

IN THE FEDERAL HIGH COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. FHC/L/CS/...../2016

**BETWEEN**

1. **FEDERAL REPUBLIC OF NIGERIA (FRN)**
  2. **NIGERIAN PETROLEUM DEVELOPMENT COMPANY (NPDC) LTD** -----
- PLAINTIFFS/APPLICANTS**
3. **NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPC)**

**AND**

1. **ATLANTIC ENERGY DRILLING CONCEPTS NIGERIA LIMITED (AEDC)**
2. **ATLANTIC ENERGY BRASS DEVELOPMENT LIMITED (AEBD)** ----- **DEFENDANTS**
3. **MR. OLAJIDE OMOKORE**
4. **MR. KOLAWOLE ALUKO**

**IN RE:**

1. ACCESS BANK PLC
  2. CITI BANK
  3. DIAMOND BANK PLC
  4. ECO BANK NIGERIA PLC
  5. FIDELITY BANK NIGERIA PLC
  6. FIRST BANK OF NIGERIA PLC
  7. FIRST CITY MONUMENT BANK PLC
  8. GUARANTY TRUST BANK PLC
  9. HERITAGE BANK PLC
  10. KEYSTONE BANK LIMITED
  11. SKYE BANK PLC
  12. STANBIC IBTC BANK NIGERIA LIMITED
  13. STANDARD CHARTERED BANK
  14. STERLING BANK PLC
  15. UNION BANK OF NIGERIA PLC
  16. UNITED BANK FOR AFRICA PLC
  17. UNITY BANK PLC
  18. WEMA BANK PLC
  19. ZENITH BANK PLC
- DOMESTIC ACCOUNTS
20. BNP PARIBAS (SWITZERLAND)
  21. LGT BANK (SWITZERLAND)
  22. STANDARD CHARTERED BANK (LONDON)
  23. BARCLAYS BANK (LONDON)
  24. STANDARD ENERGY (VODUZ, SWITZERLAND)
  25. HSBC (LONDON)
  26. CORNER BANK, LUGANO (SWITZERLAND)
  27. DEUTSCHE BANK (GENEVA)
- OFFSHORE ACCOUNTS
28. MIA HOTELS LTD
  29. FIRST MOTORS LTD

30. V. I. PETROCHEMICAL
31. EVERGREEN REALTY & MANAGEMENT
32. OX TRADE LTD
33. DE FIRST UNION INTEGRATED SERVICES
34. AMITY PLUS LTD
35. SEVEN ENERGY INTERNATIONAL LIMITED

**MOTION EX-PARTE**

**BROUGHT PURSUANT TO ORDER 25 RULE 4; ORDER 26 RULES 1, 2, 8 & 9; ORDER 28 RULE 1(1) & 2 AND ORDER 30 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2009; SECTION 13 OF THE FEDERAL HIGH COURT ACT, SECTION 6(6)(A) & (B) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT**

---

TAKE NOTICE that this Honourable Court will be moved on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 2016 at the hour of 9 0'clock in the forenoon or so soon thereafter as Counsel to the Plaintiffs/Applicants may be heard praying the Honourable Court for the following reliefs:

1. **AN ORDER OF MAREVA INJUNCTION** restraining the Defendants by themselves, their directors, officers, agents, servants, privies, trustees, nominees, proxies, subsidiaries, sister companies, related companies or otherwise any other person, natural or artificial, however called, **within and outside Nigeria**, from giving any instruction, demanding, accepting, or receiving payment from banks and other companies listed as **In Re: 1 – 34** on the face of the Motion Paper and or giving any sale or transfer instruction, demanding, accepting or receiving any payment or sale or dividend on the shares owned by the Defendants, their servants, agents, privies, sister companies, their nominees in the aforementioned companies and or persons listed as **In Re: 28 – 35** on the face of the Motion Paper pending the hearing and determination of the Motion on Notice filed herein.
2. **AN ORDER** directing the aforementioned banks listed as **In Re: 1 – 19** on the face of the Motion Paper to sequestrate within 7 (Seven) days of the receipt and or service of this Order, any and or all the sums of money and negotiable instruments standing to the credit of the Defendants, their servants, agents, privies, nominees whether natural or artificial up to the Plaintiffs/Applicants' claim against the Defendants in the sum of

**\$1,762, 338, 184.40** (One Billion, Seven Hundred and Sixty-Two Million, Three Hundred and Thirty-Eight Thousand, One Hundred and Eighty-four US Dollars and Forty Cents) only and keep same in an interest yielding account in the name of the Chief Registrar of this Honourable Court as trustee of same pending the determination of the Motion on Notice filed herein.

3. **AN ORDER OF MAREVA INJUNCTION** restraining the Defendants by themselves, their directors, officers, agents, servants, privies, trustees, nominees, proxies, subsidiaries, sister companies, related companies or otherwise any other person, natural or artificial, however called, **within and outside Nigeria**, from giving any instruction, demanding, accepting, receiving payments and/or transacting, transferring, mortgaging or howsoever dealing in any manner with assets of the Defendants in both houses and land in Abuja and Lagos and others located outside Nigeria listed below:

<b>HOUSES</b>
755 Sarbonne Road, Los Angeles
952 North Alphine Drive, Los Angeles
815 Cima Del Mundo, Los Angeles
1049 Fifth Avenue, New York
1948 & 1952 Tollis Avenue, Santa Barbara
157 West 57 <sup>th</sup> St., New York
4100 Le Reve, Dubai
Avenue Towers, Lagos Nigeria
Colina D'oro, Montagnola, Switzerland
Block A consisting of 26 Flats at No. 46 Gerrard Road, Ikoyi, Lagos
Mason apartments situated at No. 6 Gerrard Road, Ikoyi, Lagos comprising sixty (60) units of three bedrooms apartments
Marion apartments Block 8 located at 4 & 5, Onikoyi Estate, Banana Island, Ikoyi, Lagos consisting of 43 units of apartments
33A Cooper Road, Ikoyi, Lagos.
8 Gerrard Road, Ikoyi, Lagos.
Grove End Road, London
<b>LAND</b>
807 Cima Del Mundo
Mont Tremblant, Canada

### **OTHER HOLDINGS**

Galactica star (Yacht)

20 Year Berth Lease-Barcelona

Watch Collection

Car Collections (58 Vehicles)

Aeroplane-Global Express S5-GMG

Aeroplane-Bombardier Global 6000 9H-OPE

Aeroplane Bombardier

4. **AN ORDER** directing service of the orders made herein on parties affected thereby, (including in particular, the persons listed In Re: 1-34 on the face of the Motion Paper by way of advertisement in newspapers circulating within and outside the Federal Republic of Nigeria.
5. AND for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

**GROUND FOR THE APPLICATION:**

- 1 The Defendants are indebted to the 1<sup>st</sup> Plaintiff in the sum of **\$1,762, 338, 184.40** (One Billion, Seven Hundred and Sixty-Two Million, Three Hundred and Thirty-Eight Thousand, One Hundred and Eighty-four US Dollars and Forty Cents) only on account of crude oil lifting under Strategic Alliance Agreements between the 1<sup>st</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants.
- 2 The Defendants by virtue of the SAAs was granted license to lift crude oil and other associated products in Nigeria for sale and for parties to share the profits on agreed terms. The Defendants indeed lifted and sold the crude oil and have been paid but bluntly and deliberately refused to pay the Plaintiffs. The Defendants rather unlawfully diverted and converted the profit share due to the Plaintiffs in the sum of \$1,762,338,184.40 to their private use.
- 3 The Defendants' financial indebtedness to the 2<sup>nd</sup> Plaintiff has been due since September, 2014 but the Defendants have refused and/or neglected to pay as they have perfected a design to divert the proceeds of the crude oil sale to other ventures.

- 4 The Defendants are in the business of diverting proceeds of crude oil sale to their offshore accounts, businesses and other personal entities including deploying all means possible to dissipate their resources outside and beyond the reach of the jurisdiction of the court.
- 5 The Defendants own accounts and investments all over the world and with aid of Electronic Banking and E-Commerce these assets now identified will be dissipated or diverted if not protected before the determination of the substantive matter before the Honourable Court and this is the only hope left for the Plaintiffs to recover their unlawfully converted and diverted just and legitimate earnings pursuant to the SAAs.
- 6 There is real imminent threat that properties covered by this application (whether or not in the names of the Defendants or whether jointly or solely owned by them or whether directly or indirectly held or for their benefit located within the jurisdiction of the Court or elsewhere in the world) will be dissipated, disposed-off, reduced in value or removed from the long arms of the law. Specifically, the 4th Defendant has started exhibiting signs of desperation by selling one of the properties implicated by this application particularly the property at 755 Sarbonne Road, Los Angeles, United States of America.
- 7 The order of Mareva will preserve the assets of the Defendants and ensure any judgment obtained is not rendered nugatory at the end of the suit if the court finds in favour of the Plaintiffs.

Dated this ..... day of ....., 2016.

-----  
---  
OLADIPO OKPESEYI, SAN, FCIARB (UK)  
FUNMI ASAOLU , MRS.  
TOPE ADEBAYO, Esq.  
S. A. NWANBUEZE, ESQ.  
HARRISON OGALAGU  
**COUNSEL TO THE 2<sup>nd</sup> DEFENDANT**

**Dipo Okpeseyi & Co**

9 Prof. Kiumi Akingbehin Street,  
Lekki Phase 1,  
Lagos  
[Okpeshlaw@yahoo.co.uk](mailto:Okpeshlaw@yahoo.co.uk),  
[info@dipookpeseyiandco.com](mailto:info@dipookpeseyiandco.com)  
0803-322-0632

IN THE FEDERAL HIGH COURT OF NIGERIA  
HOLDEN AT LAGOS

SUIT No. FHC/L/CS/...../2016

**BETWEEN**

1. **FEDERAL REPUBLIC OF NIGERIA (FRN)**
2. **NIGERIAN PETROLEUM DEVELOPMENT COMPANY (NPDC) LTD** -----  
**PLAINTIFFS/APPLICANTS**
3. **NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPC)**

**AND**

1. **ATLANTIC ENERGY DRILLING CONCEPTS NIGERIA LIMITED (AEDC)**
2. **ATLANTIC ENERGY BRASS DEVELOPMENT LIMITED (AEBD)** ----- **DEFENDANTS**
3. **MR. OLAJIDE OMOKORE**
4. **MR. KOLAWOLE ALUKO**

