

Com of Police. Vs.

Vs.

- (1) Dr Olubukola Saraki.
- (2) Mr Tokunbo Salami
- (3) Mr Jude Iluyomade
- (4) Miss Gbemi Saraki
- (5) Mr Moh Basir Abdu Kadiri

Charges

1. That you (1) Dr Olubukola Saraki (2) Mr Tokunbo Salami (3) Mr Jude Iluyomade (4) Miss Gbemi Saraki (5) Mr Moh Basir Abdu Kadiri on or about 28/8/90 at Lagos in the Lagos. Magistral. District did unlawfully Conspire together to commit felony to wit: forgeries and thereby committed an offence punishable under Sec 516 Of Criminal code Cap 31 Vol II Laws of Lagos State 1973.
2. That you 1) Dr Olubukola Saraki (2) Mr Tokunbo Salami (3) Mr Jude Iluyomade (4) Miss Gbemi Saraki (5) Mr Moh Basir Abdu Kadiri on or about 28/8/90 at Lagos in the Lagos. Magistral. District did unlawfully with intent to defraud did forge one SGBN Inter branch Voucher No. LA 005016053-7 for N510,000.00 in favour of Trademore International Ltd knowing same to be false and thereby committed an offence punishable under Sec 516 of Criminal code Cap 31 Vol II Laws of Lagos State 1973.
3. That you (1) Dr Olubukola Saraki (2) Mr Tokunbo Salami (3) Mr Jude Iluyomade (4) Miss Gbemi Saraki (5) Mr Moh Basir Abdu Kadiri on or about 28/8/90 at Lagos in the Lagos. Magistral. District did unlawfully did conspire together to commit felony to wit: sleating and thereby committed an offence under Sec 516 Criminal code Cap 31 Vol II Laws of Lagos State 1973.
4. That you (1) Dr Olubukola Saraki (2) Mr Tokunbo Salami (3) Mr Jude Iluyomade (4) Miss Gbemi Saraki (5) Mr Moh Basir Abdu Kadiri on on or about 28/8/90 at Lagos in the Lagos. Magistral. District did unlawfully commit felony to wit stealing N510,000.00 property of the SGBN Bank contrary to Sec 388 of Criminal code Cap 31 Vol II Laws of Lagos State 1973.
5. That you Mr Moh Basir Abdu Kadiri on or about 28/8/90 at Lagos in the Lagos. Magistral. District did unlawfully did commit felony to wit stealing N510,000.00 property of the Bank contrary to Sec 388 of Criminal code Cap 31 Vol II Laws of Lagos State 1973.

CONFIDENTIAL EXHIBIT 2

Telegraphic Address
NIGPOL, LAGOS.
Telephone No. 634001
In reply please quote



THE INSPECTOR-GENERAL OF POLICE,
FORCE HEADQUARTERS,
'KAM SELEM HOUSE',
THE NIGERIA POLICE,
MOLONEY STREET,
LAGOS.

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Ref. No. CR.3000/IGP.SEC/V.5/104

Date 21st August, 1990.

The Office of the Deputy Inspector of Police
Federal Investigation & Intell. Bureau,
Alagbon Close,
Koyi, Lagos

The Inspector-General of Police,
Federal Investigation & Intell. Bureau,
Alagbon Close,
Koyi, Lagos

RE UNAUTHORIZED WITHDRAWAL OF MONEY

Please find attached copy of complaint letter in respect of unauthorised withdrawal of large sums of money from the Societe Generale Bank (Nig.) Ltd.

2. The FIIB is already dealing with an earlier complaint against some officials of the bank.
3. It is the IGP's directive that this fresh complaint be investigated with despatch and the report including that of the earlier case be submitted without much delay, please.

(C. YEMI ODUBELA) DCP.:
PRINCIPAL STAFF OFFICER
TO
INSPECTOR-GEN. OF POLICE.

Handwritten notes:
21/8/90
for this case to be...
Cyb...
15/8/90
the other case for...
23/8/90

CONFIDENTIAL

Telegraphic Address
FORCHID, LAGOS
Telephone No 682144, 685634 --07

In reply please quote:

Ref. AR. 1360/X/F/Vol. 12

THE DIRECTOR
POLICE
LAGOS

7th December, 1990

The Managing Director,
Societe Generale Bank (Nig) Ltd.,
Sarah House,
Lagos.

