

**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**

- **ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)**
- **IBRAHIM MUSTAFA MAGU** **RESPONDENTS**
- **MOSES AWOLUSI**
- **ILIYASU KWARBAI**

**COUNTER AFFIDAVIT OF THE 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> RESPONDENTS IN  
OPPOSITION TO THE APPLICANT'S ORIGINATING MOTION ON NOTICE DATED  
8<sup>TH</sup> 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:

- I am one of the Special Task Force (STF) Team 2A assigned to investigate this matter and the 3<sup>rd</sup> Respondent in these proceedings.
- 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 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents herein.

- I have the consent and authority of the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents and its counsel to depose to this Counter Affidavit.
- Except where otherwise expressly stated, all the facts deposed to herein are within my personal knowledge, information and belief.
- That on the 4<sup>th</sup> February 2016, the 1<sup>st</sup> Respondent received an internal intelligence report providing details of fresh criminal allegations against Messrs Gnanhou Sourou Nazaire and Zenou Modeste not covered by existing criminal proceedings in court including the plan of the suspects to run out of the country to the Republic of Benin immediately after appearing in court in the proceedings of 5<sup>th</sup> February 2016.
- That upon receipt of the said intelligence report, vis-à-vis the previous dispositions of the said Messrs Gnanhou Sourou Nazaire and Zenou Modeste in evading lawful arrest, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents analyzed the said intelligence report and found same to be cogent and compelling.
- That based on this fresh round of evidence that could be subject to separate criminal proceedings against the suspects, I together with Sanusi Mohammed, an operative of the Economic and Financial Crimes Commission were directed by the 4<sup>th</sup> Respondent to invite Messrs Gnanhou Sourou Nazaire and Zenou Modeste to the office of the 1<sup>st</sup> Respondent located at No. 15A Awolowo Road, Ikoyi, Lagos for further interrogation including undertaking and assurances that they would not escape from justice.
- That the instruction of the 4<sup>th</sup> Respondent to me and colleague Mr. Sanusi Mohammed on the 5<sup>th</sup> February 2016 was to wait outside the court premises and extend the invitation to Messrs Gnanhou Sourou Nazaire and Zenou Modeste only after the court proceedings including briefing the suspects' counsel of the fresh invitation of their clients to the 1<sup>st</sup> Respondent's office as stated above.
- That on the 5<sup>th</sup> day of February 2016, the suspects were sighted at the car park outside the court premises in company of their counsel including the Applicant and were immediately informed at about 11:30 am of the need for them to come to the offices of the 4<sup>th</sup> Respondent and react to further petitions against them.
- That we took our time to identify ourselves by showing our EFCC identity cards to the suspects including the Applicant and explained our mission politely and courteously.
- That I also took time to explain to the suspects and their counsel including the Applicant that the suspects would be released immediately upon responding to the fresh round of petitions at the office of the 4<sup>th</sup> Respondent which is just a stone throwaway from the court premises.
- That the Applicant specifically requested for my identification and I furnished him with details of my name including my identity card.

- That in response to my identification, the Applicant requested for the warrant of arrest and I replied that the invitation of the suspects was in response to reasonable suspicion that the crime was about being committed and based on fresh petition not covered by pending criminal proceedings in court.
- That I also took time to respond to Applicant's further interrogation on the identity of the superior officer who gave the instructions to invite the suspects by furnishing the name and telephone numbers of the 4<sup>th</sup> Respondent who is the Head of Operations of the 1<sup>st</sup> Respondent in Lagos and a Deputy Director of Operations of the Commission (1<sup>st</sup> Respondent).
- That at this point the Applicant and other counsel including the suspect were engrossed in repeated telephone calls aimed at forestalling the friendly invitation to the offices of the 1<sup>st</sup> Respondent.
- That the Applicant deliberately kept the EFCC operatives waiting for hours, refusing to surrender the suspects to EFCC's invitation or advise them to honour the invitation as required by demands of professional duties and obligations.
- That the Applicant kept the suspects locked up in his Black Mercedes Jeep with Registration No. KJA 700 CG Lagos and prevented the EFCC operatives including myself from gaining access to the suspects and also prevented the suspects upon advice by Applicant from honouring the invitation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
- That I know as a fact that the suspects were kept in the Applicant's vehicle and not the courtroom between 12noon to 5 pm on 5<sup>th</sup> February, 2016.
- That the Applicant ensured the suspects were kept comfortably in his Black Mercedes Jeep with Registration No. KJA 700 CG Lagos by keeping the engine of the vehicle running and putting on the air conditioners of the vehicle for close to five hours until such a time that the Applicant's vehicle was almost running out of fuel.
- That at this point, the suspects disembarked from the vehicle and were promptly arrested by EFCC operatives together with the Applicant.
- That the suspects were taken in EFCC's vehicle while the Applicant in difference to his status as a legal practitioner and Senior Advocate of Nigeria was allowed to drive in his car to EFCC's office at 15A Awolowo Road, Ikoyi, Lagos.
- That based on the fact that the Applicant used his Black Mercedes Jeep with Registration No. KJA 700 CG Lagos to hide the suspects and prevent EFCC's operatives from gaining access to them between the hours of 12noon to 5pm on 5<sup>th</sup> day of February, 2016 thereby preventing and obstructing EFCC from carrying out its duties, the Applicant's vehicle was recovered in the course of investigation and registered as exhibit ahead of the arraignment in court of the Applicant for perverting the course of justice.
- That I know as a fact that the Applicant's vehicle has been assigned an exhibit Number by the exhibit keeper ahead of the criminal proceedings against the Applicant before the Lagos State High Court.

