 'Shell Facility Agreement') executed by the Claimant, the 1st and 7th to 13th Defendants, pending the hearing of the Motion on Notice for Interlocutory Injunction filed in this suit is hereby granted.

6. LEAVE is hereby granted to serve the Concurrent Writ, Statement of Claim and its accompanying processes and all other processes and Orders issued in this suit outside the jurisdiction of this Honourable Court on the 2nd to 17th Defendants by courier at their respective places of business.
7. LEAVE is hereby granted to serve the Concurrent Writ, Statement of Claim and its accompanying processes and all other processes and Orders issued in this suit on the 7th, 8th, 10th, and 17th Defendants at the following e-mail addresses respectively:

Loren.Nelson@shell.com,



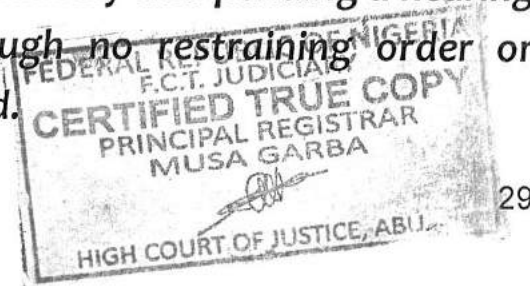
Filippo.Bof@shell.comissuerpfla@citi.com, and
EGloster@oeclaw.co.uk.

8. It is hereby directed that the provisions of Order 52 Rule 3(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 is hereby invoked in the circumstance of this application and interest of Justice to the effect that the interim injunctions granted in respect of prayers 1,2,3,4 and 5 in this application are to remain in force until the date fixed for the hearing of the Motion on Notice in the interest of justice."

This above order is clear and positive, it is subsisting. The defendants notwithstanding the service of the order of this court on them proceeded to perform the acts which this court has restrained. It must not be so. The 3rd, 4th 5th 6th 11th, 12th 13th 14th 15th an 16th are all Nigerian banks, citizens and have their operational headquarters in Nigeria and are regulated by the Central Bank of Nigeria while the 2nd defendant is headquartered in Nigeria. The other parties namely the 7th, 8th, 9th and 10th Defendants, being parties to the advancement of the loan for OML 29 in Nigeria, must be bound by the orders of this court.

In the case of **Jones v. Security and Exchange Commission 298 U.S.I** it was held at 13 by Mr Sutherland for US Supreme court:

"The rule is well settled, both by the courts of England and of this country, that where a suit is brought to enjoin certain acts or activities, for example, the erection of a building or other structure of which suit the defendant has notice, the hands of the defendant are effectively tied pending a hearing and determination, even though no restraining order or preliminary injunction be issued."



We briefly review some of the decisions. In Daniel v. Ferguson, L. R. [1891] 2 Ch. 27, suit had been brought to restrain defendant from building so as to darken plaintiff's lights. Notice of motion for a temporary injunction to be made upon a designated future day was served on the defendant. After receiving notice, the defendant put on a large number of men and proceeded with his building, running a wall up to a height of about 39 feet from the ground before the injunction was granted. The court, without regard to the ultimate rights of the parties, held that the wall thus run up by defendant should be torn down at once, as an attempt to anticipate the order of the court. A like situation was presented in Von Joel v. Hornsby, L. R. [1895] 2 Ch. 774. In that case, the evidence showed that defendant had repeatedly evaded attempts to serve him with process, and in the meantime had gone on with the building. Again, without regard to the ultimate rights of the parties, the court directed defendant to pull down that part of the building thus erected."

This state of law was followed and endorsed with approval by the Supreme Court of Nigeria in the case of **Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (PT 18) 621**, the Supreme Court granted mandatory injunction restoring Ojukwu into his peaceful possession of the property at 29 Queen's Drive Ikoyi. Applying the above ratio to the instant case, it is important that the restorative order put the parties in the position they were before the flagrant disobedience of the orders of this court, irrespective of the eventual merit of the pending applications or the substantive suit.

I am of the view that the oral application of the Claimant's **Learned Silk Kehinde Ogunwunmiju SAN, OFR**, together with the uncontroverted affidavit of facts which stood firm

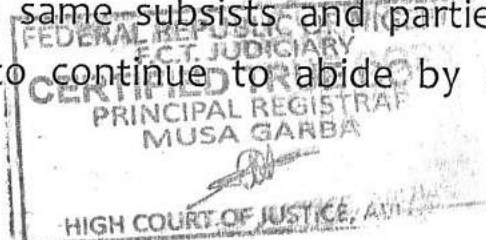
notwithstanding the Counter Affidavit of the 3rd -16th defendants, is pregnant with merit and ought to be granted *ex debitojustitiae*.

The application is hereby granted. To meet the ends of justice is not a hard and fast rule, every case has its peculiarity and the orders to be made must be tailored to meet the ends of justice and equally insulate the court from public ridicule. In doing so I am reminded of the wiseadage drawn from Professor Chinua Achebe's Things Fall Apart which aptly states:

“Since the bird has learned to fly without perching, the hunter must shoot without aiming or missing.”

Consequently, it is Declared and ordered as follows:

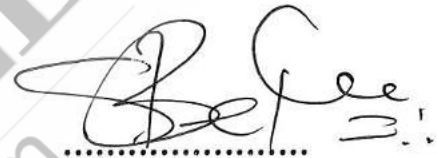
1. That the entire proceedings conducted in Arbitration No: **25880/AZR** administered by the ICC International Court of Arbitration in defiance to the orders of this court made on 21st January 2021 are hereby declared null and void, of no effect and incapable of conferring any legal right or obligation on the 1st, 2nd -16th defendants, including any purported award arising from such null proceedings, and the said proceedings are hereby set aside.
2. That the entire proceedings conducted in **Arbitration No: 25881/AZR** administered by the ICC International Court of Arbitration in defiance to the orders of this court made on 21st January 2021 are hereby declared null and void, of no effect and incapable of conferring any legal right or obligation on the 1st, 2nd -16th defendants, including any purported award arising from such null proceedings, and the said proceedings are hereby set aside.
3. That the interim orders of this court made on 22nd January 2021 is hereby reiterated as same subsists and parties are admonished and ordered to continue to abide by same,



except for the purposes of bringing this ruling to the arbitration panel and institution.

4. That in line with the decision of the Court of Appeal, the consolidated applications are fixed for hearing, if the proceeding of this court is not removed into the Court of Appeal, on the **29th September 2025** having regard to the vacation period of the court.
5. That the 2nd -16th defendants shall each pay cost of **N500,000.00**(five hundred thousand Naira)to the claimant, before the next adjourned date.

This is the ruling of the court, it is so ordered.



S. B. Belgore
(Judge) 8/7/2025

Appearance of Counsel

Ademola Abimbola SAN with Esther Jesudunmo Longe and T. Giwa for the Claimant.

C. N. Onyia for the 1st Defendant.

Imaobong Haastrup for the 2nd, 7th – 10th Defendants (under protest)

Babatunde Fagbohunlu SAN with Okiemute Ohwahwa for the 3rd – 6th, & 11-16th Defendants.

