

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT LAGOS**

FHC/L/CS/172/16

**IN THE MATTER OF APPLICATION BY MR. RICKEY TARFA SAN (TRADING UNDER THE NAME AND
STYLE OF MESSRS RICKEY TARFA & CO.) FOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS.**

AND

**IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009, MADE BY
THE CHIEF JUSTICE OF NIGERIA PURSUANT TO SECTION 46(3) OF THE CONSTITUTION OF THE
FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED).**

BETWEEN:

**MR. RICKEY TARFA SAN
(TRADING UNDER THE NAME AND
STYLE OF MESSRS RICKEY TARFA & CO)**

} **APPLICANT**

AND

- 1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)**
- 2. IBRAHIM MUSTAFA MAGU**
- 3. MOSES AWOLUSI**
- 4. ILIYASU KWARBAI**

} **RESPONDENTS**

**COUNTER AFFIDAVIT OF THE 1ST, 2ND, 3RD AND 4TH RESPONDENTS IN OPPOSITION TO
THE APPLICANT'S ORIGINATING MOTION ON NOTICE DATED 24TH DAY OF FEBRUARY,
2016**

I, Moses Awolusi, Male, Nigerian, Christian, an officer attached to Economic and Financial Crimes Commission (EFCC) of No. 15A, Awolowo Way, Ikoyi, Lagos do hereby make oath and depose as follows:

1. I am one of the Special Task Force (STF) Team 2A assigned to investigate this matter and the 3rd Respondent in these proceedings.
2. By virtue of my position, I am conversant with the facts of this case as deposed to herein and eminently informed and competent to depose to this Counter Affidavit on behalf of myself and the 1st, 2nd and 4th Respondents herein.
3. I have the consent and authority of the 1st, 2nd, and 4th Respondents and its counsel to depose to this Counter Affidavit.

4. Except where otherwise expressly stated, all the facts deposed to herein are within my personal knowledge, information and belief.
5. That I have been shown a copy of the motion on notice dated 24th day of February, 2016 and the supporting affidavit dated 24th day of February 2016, deposed to by one John Olusegun Odubela on behalf of the Applicant and I have the authority of the 1st, 2nd and 4th Respondents to react to same as follows:
6. That paragraph 8 of the affidavit in support is blatant falsehood as paragraphs 35, 36, 37, 38 & 39 of the Applicants further affidavit deposed to on 19th February, 2016, speak for themselves as the facts therein cannot be twisted or misrepresented in any way whatsoever.
7. That paragraph 10 of the affidavit in support is blatant falsehood and after thought on the part of the deponent and the Applicant to confuse issues and mislead this Honourable court on the facts contained in paragraphs 35, 36, 37, 38 & 39 of the Applicants further affidavit deposed to on 19th February, 2016.
8. That paragraph 8 of the affidavit in support is blatant falsehood as paragraphs 35, 36, 37, 38 & 39 of the Applicants further affidavit deposed to on 19th February, 2016 are reproduced hereunder.

“35. That it was common knowledge in legal circles that the Honourable Justice M.N. Yunusa lost his father in-law; Alhaji Audi Garba Damasa on 28th December, 2013 in Maiduguri and travelled there to attend to the funeral rites.

36. That the Applicant and some friends of the Honourable Justice M.N. Yunusa made some donations towards the said funeral rites and to commiserate with the Judge since they could not physically go and commiserate with him in Maiduguri where he was and stayed for a while.

37. That the contributed monies amounted to N225, 000 (Two Hundred and Twenty-five Naira) which sum was given to the Applicant with the responsibility to get same across to the bereaved judge.

38. That the Applicant consequently made arrangements to forward the sum N225,000 (Two Hundred and Twenty-five Naira).

39. That I know as a fact that it is common in Nigeria for friends and well-wishers to contribute gifts in cash and kind to people who are celebrating or bereaved.”

9. That in response to paragraph 9 of the affidavit in support, the documents exhibited to reply to further affidavit of the Respondents were extra judicial statements of the Registrar of Court 2 and the security guard of the Court premises both of which documents speak for themselves.

10. That paragraph 10 of the affidavit in support stands logic on its head and in response thereto paragraphs 37 and 38 of the further affidavit of the Applicant showing clearly that the Applicant averred that the sum of N225, 000 (Two Hundred and Twenty-five Naira) was paid directly to Honourable Justice M.N. Yunusa are reproduce hereunder:

“36. That the Applicant and some friends of the Honourable Justice M.N. Yunusa made some donations towards the said funeral rites and to commiserate with the Judge since they could not physically go and commiserate with him in Maiduguri where he was and stayed for a while.

37. That the contributed monies amounted to N225, 000 (Two Hundred and Twenty-five Naira) which sum was given to the Applicant with the responsibility to get same across tot eh bereaved judge.