- That I officially lodged a complaint against the conduct of the Applicant with the 4<sup>th</sup> Respondent stating details of how the Applicant had obstructed me and perverted the course of justice on 5<sup>th</sup> February, 2016. Now shown to me and marked **Exhibit 'A'** is the copy of the said petition I wrote against the Applicant.
- That in furtherance to the above investigation and arraignment of the Applicant in court concerning the criminal implications of his actions, the Applicant voluntarily filled and executed the EFCC Ownership Attestation Form surrendering his Black Mercedes Jeep with Registration No. KJA 700 CG Lagos which was registered as exhibit with the commission. Now shown to me and marked **Exhibit 'B'** is proof of registration of the Applicant's vehicle as exhibit with the exhibit keeper of the Commission in anticipation of the arraignment of the Applicant for criminal proceedings before the Lagos State High Court.
- That I am aware that criminal proceedings has been initiated against the Applicant before the Lagos State High Court, Lagos Judicial Division with the vehicle registered as exhibit above being the subject matter of Count 1 in the proceedings and the arraignment of the Applicant slated for Tuesday 16<sup>th</sup> February 2016. Now shown to me and marked **Exhibit 'C'** is a copy of the information filed by the 1<sup>st</sup> Respondent against the Applicant. The Applicant had since been arraigned before the Lagos State High Court on the said date with trial date fixed for April 20<sup>th</sup> 2016.
- That based on intelligence report available to the Commission that the Applicant in a desperate bid to pervert the cause of justice in earlier proceedings involving the suspects on the subject matter was using his GSM 08034600000 to communicate with Honourable Justice M. N. Yunusa in a case before His Lordship, the 1<sup>st</sup> Respondent requested the Applicant upon his arrest to respond to the allegation and surrender his mobile Apple I-Phone 6, colour black with MTN No. 08034600000.
- That based on this intelligence report an interrogation, the Applicant also surrendered his mobile Apple I-Phone 6, colour black with MTN No. 08034600000 and voluntarily executed the EFCC's Ownership Attestation Form to this effect. Now shown to me and marked **Exhibit 'D'** is the Ownership Attestation Form voluntarily executed by the Applicant in his own handwriting.
- That based on investigations and data analysis of the Applicant's mobile phones startling revelations about secret, unhealthy communications between the Applicant and judicial officers emerged.
- That investigations revealed that whilst Suits Nos. FHC/L/CS/715/2015 between Rana Prestige Industries Nigeria (owned by the suspects) and EFCC and FHC/L/CS/716 between Hair Prestige Manufacturing Nigeria and EFCC were pending before His Lordship Justice M. N. Yunusa of the Federal High Court Lagos Judicial Division were ongoing, the Applicant and Honourable Justice Yunusa of the Federal High Court were in constant communication outside the court through their mobile phone numbers i.e. GSM 08095666256 belonging to Justice Yunusa and GSM

08034600000 belonging to the Applicant Rickey Tarfa SAN respectively. Now shown to me is the call/message logs marked **Exhibit 'E'** revealing communication between the Applicant and Honourable Justice M. N. Yunusa during the pendency of the said proceedings.