CR.444/90
INVESTIGATION ACTIVITIES
CONSPIRACY, FORGERY AND STEALING N

COMMISSIONER OF POLICE
VS.

- (1) Dr. Olubukola Saraki
- (2) Mr. Tokunbo Salami
- (3) Mr. Jude Iluyomade
- (4) Miss Gbemi Saraki
- (5) Mr. Mohammed Bashir

Please be informed that investigation into the above mentioned case has been completed. You are therefore requested to produce the above mentioned suspects at the FIIB. premises at 0800hrs that 8 am on 10/12/90, unflinchingly.

2. They are to be arraigned before the Magistrate Court on the said date, please.

CERTIFIED TRUE COPY

(Sant Mohammed) CP
Deputy Commr. of Police
For: Director, FIIB
The Deputy Insp. of Police
Of Police
7 DEC 1990
Directorate Of Investigation
and Intelligence



Exhibit "B"

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Our ref: CH/PAI/AB/198/90

August 18, 1990

The Inspector General of Police,
Police Headquarters,
OPALENDE,
LAGOS.

Dear Sir,

It has just been brought to my notice that a new device is being employed by certain Officers of Societe Generale Bank (Nig.) Limited whose names are given in this Report as being involved in lifting large sums of money from the Treasury of the Bank irregularly and without specifying the purposes for which such monies are withdrawn.

The information which originates from the source of the bank gave a supporting copy of a voucher No. 3053 of August 6, 1990 (attached as Exhibit 'A') for the sum of ₦510,000.00 allegedly withdrawn recently. This is forwarded to facilitate investigation into the ever increasing large scale of alleged stealing of cash from the Bank.

Information reveals that more of such vouchers could be recovered by the Police during investigation provided that opportunity is not given to the suspects to destroy vital documents if they are free to do so.

I am informed that the vouchers usually originate from the Head Office (as indicated on the right-hand side of the voucher), payable in respect of undisclosed purpose or beneficiary other than "IN RESPECT OF CASH (TREASURY DEPARTMENT)" and signed by a - 'B' signature - MR. J. B. ILUYOMADE (Dealer) and an - 'A' signature - MR. T. A. H. SALAMI (Treasurer), both of the "Originating Branch" (The Head Office), and countersigned by paying Officers of the "Responding Branch", with 'B' signature - MR. B. GBADEBO and 'A' signature - MR. A. P. OBAHOR, as in FACE 'A' of the voucher.

.../2.

Alta Lodge, 6 Ado Ibrahim Street, Yaba, Lagos, Nigeria. Tel. 01 862566

EXHIBIT COPY

August 18, 1990


The amount in this particular case, N510,000.00 was cashed by Miss GBEMI SARAHI - the daughter of Dr. Olusola Saraki. Miss Gbemi Saraki works in the Treasury Department of Societe Generale Bank (Nigeria) Limited where the alleged thefts constantly take place. AS IN FACE 'B' of the Voucher, Miss Saraki signed for the collection of the cash in the following analysis:

N20.00	-	N210,000.00
and N10.00	-	<u>N300,000.00</u>
Totalling	=	<u>N510,000.00</u>

You will recall that Dr. Olusola Saraki, some of the Bank Executives and some members of the Board of Directors were offered Bail by the Police early this year on a pending case of alleged stealing of N8.5 million out of N10.00 million illegally withdrawn from the account of the Bank to purchase a house at Ikoyi. You will recall also that when the Police intervention was mentioned in a Lagos High Court presided by Justice A. Omotosho who was hearing another case involving Dr. Olusola Saraki, to the effect that the report made to the Police about the alleged theft tantamount 'Contempt of Court', the Honourable Justice Omotosho there and then gave a Ruling in which she clearly approved a Police Action. A copy of that Ruling is here attached as Exhibit '2'.

There is now unconcealed desire on the part of the past and present suspects to liquidate the bank where the court injunction being argued (which will be decided in September 1990) before Justice Omotosho, continues since they remain at large to perpetuate the theft at will, without regard to the Police action in process. I once more appeal for Police investigation into this new Report and also to deal with the on-going investigation against the 'culprits on bail' as expeditiously as possible in order to save the bank from untold liquidation and instability and insecurity of both workers and shareholders. I thought the Police may consider the interdiction of the suspects if not kept in custody of the Police before investigations are concluded.