38. That the Applicant consequently made arrangements to forward the sum N225, 000 (Two Hundred and Twenty-five Naira).”

11. That in further response to paragraph 10, I know as a fact that the Applicant in his extra judicial statement to the 1st Respondent upon his arrest, stated falsely that his age was 43 years in the document marked as Exhibit I to the counter affidavit of the Respondents dated 18th February, 2016, whereas the true age of the Applicant as stated in the Compendium published for all Senior Advocates in Nigeria is 54 years, the relevant page of the compendium for Senior Advocates referred to is shown to me and marked **Exhibit “RT”**. The Applicant’s extra-judicial statement to 1st Respondent is marked **Exhibit “RT2”**.

12. That paragraph 11 of the affidavit in support is blatant falsehood in that the cheque in the sum of N225, 000 annexed as **Exhibit E** to the affidavit of one Mohammed Awwal Yunusa dated 23rd day of February, 2016 is in the name of **MOHAMMED AWWAL** and not **MOHAMMED AWWAL YUNUSA**.

13. That the referred **Exhibit E** is not certified by Access Bank and there is no proof on the face of **Exhibit E** that the said Mohammed Awwal cashed the cheque.

14. That in the further affidavit of the Applicant dated 19th of February, 2016, no reference was made at all by the Applicant to any Mohammed Awwal Yunusa other than Honourable Justice M.N. Yunusa.

15. That in further response to paragraph 11 the Applicant in the further affidavit dated 19th February 2016, stated that the Honourable M.N. Yunusa lost his father In-law necessitating the donation by the Applicant and his friends to the Honourable Justice M.N. Yunusa.

16. That in further response to paragraph 11, paragraph 36 of the referred further affidavit of the 19th February 2016 are reproduce hereunder:

“36. That the Applicant and some friends of the Honourable Justice M.N. Yunusa made some donations towards the said funeral rites and to commiserate with the

Judge since they could not physically go and commiserate with him in Maiduguri where he was and stayed for a while.”

17. That in response to paragraph 12 of the affidavit in support, I reproduce on behalf of the Respondents paragraphs 58 and 59 of the affidavit in support of the Applicant's Originating motion on Notice dated 8th February 2016 as follows:

“58. That upon being briefed and based on the facts as summarized above, Applicant's law firm filed the following three suits to enforce their clients' fundamental rights, namely;

(a) Suit No: FHC/L/CS/714/2015, MR. ADEWALE ADENIYI V. EFCC & 2 ORS for unlawful arrest and detention of the Applicant (in proxy of Mr. Gnanhoue Sourou Nazaire);

(b) Suit No: FHC/L/CS/715/2015, RANA PRESTIGE INDUSTRIES LIMITED & ANOR V. EFCC & 2 ORS for unlawful sealing of the premises, detention of property etc. without any order of court;

(c) Suit No: FHC/L/CS/716/2015, HAIR PRESTIGE LTD & 3 ORS V. EFCC & 2 ORS for unlawful sealing of the premises, detention of property etc. without any order of the court.

59. That the above suits which were all filed on 15th of May, 2015 were all assigned to Honourable Justice M.N. Yunusa of the Federal High Court, Lagos Judicial Division for determination.”

18. That from the facts above, the Applicant was not just a friend to Honourable Justice M.N. Yunusa but counsel who regularly appears on behalf of clients before Honourable M.N. Yunusa.

19. That in response to paragraph 14 of the affidavit in support, Applicant former staff M.A. Yunusa Esq. is not connected to the facts and circumstances of these proceedings and is merely introduced to mislead this Honourable Court and as an afterthought by the Applicant having realized the full effect of his admission that he donated N225, 000 to Honourable Justice M.N. Yunusa for funeral rites notwithstanding his status as counsel with pending and future matters before the particular judge.

20. That in response to paragraphs 15, 16, 17, 18, 19, 20, 21 and 22 of the affidavit in support, I am informed by W.K. Shittu Esq. of counsel and I verily believe same to be true as follows:

(a) That the application dated 24th February 2016, is an attempt to arrest the judgment of this Honourable Court and therefore incompetent being unknown to our law.

(b) That this Honourable court having reserved this suit for judgment cannot entertain any fresh evidence at this stage of the proceedings.

(c) That the application of the Applicant is an abuse of court process and incompetent.

21. That the Respondents will be highly prejudiced by the grant of the instant application.

22. That I make this oath in good faith conscientiously believing same to be true, correct and in accordance with the Oaths Act.

DEPONENT

SWORN TO at the
Federal High Court Lagos Registry, Lagos.

ThisDay of2016.