- That I am aware that a petition regarding this unethical practice between the Applicant and Honourable Justice M. N. Yunusa is already pending against Justice M. N. Yunusa before the National Judicial Council (NJC) and Honourable Justice M. N. Yunusa has been asked to respond to same by the NJC.
- That I know as fact that the arrest of the Applicants in the circumstances was based on reasonable grounds that the Applicant obstructed the operatives of the EFCC from performing their statutory duties on 5<sup>th</sup> February 2016 between the hours of 12noon and 5pm when the Applicant willfully locked up in his Black Mercedes Jeep with Registration No. KJA 700 CG Lagos suspects wanted for economic and financial crimes in circumstances explained above.
- That it was not true that the Applicant's fundamental rights were in anyway infringed upon by the Respondents as erroneously portrayed by the Applicant for reasons stated hereunder:
- The Applicant and counsel including the deponent outside the court premises were politely informed by operatives of EFCC including my humble self on the 5<sup>th</sup> February 2016 that Messrs Gnanhoue Sourou Nazaire and Zenou Modeste (his clients) that they were wanted at the EFCC's office located at 15A Awolowo Road, Ikoyi, Lagos based on friendly invitation to respond to fresh allegations bordering on economic and financial crimes independent of pending criminal proceedings in court.
- The Applicant upon request was furnished by me with detailed particulars including my name, identity card, name and telephone numbers of the 4<sup>th</sup> Respondent who directed the invitation of the suspects on behalf of the 1<sup>st</sup> Respondent.
- That the Applicant inspite of being furnished with these details and particulars, elected to lock away Messrs Gnanhoue Sourou Nazaire and Zenou Modeste in the Applicant's vehicle, Black Mercedes Jeep with Registration No. KJA 700 CG Lagos between the hours of 12noon and 5pm (a period of 5 hours) in defiance of the Respondent's lawful invitation and after subjecting EFCC's operatives including myself to endless waiting for nearly more than 5 hours before the suspects and the Applicant were eventually arrested for interrogation bordering on economic and financial crimes and perversion of the cause of justice respectively.
- The Applicant rather than surrender the suspects to EFCC's invitation was busy making telephone calls and contacts to several highly placed Nigerians with the object of preventing the suspects from surrendering themselves to the Respondent's invitation, and details of the telephone contacts can be found in the call/message logs of the Applicant's GSM phone no. 08034600000.
- The Applicant was arrested on Friday, 5<sup>th</sup> February 2016 and released on

administrative bail subject to fulfillment of certain conditions on the same 5<sup>th</sup> of February 2016. Now shown to me and marked **Exhibit 'F'** is the administrative bail granted to the Applicant by the Respondents and endorsed by the Applicant in his own handwriting on the 5<sup>th</sup> of February 2016.

- That I know as a fact that the conditions attached to the administrative bail granted to the applicant do not include verification of the title deeds at the Lands Registry.
- That when it became impracticable for the Applicant to meet the conditions of the administrative bail and in absolute respect for the Applicant's fundamental rights, the Applicant was released to the National President of the Nigerian Bar Association on Sunday, 7<sup>th</sup> February 2016 (within 48 hours) based on self-recognition of the status of the President of the Bar. Now shown to me and marked **Exhibits 'G & H'** respectively are copies of the application for bail made by the President of the NBA on behalf of the Applicant on 7<sup>th</sup> February 2016 and the recognizance signed for the release of the Applicant by the President of the Bar in recognition of the Applicant's fundamental rights.
- That I know as a fact that the Applicant cannot be arraigned in any court of competent jurisdiction on Saturday and Sunday being non-judicial days.
- That a charge against the Applicant was promptly filed on 8<sup>th</sup> day of February 2016 based on the reasonable cause for which the Applicant was arrested and detained for less than 48 hours.
- That the Applicant volunteered an extra-judicial statement freely responding to the allegations raised against him whilst in custody of the Respondents with the operatives including myself extending to the Applicant the best of courtesies and respect in recognition of his status as Senior Advocate of Nigeria. Now shown to me and marked **Exhibit 'I'** is the Applicant's voluntary extra-judicial statement made to the Respondents.
- That I know as a fact that the Applicant's driver, Mr. Jimoh Ajibade also volunteered an extra-judicial statement confirming that the suspect were in the Applicant's car for close to 3 or 4 hours. Now shown to me and marked **Exhibit 'J'** is Applicant's driver voluntary statement to the Respondents.
- That I know as a fact that one Mr. Salaudeen Sulaimon, a Lawyer of No. 23 Alhaji Kofoworola Crescent, Off Awolowo Way, Ikeja who witnessed the circumstances surrounding the arrest of the suspects and the Applicant also made voluntary statement to the Respondents stating amongst others that "Mr. Rickey Tarfa who had earlier dispersed with his clients called them back and asked them to enter his car while he came down from the car..." now shown to me and marked **Exhibit 'K'** is the extra-judicial statement of Mr. Salaudeen Sulaimon.
- That I know that my colleague Mr. Sanusi Mohammed who was with me at the time the suspect and the Applicant were arrested also volunteered a statement detailing the account of the incident. Now shown to me and marked **Exhibit 'L'** is the statement of Mr. Sanusi Mohammed.