Yours faithfully,


H. H. PIRNCE-ADU IBRAHIM
Representing Societe Generale Paris,
holders of 40% equity in
Societe Generale Bank (Nig.) Ltd.)
att.

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT LAGOS JUDICIAL DIVISION:
THURSDAY THE 4TH DAY OF APRIL, 1991:

BEFORE: THE HON. JUSTICE A. N. KESINGTON) JUDGE.

SUIT NO. LD/1936/90

BETWEEN:-

1. SOCIETE GENERAL BANK LIMITED)
2. DR. OLUFOKOLA A. SARAKI) PLAINTIFFS.
3. JUDE ILUYOMADE)

A N D

1. ALHAJI ALIYU IBRAHIM ATTA)
2. ALHAJI SANMI MOHAMMED) DEFENDANTS.
3. BERNARD B. OYIBO)
4. ALHAJI ADO IBRAHIM)

Parties absent except 1st and 3rd Applicant
Chief A. C. RAZAQ (SAN) with H. BOLAJI for
the Applicants.

MR. E. O. SANYAGLU, Director Federal Ministry
of Justice for 1st and 3rd Respondents.

R U L I N G

On 17th of September, 1990, the Plaintiffs filed
their Writ of Summons jointly and severally claiming
against the Defendants jointly and severally:-

- (1) A declaration that the arrest and detention of the
2nd and 3rd Plaintiffs by and/or on the instruction
or directive of the 1st, 2nd, and 3rd Defendants in
August, 1990, is illegal and contrary to the law and
and Constitution of Nigeria.
- (2) N5,000,000 damages by each of the said 2nd and 3rd
Plaintiffs against the Defendants jointly and
severally.
- (3) N5,000,000 damages against the Defendants jointly
and severally for using unlawful means to interfere
with the business operation of the said Plaintiff.

Accompanying the said Writ of Summons is an application
Ex-parte of the same date. In support of the said

Ex-parte application is a six (6) paragraphed affidavit

sworn to by the 2nd Plaintiff Dr. Olubokola Abubakar Saraki - the Executive Director of the 1st Plaintiff Bank. The relevant paragraphs of the said affidavit are:-
Paragraph 2: On the 28th of August, 1990, a Police Officer by name Superintendent Oyibo (the 3rd Defendant) came to the head office of the Bank and claimed that he was investigating a matter of fraud, conspiracy and theft involving ₦510,000.

Paragraph 3: The said Superintendent Oyibo assured me and the Managing Director of the Bank (Mr. J.A. Hall) that the 3rd Plaintiff will be released the same day. I waited sometime for the 3rd Plaintiff to return to the office and when he did not return I decided to go there and see him.

Paragraph 4: Upon reaching Alagbon at about 5.30pm. Superintendent Oyibo informed me that it was necessary for me to make a statement and I did so. In my statement, I said that I was aware of the Inter-branch voucher order on Lagos branch of the Bank for the sum of ₦510,000. I also said that the management of the Bank gave the Bank's Treasury Department authority to pay the sum as a consultancy fee to a company - Trade Moore International Company - for work done for the 1st Plaintiff.

Paragraph 5: I finished making my statement at about 7.45pm. and to my utter amazement, Superintendent Oyibo said he had to detain me. To the best of my knowledge, information and belief, Superintendent Oyibo took this action after consulting the 2nd Defendant herein who is a Deputy Commissioner of Police in the Force Intelligence Department.

Paragraph 6: On the following day at about 2.00pm. Superintendent Oyibo and two other officers of the Nigeria Police Force took the 3rd Plaintiff and I with them for a search of our respective offices and houses, after the search, we were taken back to C.I.D. Alagbon and finally released about 6.00pm, on bail with two sureties and on condition that each of us produces his Passport the following day.

On 21/9/90, the Applicant through one Ayokunle Rotimi an Assistant Company Secretary in the 1st Plaintiff/ Applicant sworn to another affidavit in support of;

Paragraph 2: On 21st of August, 1990, a Police Officer by name Superintendent Oyibo came to the Head Office to

demand Minutes of the last Annual General Meeting as well as the names and addresses of the Bank's Shareholders.