BEFORE ME

COMMISSIONER FOR OATHS

**IN THE FEDERAL HIGH COURT OF NIGERIA
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**MR. RICKEY TARFA SAN
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- 1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)**
- 2. IBRAHIM MUSTAFA MAGU**
- 3. MOSES AWOLUSI**
- 4. ILIYASU KWARBAI**

} **RESPONDENTS**

**WRITTEN ADDRESS OF THE RESPONDENTS IN OPPOSITION TO THE APPLICANT'S
MOTION ON NOTICE DATED 24TH DAY OF FEBRUARY, 2016**

1.0 INTRODUCTION:

- 1.1 On Friday the 19th of February 2016, this Honourable Court entertained arguments from the Applicant and the Respondents in respect of the Originating Motion on Notice for the enforcement of the fundamental rights of the Applicant and adjourned proceedings till Monday 29th February 2016 for JUDGMENT.
- 1.2 Notwithstanding, the Applicant has brought this application dated 24th day of February 2016 (5 days away to the judgment day) seeking to reopen and adduce further evidence by way of a Further and Better Affidavit of one Mr. Mohammed Awwal Yunusa. The Application which was premised on certain grounds stated on the face of the Motion paper is supported by a 23 paragraph affidavit deposed to by John Olufemi Odubela.

Attached to the affidavit is exhibit 'A' which is a copy of code of conduct for judicial officers as well as a written address in support of the Application.

- 1.3 In opposition, we have filed a 22 paragraph affidavit deposed to by one Moses Awolusi, an officer attached to the EFCC. Attached thereto is exhibit 'RT' extract from 'A compendium of Senior Advocates of Nigeria, 3rd Edition A publication of Gem Communication Resources showing that the Applicant, Mr. Rickey Tarfa was born of February 23rd 1962 (54 years), a fact at variance with the age of 43 stated by the Applicant in his extra-judicial statement to the Economic and Financial Crimes Commission upon his arrest. The Applicant repeated the age of 43 in all the pages of his extra-judicial statement to the EFCC.
- 1.4 The gist of the Respondent's opposition is that the Applicant stated clearly in the Affidavit deposed to on 19th February 2016 that he paid the N225,000.00 to Honourable Justice M. N. Yunusa towards to the funeral rites of his father-in-law, Alhaji Garuba Damasa on 28th December, 2013. Therefore, the Applicant's position that this was not what he stated on oath in paragraphs 35, 36, 37, 38 and 39 is gross misrepresentation and an attempt to mislead the Honourable Court. The Respondents' position is that this trait of misrepresenting facts is characteristic of the Applicant having also misrepresented his true age to the Respondents during interrogation.
- 1.5 Fundamentally, it is the position of the Respondents that parties having joined issues on the Originating Motion on Notice with arguments taken and judgment reserved for February 29th 2016, the present application is gross abuse of court process and consequently incompetent in all material particular.

2.0 ISSUES FOR DETERMINATION:

- 1. Whether the Applicant can reopen and adduce further evidence at this stage notwithstanding that the matter has been reserved for judgment on 29th February 2016?**
- 2. Whether arrest of judgment is known to our law and jurisprudence?**

3.0 ARGUMENTS ON ISSUES 1 & 2

- 3.1 These two closely related issues shall be taken together, reliance been placed on incontrovertible pronouncements of the Supreme Court, the highest court in the land on whether arrest of judgment is known to our jurisprudence in the circumstances.

- 3.2 The Counter Affidavit of the Respondents denied the basis of the Applicant's current application and stated in paragraphs 6,7,8,9,10,12,13,14,15,16,17,18 and 19 the reasons why the position canvassed by the Applicant cannot be correct. In paragraph 20 thereof, the Respondents contend strongly that the present application is meant to arrest the judgment in these proceedings already reserved for 29th February 2016. In the circumstances the application being incompetent should be dismissed by the Honourable Court. What are the authorities the Respondents rely on for this position?
- 3.3 Significantly, in the case of **NICHOLAS CHUKWUJEKWU UKACHUKWU AND PEOPLES DEMOCRATIC PARTY AND 3 ORS VS NICHOLAS CHUKWUJEKWU UKACHUKWU AND DR. TONY NWOYE AND 3 ORS** delivered by Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC on 22nd day of October, 2013 the Supreme Court held as follows:

*“The law is settled that in an application of this nature, which calls for the exercise of the court’s discretion, the discretion must be exercised judicially and judiciously taking all the facts and circumstances of the case into consideration. In the instant case, it is of considerable importance that at the court below, the appeal has been heard and judgment reserved to a date to be notified to the parties. The applicant herein is seeking a stay of proceedings. It raises the question as to what proceedings are still pending before the lower court that could be stayed? An appeal is heard once the briefs of arguments filed by the respective parties have been adopted and relied upon in open court. By virtue of Order 18 Rule 9 (4) of the Court of Appeal Rules, 2011 (as amended) even where a party or his counsel is absent but a brief has been filed on his behalf, he would be deemed to have argued the appeal. Once argued there is no other pending proceeding save the delivery of judgment. In the circumstances, i agree with my learned brother, Onnoghen, JSC in the lead ruling that although this application purports to be seeking a stay of proceedings at the lower court, to all intents and purposes it is aimed at arresting the judgment already reserved. There is no provision for the arrest of a judgment in our rules of court as categorically stated by this court in the case of: **Newswatch Communications Ltd. Vs Atta (2006) 12 NWLR (Pt.993) 144 @179 F – G.** In effect the application is incompetent.*