- That I also made extra-judicial statement on the incident to the Respondents. Now shown to me and marked **Exhibit 'M'** is my extra-judicial statement to the 1<sup>st</sup> Respondent.
- That having read affidavit in support of the Applicant's application in this proceedings, I know that the deponent stated in paragraph 4 thereof that he had restricted access to the Applicant on 5<sup>th</sup> and 6<sup>th</sup> of February 2016 whilst the Applicant was in the Respondent's custody.
- That I read in paragraph 95 of the affidavit in support of the Applicant's application that the Honorable Court did not make an order against further invitation of the Applicant's clients by the Respondents in the proceedings of 5<sup>th</sup> February 2016.
- That I read in paragraph 97 thereof that the deponent confirmed the fact that '**...the 3<sup>rd</sup> Respondent approached counsel and stated that he wanted to talk to Mr. Ghanhoue Sourous Nazaire and he was obliged**' - an indication that the approach of the 3<sup>rd</sup> respondent was polite and professional in his disposition to the Applicant and his team.
- That I read in paragraph 98 thereof that the deponent confirmed that '**the 3<sup>rd</sup> Respondent said he was instructed by the 4<sup>th</sup> Respondent to invite Ghanhoue Sourous Nazaire to their office at no 15A Awolowo Road, Ikoyi-Lagos for interview**' - an indication that the approach of the 3<sup>rd</sup> respondent was polite and professional in his disposition to the Applicant and his team.
- That I read in paragraph 100 thereof wherein the deponent confirmed that '**...the 3<sup>rd</sup> Respondent then explained that it was not his making but that he was directed to do so by the same 4<sup>th</sup> Respondent**' - an indication that the approach of the 3<sup>rd</sup> respondent was polite and professional in his disposition to the Applicant and his team.
- That I read in paragraph 101 thereof wherein the deponent confirmed that '**...the 3<sup>rd</sup> Respondent in further explanation of his action gave me the phone number of the 4<sup>th</sup> Respondent (08038282754) as the person who directed him adding that Mr.Ghanhoue Sourous Nazaire, knows the person and he should talk to him**' an indication that the approach of the 3<sup>rd</sup> respondent was polite and professional in his disposition to the Applicant and his team.
- That I read in paragraph 102 thereof wherein the deponent confirmed that '**...the 3<sup>rd</sup> Respondent said that if the 4<sup>th</sup> Respondent denied authorizing the invitation to invite Ghanhoue Sourous Nazaire, he would leave**' - an indication that the approach of the 3<sup>rd</sup> respondent was polite and professional in his disposition to the Applicant and his team.

- That I read in paragraph 105 thereof wherein the deponent confirmed that **'...all these events started at about 12: noon or so and we were all waiting and still trying to reach the 4<sup>th</sup> Respondent until some minutes to 4:30pm'** - an indication that the account of the Respondents on what actually transpired is credible.
- That I know as a fact that other EFCC operatives including Zacks Jonathan, Solomon Samuel, Makeri Ishaya, Samaila Saidu, Tyav Iorlumun and Ibrahim Sikiru also made voluntary extra-judicial statements detailing the circumstances surrounding the arrest of the suspects and the Applicant. Now assembled and marked **Exhibit 'N'** are their referred extra-judicial statements.
- That paragraph 107 of the Affidavit in support is untrue to the extent that the EFCC operatives did not swooped on the Applicant's clients as alleged but effected their arrest in line with the accepted standard practice of undertaking such assignment by simply informing the suspects that they were under arrest and that they should get into the Respondent's vehicle for onward journey to the Respondent's office with no threats or intimidation applied in line with best standards and practices.
- That paragraph 107 is also untrue to the extent that the suspects were not arrested in courtroom of Honourable Justice O. O. Oke as erroneously portrayed but outside the court premises at the car park upon alighting from the Applicant's vehicle after the said vehicle ran out of fuel forcing the occupants of the vehicle to disembark from the vehicle.
- That I know that the deponent in paragraph 108 stated 'that the same time the Applicant was also arrested along with his clients and the operatives of the Respondents said that the Applicant too was under arrest for 'obstructing the course of justice' – an indication that the Applicant was never arrested under horrible circumstances as erroneously portrayed in the reliefs sought by the Applicant in these proceedings.
- That paragraph 111 is denied and untrue in that the Applicant was simply informed that he was under arrest with all courtesies extended to his status and standing as a Senior Advocate of Nigeria.
- That paragraphs 122 – 126 are denied and untrue to the extent that the Respondents did not forcefully retrieve the mobile handsets of the Applicant from the driver of the Applicant rather the driver voluntarily made statements to the Respondents detailing the circumstances surrounding the incident.
- That paragraph 132 is denied to the extent that Applicant Mercedes Benz SUV with registration No. KJA 700 CG was recovered during investigation as instrument used by the Applicant to pervert the course of justice and not seized upon the release of the Applicant on 7<sup>th</sup> February 2016 as erroneously portrayed by the deponent in the affidavit in support.
- That I know as a fact that Applicant's GSM telephone no. 08034600000 is registered as exhibit in proof of Count 2 of the pending criminal proceedings against the Applicant before the Lagos State High Court.
- That I know as a fact that there are several incriminating materials arising from the



use by the Applicant of his GSM telephone no. 08034600000, details of which cannot be revealed at this stage in deference to ongoing investigations by the Respondents.