**IN RE:**

1. ACCESS BANK
  2. CITIBANK
  3. DIAMOND BANK
  4. ECO BANK NIGERIA
  5. FIDELITY BANK NIGERIA
  6. FIRST BANK OF NIGERIA
  7. FIRST CITY MONUMENT BANK
  8. GUARANTY TRUST BANK
  9. HERITAGE BANK PLC
  10. KEYSTONE BANK LIMITED
  11. SKYE BANK
  12. STANBIC IBTC BANK NIGERIA LIMITED
  13. STANDARD CHARTERED BANK
  14. STERLING BANK
  15. UNION BANK OF NIGERIA
  16. UNITED BANK FOR AFRICA
  17. UNITY BANK PLC
  18. WEMA BANK
  19. ZENITH BANK
  20. BNP PARIBAS (SWITZERLAND)
- DOMESTIC ACCOUNTS

21. LGT BANK (SWITZERLAND)
22. STANDARD CHARTERED BANK (LONDON)
23. BARCLAYS BANK (LONDON) OFFSHORE ACCOUNTS
24. STANDARD ENERGY (VODUZ SWITZERLAND)
25. HSBC (LONDON)
26. CORNER BANK, LUGANO (SWITZERLAND)
27. DEUTSCHE BANK (GENEVA)
  
28. MIA HOTELS LTD
29. FIRST MOTORS LTD
30. V. I. PETROCHEMICAL
31. EVERGREEN REALTY & MANAGEMENT
32. OX TRADE LTD
33. DE FIRST UNION INTEGRATED SERVICES
34. AMITY PLUS LTD
35. SEVEN ENERGY INTERNATIONAL LIMITED

### **AFFIDAVIT IN SUPPORT OF MOTION EX-PARTE FOR MAREVA INJUNCTION**

---

I, **OGINNI ISAAC KEHINDE**, Male, Christian, Adult, Nigeria Citizen and Legal Practitioner in the Federal Ministry of Justice, Maitama, Abuja, do solemnly make Oath and states as follows:

1. I am a Special Assistant to the Honourable Attorney-General of the Federation and Minister of Justice, Federal Ministry of Justice, Maitama, Abuja.
2. I have the consent of my employers to depose to the facts contained in this affidavit.
3. Save and except expressly stated, the facts deposed in this Affidavit are derived from the bundle of documents received from the 2<sup>nd</sup> Plaintiff/Applicant in connection with this suit which I have carefully studied.

#### **INTRODUCTION**

4. I know that the Plaintiffs have instituted this action to enforce payment obligations and outstanding indebtedness of the Defendants to the Plaintiffs arising from crude oil lifting by the Defendants pursuant to the Strategic Alliance Agreements (SAAs) between the 1<sup>st</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants. I also know the parties in this suit and details of the transaction between the parties.
5. I know that the 1<sup>st</sup> Plaintiff is an independent sovereign state with exclusive ownership of all mineral resources including oil fields, natural gas and oil mining located within any of the federating states. The 1<sup>st</sup> Plaintiff established the 3<sup>rd</sup> Plaintiff

to manage its interest in oil and gas in addition to administering and regulating the oil and gas industry.

6. The 2<sup>nd</sup> Plaintiff is a company incorporated under the laws of the Federal Republic of Nigeria with its registered office at 62/64, Sapele Road, Benin City, Edo State. The 2<sup>nd</sup> Plaintiff is also a fully-owned subsidiary of the 3<sup>rd</sup> Plaintiff and engages in Oil & Gas Exploration and Production activities in the hydrocarbon-rich regions of coastal Nigeria, both onshore and offshore; and more recently, around Equatorial Guinea.
7. The 3<sup>rd</sup> Plaintiff is a statutory corporation established in 1977 through which the Federal Government of Nigeria regulates and participates in the petroleum industry. The Corporation manages joint ventures and other arrangements between the Federal Government of Nigeria and a number of domestic and foreign multinational corporations.
8. The 1<sup>st</sup> Defendant is a private upstream oil and gas company incorporated under the laws of the Federal Republic of Nigeria with its registered office at 32A, Ademola Adetokunbo Street, Victoria Island, Lagos State. It is an oil and gas company with an increased focus on under-developed producing fields in Nigeria.
9. The 2<sup>nd</sup> Defendant is also a private portfolio company incorporated under the laws of the Federal Republic of Nigeria with its registered office at 32A, Ademola Adetokunbo Street, Victoria Island, Lagos State. It is a sister company to the 1<sup>st</sup> Defendant and also engages in upstream oil and gas business. All rights and obligations of the 1<sup>st</sup> Defendant under and by virtue of the Strategic Alliance Agreements (SAA) between the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant in respect of OML 60 series was novated by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant by the novation agreement dated 14<sup>th</sup> February, 2013.
10. The 3<sup>rd</sup> Defendant is a businessman who is actively engaged in the upstream and downstream activities of Nigerian oil and gas industry. The 3<sup>rd</sup> Defendant is also the promoter, Chairman and alter ego of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant companies.
11. The 4<sup>th</sup> Defendant is also a businessman who is actively involved in the upstream and downstream activities of Nigerian oil and gas industry. The 4<sup>th</sup> Defendant is a



major shareholders and Director of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who, in concert with the 3<sup>rd</sup> Defendants, ran the affairs of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

12. In this suit and specifically in respect of the Plaintiffs' claim, technical words expressed herein, unless the context otherwise requires, shall bear the meanings stated herein:

**"AVAILABLE CRUDE OIL"** means, the Crude Oil including Condensates won, saved and allocated to the 2<sup>nd</sup> Plaintiff from the Contract Area.

**"AVAILABLE NATURAL GAS"** means, the non-associated Natural Gas won, saved and allocated to 2<sup>nd</sup> Plaintiff from the Contract Area.

**"BARREL"** means, a quantity or unit of Crude Oil, equal to forty-two (42) united states gallons at the temperature of sixty degrees (60%) Fahrenheit at normal atmospheric pressure.

**"BCF"** means, billion cubic feet of Natural Gas.

**"CONDENSATE"** means, all liquid hydrocarbons produced in association with Natural Gas from the Contract Area.

**"COST GAS"** means, the proceeds realized from the sale of Natural Gas produced from the Contract Area to enable the parties recover their respective costs incurred in carrying out Petroleum Operations with respect to non-associated gas under the SAAs.

**"COST OIL"** means, the quantum of Available Crude Oil allocated to the parties to enable them generate the proceeds to recover the respective costs incurred by them in carrying out Petroleum operations under this Agreement.

**"CRUDE OIL"** means, mineral oil in its natural state before it has been refined or treated including condensates, being all liquid hydrocarbons produced in association with Natural gas from the Contract Area. (excluding basic sediments and water or other Foreign substances).

**"CRUDE OIL PROCEEDS"** means, the amount in U.S Dollars determined by multiplying the official selling price by the number of Barrels of Available Crude Oil lifted by either party.

**"INCREMENTAL PRODUCTION"** means, monthly production of Crude Oil or Natural Gas over and above Proven, Developed and Producing reserves attributable to capital contributions by 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

**"LIBOR"** means the seven-day term London Inter-Bank Offer Rte for U.S. Dollars for similar months to the sums in question, quoted by Barclays Bank in London at 11:00am on the first business day of the relevant period.

“**MACOM**” means Management Committee.

“**MANAGEMENT COMMITTEE**” means, the committee established by 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants to carry out the functions set out in Article 7 of the SAA.

“**MCF**” means, million cubic feet of Natural Gas.

“**NGL**” means Natural Gas Liquid.

“**NATURAL GAS**” means, all gaseous hydrocarbons produced in association with Crude Oil or from reservoirs which produce gaseous hydrocarbons

“**NATURAL GAS PROCEEDS**” means, the amount in U.S. Dollars agreed between the Parties and any off-taker of Natural Gas.

“**OML**” means, Oil Mining Lease.

“**OPCOM**” means, Operating Committee.

“**PETROLEUM OPERATIONS**” means, all Crude Oil and Natural Gas Development and Production Operations, processing, transportation and Crude Oil terminal activities for or with respect to the Contract Area.

“**PETROLEUM OPERATIONS COSTS**” means, expenditures made and obligations incurred in carrying out Petroleum Operations as determined in accordance with this Agreement and the Accounting Procedure.

“**PETROLEUM PROFIT TAX**” or “**PPT**” means, the tax obligations arising from the Petroleum Operations as defined in the Petroleum Profit Tax Act, Cap P13 LFN 2004, as amended (PPT Act).

“**PRODUCTION COST**” means, all costs incurred in carrying out Production Operations.

“**PRODUCTION OPERATIONS**” means, all operations carried out subsequent to Development in order to produce, treat, store, convey and deliver Crude Oil and Natural Gas from wells, platforms and facilities to a refinery, terminal or other utilization or marketing point.

“**PROFIT GAS**” means, the balance of Available Natural Gas after the allocation of Royalty Gas, Cost Gas and Tax Gas, which shall be 70% pre cost recovery.

“**PROFIT OIL**” means, the balance of Available Crude Oil after the allocation of Royalty Oil, Cost Oil and Tax Oil.

“**ROYALTY**” means, the amount payable pursuant to the Petroleum Act and Petroleum (Drilling and Production) Regulations, Cap P10 LFN 2004, as amended.

“**ROYALTY OIL**” means, the quantum of Available Natural Oil allocated to 2<sup>nd</sup> Plaintiff which will generate an amount of proceeds equal to the actual payment of Royalty.

“**SAA**” means Strategic Alliance Agreement.

“**SUBCOM**” means Sub-Committee.

“**TAX GAS**” means, the quantum of Available Natural Gas allocated to 2<sup>nd</sup> Plaintiff which will generate an amount of proceeds equal to the actual payment of CIT

“**TAX OIL**” means, the quantum of Available Natural Oil allocated to 2<sup>nd</sup> Plaintiff which will generate an amount of proceeds equal to the actual payment of PPT

“**U.S. DOLLARS**” means the currency of the United States of America.