As noted earlier, learned Senior Counsel for the applicant, J. B. DAUDU, SAN placed considerable reliance on the case of Dingyadi Vs INEC & Ors. (No.1) (2010) 4 – 7 SC (Pt.1) 76 “ 136 -138: (2010) 18 NWLR (Pt. 1224) 1 in support of his prayer that the proceedings before the lower court should be stayed pending the determination of the appeal before this court. My learned brother, Onnoghen, JSC has done an in-depth analysis of the facts and circumstances that gave rise to the decision of this court in that case. I agree with his analysis and the conclusion that Dingyadi’s case is distinguishable from the facts of this case, as in that case there was a clear case of abuse of court process, which this court had a duty to bring to an end. In Dingyadi’s case (supra), at pages 76-77 G-E of the NWLR citation, the decision of this court in the case of Globe Motors Holdings Ltd. Vs Honda Motor Co. Ltd. (1998) 5 NWLR (Pt. 550) 373 @ 381 – 382 per Ayoola, JSC was cited with approval, wherein His Lordship stated Inter alia:

“Any action or course of conduct that is seen to be designed to introduce anarchy into the judicial system must be dealt with appropriately. In the instant case, the plaintiff while the order of the court still subsists rushed to the court below to seek orders which are in direct conflict with the subsisting order of this court and the fact (that) the defendant may have made preparations to clear the cars from the ports pursuant to the unconditional order of this court...in my view this court would be remiss in its duties if it does not bring it home to the parties that while all sorts of unethical behaviour may be regarded as cleverness in the market place, such is not permissible in the legal system of our country. In the present case the conduct of the plaintiffs prima facie indicated a determination to abuse the judicial process. In the result I would grant the injunction as sought...”

In this instant case, as stated earlier, the clear intention of the applicant was to arrest the judgment of the court below. There was no suggestion that there had been an abuse of the court’s process, which would warrant the application of the decision in Dingyadi’s case to the facts of this case.

I also agree with my learned brother that the issue as to the competence of the notice of appeal should await the determination of the substantive appeal. Having found the application to be incompetent, i agree that his

application is misconceived and lacks merit. It is for these reasons and the more detailed reasons contained in the lead ruling that i also dismissed it on 22nd October 2013. I abide by the order on costs.”

- 3.4 Furthermore, the Supreme Court in the case of **NICHOLAS CHUKWUJEKWU UKACHUKWU VS. PEOPLES DEMOCRATIC PARTY [PDP] AND 3 ORS** delivered on Friday the 20th day of December, 2013 further held as follows:

“...It is very clear therefore that as at the time the application was filed in this court, there was nothing left in the proceedings in the lower court except the delivery of the judgment so adjourned in respect of the consolidated appeals. It is therefore very clear that the application under consideration is aimed at or intended to arrest the said judgment though couched as a stay of further proceedings in the appeals.

It follows, therefore, that the application being to arrest the judgment of the lower court about to be delivered, it is an application not recognized by the rules of this court and consequently misconceived and incompetent...”

- 3.5 Order XV Rule 4 of FREP Rules and Order 17 Rule 1 of the Federal High Court Civil Procedure Rules relied on by the Applicant are not applicable in this case, the matter having been reserved for final judgment.
- 3.6 More importantly, rules of court cannot take precedence over pronouncements of the Supreme Court. The highest court in the land.
- 3.7 There is a distinction between furnishing authorities to guide the court before judgment is delivered and seeking to reopen a case or arrest a judgment after same has been reserved by the Honourable Court at the conclusion of the respective cases of parties before the court.
- 3.8 In the circumstances and in view of the authoritative pronouncements of the Supreme Court above, we urge this Honourable Court to dismiss the Applicant’s Motion on Notice dated 24th day of February, 2016 with punitive costs against the Applicant and proceed to deliver judgment already reserved in this suit for today.

4.0 CONCLUSION:

We urge the court to dismiss the Motion on Notice dated 24th February, 2016 with punitive cost against the Applicant.

Dated this day of February, 2016.

Wahab Shittu, Esq.
I. Onuamah, Esq.
Emmanuel Sadoh, Esq.
Ujunwa Ndubuisi, Esq.
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