- That I know as a fact that the Applicant's Black Mercedes Jeep with Registration No. KJA 700 CG Lagos and GSM telephone no. 08034600000 were exhibits recovered during investigations, being instruments used by the Applicant to pervert the cause of justice.

**Direct Response to Applicant's Affidavit in Support of the Application dated 8<sup>th</sup> day of February 2016**

- I have read through the Applicant's Originating Motion on Notice as well as the 145 paragraphs affidavit in support of the application.
- I know as a fact that save for paragraphs 1,2,11,12,13,14,15,16,17,18,19,23 and 24 most of the paragraphs of the affidavit are false and misleading.
- That contrary to paragraphs 3,4,5,6,7,8,9 and 10 of the affidavit in support, the deponent is neither the applicant nor a party to this proceeding.
- Contrary to paragraph 3 of the affidavit in support of the originating motion on notice, I know as a fact that the Applicant was not arrested in the courtroom No. 2 of Honourable Justice O. O. Oke of the Lagos State High Court, Igbosere, Lagos.
- I further know that applicant was never arrested in the course of any proceedings.
- That in response to paragraph 11 – 22 of the affidavit in support, I know as a fact that the Applicant's pedigree and profile as detailed therein reflects an understanding/knowledge and appreciation of the Respondent's statutory duties including how to properly advise his clients including the suspects.
- That in response to paragraphs 23, 24, 26 and 27, I know as a fact that by virtue of the statutory responsibilities of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the Respondents are aware of obligation to carry out their duties as authorized persons unimpaired by willful obstruction by any person as prescribed by statute.
- In response to paragraph 25 of the affidavit in support, I was employed not on the basis of any recommendation from Mr. Femi Falana SAN but after undergoing rigorous recruitment, examination and interview process in consequence of which I was found qualified and competent to carry out my statutory responsibilities.
- That in further response to paragraph 25, I responded to an advertisement of vacancies published by the 1<sup>st</sup> Respondent sometime in 2008.
- That I was one of the shortlisted candidates who were invited to write an examination to determine our suitability for the jobs by the 1<sup>st</sup> Respondent.
- That following my success in the examination, I was invited for an oral interview conducted by officials of the 1<sup>st</sup> Respondent.
- That upon passing the oral interview, the 1<sup>st</sup> Respondent decided to employ me and I have since remained in the service of the 1<sup>st</sup> Respondent since then.

- That although I had always admired Mr. Femi Falana SAN since I was a kid I never knew him in 2008 when I joined the services of the 1<sup>st</sup> Respondent.
- That in specific response to paragraphs 28 - 40 of the affidavit in support, I know as a fact that I am not supposed to comment on the merit or otherwise of pending proceedings in court, same being sub-judice as advised by counsel.
- That in specific response to paragraphs 41 – 46 of the affidavit in support, the substance of which are hereby denied to the extent of alleged violation of rule of law and fundamental rights, I state that whatever actions attributed to me, the exaggeration of which is not conceded is in furtherance of my statutory duties as an operative of EFCC and in furtherance of instructions by my employers and superiors notably the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents whose mandate I carry out dutifully subject to compliance with law in all circumstances.
- That in specific response to paragraphs 47 – 57 of the affidavit in support, the substance of which are hereby denied to the extent of alleged violation of rule of law and fundamental rights, I state that whatever actions attributed to me, the exaggeration of which is not conceded is in furtherance of my statutory duties as an operative of EFCC and in furtherance of instructions by my employers and superiors notably the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents whose mandate I carry out dutifully subject to compliance with law in all circumstances.
- That in specific response to paragraphs 58 – 64 of the affidavit in support, I know as a fact that there is ongoing investigation arising from petition written against Honorable M. N. Yunusa to the National Judicial Council concerning alleged secret communication between His Lordship and the Applicant during the pendency of SUIT NO. FHC/L/CS/714/2015, MR. ADEWALE ADENIYI V. EFCC & 2 ORS; SUIT NO. FHC/L/CS/715/2015, RANA PRESTIGE INDUSTRIES LIMITED & ANOR V. EFCC & 2 ORS and SUIT NO. FHC/L/CS/716/2015, HAIR PRESTIGE & 3 ORS v. EFCC & 2 ORS.
- That I know as a fact that in further specific response to paragraphs 58 – 64 of the affidavit in support, investigations carried out by the Respondents into the Applicant's Firm's (Rickey Tarfa & Co.) Access Bank Account with account no. 0000964760 shows that before the institution of the above proceeding particularly on the 7<sup>th</sup> January 2014 the Applicant bribed His Lordship, Honourable M. N. Yunusa with the sum of N225,000.00 (Two Hundred and Twenty Five Thousand Naira) a copy of the Applicant's firm account details showing the transfer of the sum of N225,000.00 (Two Hundred and Twenty Five Thousand Naira) from the Applicant's firm to Honourable Justice M. N. Yunusa is hereby shown to me and marked **Exhibit 'O'**.
- That in further specific response to paragraphs 58 – 64 of the affidavit in support, I know from facts revealed during investigation that the said bribe of N225, 000.00 (Two Hundred and Twenty Five Thousand Naira) was accepted and acknowledged by Justice Yunusa in a text message to the Applicant wherein he said **"Thank you my**