Paragraph 3: He claimed then that he was investigating a matter involving a payment of N8.5 million given to NSG Securities & Investment Company Limited (NSG) by the Plaintiff Bank.

Paragraph 4: He also claimed that he was investigating another complaint about notices of the last Annual General Meeting being fraudulently served, he explained that by this, he meant that the notices were sent to false addresses.

Paragraph 5: He also disclosed that the complainant in the matters being investigated was Alhaji Ado Ibrahim (the 1st Defendant) who is a brother (of the same father) of the 1st Defendant.

Paragraph 6: In spite of the fact that he was informed that the Company had already lodged a formal complaint with the Inspector General of Police by letter dated the 30th day of April, 1990, he did not cease his barrasment of Bank Officials. The said letter is annexed herewith and marked Exhibit AR/1.

Paragraph 7: The 3rd Defendant was also informed that payment of N8.5 million to N.S.G. had been reported to the Central Bank of Nigeria who investigated and did not find any evidence of fraud.

Paragraph 8: The 3rd Defendant was also informed that all the notices referred to in paragraph 4 above were sent out to the addresses in the register of the Plaintiff Bank.

Paragraph 9: On the 20th day of April, 1990, at about 10.30am, Superintendent Oyibo and another Police Officer by name N.F. Komonibio accompanied by Alhaji Ado Ibrahim barged into the boardroom of the Plaintiff Bank.

Paragraph 10: A meeting of all Branch Managers was in progress, the Police Officers invited Dr. Olubukola Saraki who was chairing the meeting to the Police Station.

Paragraph 11: Alhaji Ado Ibrahim then claimed he was an executive director and tried to address the meeting. The management were then forced to bring the meeting to an abrupt end.

Paragraph 12: Again on the 20th of August, 1990, a Police Officer by name Superintendent Oyibo came to the Head

Office of the Bank and claimed he was investigating a matter of fraud, conspiracy and theft involving ₦510,000. Like the affidavit of Jude Iluyomade, the above deponent confirmed the 1st affidavit.

On 24/9/90 when the Ex-parte application came up for hearing, because of the constitutional importance of this application, I concerted the said application into one of notice and directed counsel to the Applicants to serve copies of the said application on 1st - 3rd Respondents personally through the Attorney General of the Federation and adjourned the hearing to 27/9/90. Despite evidence of service of the copies the notion in the Federal Att. General, neither their Respondents nor any counsel from the Federal Ministry of Justice were in Court. Acting on the affidavit - evidence before me, I granted an interim order restraining all the Respondents from arresting or molesting the Applicants and adjourned the hearing of the Motion to 7/11/90. In between the adjourned date, the Applicants through the Managing Director, John Hall and Robert Olugili filed two more affidavits with Exhibits JH/1,2,3 and ROA/1. These affidavit totally confirmed the contents of the 1st affidavit of Dr. Olubukola Saraki. On 7/11/90, the Motion could not be heard because counsel to the Respondent H.W. Dady Esq. intimated the Court that he had just been briefed and the Applicant was further adjourned.

On 16/11/90, the respondents through Superintendent Oyibo swore to a counter-affidavit denying paragraph 3, of the affidavit of Dr. Olubukola Saraki, paragraphs 5 - 11 of Ayokunle Rotimi's; paragraphs 3 and 4 of John Hall's and paragraphs 4-7 of Robert O. Adeduyon's affidavits. The totality of the respondents' affidavit was complete denial of the allegation in the applicants affidavit. The Respondents filed three more counter-affidavits with Exhibits A, B², B(1), C & C(1). Arguing in support of the Motion for an interlocutory injunction restraining the 1st - 3rd respondents and their agents, privies, servants and any person acting under the instruction or direction of the said respondents from initiating or purporting to initiate or from taking any step or any further step in any Criminal proceeding Court against the 2nd and 3rd Applicants herein or any other officer or servant of the 1st Applicant. Learned counsel, Chief E.P.A. Williams(SAN), referred

to paragraph 17 of the Statement of Claim and submitted that the respondents are yet to file their Statement of Defence. He referred to the case of GARBA VS. CIVIL SERVICE COMMISSION (1988) 19 NSCC (PT.1) 306 at 320 and according to him applied to the case in hand, the Respondent should not be allowed to initiate any prosecution against any officer or servant of the 1st Applicant, 2nd and 3rd Applicants inclusive until final determination of the substantive suit. He further submitted that if the respondents have a good case, the best option was to ask for an accelerated hearing of the substantive suit. He urged the Court to refrain from entertaining any question that would decide the main issue in the substantive suit. According to him, the fact that the affidavits of both parties are conflicting show that there is a serious issue to be tried. On this, counsel urged me to grant the interlocutory injunction sought for.