## **THE TRANSACTION**

13. In 2011, Shell Petroleum Development Company (SPDC) decided to divest its interest in OML 26, 30, 34, 42, 60, 61, 62, and 63 to independent companies in furtherance of its strategic plan.
14. Consequent upon the divestment stated above, and by virtue of its at least 55% stake in each of the Oil Mining Leases (OMLs) 26, 30, 34 and 42, the Nigerian government revoked the operatorship of the assets from the entities that acquired SPDC’s interest and assigned both its (1<sup>st</sup> Plaintiff’s) interest in the divested OMLs and the operatorship to the 3<sup>rd</sup> Plaintiff.
15. Following the divestment of the 3<sup>rd</sup> Plaintiff’s participating interests in OMLs 26, 30, 34, 42 (Forcados Assets) and 60, 61, 62 and 63 (Brass Assets) to the 2<sup>nd</sup> Plaintiff and in order to meet its cash call funding obligations to the assets, the 2<sup>nd</sup> Plaintiff entered into four (4) Strategic Alliance Agreements (SAA) with the 1<sup>st</sup> Defendant in 2011 (*for the Forcados Assets*), while another SAA was executed with the 1<sup>st</sup> Defendant in 2012 (*with respect to the Brass Assets*). The SAA for the Brass Assets was subsequently novated by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant by the Agreement dated 14<sup>th</sup> February, 2013.
16. Specifically, the 2<sup>nd</sup> Plaintiff’s SAA arrangement with the Defendants took the following critical forms;
  - 16.1 On April 20, 2011, the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant signed the Strategic Alliance Agreements for OMLs 26 and 42;
  - 16.2 On May 25, 2011 the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant signed the Strategic Alliance Agreements for OMLs 30 and 34;
  - 16.3 The 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant signed Addendum 1 to the SAAs on OMLs 26, 30, 34 and 42 on June 12, 2012. The addendum amended the sharing

ration of profit oil and gas attributable to capital costs incurred prior to execution of the agreement;

16.4 On December 17, 2012 the 2<sup>nd</sup> Plaintiff and 2<sup>nd</sup> Defendant signed Strategic Alliance Agreement for OML 60 series (60, 61, 62 and 63);

16.5 On February 14, 2013, the 1<sup>st</sup> Defendant signed a novation agreement transferring its rights and obligations under the Strategic Alliance Agreement to the 2<sup>nd</sup> Defendant.

***Now shown to me and marked Exhibit NPDC 1 A - E are copies of the Strategic Alliance Agreement between the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.***

### **SIGNIFICANT HIGHLIGHTS OF THE SAA**

17. The Strategic Alliance Agreements (SAA) create an obligation for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to provide funding and technical services to the 2<sup>nd</sup> Plaintiff for the development of both assets. In consideration for the funding and provision of technical services, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are entitled to a share of incremental production from the respective assets above the baseline production, depending on the level of increase in production and development of both assets.

18. In the Strategic Alliance Agreements arrangement for each asset, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are required to pay \$.30/bbl and \$0.01/ Mcf of the 2P reserves to the 2<sup>nd</sup> Plaintiff as entry fee for participation in the development of Reserves of certain quantity of crude Oil/ condensate and Natural Gas. The entry fee which may be adjusted in the event of a change in the 2P reserves is required to be paid days after the 2<sup>nd</sup> Plaintiff has been assigned the interest under the respective OML by the Minister and the complete divestment of all other OML interest holders apart from the 3<sup>rd</sup> Plaintiff.

19. The Strategic Alliance Agreement for each asset also provides that not later than 70 days prior to the commencement of the work programme for the capture of 2C contingent resources of certain quantity of crude Oil/Condensate and certain quantity in Bcf of Natural Gas, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are required to pay an additional sum of \$0.30/bbl and \$0.01/ Bcf of the 2C reserves as entry fee for participation in the development of the 2C Reserves under each OML. In the event of failure by the

1<sup>st</sup> and 2<sup>nd</sup> Defendants to make the payment of the entry fee within the stipulated period, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall not be entitled to participate in the development of the 2C Reserves under the respective OML. The SAA further provides that the payment of the entry fee is condition precedent for the participation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the SAA arrangement and is not recoverable either as Cost Oil or Cost Gas.

20. The respective Strategic Alliance Agreements are to remain in force until the cumulative production from the contract area has reached the 2P reserves of a specified quantity of crude oil/ condensate and specified quantity in Bcf of natural gas. The SAA will however be renewed on the same terms and conditions to capture the 2C Reserves of a specified quantity in Barrels of Crude Oil/ Condensate and specified quantity in Bcf of Natural Gas, if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants make the entry fee payment for the development of the 2C Reserves. The SAA can be extended further (though on new mutually agreeable terms and conditions) if new producible volumes are added to the 2P and 2C Reserves and the SAA will then remain in force until the full recovery of such new reserves.
21. In essence, the highlights of the SAA include but are not limited to;
  - 21.1 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants agreed to pay the 2<sup>nd</sup> Plaintiff a non-refundable entry fee for its participation in the development of remaining Oil and Gas reserves in the OMLs.
  - 21.2 Entry fees of \$.30/bbl and \$0.01/ Mcf are to be paid by the 1<sup>st</sup> & 2<sup>nd</sup> Defendant for participating in the development of 2P Reserves for the base line production. Entry fees are due seventy (70) days after the 2<sup>nd</sup> Plaintiff has legally assigned its interest in the OML. Payment of the entry fees marks the commencement of the agreement;
  - 21.3 Annual Training fees of \$350, 000 are to be paid by the 1<sup>st</sup> & 2<sup>nd</sup> Defendant per SAA for a period of five (5) years from the effective date. The payment is due in January each year;
  - 21.4 The costs incurred by the 1<sup>st</sup> & 2<sup>nd</sup> Defendant and 2<sup>nd</sup> Plaintiff in carrying out Petroleum Operations are to be recovered through cost oil or cost gas;

- 21.5 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants are entitled to a share of profit oil and profit gas on the additional production achieved;
- 21.6 2<sup>nd</sup> Plaintiff shall furnish the 1<sup>st</sup> & 2<sup>nd</sup> Defendants with Cash call request and other information relating to petroleum operations in the OMLs;
- 21.7 All transactions are to be made through bank accounts opened and maintained by the 2<sup>nd</sup> Plaintiff exclusively for petroleum operations;
- 21.8 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants are to bear all losses associated with funding the 1<sup>st</sup> Plaintiff's share of petroleum operations under the SAA;
- 21.9 Profit Oil is the balance of available crude oil after deducting royalty oil, cost oil and tax oil. The sharing ratio was defined under the following heading;
- i. Undepreciated costs attributable to Capital Costs incurred prior to execution of the SAA;
  - ii. Up to full recovery of development costs by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants;
  - iii. After full recovery of development costs by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.
- 21.10 All payments in relation to cash calls, entry fees, training fees, 1<sup>st</sup> & 2<sup>nd</sup> Defendants' entitlements from sale of crude oil and gas, etc., are to be made within forty-five (45) days following the end of the month in which the obligations are due. Overdue payments will bear interest at the annual rate of three (3) months LIBOR;
- 21.11 1<sup>st</sup> & 2<sup>nd</sup> Defendants are required to provide and shall deliver an affiliate company guarantee from SPOG Petrochemical Nigeria Limited (SPNL) to the 2<sup>nd</sup> Plaintiff within seventy (70) days covering the total amount of the minimum disbursement required to meet the 2<sup>nd</sup> Plaintiff's 55% share of petroleum operation costs.
22. Further to addendum 1 contained in paragraph 16.3 above, on February 10, 2015 the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant signed Addendum 2 to the SAAs on OMLs 26, 30, 34 and 42 and Addendum 1 to the SAA on OML 60 series (60, 61, 62 and 63). These addenda amended the powers of the Management Committee (MACOM), allocation of profit oil and gas attributable to the capital costs incurred prior to execution of the agreements, specifications for the provision of the parent company guarantee, cash call procedure, and conditions for the restoration of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' lifting rights.

23. For purposes of clarity, the major highlights of the addenda to the SAAs include;

23.1 Profit Oil/Gas and Natural Gas Liquids (NGL) Profit are defined as the balance of available crude oil/gas (including proceeds from power generation in respect of the operations of the Okpai Power Plant) and NGL after deducting royalty oil/gas and royalty on NGL, cost oil/gas and NGL cost and tax oil/gas and NGL tax respectively. The sharing ratio was amended as follows;

OMLs 26, 30, 34 and 42				OML 60 series (60, 61, 62 and 63)			
Gas		Oil		Gas		Oil	
NPDC %	AEDC %	NPDC %	AEDC %	NPDC %	AEDC %	NPDC %	AEDC %
80	20	80	20	80	20	80	20

23.2 Addendum to the SAA on OML 60 series amended the provision for parent company guarantee. It requires the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to provide a 30-day revolving bank guarantee in the sum of \$60, 000, 000 (Sixty Million US Dollars) within 90 days issued by a reputable bank acceptable to the 2<sup>nd</sup> Plaintiff. The guarantee is to fund 2<sup>nd</sup> Plaintiff's 60% share of petroleum operations cost in respect of an approved work program for any particular year.

***Now shown to me and marked Exhibit NPDC 2A – B are copies of the Addenda to the Strategic Alliance Agreements executed by the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants.***

24. The Strategic Alliance Agreements (SAAs) executed between the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants also contain definite stipulations on process of making cash call requests to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants by the 2<sup>nd</sup> Plaintiff. Below is the summary of the processes;

24.1 2<sup>nd</sup> Plaintiff prepares and forwards approved cash call estimates to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants;

- 24.2 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants pay the cash call request to a dedicated account as prescribed by the SAA;
- 24.3 2<sup>nd</sup> Plaintiff utilizes funds for production and development and prepares an account of the actual cost incurred (“performance returns”);
- 24.4 2<sup>nd</sup> Plaintiff submits performance returns to Sub-Committee (SUBCOM) for review and approval;
- 24.5 Following SUBCOM’s approval, the 2<sup>nd</sup> Plaintiff forwards performance returns to TECOM for review and approval;
- 24.6 Following TECOM’s approval, 2<sup>nd</sup> Plaintiff forwards performance returns to Operating Committee (OPCOM)/ Management Committee (MACOM) for review and approval;
- 24.7 2<sup>nd</sup> Plaintiff reconciles OPCOM/MACOM approved performance returns to the cash call paid;
- 24.8 2<sup>nd</sup> Plaintiff prepares cash call balance based on net position between approved costs and cash call paid.