**senior advocate”.**

- I also know that investigations has revealed that the applicant's law firm was in the habit of asking the Chief Registrar of the Lagos Judicial Division of the Federal High Court to assign his cases before His Lordship Honourable M. N. Yunusa in furtherance of the understanding between the Applicant and the particular judge.
- I also know that investigations has revealed that even the junior counsel in the law firm of the applicant also engaged in the corrupt practices of their boss by manipulating the Federal High Court Registry to fix and assign cases filed by them to particular judges. Attached and marked **Exhibit 'P'** herewith are text messages on the assignment of the applicant's firm's cases to Justice Yunusa's court.
- That I know as a fact that the 1<sup>st</sup> Respondent is currently investigating related corrupt practices of the Applicant concerning perversion of the cause of justice and attempts by the Applicant to bring the administration of justice into ridicule.
- That I know as a fact from investigations that other instructions by the Applicant for transfer of funds to other public officers were given to bank officials through the telephone handsets of the Applicant (08034600000), details of which are being kept to prevent the Applicant from tampering with vital evidence concerning allegation of corrupt practices against the Applicant.
- That I know as a fact that the 1<sup>st</sup> Respondent is currently investigating other corrupt practices of the Applicant.
- That in specific response to paragraphs 65 – 87, I state that I have no comments on pending criminal proceedings, the subject matter of those paragraphs which are clearly subjudice based on legal advice.
- That I know as a fact the Complainant Mrs. Rachidatou Abdou informed me during the course of this investigation and I verily believed her that she reported Justice Yunusa to the Honourable Chief Justice of Nigeria and the Chairman of the National Judicial Council for communicating with counsel of the suspect Mr. Rickey Tarfa (Applicant herein) in a desperate bid to pervert the course of justice.
- That owing to the seriousness of the allegation of judicial misconduct contained in the Complainant’s petition, the Honourable Chief Justice of Nigeria and the Chairman of the National Judicial Council cause a query to be issued to Justice Yunusa.
- That in further specific response to paragraphs 65 – 87, I state that there is no order of court arising from the criminal proceedings preventing the Respondents from further invitation of the suspects for separate offences unrelated to the pending proceedings.
- In specific response to paragraphs 96 – 111, I state that the correct version of the facts surrounding the arrests of the suspects and Applicant has been stated in the

foregoing paragraphs of this Counter Affidavit.

- That in specific response to paragraphs 112 – 115, I state that the respondents do not control the activities and operations of Sahara Reporters and Channels Television that are clearly independent entities outside the operational control of the Respondents.
- That in further specific reference to paragraphs 112 – 115, the averments therein are speculative and an attempt by the Applicant to blackmail the Respondents.
- That in specific response to paragraphs 116 – 118, I know that questions put to the Applicant were in furtherance of investigation into pending petitions against the Applicant regarding his habit of trying to influence the cause of justice in circumstances giving rise to the pending criminal proceedings against the Applicant before the Lagos State High Court.
- That in specific response to paragraph 118, I state that the Applicant was undergoing interrogation in line with the statutory duties of the Respondents and was granted administrative bail the same day he was arrested by the Respondents.
- That in specific response to paragraphs 119 - 121, I state that the terms of the administrative bail did not require verification at the lands registry as a specific requirement of the terms.
- That in specific response to paragraph 122 which is hereby denied, I state that the Applicant was given unfettered access to counsel, relations, food including access by the President of the Nigerian Bar Association to whom he was released on self-recognition after being unable to fulfill the terms of the administrative bail granted to him by the Respondents.
- That in specific response to paragraphs 131 - 133, I state that the Applicant's vehicle is registered as Exhibit and is the subject matter of Count 1 in the pending criminal proceedings against the Applicant.
- That in further specific response to paragraph 131, the Applicant was released to the President of the Nigerian Bar Association without conditions and therefore the question of 'unwilling release' of the Applicant does not arise.
- That in specific response to paragraph 132 and 133 of the affidavit in support, I know as a fact that the Applicant use his Mercedes Benz SUV with registration number KJA 700 CG to shield the two suspects from arrest and thereby obstructed the Respondents from performing their lawful duties.
- That in specific response to paragraphs 134 - 136, I state that the Applicant obstructed the Respondents from performing their statutory duties and chose to advice his clients against surrendering to the Respondent's friendly and polite invitation for

interrogation at their offices located at No. 15A, Awolowo Road, Ikoyi-Lagos which is a stone throwaway from outside the court premises.

