

IN THE FEDERAL HIGH COURT OF NIGRIA

HOLDEN AT LAGOS

SUIT No.

FHC/2/CS/791/1

IN THE MATTER OF AN APPLICATION BY MESSRS. EUROFLOW DESIGNS LIMITED,
GODWIN ADAMOLEKUN AND JIMI BADEMOSI FOR AN ORDER FOR THE
ENFORCEMENT OF THEIR FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF:

1. EUROFLOW DESIGNS LIMITED
2. GODWIN ADAMOLEKUN
3. JIMI BADEMOSI

APPLICANTS

AND

1. ATTORNEY-GENERAL OF THE FEDERATION
2. INSPECTOR GENERAL OF POLICE
3. POLICE SERVICE COMMISSION
4. COMMISSIONER OF POLICE, SPECIAL FRAUD UNIT,
MILVERTON, IKOYI, LAGOS.
5. SUPOL. SHOLA OKETUNJI
6. OFFICER LAWAL
7. GUARANTY TRUST BANK
8. ASCORP PETROLEUM LIMITED
9. IBIWUNMI OKUSANYA
10. TOLA OKUSANYA
11. UNKNOWN PERSON

RESPONDENTS

STATEMENT

IN SUPPORT OF APPLICATION TO ENFORCE FUNDAMENTAL
RIGHTS IN PURSUANCE OF ORDER 2 RULE 3 OF THE FUNDAMENTAL
RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009

1. NAME OF APPLICANTS:

1. EUROFLOW DESIGNS LIMITED
2. MR. GODWIN ADAMOLEKUN
3. MR. JIMI BADEMOSI

- 2. DESCRIPTION OF APPLICANTS:**
1. A REGISTERED COMPANY
 2. CHAIRMAN OF THE 1ST APPLICANT
 3. MANAGING DIRECTOR
OF THE 1ST APPLICANT

3. STATEMENT OF FACTS RELIED ON:

- 3.1. The 1st Applicant is a registered company under the Laws of the Federal Republic of Nigeria, the Companies and Allied Matters Act and carrying on business as an Oil and Gas servicing Company in Nigeria.
- 3.2. The 2nd Applicant is the Chairman of the 1st Applicant Company.
- 3.3. The 3rd Applicant is the Managing Director of the 1st Applicant Company.
- 3.4. The 10th Respondent at all material times to this Application was a staff of the 7th Respondent and was the account officer for the 1st Applicant in respect of its accounts that it maintains with the 7th Respondent.
- 3.5. Sometime in 2010, when the 1st Applicant wanted to purchase a vessel for the purpose of oil servicing contracts, it needed some funds to make up the total cost of the vessel to be purchased.
- 3.6. The 1st Applicant approached the 7th Respondent for a loan to finance the purchase of the vessel, the discussions which in fact, later brought about setting up a meeting between the directors of the 1st Applicant and that of the 7th Respondent i.e the late Mr. Tayo Aderinokun , the present Managing Director of the 7th Respondent, Mr. Segun Agbaje including the 10th Respondent were present at the meeting.
- 3.7. It later turned out that the terms and conditions didn't work for the parties to agree. However, the facts contained in the above paragraphs 3.4 to 3.6 was how the 10th Respondent became aware that the 1st Applicant wanted to buy a vessel and that it needed money to make up the cost of the purchase.

- 3.8. The 10th Respondent then told the 1st Applicant that she knew of a petroleum company that could also invest in the vessel to be purchased on terms to be agreed with the company.
- 3.9. Also as the account officer of the 8th Respondent, the 10th Respondent then introduced the 8th Respondent as the company that was willing to invest in the purchase of the vessel. Hence, the 1st Applicant dealt with the 8th Respondent, Ascorp Petroleum Limited in relation to the investment; which was not out of place, being a company that also operates within the oil and gas industry.
- 3.10. The 8th Respondent loaned the 1st Applicant the sum of N375, 000,000.00 (Three Hundred and Seventy-Five Million Naira) only, to make up the total cost of the vessel and on the understanding that when the vessel commences work in Nigeria, the 1st Applicant shall pay to the 8th Respondent 30% (Thirty Percent) of the proceeds of the vessel's work until the loan is finally paid up.
- 3.11. Known to the 8th Respondent, the vessel was actually procured by the 1st Applicant, but unfortunately the projects for which the vessel was purchased did not start as expected and since its procurement, has not executed contracts as expected by both the 1st Applicant and the 8th Respondent.
- 3.12. Meanwhile, at the time the 8th Respondent was advancing the loan to the 1st Applicant, the 8th Respondent immediately deducted the sum of N13, 315.068.50 (Thirteen Million, Three Hundred and Fifteen Thousand, Sixty Eight Naira Fifty Kobo only) from the entire N375, 000,000.00 and claimed same to be covering bank charges, facilitation fees and interest upfront.
- 3.13. The 1st Applicant then began to do everything possible to make sure that the vessel gets engaged under certain contracts and with a view to repay the outstanding balance of loan. Despite the setbacks in engaging the vessel for contracts, the 1st Applicant continues to raise money from other sources to show good faith and continues to pay back the loan.