#### **LIFTING OF OIL PURSUANT TO THE SAAs**

25. I know that consistent with the agreements on the various OMLs but prior to completely satisfying the conditions precedent to lifting of oil, the Defendants lifted huge volumes of oil from the OMLs. The lifting activities of the Defendants commenced and ended as follows;
  - 25.1 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants made its first lifting of oil on Forcados Blend (OMLs 26, 30, 34 and 42) on 31<sup>st</sup> December, 2011;
  - 25.2 On May 28, 2013 the 1<sup>st</sup> & 2<sup>nd</sup> Defendants made its first lifting on Brass Blend (OML 60 series);
  - 25.3 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants lifted its last cargo on Brass Blend on March 18, 2014;
  - 25.4 On April 7, 2014 the 1<sup>st</sup> & 2<sup>nd</sup> Defendants lifted its last cargo on Forcados blend.
26. Further to the lifting activities of the Defendants on the various OMLs, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, in all, lifted 15 (Fifteen) cargoes on Brass blend (OMLs 60, 61, 62 and 63)



valued at **\$823, 075, 190** (Eight Hundred and Twenty-Three Million, Seventy-Five Thousand, One Hundred and Ninety US Dollars) only. In respect of the Forcados blend (OMLs 26, 30 34 and 42), the 1<sup>st</sup> & 2<sup>nd</sup> Defendants lifted 21 cargoes valued at **\$677, 238, 673** (Six Hundred and Seventy-Seven Million, Two Hundred and Thirty-Eight Thousand, Six Hundred and Seventy-Three US Dollars) only. Crude oil lifting by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants during the period is articulated in the table below;

Year	OMLs 26, 30, 34 and 42		OML 60 series	
	Crude Oil Lifting (\$)	Cumulative Crude Oil Lifting (\$)	Crude Oil Lifting (\$)	Cumulative Crude Oil Lifting (\$)
2012	388,344,955	388,344,955	-----	-----
2013	234,431,871	622,776,826	616,013,615	616,013,615
2014	54,461,847	677,238,673	207,061,575	823,075,190

The low lifting value recorded in 2014 is attributable to the cessation of lifting by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants in April, 2014 as a result of the suspension of lifting activities on account of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' failure to honour its obligations on the SAAs.

27. In summary and prior to the suspension of the lifting activities of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, they had already lifted crude oil worth over **\$1.5 Billion**. During the subsistence of lifting activities of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, lifting approvals on OMLs 26, 30, 34 and 42, and 60 series were signed on behalf of the Plaintiffs as follows;

S/N	Lifting Approved By	Designation	Total Number of Approvals	Total Volume of Approvals (Cargoes)	Total Value of Approvals (\$)
1	Engr. A. H. Membere	Managing Director	3	1,807,250	216,211,246
2	Mr. Ekanem	Acting Manager, Planning and	17	6,147,095	683,943,198

		Commercial			
3	Mr. Mbanefo	Manager, Planning and Commercial	15	4,646,000	515,813,298
4	Mr. Emmanuel John	Planning and Commercial	1	905,000	94,377,020
	<b>Total</b>		<b>36</b>	<b>13,505,345</b>	<b>1,510,344,762</b>

***Now also shown to me and marked Exhibit NPDC 3 are copies of the various approvals granted to the Defendants by management of the 2<sup>nd</sup> Plaintiff to lift crude oil in prosecution of the agreement of the parties under the SAAs.***

#### **DEFENDANTS' DEFAULT ON THE SAAs**

28. I do know, as well, that the total cash call made against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants was the sum of **\$2, 067, 558, 729.32 (Two Billion, Sixty-Seven Million, Five Hundred and Fifty-Eight Thousand, Seven Hundred and Twenty-Nine US dollars and Thirty-Two Cents)** only. This is despite the actual Operating Committee (OPCOM) and Sub-Committee (SUBCOM) approved performance returns (actual expenditure incurred) which was the sum of **\$3, 156, 198, 156.90 (Three Billion, One Hundred and Fifty-Six Million, One Hundred and Ninety-Eight Thousand, One Hundred and Fifty-Six US Dollars and Ninety Cents)** only.
29. Of the total cash call made against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, they were able to pay only the sum of **\$305, 108, 522.43 (Three Hundred and Five Million, One Hundred and Eight Thousand, Five Hundred and Twenty-Two US Dollars and Forty-Three Cents)** only. This payment which represents just about 11% of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' obligation under the SAAs was made in respect of OMLs 26, 30, 34 and 42.

30. I am aware, in addition to the above paragraph, that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants refused and neglected to make the mandatory entry fees payment in respect of the OML 60 series. Notwithstanding the failure to pay the entry fees, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants proceeded to make crude oil lifting in respect of the OML 60 series to over 7, 000, 000 Barrels of crude oil valued at **\$823,075,189.97**.
31. The failure of the Defendants to make payments as dictated by the SAAs is notwithstanding the fact that as at December 31, 2014 the 1<sup>st</sup> & 2<sup>nd</sup> Defendants have lifted 87% of its entitlement on OMLs 26, 30, 34 and 42 whilst in respect of OML 60 series the 1<sup>st</sup> & 2<sup>nd</sup> Defendants have lifted 91% of its entitlement. The non-payment of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' cash call obligations compelled the 2<sup>nd</sup> Plaintiff to suspend its oil lifting in 2014.

#### **TERMS OF PAYMENT**

32. On account of failure of the Defendants to honour their payment obligations under the SAAs, the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants, on February 10, 2015 signed Terms of Payment in respect of OMLs 24, 30 34, 42, and 60 series on the joint indebtedness of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants. This agreement details the modalities of payment of outstanding obligations between the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant. Some of the highlights of the terms of payment agreement include;
- 32.1 The 1<sup>st</sup> & 2<sup>nd</sup> Defendants have outstanding obligations under the SAAs for the payment of entry fee in respect of OMLs 60, 61, 62 and 63 as well as training and cash call requests in respect of all the assets – OMLs 26, 30, 34, 42, 60, 61, 62, and 63.
- 32.2 The outstanding net indebtedness owed by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to the 2<sup>nd</sup> Plaintiff in respect of all the OMLs 26, 30, 34, 42, 60, 61, 62 and 63 is the sum of **\$1,319,814,499 (One Billion, Three Hundred and Nineteen Million, Eight Hundred and Fourteen Thousand, Four Hundred and Ninety Nine U.S. Dollars)** only as at September 30, 2014 subject to actual performance returns and updated for additional cash calls and entitlements to 28<sup>th</sup> February, 2015.
- 32.3 The total outstanding Training Fee and Cash Call payments owed by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to the 2<sup>nd</sup> Plaintiff in respect of OMLs 26, 30, 34 and 42 is in

the sum of **\$579,268,090 (Five Hundred and Seventy Nine Million, Two Hundred and Sixty Eight Thousand, Ninety U.S. Dollars)** only as at September 30, 2014 and updated for additional reconciled cash calls to 28<sup>th</sup> February, 2015.

- 32.4 The total outstanding Entry Fee, Training Fee and Cash Call payments owed by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to the 2<sup>nd</sup> Plaintiff in respect of OMLs 60, 61, 62 and 63 is in the sum of **\$1,250,644,475 (One Billion, Two Hundred and Fifty Million, Six Hundred and Forty Four Thousand, Four Hundred and Seventy Five U.S. Dollars)** only as at September 30, 2014 subject to actual performance returns and updated for additional cash calls to 28<sup>th</sup> February, 2015.
- 32.5 The total outstanding entitlement due the 1<sup>st</sup> & 2<sup>nd</sup> Defendants from the 2<sup>nd</sup> in respect of OMLs 26, 30, 34 and 42 is the sum of **\$125,300,708 (One Hundred and Twenty Five Million, Three Hundred Thousand, Seven Hundred and Eight U.S. Dollars)** only as at September 30, 2014 and updated for additional reconciled entitlements to 28<sup>th</sup> February, 2015.
- 32.6 The total outstanding entitlement due the 1<sup>st</sup> & 2<sup>nd</sup> Defendants from the 2<sup>nd</sup> Plaintiff in respect of OMLs 60, 61, 62 and 63 is the sum of **\$385,375,069 (Three Hundred and Eighty Five Million, Three Hundred and Seventy Five Thousand, Sixty Nine U.S. Dollars)** only as at September 30, 2014 and updated for additional reconciled entitlements to 28<sup>th</sup> February, 2015.
- 32.7 Any failure or delay on the part of the 2<sup>nd</sup> Plaintiff to exercise any right under the agreement shall not be deemed as a waiver of such right, nor shall any partial exercise of such rights preclude any other or further exercise of the rights. Any of the rights or remedies of 2<sup>nd</sup> Plaintiff under the agreement may at any time be enforced separately or concurrently with other rights and remedies whether under the agreement or the SAAs or otherwise arising from the operation of law or equity with the effect that the rights and remedies are cumulative and exclusive of each other.

***Also shown to me now and marked Exhibit NPDC 4 is a copy of the Terms of Payment Agreement between the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and the 2<sup>nd</sup> Plaintiff dated 10<sup>th</sup> February, 2015.***

33. Subsequently and against the backdrop of failure of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to commence payment in March, 2015 as earlier agreed in the Terms of Payment Agreement above, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and 2<sup>nd</sup> Plaintiff, on June 24, 2015 signed Amendment to the terms of payment agreement earlier executed by the parties.
34. The said Amendment and Restatement Agreement was designed to and indeed amended the previously agreed timelines on payment. Whilst the amendment made payment date to be 17<sup>th</sup> July, 2015, it retains the provision of Clause 12.3 of the SAA on interest at the annual rate of three (3) months LIBOR in the event that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' default in paying their outstanding indebtedness and future cash calls.

***Now shown to me and marked Exhibit NPDC5 is a copy of the Amendment and Restatement Agreement for Terms of Payment between the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and 2<sup>nd</sup> Plaintiff executed on 24<sup>th</sup> June, 2015.***

35. Notwithstanding Agreements on payment of outstanding obligations to the 2<sup>nd</sup> Plaintiff by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, the Defendants willfully neglected and refused to make any payment thereto to the 2<sup>nd</sup> Plaintiff.
36. I know, further to the above paragraph, that failure of the Defendants to honour their payment obligations under the SAAs impaired the capacity of the Plaintiffs to deliver on the fundamental aspects of their statutory duties to the Federal Government of Nigeria and other critical stakeholders in the Oil and Gas industry.
37. Specifically, some of the implications of failure of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants include;
  - 37.1 Inability of the 2<sup>nd</sup> Plaintiff to pay into the Federation Account true and proper value as consideration for acquiring the 55% - 60% interest in the assigned OMLs;
  - 37.2 Slow or non-implementation of approved work programs resulting in crude oil and gas reserves and production decline during period of high oil prices;
  - 37.3 Inability of the 2<sup>nd</sup> Plaintiff to pay Royalty and Tax (PPT);
  - 37.4 2<sup>nd</sup> Plaintiff's inability to train its staff due to non-remittance of agreed training funds.

37.5 Total loss, unlawful conversion and or deliberate denial of businesses, capital, development, profits, resources meant for other critical areas of the Nigerian economy and time.

37.6 Unleashing untold hardship on the Nigerian People and its institutions with legitimate and reasonable expectations.

38. I know as a fact that the Defendants do not intend to make any payment on their financial obligations to the 2<sup>nd</sup> Plaintiff as the Defendants have perfected a design to divert the proceeds of the crude oil lifted in prosecution of questionable ventures.