Mrs. Wanni Folarin - Director in the Federal Ministry of Justice opposing in her reply submitted that by the very case cited by the Applicant the Applicants are asking the Respondents to fold their arms pending the final determination of the substantive suit. She asserted that that is not the law and cited the Case of Chief Gani Fawehinmi VS. Col. Halilu Akilu and Another (1988). ANWLR (PT.88) 367 to buttress her submission that where a criminal matter arises from the Civil suit, the criminal action must take precedence or the two actions could go on simultaneously. According to her the case of Garba VS. Civil Service Commission (Supra) has no relevance to the present motion because in that case, the appellant was sacked because he went to Court and has no criminal flavour. She finally submitted that to restrain the Respondents from performing their lawful duties as envisaged under Sections 4 and 1st Police Act is against the Rule of Law and urged me to reject the prayer sought for by the Applicants.

The issue for consideration in this is whether or not this Court can restrain the Respondents from initiating a criminal prosecution against the Applicants and if the answer is affirmative, should they ^{two} go on simultaneously. Before answering the vexed question, I would define what is the meaning of an injunction?

An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act

or thing. In the former case, it is called a restrictive injunction and the latter mandatory injunction - See Nelson's Law of Injunctions 2nd Edition 1984 at P.1 But in another form, an injunction is a specific order of the Court, forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun i.e. an injunction can only be granted against an unlawful act. Therefore, no injunction would be granted against lawful exercise of a right or duty.

DAMODAY PAINTS PRIVATE LTD. VS. INDIA OIL CORPORATION LTD. (1982) ALL INDIA REPORTER (DELHI) 57 at 59. Not only must there be a legal right in existence, but it must be vested in the Applicant who seeks for an injunction i.e. there must be an obligation existing in favour of the Applicant. It is very essential that the Applicant shows not merely an injury (actual or prospective), caused by the act of the Respondent, but the act in question is an infraction of some right vested in the Applicant or an omission - something which the Respondent was legally bound to do, hence no injunction will be granted where no right of the Applicant has been or is about to be invaded, and no damage caused or threatened.

Thus in VESTRY OF ST. MARY MATTERSEA VS. COUNTY OF LONDON & BRITISH PROVINCIAL ELECTRIC LIGHTING CO, (1899) 1 CH. 274 - an Electric Lighting Company had illegally broken up surface of a street within the district of a Metropolitan vestry and placed pipes and wires at a depth of two feet. The vestry sued for an injunction, which was refused on the ground that the soil of a street is vested in vestry under the Metropolitan Management Act, 1855, Section 96, only so far as is necessary for the control, protection and maintenance of the street as a highway for public use and therefore there had been no interference with any right of the vestry.

If a right being assailed is not justiciable, no relief by way of an injunction - temporary or perpetual can be granted. While I concede that under Section 18 (1) High Court Law of Lagos State, the power conferred in this Court is very wide to grant injunction "in all cases in which it appears to the Court to be just or convenient so to do". This power is and must be exercised according to settled legal principles hence this Section of the High Court Law does not give the Court power to issue an injunction where formerly no Court could have given any

DAY Vs. BROWNRICE (1878) 10 CH.D. 294 AT 307 where an injunction was refused to prevent the Defendant from calling his house by the same name as the Plaintiffs, although the parties lived next door to each other and the name has been used by the Plaintiff for sixty years. See also BENDDON Vs. BENDDON (1878) 9 CH.D. 89 at 93. NORTH LONDON PLY. CO. Vs. G.T. NORTHERN PLY. CO. (1898) 11.Q.B.D. 130. FARRAR Vs. COOPER (1890) 44.CH.D. 323. JUNGHEIN HOPKINS & CO. Vs. FOUKEL MAUW (1909) 2/KB. 948.