3.14. The following documents form part of the correspondence showing the civility and the understanding between the 1st Applicant and the 8th Respondent regarding the loan;

(A) **Exhibit J1** is a copy of the 1st Applicant's letter dated 20th September 2012, admitting the indebtedness and further confirming that the repayment shall be from the proceeds of the work done by the vessel as agreed.

(B) **Exhibit J2** is the minutes of the meeting between the parties in December 2012 where it was agreed that in demonstration of good faith towards repayment, the 1st Applicant shall pay a sum of \$100,000.00 to the 8th Respondent. The minutes were recorded by the 8th Respondent's Solicitor.

(C) **Exhibit J3** is a copy of the letter dated 14th December 2012 from the 8th Respondent acknowledging the receipt of the \$100,000.00 agreed to be paid in the meeting referred to in B above.

3.15. To the Applicants' consternation, sometime in the month of September 2013, the 2nd and 3rd Applicants received invitation letters from the office of the Special Fraud Unit (SFU) inviting us to see one Chief Superintendent of Police in person of Sola Oketunji. **Exhibits J4 and J5.**

3.16. On our arrival at SFU, the 2nd and 3rd Respondents were told that the 8th Respondent had petitioned their office regarding the 1st Applicant's indebtedness to it. This was in a bid to recover the money through the instrumentality of the Police.

3.17. The 8th Respondent wrote the Petition to SFU on the ground that the 1st Applicant failed to repay the loan as expected by the 8th Respondent. The officers of the SFU showed them a purported agreement between AscCorp and the 1st Applicant showing how the loan ought to be repaid and the interest rate to be applied and added that the 1st Applicant had defaulted on the agreement.

- 3.18. The officers further expressed that in view of the 1st Applicant's failure to pay the loan according to the agreement that they were set to recover the loan.
- 3.19. Due to several harassments by the police, the Applicants herein applied to this Honourable court to enforce their Fundamental Rights in suit No **FHC/L/CS/1737/2013** as their Rights were being violated by the officers of the 4th Respondent (SFU) and the 8th Respondent herein. **Exhibit J6.**
- 3.20. It is noteworthy that the police seemingly stayed off the matter immediately the action was filed in court, particularly when an Interim Injunction was obtained to restrain them from further harassing the Applicants. **Exhibit J7.**
- 3.21. Judgment was eventually delivered on the **21st of May 2014** in favour of the Applicants establishing that the relationship between that 1st Applicant and the 8th Respondent was purely business/commercial transaction and had no elements of criminality. **Exhibit J8.**
- 3.22. It is also important to mention that even while the matter was ongoing, the 1st Applicant continued to make efforts to ensure the repayment of the loan in good time, albeit not as expected by the parties. Therefore has always tried to raise money from sources other than proceeds of vessel contract; at least to show good faith to the 8th Respondent as the vessel has not been working. **Exhibit J9.**
- 3.23. Even after judgment had been delivered in favour of the Applicants, the 1st Applicant did not stop to make this effort towards the repayment of the loan. The 1st Applicant has so far repaid about **N115, 000,000.00 (One Hundred and Fifteen Million Naira)** out of the total sum of the loan.
- 3.24. To our consternation, on the 26th of May 2015, the officers of the 4th Respondent walked into the office of the 1st Applicant with the 10th Respondent and came to arrest the 2nd and 3rd Respondents in respect of the same indebtedness and now put a twist to it.