39. Specifically, the Plaintiffs aver that that the Defendants lifted about 7,351,867 Barrels of crude oil in respect of OML 60 series in about 8 shipments with fiscal value of **\$823,075,189.97** which were purchased by Glencore Energy UK Limited at a total cost of **\$811,297,883.11**

40. Glencore Energy Uk Limited made payment in respect of the crude oil in three different accounts of the 2<sup>nd</sup> Defendant as shown in the table below:

<b>Beneficiary Bank</b>	<b>A/C Number</b>	<b>Beneficiary Name</b>	<b>Amount USD (\$)</b>
Standard Chartered Bank, London	1267630350	Atlantic Energy Brass Development Ltd (AEBD)	184,073,712.23
Deutsche Bank, Geneva	2015841	Atlantic Energy Brass Development Ltd (AEBD)	83,717,618.34
Stanbic IBTC Bank, Nigeria	0005039941	Atlantic Energy Brass Development Ltd (AEBD)	543,506,552.54
		<b>Total</b>	<b>811,297,883.11</b>

41. Further to paragraph 40 above, the Plaintiffs state that upon receipt of the sum of **\$811,297,883.11** as consideration for purchase of the crude oil, the Defendants

diverted the money to several countries around the world for purchase of properties, vehicles and for investments rather than fulfill due obligations to the Plaintiffs herein.

**PARTICULARS OF DIVERSION OF PAYMENT ON OML 60 SERIES**

- 41.1 Several assorted vehicles with a combined value of over **N800million** were purchased by the suspects and donated to Peoples Democratic Party (PDP) through its former National Chairman Prince Secondus among others;
  - 41.2 Additional vehicles valued at over **N130, 000, 000** were purchased by the Defendants and distributed to the former Minister of Petroleum Mrs. Diezani Alison Maduekwe and some other senior management staff of the 2<sup>nd</sup> Plaintiff;
  - 41.3 Sums of **\$18,548,618.99** and **N1,070,000,000** were paid to FBN Mortgages Ltd by the 3<sup>rd</sup> Defendant as part payment for Block A consisting of 26 Flats at No. 46 Gerrard Road, Ikoyi, Lagos purchased at a total cost of **N5,210,520,315**.
  - 41.4 Payments of a total sum of **\$25,839,606.77** and **N95,000,000** was made to Real Bank for the purpose of part financing the acquisition of the 1<sup>st</sup> and 2<sup>nd</sup> property as well as renovation of the 3<sup>rd</sup> and 4<sup>th</sup> property listed below;
    - 41.4.1 Mason apartments situated at No. 6 Gerrard Road, Ikoyi, Lagos comprising sixty (60) units of three bedrooms apartments valued at **\$78,000,000**
    - 41.4.2 Marion apartments Block 8 located at 4 & 5, Onikoyi Estate, Banana Island, Ikoyi, Lagos consisting of 43 units of apartments valued at **\$76,160,000**
    - 41.4.3 Renovation of apartments block at 33A Cooper Road, Ikoyi, Lagos at a total cost of **\$4,937,750**.
    - 41.4.4 Renovation of the Admiralty towers at 8 Gerrard Road, Ikoyi, Lagos.
  - 41.5 Additional fund transfers among others to the tune of **\$69,912,981.15** were made to several companies namely; Mia Hotels Ltd, First Motors Ltd, V I Petrochemical, Evergreen Realty & Management, QX Trade Ltd, De First Union Integrated Services and Amity Plus Ltd.
42. I am aware that the 4<sup>th</sup> Defendant literally took residence outside the shores of Nigeria in order to facilitate the diversion of the proceeds of Crude Oil lifted in respect of both

OMLs 26, 30, 34 and 42, and OMLs 60, 61,62 and 63 to other ventures. The 4<sup>th</sup> Defendant authorized payments of the proceeds of the Crude Oil as stated above to the entities and individuals as contained in paragraph 36 above.

43. In addition to the diversion of the proceeds of about 7,351,867 Barrels of crude oil lifted in respect of OML 60 series, the Defendants also diverted proceeds of crude oil lifted in respect of OMLs 26, 30, 34 and 42 to ventures held in the name of the 4<sup>th</sup> Defendant. Authorization for diversion of the proceeds was also given by the 4<sup>th</sup> Defendant. The venture which includes physical assets, cash in the bank and shares are as at 2014 as follows:-

### **PROPERTIES**

- i) Grove end road, London
- ii) 755 Sarbonne Road, Los Angeles
- iii) 952 North Alpine drive, Los Angeles
- iv) 815 Cima Del Mundo, Los Angele
- v) 807 Cima Del Mundo (Land)
- vi) 1049 Fifth Avenue, New York
- vii) 1948 & 1952 Tollis Avenue, Santa Barbara
- viii) 157 West 57<sup>th</sup> St, New York
- ix) 4100 Le Reve, Dubai
- x) Residences in Nigeria
- xi) Avenue Towers, Lagos Nigeria
- xii) Land in Mont Tremblant, Canada
- xiii) Colina D'oro, Montagnola, Switzerland

### **CASH IN BANK ACCOUNTS**

i)	LDT Switzerland	-----	\$25, 000, 000
ii)	Corner Bank, Lugano, Switzerland	-----	\$1, 000, 000
iii)	Deutsche Bank, Geneva	-----	\$40, 000, 000
iv)	HSBC London	-----	\$175, 000

### **INVESTMENT IN SHARES**



- i) 75% Shareholding in 1<sup>st</sup> & 2<sup>nd</sup> Defendants
- ii) 10% Shareholding in Seven Energy

**OTHER HOLDINGS**

- i) Galactica star (Yacht)
- ii) 20 Year Berth Lease-Barcelona
- iii) Watch Collection
- iv) Car Collections (58 Vehicles)
- v) Aeroplane-Global Express S5-GMG
- vi) Aeroplane-Bombardier Global 6000 9H-OPE
- vii) Aeroplane Bombardier

44. The 4<sup>th</sup> Defendant also authorized and approved payments from the proceeds of Crude Oil lifted as stated above to off-shore accounts of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and other companies affiliated to 1<sup>st</sup> & 2<sup>nd</sup> Defendants. Details of the accounts are as shown in the table below: -

S/N	COMPANY	BANK	ACCOUNT
1	Atlantic Energy Ltd	BNP PARIBAS (Switzerland)	1323951
2	Atlantic Energy	LGT Bank (Switzerland)	2005108
3	Atlantic Energy	LGT Bank (Switzerland)	2006431
4	Atlantic Energy	LGT Bank (Switzerland)	2006822
5	Atlantic Energy	STANDARD CHARTERED (LONDON)	12670593
6	ATLANTIC MADE AFRICA LTS	BARCLAYS BANK (LONDON)	28037304495
7	ATLANTIC ENERGY DEVELOPMENT	STANDARD ENERGY (VODUZ SWITZERLAND)	1267630350

**3<sup>RD</sup> PLAINTIFF’S INTERVENTION**

45. Management of the 3<sup>rd</sup> Plaintiff, upon assumption of office of the current government, reviewed the performance of the SAAs and discovered that the Defendants only fulfilled 11% of their financial obligations under the Strategic Alliance Agreements. The Group Managing Director of the 3<sup>rd</sup> Plaintiff constituted a Corporate Review

Committee and also directed the engagement of an independent financial consultant and a legal consultant to assist the Committee in carrying out its assignment.

46. Sequel to the above, the firm of KPMG (Financial Consultant) was engaged to carry out an independent verification of the financial reconciliation done by the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants under the Strategic Alliance Agreements in order to ascertain the actual indebtedness of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

47. Further to the above, the firm of KPMG was mandated to undertake a review of the reconciliation performed by the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants from inception of the agreements to date including but not limited to the following:

47.1 Annual cash call obligations on the OMLs payable by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the Strategic Alliance Agreements as established by the 2<sup>nd</sup> Plaintiff (the Operator);

47.2 Annual cash call paid by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants during the period;

47.3 Total amount payable by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants per annum and cumulatively;

47.4 Interest on the amount payable by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; and

47.5 Total volume and value of crude oil and gas lifted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the Strategic Alliance Agreements.

48. Consistent with its terms of reference, KPMG made critical findings and insightful discoveries on the SAAs after detailed verification. Some of the key findings are as follows;

48.1 The total cash call made against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, on account of actual OPCOM and SUBCOM approved performance returns, was the sum of **\$3,156,198,156.90 (Three Billion, One Hundred and Fifty-Six Million, One Hundred and Ninety-Eight Thousand, One Hundred and Fifty-Six US dollars and Ninety Cents)** only;

48.2 Out of the total cash call made, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants paid only paltry sum of **\$305, 108, 522.43 (Three Hundred and Five Million, One Hundred and Eight Thousand, Five Hundred and Twenty-Two US Dollars and Forty-Three Cents)** only. This payment which represents just about 11% of the 1<sup>st</sup>

& 2<sup>nd</sup> Defendants' obligation under the SAAs was made in respect of OMLs 26, 30, 34 and 42;

48.3 No payment was made on OML 60, 61, 62 and 63.

49. Details of performance returns and Lifting of crude oil in respect of the entire assets – OMLs 26, 30, 34, 42, 60, 61, 62 and 63 are represented in the table below;

Year	OMLs 26, 30, 34 and 42		OMLs 60, 61, 62 and 63		Total	
	Performance Returns (\$)	Lifting (\$)	Performance Returns (\$)	Lifting (\$)	Performance Returns (\$)	Lifting (\$)
2011	80,636,762.88	-----	-----	-----	80,636,762.88	-
2012	320,347,654.00	388,344,954.90	-----	-----	320,347,654.00	388,344,954.90
2013	257,838,432.50	234,431,870.84	855,168,600	616,013,615.28	1,113,007,032.50	850,445,486.12
2014	777,847,907.52	54,461,847.00	864,358,800.00	207,061,574.69	1,642,206,707.52	261,532,421.69
Total	1,436,670,756.90	677,238,672.74	1,719,527,400.00	823,075,189.97	3,156,198,156.90	1,500,313,862.71

50. Further findings by KPMG disclose 1<sup>st</sup> & 2<sup>nd</sup> Defendants' crude oil entitlements and value of Cargoes Lifted on OMLs 26, 30, 34 and 42 and OMLs 60, 61, 62 and 63 as follows;

Year	OMLs 26 - 42(\$)	Actual Lifting on OMLs 26 - 42(\$)	OMLs 60 series(\$)	Actual Lifting on OMLs 60 series (\$)
2011	39,410,706.10	-----	-----	-----
2012	242,816,424.24	388,344,955	-----	-----
2013	244,633,569.41	234,431,871	552,392,775.21	616,013,615
2014	482,084,003.71	54,461,847	665,183,424.00	207,061,575
Total	1,008,944,703.46	677,238,673	1,217,576,199.21	823,075,190