Before an injunction either mandatory, perpetual, interlocutory, common, special or quit time is granted, there must be a right vested in the Applicant and the Court must be satisfied that there is a real apprehensive of his suffering any injury by a violation of that right if the same is declined to him. Be that as it may, the lawful exercise of right/duty vesting in a person cannot be said to be an injury and such, the same cannot furnish a ground for granting an injunction restraining such person, from exercising it. As rightly pointed out by the Supreme Court in AKIBU VS. ODUHTAN (1991) 2.NWLR (PT.171) 1 AT Page 10 Paragraph "C". an interlocutory injunction can only be issued to restrain a threatened wrong to a right and not to restrain the lawful enjoyment of a legal right", per Obaseki, JSC.

It is pertinent to note that the submissions of both Counsel (Chief F.R.A. Williams (SAN) for the Applicants and Mrs. Wona Folarin - Director in the Federal Ministry of Justice for the Respondents) centered around the question earlier posed in this Ruling.

From this, neither Counsel addressed me on the implications of the provisions of Section 3, 4 and 19 of the Police Act & Section 78 (b) Criminal Pro. Act/Law.

SECTION 3 Says: There shall be established in Nigeria a Police Force to be known as the Nigeria Police Force.

SECTION 4: Says: The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and the protection of property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without Nigeria as may be required of them by or under the authority of the President.

all prosecutions before any Court whether the information or complaint be laid in his name or not - But this subject to Sections 160(1) 191 (1) (b) of the constitution. See also R. Vs. Adan Haji Jama (1948) AC.255. Sec. 78(b) Criminal Procedure Act/Law whichever is applicable - by saying a person arrested without a Warrant before the Court upon a Charge contained in a Charge sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed. The charge sheet shall be signed by the Police Officer in charge of the case. However, I am enjoined to take and I do take judicial notice of these two sections of the said Act read co-jointly with Section 73(1) (a) Evidence Act:-

BENSON VS. ASHERU (1967) 1. AU. N.L.R. 184 AT 188.

ADETIFE VS. ANODU (1969) NWLR (PT.1) 62

OTTI VS. I.G.P. (1958) NWLR. 2.

KANADA VS. GOVERNOR, KADUNA STATE (1986) 4. NWLR. (PT.35) 361 at 373 Paragraphs 7 - 6.

AROMOLARAM VS. OLADELE (1990) 7. NWLR. (PT.162) 359 AT 359 AT 368 paragraph B - C. that the Respondents have the constitutional duty to investigate an alleged crime committed and if satisfied at the end of their investigation that such a crime has been committed by a particular suspect, have the right to prosecute the suspect(s). As stated in H. KARSET VS. W. G. PEDDER, MUNICIPAL COMMISSIONER 12 ROM. HIGH COURT RULE 199 "where a public body is under an Act of Parliament entrusted with powers and duties for a public purpose, the Court will give credit to them as being the best judges of what they want for that purpose". I am adopting this stance in the motion before me.

Although the action of the Respondents in this case might be erroneous but unless the intended prosecution is also malicious the High Court would not generally restrain the Respondents or any body who has an interest from prosecuting a suspect for criminal offence alleged to have been committed:-

GRAND JUNCTION WATERWORKS CO. VS. HAIFTON URBAN DISTRICT COUNCIL (1898) 3.CU. 331. Therefore it cannot be asserted that the Respondents in this Motion were/are causing any injury or that the Applicants could have any reasonable apprehension of any injury to their rights, rather their

contentious are that the intended prosecution should not be allowed to proceed simultaneously with the substantive civil suit. Much as I agree that the Applicants have that right not to be maliciously prosecuted - that right is between and betwixt could only be vindicated at the end of the intended prosecution; however, mere prosecution is not and cannot be a wrongful act unless as I indicated earlier, it is also malicious, for it has never been the practice of this Court to restrain men from prosecuting frivolous, litigations, or desperate cases merely because they are so or to restrain person from acting without authority as where a man take proceedings out of Court in the name of a person who has given no authority to use it:-

PENNELL Vs. ROY & CO. 133.

LONDON & BLACKWALL RLY Vs. CROSS L.R. 33 CH. DIV. 371.