- 3.25. The officers of the 4th Respondent stated that the 7th Respondent has petitioned their office – stating that the 10th Respondent diverted some money belonging to the 11th Respondent; monies which were allegedly kept in custody of the 7th Respondent.
- 3.26. That upon tracing the money, the 7th Respondent allegedly discovered that the money was diverted into the 8th Respondent's account and that it was the same money that the 8th Respondent loaned to the 1st Applicant.
- 3.27. The officers of the 4th Respondent, particularly the team of the 5th and 6th Respondents obtained the statements of the 2nd and 3rd Applicants and eventually kept them in their custody till the 27th of May, 2015.
- 3.28. On the 27th of May 2015, the officers told the 2nd and 3rd Applicants that the 7th Respondent had insisted that they must obtain an immediate payment commitment in the sum of N100,000,000.00 (One Hundred Million Naira Only) from the Applicants before the 2nd and 3rd Applicants could be released on bail; after sleeping in their custody since the 26th of May 2015.
- 3.29. The Applicants were eventually forced to issue a cheque in the sum of N100,000,000.00 (One Hundred Million Naira) in the name of the 8th Respondent and were also made to state overleaf the cheque that the money is to be paid into the account of the 8th Respondent (Ascorp) that it maintains with Guaranty Trust Bank, the 7th Respondent. They also insisted that same should be dated the 5th of June 2015. **Exhibit J10.**
- 3.30. The officers of the 4th Respondent also told the Applicants that the 7th Respondent informed them that by the CBN Regulation, a cheque issued for such an amount would not go through clearing. Hence, that in addition to the cheque issued, we should also write a letter of instruction to our bank, Zenith Bank, instructing our bank to transfer the said sum to Ascorp's account with Guaranty Trust Bank.
- 3.31. The 4th Respondent's officers insisted that according to the 7th Respondent, the letter referred to above must be on the letterhead of the 1st Applicant. For the Applicants to gain freedom, the 2nd and 3rd Applicants were

compelled to send somebody to their to bring copies of the 1st Applicant's official letterhead and the letter of instruction was typed on it and submitted to the officers of the 4th Respondent on the instruction of the 7th Respondent. A copy of the draft that the Applicants were given to adopt is attached as **Exhibit J11**.

- 3.32. In addition to the transfer instruction letter and the cheque issued, the officers of the 4th Respondent also compelled the Applicants to admit that we shall pay back the total sum of **N754, 000,000.00 (Seven Hundred and Fifty Four Million Naira)** to Ascorp Petroleum and the 7th Respondent. The 7th Respondent claimed that it has to at least apply the interest rate that the bank agreed with the unknown person. **Exhibit J12**.
- 3.33. After releasing the 2nd and 3rd Applicants on the 27th May 2015, they were also told to come back and submit their International Passports to officers of the 4th Respondent. Both the 2nd and 3rd Applicants have now submitted their International passports to the 5th Respondent.
- 3.34. At all material times regarding the N375, 000,000.00 (Three Hundred and Seventy-Five Million Naira Only) that was loaned to the 1st Applicant, the 1st Applicant dealt with neither the 7th Respondent nor the Unknown Person.
- 3.35. Even the officers of the 4th Respondent had always been aware that there was no conspiracy to commit any crime between the 1st the Applicant and any of the 7th to 11th Respondent as the 8th Respondent had earlier petitioned the same office of the 4th Respondent to recover the same money from the 1st Applicant and clearly stated that it was a loan.
- 3.36. The judgment of this Honourable court of the 21st of May 2014, also established that the relationship between the 1st Applicant and the 8th Respondent was business/loan transaction and that the police could not be involved in it.
- 3.37. The 8th Respondent is aware that the vessel had suffered some setbacks in trying to get it engaged under various contracts.

- 3.38. At some point, the 1st Applicant even offered the 8th Respondent to delegate its representative to periodically walk into our office to monitor the progress on the jobs for the vessel.
- 3.39. The Applicants explained to the officers of the 4th Respondent that the relationship between the 1st Applicant and the 8th Respondent is merely a civil and contractual one and that we didn't commit any crime. All the facts forming the relationship between the 1st Applicant and the 8th Respondent are verifiable.
- 3.40. The 1st Applicant now has contracts capable of paying its debt to the 8th Respondent, but as a matter of reality, the Applicant only needs a little more time within the framework of its business.
- 3.41. However, the directors of the 1st Applicant, whose International passports have now been seized, will need to do some travelling for the smooth running of the business of the 1st Applicant in order to pay its debts to the 8th Respondent.
- 3.42. However, the 1st Applicant has no means of paying the sum of 100,000,000.00 (One Hundred Million Naira) within the short period that its directors were compelled to agree to.
- 3.43. The 8th Respondent has never informed the Applicants of the unknown person that the 7th Respondent is now imposing his terms on us.
- 3.44. The legal and constitutional rights of the Applicants to personal liberty, bodily integrity, Right to private life, Right to Peaceful Assembly and Association and freedom of movement are at the risk of being breached and jeopardized by the imminent actions of all the Respondents;
- 3.45. The instigation of the police by the 7th to 11th Respondents against the Applicants is a breach of the Applicants' constitutional and human rights.
- 3.46. The circumstances surrounding this case indicate that the Applicants have an arguable case and there are substantial issues to be tried.