51. I know state that using the OPCOM and SUBCOM approved performance returns, the revised net indebtedness of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants (as disclosed in the KPMG Report) as at December 31, 2015 is as follows;

51.1	Owed in respect of OMLs 26, 30, 34 and 42 is -----	<b>\$755, 592, 966.00</b>
51.2	Owed in respect of OMLs 60 series -----	<b>\$1, 006, 745, 218.40</b>
<b>Total indebtedness</b>		<b>\$1, 762, 338, 184.40</b>

52. In other words, the revised total indebtedness is as follows;

52.1	Outstanding due from 1 <sup>st</sup> & 2 <sup>nd</sup> Defendants is -----	<b>\$2,983,773,360.66</b>
52.2	Outstanding due to 1 <sup>st</sup> & 2 <sup>nd</sup> Defendants is -----	<b>\$1,221,435,176.26</b>
<b>Total indebtedness</b>		<b>\$1, 762, 338, 184.40</b>

53. The outstanding indebtedness of the Defendants is further summarized and represented in the table below;

<b>Heads of entitlement</b>	<b>OMLs 26, 30 34 and 42 (\$)</b>	<b>OML 60 series (\$)</b>	<b>Total (\$)</b>
Cash-call/approved performance returns	(1,132,619,075.48)	(1,720,789,606.97)	(2,853,408,682.45)
Entry fees	139,453.21	(124,009,542.28)	123,870,089.08
Training fees	(5,651,103.93)	(704,032.00)	(6,355,135.93)
AEDC's entitlement from gas sales	50,831,729.47	419,419,474.67	470,251,204.14

AEDC's profit oil	331,706,030.73	394,501,009.25	726,207,039.98
AEDC's entitlement from NGL gas sales	-----	24,837,478.93	24,837,478.93
<b>NET</b>	<b>(755,592,966.00)</b>	<b>(1,006,745,218.40)</b>	<b>(1,762,338,184.40)</b>

***Now to shown to me and marked Exhibit NPDC 6 is a copy of the KPMG Report of December, 2015***

54. I am aware that the Plaintiffs have suffered and continued to suffer immense losses and damage as a consequence of the failure and refusal of the Defendants to pay the outstanding indebtedness on the SAAs and should be compensated, in addition, with interest on the outstanding sum and damages for breach of contract.
55. That unless this Honourable Court urgently entertains this application, the Defendants would move their assets including funds and/or deal with same in a manner that will render them untraceable and/or beyond the reach of the jurisdiction of this Honourable Court and thereby frustrate the enforcement of any judgment and/or order likely to be made or imposed by this Honourable Court.
56. That the Defendants are engaged in International crude oil transactions with networks and supply chain spread all over the world and accordingly have dealings one way or the other with all banks listed as Nos 1 – 27 on the motion paper.
57. These banks are collection agents and financial windows through which the transactions are conducted both locally and in the international market.
58. That I verily believe that the actions of the Defendants smacks of ulterior motive designed to fraudulently cheat on the Plaintiffs/Applicants.
59. In addition to paragraphs 48 to 52 above, I further state that the monies involved in this application in the sum of **\$1,762,338,184.40 (One Billion, Seven Hundred and Sixty-Two Million, Three Hundred and Thirty Eight Thousand, One Hundred and Eighty Four US Dollars and Forty Cents)** is equal to the combined 2016 budgets of

about 4 States in Nigeria which monies would be utilized to cater for about 13 million indigenes and residents of those States.

60. I believe that it is a matter of utmost and urgent public interest, in aid of the administration of justice, to obtain a worldwide Mareva order restraining the Defendants from dissipating all the known assets owned directly or indirectly by the Defendants including but not limited to assets listed on the face of the Motion paper.
61. That unless this Honourable Court urgently entertains this application, the Defendants would move their funds from the aforesaid Banks and frustrate the Plaintiffs from recovering their funds when this court ultimately passes judgment which would spell doom for the Plaintiffs' statutory duties.
62. I know that balance of convenience is in favour of the Plaintiffs/Applicants as refusal to grant the application will expose the Applicants to risk of completely losing their due entitlements from the crude oil lifting pursuant to the Strategic Alliance Agreements in the event this Honourable Court finds in favour of the Plaintiffs.
63. It is in the interest of justice to grant this application as the grant of same will not prejudice the Defendants herein howsoever.
64. That I undertake to indemnify the Defendants in damages if it turns out that this application ought not to have been granted in the first place.
65. I know that there are good and substantial arguable issues to be tried in this suit which border on the rights of the 1<sup>st</sup> Plaintiff to receive payments from the crude oil lifting pursuant to the Strategic Alliance Agreement.
66. That the Defendants' assets in the banks aforesaid and real properties are in real and imminent danger of being dissipated and rendered beyond the reach of the Plaintiffs and by extension jurisdiction of this Honourable Court such as would render nugatory the likely orders that may be made in this suit.
67. That I also verily believe that the Defendants will render their money and other assets both moveable and immovable immediately untraceable if given prior notice of this

application, hence the propriety of seeking these reliefs by way of Ex-parte application for mareva injunction.

68. Further to paragraphs 51 to 53, 54 to 60 above, there is real imminent threat that properties covered by this Application (whether or not in the names of the Respondents or whether jointly or solely owned by them or whether directly or indirectly held or for their benefit located within the jurisdiction of the Court or elsewhere in the world) will be dissipated, disposed-off, reduced in value or removed from the long arms of the law. Specifically, the 4th Defendant has started exhibiting signs of desperation by selling one of the properties implicated by this application particularly the property at 755 Sarbonne Road, Los Angeles, United States of America.
69. That the information herein deposed constitutes full and frank disclosure of all disclosure of all material facts relevant to the granting of the application at the time of preparing and filing this affidavit.
70. I depose to this Affidavit in good faith, consciously believing same to be true and correct in accordance with the Oaths Act.

\_\_\_\_\_  
DEPONENT

Sworn to at the Federal High Court Registry,

Lagos, this \_\_\_\_\_ day of \_\_\_\_\_ 2016

BEFORE ME

COMMISSIONER FOR OATHS

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**HOLDEN AT LAGOS**

**SUIT No. FHC/L/CS/...../2016**

**BETWEEN**

- 1. **FEDERAL REPUBLIC OF NIGERIA**
- 2. **NIGERIAN PETROLEUM DEVELOPMENT COMPANY (NPDC) LTD** -----
- PLAINTIFFS/APPLICANTS**
- 3. **NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPC)**

**AND**

- 1. **ATLANTIC ENERGY DRILLING CONCEPTS NIGERIA LIMITED (AEDC)**
- 2. **ATLANTIC ENERGY BRASS DEVELOPMENT LIMITED (AEBD)** ----- **DEFENDANTS**
- 3. **MR. OLAJIDE OMOKORE**
- 4. **MR. KOLAWOLE ALUKO**

**IN RE:**

- 1. ACCESS BANK
  - 2. CITIBANK
  - 3. DIAMOND BANK
  - 4. ECO BANK NIGERIA
  - 5. FIDELITY BANK NIGERIA
  - 6. FIRST BANK OF NIGERIA
  - 7. FIRST CITY MONUMENT BANK
  - 8. GUARANTY TRUST BANK
  - 9. HERITAGE BANK PLC
  - 10. KEYSTONE BANK LIMITED
  - 11. SKYE BANK
  - 12. STANBIC IBTC BANK NIGERIA LIMITED
  - 13. STANDARD CHARTERED BANK
  - 14. STERLING BANK
  - 15. UNION BANK OF NIGERIA
  - 16. UNITED BANK FOR AFRICA
  - 17. UNITY BANK PLC
  - 18. WEMA BANK
  - 19. ZENITH BANK
- DOMESTIC ACCOUNTS
- 
- 20. BNP PARIBAS (SWITZERLAND)
  - 21. LGT BANK (SWITZERLAND)
  - 22. STANDARD CHARTERED BANK (LONDON)
  - 23. BARCLAYS BANK (LONDON)
  - 24. STANDARD ENERGY (VODUZ SWITZERLAND)
  - 25. HSBC (LONDON)
  - 26. CORNER BANK, LUGANO (SWITZERLAND)
  - 27. DEUTSCHE BANK (GENEVA)
- OFFSHORE ACCOUNTS
- 
- 28. MIA HOTELS LTD
  - 29. FIRST MOTORS LTD
  - 30. V. I. PETROCHEMICAL
  - 31. EVERGREEN REALTY & MANAGEMENT
  - 32. OX TRADE LTD
  - 33. DE FIRST UNION INTEGRATED SERVICES



**ARGUMENT IN SUPPORT OF MOTION EX PARTE FOR MAREVA INJUNCTION**

---

**1.00 INTRODUCTION**

1.01 This is a Motion Ex-Parte dated .... day of May, 2016 and brought pursuant to Order 25 Rule 4; Order 26 Rules 1, 2, 8 & 9; Order 28 Rule 1(1) & 2 and Order 30 of the Federal High Court (Civil Procedure) Rules, 2009; Section 13 of the Federal High Court Act, Section 6(6)(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and under the inherent jurisdiction of this Honourable Court. The Motion seeks the following reliefs:

1. **AN ORDER OF MAREVA INJUNCTION** restraining the Defendants by themselves, their directors, officers, agents, servants, privies, trustees, nominees, proxies, subsidiaries, sister companies, related companies or otherwise any other person, natural or artificial, however called from giving any instruction, demanding, accepting, or receiving payment from banks and other companies listed as **In Re: 1 – 34** on the face of the Motion Paper and or giving any sale or transfer instruction, demanding, accepting or receiving any payment or sale or dividend on the shares owned by the Defendants, their servants, agents, privies, sister companies, their nominees in the aforementioned companies and or persons listed as **In Re: 28 – 35** on the face of the Motion Paper pending the hearing and determination of the Motion on Notice filed herein.
  
2. **AN ORDER** directing the aforementioned banks listed as **In Re: 1 – 19** on the face of the Motion Paper to sequestrate within 7 (Seven) days of the receipt and or service of this Order, any and or all the sums of money and negotiable instruments standing to the credit of the Defendants, their servants, agents, privies, nominees whether natural or artificial up to the Plaintiffs/Applicants' claim against the

Defendants in the sum of **\$1,762, 338, 184.40** (One Billion, Seven Hundred and Sixty-Two Million, Three Hundred and Thirty-Eight Thousand, One Hundred and Eighty-four US Dollars and Forty Cents) only and keep same in an interest yielding account in the name of the Chief Registrar of this Honourable Court as trustee of same pending the determination of the Motion on Notice filed herein.