- That in further specific response to paragraphs 20 and 134 – 136, the Applicant had the option of detailing any of the 60 lawyers in his employment to follow agents of the 1<sup>st</sup> Respondent to 1<sup>st</sup> respondent offices located at No. 15A, Awolowo Road, Ikoyi-Lagos.
- That in further specific response to paragraphs 20 and 134 – 136, I know that professionally the Applicant had the option of allowing the Respondents to invite his clients and thereafter make a case for their release on bail as a learned Senior Advocate of Nigeria but chose to rebuff the Respondents.
- That in further specific response to paragraphs 20 and 134 – 136, I know that professionally the Applicant had the option of applying to any court of competent jurisdiction for the enforcement of the fundamental rights of his clients if he felt their rights were being infringed upon or if he thought the invitation of his clients were unlawful but he chose to rebuff the Respondents and hide his clients wanted by the respondents in his vehicle between the hours of 12noon to 5pm until the vehicle ran out of fuel forcing the suspects to alight from the vehicle leading to the arrest of the suspects and the Applicant for perversion of the cause of justice.
- That in specific response to paragraph 137, the Respondent have no way of knowing that the Applicant was billed to travel on the 6<sup>th</sup> of February 2016 to the Republic of Niger as alleged and there is no proof of such impending trip coupled with the fact that such travel arrangement cannot prevent the Respondents from discharging their statutory duties.
- That in response to paragraphs 138 – 139, the Respondents are not in any way responsible for such calls received by the Applicant's law firm, neither did the Respondents breached the Applicant's fundamental rights in anyway having been granted administrative bail on the first day of his arrest and released unconditionally to the President of the Bar within a period of 48 hours in addition to being promptly arraigned in court in respect of pending criminal proceedings.
- That in response to paragraph 140, I state that the actions of the Respondents are covered by statute and do not amount to infringement of the rights of the Applicant being actions carried out in protection of statutory provisions and within the ambit of law.
- That in response to paragraph 141, I state that having regard to the averments in the foregoing paragraphs against the Applicant, the prayer for aggravated damages in the sum of **N2,500,000,000.00 (Two Billion, Five Hundred Billion Naira)** only or any sum at all is provocative, annoying, self-serving and groundless in the circumstances.

- That in response to the reliefs claimed by the Applicant, any release of his vehicles and mobile handsets, instruments deployed by the applicant in perverting the cause of justice would be fatal to ongoing criminal proceedings before the Lagos State High Court wherein the recovered exhibits would be necessary and vital pieces of evidence against the Applicant.
- That in further response to the reliefs claimed by the Applicant, I state that an order of this Honourable Court ordering the destruction of all information and data contained in the two mobile handsets of the Applicant would amount to destroying valuable evidential materials necessary for establishing ongoing criminal proceedings against the Applicant.
- That I know as a fact the allegations against the Applicant giving rise to these proceedings is similar to the allegations for which the applicant had stood trial at the instance of the 1<sup>st</sup> Respondent in the past.
- That I know as an operative of the commission that sometime in 2005, in line with his corrupt practices the Applicant collected the sum of \$500,000 from one of his clients under the pretext that he was going to bribe some officials of the 1st Respondent.
- That upon the investigation and confirmation of the serious allegation of bribery, the 1st Respondent charged the applicant before the Lagos High Court.
- That although four witnesses gave evidence for the Prosecution including a respected legal practitioner, Babajide Ogundipe Esq. the Applicant was discharged but not acquitted by the Lagos High Court on mere technical ground.
- That notwithstanding that the Applicant narrowly escaped conviction in the said case of attempted bribery he has continued to engage in corrupt practices with wanton impunity.
- That having become totally engrossed in corruption the Applicant has since extended his despicable conduct to the temple of justice by bribing judges and court officials.
- That I know as a fact that on April 29, 2015, the Applicant's law firm represented Mr. Michael Igbinedion, the son of Chief Igbinedion, who was standing trial for money laundering of N25 Billion before the Benin Judicial Division of the Federal High Court and the Applicant's client's son was subsequently convicted by the trial judge, Liman J.
- That I know as a fact that on April 30, 2015, the Applicant attended the launching of a book in honour of Justice Ibrahimauta, the Chief Judge of the Federal High Court at Abuja in the company of Chief Gabriel Igbinedion, the Chief Launcher and on that occasion, the Applicant introduced Chief Igbinedion to judges and senior lawyers

who attended the programme.