- 3.47. If all the Respondents are not restrained by this Honourable Court, the Applicants stand the risk of continually losing their personal liberty and the injury that may be occasioned by the conduct of all the Respondents are such that damages would be insufficient compensation to the Applicants for the indignities they would have suffered.
- 3.48. The relationship between the 1st Applicant and the 8th Respondent is merely a civil one and as such the police officers have no constitutional role to play in the matters involving the parties.
- 3.49. Assuming without conceding that there was a breach of the agreement between the parties, the SFU is not the proper place for the 7th to 11th Respondents to enforce the Agreement between the 1st Applicant and the 8th Respondent.
- 3.50. The 1st Applicant never had any dealing with the 7th and 11th Respondents regarding this referred sum of N375,000,000.00 (**Three Hundred and Seventy Five Million Naira**).
- 3.51. The 1st Applicant also never dealt with the 9th and 10th Respondents in their personal capacities regarding the loan.
- 3.52. It is appropriate to include the 1st Respondent in these proceedings as he is the Chief Law Officer of the Federation. Also the 2nd & 3rd Respondents are offices that should have notice of this conduct. The 7th – 11th Respondents have resorted to using the members of the Police Force, especially the 5th and 6th Respondents herein, to harass the Applicants in connection with the petition of the 7th Respondent as alleged.

4. RELIEFS SOUGHT:

- 4.1 **A DECLARATION** that the relationship between the 1st Applicant and the 8th Respondent had been established by the subsisting judgment of this Honourable court delivered on the 21st of May 2014 as merely contractual under a loan agreement/arrangement between the parties without any criminality and remains an open transaction and therefore has no bearing with whatsoever funds the 10th Respondent could have diverted from the 7th Respondent.

- 4.2 **A DECLARATION** that the detention of the 2nd and 3rd Applicants by the Special Fraud Unit of the Nigeria Police on the 26th of May till the 27th of May 2015 at their office at Sunday Adewusi House , 14 Miverton Road, Ikoyi, Lagos is unconstitutional, null and void and *ultra vires* the powers of the Police and a violation of the Applicants' constitutional and fundamental right to personal liberty, dignity and freedom of movement.
- 4.3 **A DECLARATION** that the imminent further detention, harassment, embarrassment and intimidation of the Applicants by the 2nd - 6th Respondents as a result of the false petition lodged by the 7th - 11th Respondents on the basis of a simple agreement between the 1st Applicant and the 8th Respondent; is unlawful and a gross violation of the Applicants' constitutional and fundamental right to personal liberty, dignity and freedom of movement;
- 4.4 **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondents, whether by themselves, agents, servants, privies and/or any other persons acting or purporting to act on the Respondents' joint or several instructions, or otherwise howsoever, from arresting, detaining, harassing or otherwise violating any of the Applicants' fundamental rights or arresting, detaining/seizing any of the Applicants' property including the 1st Applicant's vessel on the basis of the simple agreement existing between the 1st Applicant and the 8th Respondent and or in connection with any funds that could have been diverted by the 10th Respondent in custody of the 7th Respondent.
- 4.5 **AN ORDER AWARDING** the sum of ₦500, 000,000 (Five Hundred Million Naira) damages in favour of the Applicants to be paid by the 2nd - 7th Respondents as compensation for the psychological pain and injury caused the Applicants through the issuance of unlawful threats of arrest, detention and bodily harm.

5. GROUNDS ON WHICH THE RELIEFS ARE SOUGHT:

- 5.1 The foundation of the 7th to 11th Respondents' threats to use the instrumentality of the agents of the 2nd to 4th Respondents is rooted in a simple agreement between the 1st Applicant and the 8th Respondent, in the

absence of any fraud - or other form of criminality - alleged and/or proved against the 1st Applicant or 2nd Applicant or 3rd Applicant; particularly as established by the judgment of 21st May 2014. The 2nd, 3rd, 4th, 5th or 6th Respondents, lack the powers to either arrest, detain any of the Applicants and/or cause them bodily harm neither do they have the powers to so interfere in purely civil transactions of this nature.

5.2 Any purported 'intervention' by the 2nd - 6th Respondents aimed at harassing the Applicants or in any way interfering with the matter amongst others in a bid to recover the debt for the 8th Respondent would amount to an usurpation of the powers and the jurisdiction of the Courts on themselves; whether or not claiming to act on the Petition of the 7th Respondent.

5.3 Further, the threats of detention, harassment and intimidation of the 2nd and 3rd Applicants by the officers and men of the 2nd - 6th Respondents amounts to a gross violation of the Applicants' fundamental rights to personal liberty, dignity and movement under Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 and under ARTICLES 2, 4, 5, 6 and 12(1) of the African Charter on Human and Peoples' Rights 1981; &

5.4 By virtue of section 35(6) of the Constitution of the Federal Republic of Nigeria, any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

DATED THIS 1st DAY OF June 2015


MICHAEL AKINYEMI

MICHAEL AKINYEMI & CO
(APPLICANTS' COUNSEL)

3/5, IKOYI CRESCENT,
IKOYI, LAGOS.

08056332547; akinyemimichael@yaho.com