No one can obtain a quia time (and that is what these Applicants are asking for) order merely by saying "timeo" unless he avers and proves that what is going on or intended is calculated to infringe his right:-

ATT. - GEN. FOR DOMINION OF CANADA Vs. RITCHIE (CONTRACTING & SUPPLY) CO. (1919) A.C. 929 AT 1005 (PC) per Lord DUNEDIN.
 Whether or not the intending criminal prosecution of the 2nd and 3rd Applicants by the Respondent is malicious is not for this Court to decide as there is no means for me to know since this Court is incompetent to order the Respondents to produce their file or forward the said file to the Attorney-General for perusal, as to do so, this Court would in my view be usurping the power of the Attorney - General and this would be against the spirit of our Constitution where the doctrine of separation of powers is loudly pronounced.

From what I have so far said above, I hold that an injunction would not be generally granted in the under-mentioned circumstances:-

1. To restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restrain is necessary to prevent a multiplicity of proceedings.
2. to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

3. to restrain any person from applying to any legislative body.
4. to restrain any person from instituting or prosecuting any proceeding in a criminal matter.
5. to prevent the breach of a contract, the performance of which could not be specifically enforced,
6. to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance.
7. to prevent a continuance breach in which the Plaintiff has acquired;
8. When equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust and
9. When the conduct of the Plaintiff or his agents has been such as to dis-entitle him to the assistance of Court. Lest I be misinterpreted, I would here amplify paragraphs (1) and (4) above which are very relevant to the case on hand. In paragraphs

(1) I have deliberately used the word generally, showing that although no proceedings pending in the High Court or Court Appeal can be restrained by injunction vide Section 41, Judicature Act 1925 which is still applicable to Lagos state vide Section 112 High Court Law of Lagos State. It is still possible in certain cases to restrain the institution of civil suit in the High Court. Thus an injunction may be granted to restrain a person who claims to be a creditor of a company from presenting a petition to wind up the company where the alleged debt is bona-fide disputed and the so-called debtor company is solvent, it may also be granted to restrain a threatened action against a Receiver appointed by the Court in respect of acts done by him in discharge of his office.

Further, the High Court may restrain a person from prosecuting vexatious civil or criminal proceedings in inferior Courts, even is pending, as where it is sought to litigate in Magistrate Court issues which are already being litigated in the High Court:-

MESANI vs. WOOD (1879) 12. CH.D. 191 AT 630.

HART vs. HART (1881) 18 CH.D. 670.

CERCLE vs. RESTAURANT CANTIGALIONS CO. vs. LAVERY (1881) 18 CH. D. 555.

MAIDSTONE PALACE OF CARLITIES LTD. RE. (1909) 2 CH. 283

RE: CONNOLLY BROSS LTD. (1911) 1 CH. 731

THAMES LAUNCHES LTD, Vs. TRINITY HOUSE CORP. (DEPTFORD STROND), (1961) CH. 197.

Like paragraph (1) above, under paragraph (4) there are circumstances where criminal prosecution may be restrained, these are where the Magistrate Court has no jurisdiction to entertain the case or where a party to a suit before the High Court is threatened with concurrent criminal proceedings which proceedings are not purely criminal. Thus in LORD ARCKLAND Vs. WESTMINSTER DISTRICT BOAD OF WORDS, LR.9 CH. APP. 597 - the Court of Appeal (James and Mellish, L.JJ) restrained the Defendant from taking out a summons under Section 75 Metropolitan Management Act, 1862 on the ground that the case fell within Section 74 and consequently a magistrate would have no jurisdiction to deal with the case.

So also in MAYOR OF YORK Vs. FILKINGTON 2 ATK. 302. Lord Hardwick restrained the Plaintiff in suit in equity from indicting the Defendant's agent, holding that although there was no restraining powers in Courts of equity over criminal prosecutions, yet where a bill is brought to quiet possession and after that the Plaintiff prefers an indictment for forcible entry, the Court will stop proceedings and on the facts of the case, that Court has jurisdiction to determine the matter, then, the High Court cannot and will not stop the proceedings.

KERR Vs. PRESTON CORPORATION, L.R. 6 CH. DIV. 463 OR 46 LJ. CH. 409.