3. **AN ORDER OF MAREVA INJUNCTION** restraining the Defendants by themselves, their directors, officers, agents, servants, privies, trustees, nominees, proxies, subsidiaries, sister companies, related companies or otherwise any other person, natural or artificial, however called from giving any instruction, demanding, accepting, receiving payments and/or transacting, transferring, mortgaging or howsoever dealing in any manner with assets of the Defendants in both houses and land in Abuja and Lagos and others listed below:

<b>HOUSES</b>
755 Sarbonne Road, Los Angeles
952 North Alphine Drive, Los Angeles
815 Cima Del Mundo, Los Angeles
1049 Fifth Avenue, New York
1948 & 1952 Tollis Avenue, Santa Barbara
157 West 57 <sup>th</sup> St., New York
4100 Le Reve, Dubai
Avenue Towers, Lagos Nigeria
Colina D'oro, Montagnola, Switzerland
Block A consisting of 26 Flats at No. 46 Gerrard Road, Ikoyi, Lagos
Mason apartments situated at No. 6 Gerrard Road, Ikoyi, Lagos comprising sixty (60) units of three bedrooms apartments
Marion apartments Block 8 located at 4 & 5, Onikoyi Estate, Banana Island, Ikoyi, Lagos consisting of 43 units of apartments
33A Cooper Road, Ikoyi, Lagos.
8 Gerrard Road, Ikoyi, Lagos.
Grove End Road, London
<b>LAND</b>
807 Cima Del Mundo
Mont Tremblant, Canada

### **OTHER HOLDINGS**

Galactica star (Yacht)

20 Year Berth Lease-Barcelona

Watch Collection

Car Collections (58 Vehicles)

Aeroplane-Global Express S5-GMG

Aeroplane-Bombardier Global 6000 9H-OPE

Aeroplane Bombardier

4. **AN ORDER** directing service of the orders made herein on parties affected thereby, (including in particular, the persons listed In Re: 1-34 on the face of the Motion Paper by way of advertisement in newspapers circulating within the Federal Republic of Nigeria.
5. AND for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is made by the Plaintiffs/Applicants which, of course, are substantial are stated on the face of the motion paper.

- 1.02 The Motion is supported by a 70-paragraph affidavit deposed to by OGINNI ISAAC KEHINDE, Special Assistant to the Honourable Attorney-General of the Federation and Minister of Justice. Attached to the affidavit in support are 6 Exhibits, **EXHIBITS NPDC 1 – NPDC 6**. The Plaintiffs/Applicants rely on all the paragraphs of the affidavit in support including the exhibits attached. In compliance with the rules of this Honourable Court, the Plaintiffs/Applicant have now settled this written address in support of the application and adopt same as their arguments in moving this Court to grant the reliefs sought.

## 2.0 **MATRIX OF FACTS**

- 2.01 We adopt the facts as contained in the affidavit in support of the application as constituting the planks upon which this application is made.

## 3.00 **ISSUES FOR DETERMINATION**

We submit that the sole issue for determination by this Honourable Court is,

***Whether considering the facts and circumstances of this case and the applicable law thereto, the Plaintiffs/Applicants are entitled to the exercise of the discretion of this Honourable Court in respect of the reliefs sought in this application.***

4.00 **ARGUMENT ON THE ISSUE**

4.01 My Lord, the instant application seeks the exercise of discretion of this Honourable Court in favour of the Plaintiffs/Applicants and as in all other cases of injunctions, the law enjoins this Court to exercise its discretion judicially and judiciously. In the same vein, our law is replete with wealth of authorities that, to assist the court in exercising its discretion to grant the injunctive reliefs sought, the applicant has the bounden duty to place enough material particulars before the court. Refer to ***NITEL PLC VS. I.C.I.C. (DIRECTORY PUBLISHERS) LTD (2009) 16 NWLR (PT. 1167) PAGE 357 @ 384 PARAGRAPHS C-D, RATIO19.***

4.02 At any rate, the law is trite that the purpose or object of granting an order of interim injunction is to make sure that the subject matter of the litigation is kept in *status quo* pending or until the litigation. The essence is to maintain the *status quo* between the parties. Accordingly, the order is restricted to the preservation of the *res* pending the determination of the motion on notice. The order therefore enures to protect the existing legal right of the applicant from being destroyed or annihilated. The order is aimed at meeting situation of real urgency or emergency before the respondent can be put on notice. Suffice it to argue that an application ex-parte for interim injunction can be made in cases of extreme urgency where it is not possible in reality to file an application on notice or where delay will occasion irreparable loss. We commend the authority of ***U.T.B.LTD VS. DOLMETSCH PHARM. (NIG.) LTD. (2007) 16 NWLR (PT. 1061) PAGE 520 @ 545, PARAGRAPHS E-F, RATIO 1.***

4.03 My Lord, we refer to paragraphs 4 – 69 of the affidavit in support of this application and argue that a close examination of the depositions therein would reveal that the facts and circumstances of this case are urgent and compelling such as to leave this Honourable Court with no other alternative in preventing an anticipated injury of a grave nature to the Plaintiffs/Applicants. We urge this Honourable Court to so hold.

## MAREVA ORDER

- 4.04 In the light of the reliefs sought in this application, it is our contention that mareva injunction would be granted where it is likely that the court would find in favour of the applicant and there is a reason on the part of the applicant to believe that the respondent has assets to meet the judgment wholly or in part, and that the respondent may likely dispose of or dissipate the assets such that when judgment is delivered against him there will be no asset to satisfy the judgment. It is no longer obscure or even recondite that there is always the risk that the defendant will remove his assets from the court's jurisdiction, thus defeating the creditor of his claims. In the light of the risk, no court should allow the defendant to create such a situation which undermines the efficacy of the judicial process. Mareva order is thus preservative in the circumstances of the adverse conduct of the respondent. The order can, in deserving circumstances, be granted against anybody who is in possession of the respondent's assets.
- 4.05 By way of introduction it is essential to note that the English courts have exercised jurisdiction to grant injunctions, which has come to be called Mareva Injunction, since 1975 named after the well known homonymous decision **Mareva Compania Naviera S.A. v International Bulkcarriers .S.A (The Mareva) C.A. June 23, 1975**, the case in which its validity was first upheld by the Court of Appeal given on an ex parte application. Mareva injunction is essentially the offspring of equity. Not exactly a procedural innovation but the evolution of the equity doctrines. As such, equity acts against the person whereas common law remedies exist as of right. In synopsis a mareva injunction is an injunction that freezes assets. It is the unique characteristic of mareva that it does not operate as an attachment of property, but it is a relief *in personam*, which restrains the owner of the assets from dealing with them. Nigerian courts have, almost recently, identified with other common law jurisdictions in accepting the imperatives of mareva injunctions in the avowed commitment to ensure the judicial process is not undermined. Admittedly, this specie of injunction recognizes guiding principles which are, nonetheless exhaustive.

4.06 Mareva is widely recognized in common law jurisdictions and such orders can be made to have world-wide effect. ***It is variously construed as part of a court's inherent jurisdiction to restrain breaches of its process.*** It is recognized as being preventive and proactive because the order is often granted at the pre-trial stage in interlocutory hearings, based on affidavit evidence alone. The purpose of a Mareva injunction is to protect the interests of the applicant during the pendency of the suit and is granted to restrain the respondent from disposing of their assets within the jurisdiction until the trial ends or judgment in the action for infringement is passed. Mareva or freezing injunction is passed when there is evidence or material to show that the debtor is acting in a manner or is likely to act in a manner to frustrate subsequent order/decreed of the court or tribunal. In justifying the grant of such injunction, the Court of Appeal, Lagos held in ***AKINGBOLA VS. CHAIRMAN, E.F.C.C (2012) 9 NWLR (PT.1306) PAGE 475 @ 502-503***, held inter alia;

*“By the provisions of section 13 of the Federal High Court Act, the Court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to be just or convenient so to do”.*

***AKAAHS JCA (as he then was)*** who delivered the lead judgment opined thus:

*“Since the order was in the nature of a preservatory order pursuant to section 13 (1) of the Federal High Court Act, it is consistent with the intendment of section 44 (2)(K) of the Constitution of the Federal Republic of Nigeria which provides:*

*“Nothing in sub-section (1) of this section shall be construed as affecting any general law-*

*(K) Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry”*

*Construing section 45 (1) of the Supreme Court of judicative (consolidation) Act 1925 which is identical with section 13(1) of the Federal High Court Act, Lord Diplock in the case of the Siskina (1977) 3 ALL E.R. 803 said at page 823:*

*“That subsection speaking as it does of interlocking orders presupposes the existence of an action actual or potential claiming substantial relief, which the*

*high Court has jurisdiction to grant and to which the interlocutory orders referred to are but ancillary”*

4.06 Some significant constituents and features of mareva are that the application is usually and initially made ex-parte as secrecy from the respondent is essential. After an interim order must have been made to safeguard the assets, an interlocutory order could be made to further preserve the assets until final determination of the substantive suit. Thus, in *I.F.C. VS. DSNL OFFSHORE LTD (2008) 7 NWLR (PT. 1087) PAGE 592 @ 602 PARAGRAPHS C-F, RATIO 4*, the Court of Appeal, Port Harcourt Division re-stated the age-long principles guiding the grant of mareva injunction when it held as follows:

***“The principles guiding the grant of mareva injunction are as follows:***

- (a) There must be a justifiable cause of action against the defendant.***
- (b) There must be a real and imminent risk of the defendant removing his assets from jurisdiction and thereby rendering nugatory any judgment which the plaintiff may obtain.***
- (c) The applicant must make a full disclosure of all material facts relevant to the application.***
- (d) The applicant must give full particulars of the assets within jurisdiction.***
- (e) The balance of convenience must be on the side of the applicant; and***
- (f) The applicant must be prepared to give an undertaking as to damages.”***

Please refer also to *A.I.C LTD VS. NNPC (2005) 1 NWLR (PT. 937) PAGE 563*.

4.07 In the instant application and as can be gleaned from the affidavit in support thereto, the Plaintiffs/Applicants have, no doubt, satisfied the requirements of the law in respect of the guiding principles above to warrant the exercise of the discretion of this Honourable Court in their favour.

***DO THE APPLICANTS HAVE A JUSTIFIABLE CAUSE/CLAIM***

4.08 It is significant to underscore here that the indebtedness arose from crude oil lifting by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants further to the Strategic Alliance Agreements executed in that regard between the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants. Moreover, items of the indebtedness include entry fees which ought to be paid prior to commencement of lifting activities. In some instances, the entry fees were not paid at all and at some other instances, paltry sum of money was paid as entry fees. From the affidavit in support of the application, it is beyond controversy that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants are wont to pull a very fast one on the Plaintiffs. Under the Strategic Alliance Agreements, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants had already lifted crude oil worth over **\$1.5 Billion** prior to the suspension whilst the 1<sup>st</sup> & 2<sup>nd</sup> Defendants have only paid just about 11% of their financial obligations to the 1<sup>st</sup> Plaintiff.