- That I know as a fact that inspite of the Applicant's knowledge of Rule 3(f)(j) of the Code of Conduct for Judicial Officers which stipulates that "A judicial officer and members of his family shall neither ask for nor accept any gift, bequest, favour, or loan on account of anything done or omitted to be done by him in the discharge of his duties" the Applicant did not advise his client not to donate the said sum of N8 million to the Chief Judge of the Federal High Court. Now shown to me and marked **Exhibit 'Q'** is Thisday edition of 3<sup>rd</sup> May 2015 capturing the proceedings of the launching including role of the Applicant.
- That I know as a fact that the Applicant's client, Chief Gabriel Igbinedion made the donation of N8m in the referred occasion to the Chief Judge of the Federal High Court inspite of knowledge by Chief Gabriel Igbinedion that his son Michael Igbinedion who had been convicted was awaiting the sentence of the Federal High Court in criminal proceedings pending against Chief Gabriel Igbinedion's son (Chief Michael Igbinedion) before the Federal High Court.
- That I know as a fact that a few hours after the donation of the said sum of N8 million to the Chief Judge of the Federal High Court by the Applicant's client, Chief Gabriel Igbinedion's convicted son was sentenced to a year imprisonment or N1 million through a questionable plea bargain which was condemned by all right thinking Nigerians. Now shown to me and marked **Exhibit 'R'** is The Nation edition of January 28, 2014 containing the reaction of a former Chief Judge of the Federal High Court, Justice Abdullahi Mustapha to the donation made at the launching.
- That I know as a fact that notwithstanding that the Applicant has cases pending before the Chief Judge he and four of his brother silks also donated the sum of N7,000,000.00 (Seven Million Naira Only) at the book launch.
- That I know as a fact that the Chief Justice of Nigeria, Honourable Justice Mahmud Mohammed condemned book launch by judges when he said that "by launching such books while in service, they potentially submit themselves to the publishers and the so called launchers, while opening themselves up to allegations of corruption" Attached herewith and marked **Exhibit 'S'** is the Daily Independent edition of May 29, 2015 reporting the comment of the Chief Justice of the Federation.
- That I know as a fact that following this development, the National Judicial Council has placed a ban on book launch by sitting judges.
- That I know a fact that the 1<sup>st</sup> Respondent sometimes in 2006 investigated the Applicant and found in its report that the Applicant obtained the amount of \$500,000.00 (Five Hundred Thousand Dollars) from one Prince Akinruntan by false pretences.

- That I know as a fact that Chief Akinruntan in his pretrial statement to the 1<sup>st</sup> Respondent said of the Applicant as follows:

*“He i.e. Ricky Tarfa met me in my House at Foreshore Estate Osborne road Ikoyi. While in my house, he started by asking of his legal fee of about \$800, 000,= I then argue with him of the role he is going to play, I then offer him \$100,000 as his fee and insisted that I cannot pay more than that since he has no role to play on the transaction. After bargaining we agreed at \$500,000 because he told me that the money is not for him alone that he is going to settle the Court, EFCC and many other people. I paid him the first instalment of \$100,000 cash. I paid him the balance in Naira using my Oceanic Bank Cheque which is about N75 million. For all the payment I made to him he sign document for me acknowledging collecting the money from me.”*

- That I know that following Chief Akinruntan complaint against the Applicant above, the 1<sup>st</sup> Respondent arraigned the Applicant before Honourable Justice Oyewole (as he then was) of the Lagos State High Court and the case was eventually struck out on technical ground with the judge remarking in the judgment as follows:

*“The statement credited to the accused as having been made by him in the course of negotiation of professional fees for the brief given him by Prince Akinruntan, to the effect that he would share his fees with the Court, the EFCC and others not named, if true, would be grossly improper and would most likely constitute professional misconduct and should be of interest to the regulatory authorities of the legal profession, but it would certainly in my view not constitute the requisite grounds for the offence of obtaining by false pretences.”*

- That I know as a fact that the Nigerian Bar Association which is usually headed by a Senior Advocate of Nigeria has refused to discipline the Applicant as recommended by Honourable Justice Oyewole in the judgment.
- That I know as a fact that this is not the first time the Applicant will be accused of attempting to pervert the course of justice.
- That I state that the Respondents would be highly prejudiced if this application is granted.

105. That it would be in the interest of justice and equity that the reliefs as contained in the Motion paper are not granted.

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

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**DEPONENT**



Sworn to at the Federal High Court Registry, Lagos

This .....Day of .....2016.

**BEFORE ME**

**COMMISSIONER FOR OATHS**