BRITON MEDICAL & GEN. LIFE ASSURANCE ASSOCIATION 32. CH. D. 503.

MERRICK Vs. LIVERPOOL CORPORATION (1910) 2 CH. 499.

The principle deducible from these decisions is that though the extreme position cannot be maintained, that there is absolutely no jurisdiction in the High Court to restrain criminal proceedings before a magistrate, the Court will not interfere unless in very special circumstances by way of injunction or declaration of right where the law maker has pointed out a mode of procedure before a magistrate. Above all unless the cases raised and the objects sought are identical, the Court will not prevent a party to a suit before it from proceeding in a criminal Court against the opposite party. As to when such criminal proceedings should begin, Lord Cains, L.C. in SAULL Vs. BROWNE L.R. 10. APP. 64 AT 65, stated thus:

"Such a Court could not interfere with criminal proceedings brought before the institution of the suit nor after its determination, if then" ... such proceedings might be taken either before or after the suit, it is difficult to see why then they should not be taken at the same time and concurrently with the suit. There is no inconsistency in allowing both proceedings, as nothing which takes place on the summons can be evidence in the suit". See JEFFERSON SON LTD. Vs. BHETCHA (1979) 2. AER. 1108.

Having read the two authorities cited i.e. GARBA Vs. CIVIL SERVICE COMMISSION (1988) 15 NSCC (FT.1) 306 at 320 and Chief Gani Fawehinmi Vs. Col. Halilu Akilu and another. (1988) 4 NWLR (FT.88) 367 by both learned counsel, it is my view that the case of Garba as rightly submitted by counsel to the Respondents, has no relevance to the issue in this application in that, in that case Garba was about to be punished administratively because he had taken the Commission to Court for illegal dismissal and was pressurized to withdraw his case. This attitude of the Commission was the very issue before the Court yet to be decided then, hence the Court has the power to restrain the Commission. Unlike in the application on hand, these Applicants are not fouling the intended prosecution as being illegal, instead they are only praying the Court not to allow their own substantive suit to proceed simultaneously with the intended criminal prosecution to be initiated by the Respondents.

I am buttressed in this interpretation by the substantive suit as shown in the body of their Writ of Summons where what the Applicants are asking for is a declaration that their detention in August, 1990, is illegal and contrary to the Law and constitution of Nigeria. It is my view that the substantive suit with the intended criminal prosecution could never be held to be multiplicity of proceedings or one (i.e. the criminal action) which the Magistrate Court has no jurisdiction.

From the affidavit - evidence and the submissions of their counsel, the Applicants have failed to show that the intended criminal prosecution complained of would be violation of their rights or is at least an act if carried into effect will necessarily result in a violation of that rights. In this application, the Applicants made a heavy weather of the relationship between the

not and could not be denied but I know of no law which makes such relationship as been illegal and unless they could prove more, there is the well-settled rule that it is not the practice of the Court to interfere with corporate bodies, unless they are manifestly abusing their powers:-

DUKE OF BEDFORD Vs. DAWSON, LR. 20 EQ. 353 or 44 LJ. CH. 549.

AHMEDABAD MUNICIPALITY Vs. MANILAL UDENATH, ILR. 19 BOM.

Therefore I hold in support of the submission of counsel to the Respondent that it would be an abuse of the process of Court to ask for an injunction to restrain the Respondents from performing their statutory duties under Sections 4 and 19 of the Police Act, hence the interim injunction granted by this Court on 27/9/90 is hereby revoked and the Respondents are free to initiate the criminal prosecution. Since the both actions can proceed simultaneously.

CHIEF GANI FAWEHINMI Vs. COL. H. AKILU & ANOTHER (SUPRA) PROUDE Vs. PRICE, 63 L.J. Q.B. 61

GRAMCHOSE KARA ODURETE & ORS, Vs. ATT. GEN. L/STATE & ANR. (1980) 4 - 6, CCH. CJ. 150 AT 153 LINES 20 - 24.

This Motion is hereby dismissed. The substantive suit is hereby adjourned to 25/6/91.

CERTIFIED TRUE COPY:PHOTOSTAT

A. OLA DADA
CHIEF LITIGATION ASSISTANT

17/4/91

Rishi Varma
KESINGTON A. S.
JUDGE
4/4/91



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