4.9 Further to the above, the 1<sup>st</sup> Plaintiff and 1<sup>st</sup> & 2<sup>nd</sup> Defendants executed terms of payments whereof admissions of indebtedness were made. On the default of the Defendants to pay pursuant to the agreement, amendment to the terms of payment was also executed. Notwithstanding all opportunities afforded the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to make payment, the Defendants refused and/or neglected to make payments as agreed.

My Lord, the Defendants have already begun the process of diverting the proceeds of crude oil sale to other ventures unconnected with the contract with the 2<sup>nd</sup> Plaintiff. The persistent refusal of the Defendants to comply with payment obligations under the contract even after the 1<sup>st</sup> & 2<sup>nd</sup> Defendants have lifted cumulatively over 85% of crude oil thereto further reinforces our contention that there is a justifiable cause/claim deserving of the protection of this Honourable Court and we urge the court to so hold.

***IS THERE RISK OF THE PLAINTIFF DISPOSING ITS ASSETS***

4.10 The Applicants have also set out, in the affidavit in support, the grounds for believing that the Defendants might dispose or dissipate their assets outside the jurisdiction of this Honourable Court. The Plaintiffs have also set out the antecedents of the Defendants in diverting proceeds of crude oil sale to other



ventures and entities including transfer of large sums to offshore accounts. The apprehension of the Plaintiffs, borne out of the antecedents of the Defendants, is real and empirically verifiable. Now that there is apprehension that the Defendants herein could use phony companies to dispose or dissipate their assets out of the jurisdiction of this Honourable Court before the determination of the suit, there is a duty on this court to make a preservative order to protect the assets.

- 4.11 My Lord, beyond the above 2 (two) primary considerations in determining whether a preservative order is deserving in the circumstance, it is instructive to note that the frontiers of mareva have been extended to cover any attachable assets of the respondent either held by him or in trust for him and the asset need not be subject matter of the pending suit. This is the gravamen of the ***ratione decidendi*** in ***EFE FINANCE HOLDINGS LTD. VS. OSAGIE, OKEKE, OTEGBOLA & CO. (2000) 5 NWLR (PT. 658) PAGE 536 @ 545 – 546***, where the Court of Appeal, Lagos Division held inter alia:

***“Any attachable asset of the defendant can be restrained by Mareva order. They need not be subject matter of the dispute giving rise to the suit. The rationale behind this is because judgment debts are ordinarily satisfied by attaching all assets of the defendant within jurisdiction whether or not they are part of the litigation process ... Mareva orders restrain a defendant from disposing out of the jurisdiction monies standing to the credit of the defendant even before a judgment is given against him.”***

It is in recognition of the extension of the frontiers of mareva that the Plaintiffs/Applicants have included all the banks where the Defendants will possibly be maintaining accounts to keep proceeds of the crude oil sales. The funds in the accounts are held in trust for the Defendants and can be attached by an order of mareva. We urge the court to so hold.

- 4.12 Similarly, the frontiers of Mareva have been extended such that all relics of limitations inherent in its origin have been discarded. Thus, in ***BARLAY-JOHNSON VS. YUILL (1980) 3 AER 190***, the versatility of Mareva injunction was recognized when the court held inter alia:

***“It seems to me that in the short five years of its life, the Mareva doctrine has shed all the possible limitations of its origin. It is now quite a general doctrine free from any possible requirement of foreigner, commercial or anything else; and in a proper case, it depends upon the existence of the defendant’s assets being removed from the jurisdiction with the consequent danger of the plaintiff being deprived of the fruits of the judgment that he is seeking”***

4.13 My Lord, the growth and development in the Mareva principle has rendered the principle a potent preservative fortress such that a reasonable belief that the defendant will dispose or dissipate his assets before judgment is obtained is sufficient to warrant the exercise of discretion of this Honourable Court to grant interim preservative order protecting the assets. Such circumstance finds explanation in the facts of the instant case. We urge the Honourable Court to exercise its discretion in favour of the Plaintiffs/Applicants in this regard so that any order that may be made by this court will not be rendered nugatory.

***EXTRA-TERRITORIAL EFFECT OF MAREVA INJUNCTION***

4.14 Additionally, it is now part of the features of Mareva injunction that assets in respect of which preservative orders can be made need not exclusively be within the territorial jurisdiction of the restraining court. Thus, assets domiciled in foreign jurisdictions can be subject of preservative orders of mareva injunction. As shall be seen anon, Mareva injunction has been seen as instrument of international cooperation. We commend the following English authorities to this Honourable Court. They are;

***BABANAFT INTERNATIONAL CO. S.A. VS. BASSATNE [1990] CH. 13,***

***REPUBLIC OF HAITI VS. DUVALIER [1990] Q.B. 202***

***DERBY & CO VS. WELDON No. 1 [1990] CH. 48.***

4.15 In the ***PASTELLA MARINE COMPANY LTD VS. NATIONAL IRANIAN TANKER COMPANY LTD (“PASTELLA MARINE”) [1987]*** which examined the history and development of the doctrine, the Supreme Court of Cyprus was concerned with an appeal against the decision of the Admiralty Court at first instance which concluded that an order in

the nature of a Mareva injunction could be made, notwithstanding that the vessel in question was out of the jurisdiction because as the remedy is an equitable one and equity acts in personam, it matters not that the property in the control of the defendants (appellants) was outside the jurisdiction, so long as those to whom the order is addressed can appropriately be restrained from parting with the property.

4.16 The Supreme Court of Cyprus was invited to consider the principles of the territorial scope of the Mareva injunction in the joined appeals of **Seamark Consultancy Services Ltd v Joseph P. Lasala and Fred S. Zeidman, Co – Trustees of the Aremisoft Liquidating Trust C.A. No. 71/2006, 92/2006 (16/2/2007)**. The Supreme Court of Cyprus in a well reasoned appeal judgment adopted the worldwide effect of Mareva injunction implementing its English equivalent. The Court by way of reference to **BP Holdings Ltd & Others v Andreas Kitallides & Others (No. 2) [1994] J.S.C. 694** noted the wide wording of Section 32 of the Law 14/60 which could cover as a matter of jurisdiction the grant of an injunction of a Mareva nature in respect of assets which are not within the jurisdiction of the Court. The Appeal judge referred to the principles emerging from the English case law stretching that as fraudulent schemes increasingly involve international dealings, and as the ease with which assets may be transferred abroad increases, the worldwide Mareva order becomes an increasingly invaluable tool which may be used to assist victims of international fraud. The reason for the shift away from previous courts' practices by the Court of Appeal is in full accord with the line laid down by the English case law which seems to have been the realization that modern technological progress had made it extremely easy for defendants to transfer their assets with the minimum delay and effort, and that the new situation required a judicial response to the growing number of calls for action to be taken in order to restrain defendants from hiding assets abroad beyond the reach of plaintiffs.

4.17 Not only in Cyprus has the wind of extension of territorial limit of Mareva injunction blown. This is, unarguably the position in England, the origin of Nigerian Legal system. As aptly captured by **HALSBURY'S LAWS OF ENGLAND (4<sup>TH</sup> EDITION, RE ISSUE) VOL.24, AT PAGE 455 AND PARAGRAPH 866,**

*“the Court has jurisdiction to grant such an injunction so as to prevent a defendant from disposing of assets in order to defeat a judgment. This power depends not on the territorial jurisdiction of the Court over assets in England but on the unlimited jurisdiction of the English Court in personam against any person whether an individual who or a corporation which is, under English procedure, properly made a party to proceedings in the English Court.*

*Accordingly, an order may be made before or after judgment against a defendant, whether or not based in England, to restrain the removal of assets from the jurisdiction, the disposal of or otherwise dealing with assets within the jurisdiction in such a way as to place them beyond the reach of the plaintiff, or exceptionally to restrain dealing with assets outside the jurisdiction.*

*In an appropriate case the Court has power to order the transfer of assets to a jurisdiction in which the order of the English Court after the trial of the action will be recognised from a jurisdiction in which that order will not be recognised.”*

4.18 In Nigeria, the territorial effect of Mareva injunction has equally been extended to accommodate restraining orders against assets abroad. In ***DANGABAR vs. F.R.N. (2014) 12 NWLR (PT.1422) PAGE 575 @ 599 PARAGRAPHS A-C***, the Court of Appeal, whilst considering the power of Court to grant mareva injunction over assets outside the jurisdiction of the Court held thus;

*“Furthermore, in common law jurisdiction, the Court is empowered to grant interim reliefs including freezing injunction of mareva injunctions, where proceedings between the same parties are pending in the other Courts including Courts of other Countries. See the case of; ***The Siskina (1979) A.C. page 210.****

*The Court can make freezing order against assets within jurisdiction and outside the jurisdiction including the assets in the name of third parties if it can be established that those assets are beneficially issued by a defendant. See the following cases:-*

***Derby v. Weldon (No. 2) (1989) 1 ALL ER, page 1002;***

***TSB v. Chabra***” (Underlining is ours for emphasis)

4.19 In the instant application, there is a pending proceeding between the Applicants and the Defendants before this Honourable Court. There is no doubt that some of

the assets are outside the jurisdiction of this Honourable Court but in beneficial ownership of the Defendants and the reliefs in this application are sought in personam as against the Defendants who are parties in a suit pending before this Court. We refer to paragraphs 59, 60 and 68 of the supporting affidavit and argue that the attitude of the Defendants in diversion of the proceeds of the crude oil sales smacks of fraud and there is a duty on this court to take a cue from the authorities referred to above, which we commend to this Honourable Court in granting the application.

5.00 **SUMMARY**

5.01 We urge the Honourable Court, in the light of the circumstances of the instant case and the extant position of the law, to grant the application in the interest of justice as the Defendants will not be prejudiced whatsoever.

Dated this ..... day of ....., 2016.

-----  
---  
OLADIPO OKPESEYI, SAN, FCIARB (UK)  
TOPE ADEBAYO, Esq.  
HARRISON OGALAGU  
**COUNSEL TO THE 2<sup>nd</sup> DEFENDANT**

**Dipo Okpeseyi & Co**  
**s9 Prof. Kiumi Akingbehin Street,**  
**Lekki Phase 1,**  
**Lagos**  
[Okpeshlaw@yahoo.co.uk](mailto:Okpeshlaw@yahoo.co.uk),  
[info@dipookpeseyiandco.com](mailto:info@dipookpeseyiandco.com)  
**0803-322-0632**