

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON FRIDAY, THE 24<sup>TH</sup> DAY OF MARCH, 2017**  
**BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE**  
**JUDGE**

**SUIT NO. FHC/ABJ/CS/282/2015**

**BETWEEN:**

- |   |   |                   |
|---|---|-------------------|
| <ol style="list-style-type: none"><li>1. AFESCO INTERNATIONAL (NIG.) LIMITED</li><li>2. MR. A.J. AFEKHUME</li></ol> | } | <b>PLAINTIFFS</b> |
|---|---|-------------------|

**AND**

- |  |   |                   |
|--|---|-------------------|
| <ol style="list-style-type: none"><li>1. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA</li><li>2. THE MINISTER OF EDUCATION</li><li>3. THE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE</li></ol> | } | <b>DEFENDANTS</b> |
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# **JUDGMENT**

By an "Originating Summons" undated but filed on 26/3/15, the Plaintiffs instituted the instant action against the Defendants, and set down four (4) questions for the determination of the Court. The said questions are:

1. *"Whether the President of the Federal Republic of Nigeria, the Minister of Education and the Attorney General of the Federation are not statutory and*

*constitutionally duty bound with the responsibility to ensure that the appropriate agencies investigate the allegation of criminality, corruption and abuse of office at the Federal Polytechnic Auchi, regard being had to Sections 5(1)(a)&(b); 130(1)&(2); 148(1); 150(1) and the 7<sup>th</sup> Schedule of the **1999 Constitution of the Federal Republic of Nigeria as amended?**"*

2. *"Whether the President of the Federal Republic of Nigeria, the Minister of Education and the Attorney General of the Federation are not under the bounding duty to ensure that an enquiry is conducted into the allegation of gross abuse of office, fraudulent practices and offences bothering on economic and financial crimes at the Federal Polytechnic Auchi or at the least ensure that a panel of enquiry is set up to look into the allegation of gross abuse of office by the management of the Institution?"*
3. *"Whether or not it would not be proper in the circumstance that a panel of enquiry is set up and for the time of the enquiry, the respective head of the Institution and the Governing Board thereof step*

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*aside for a credible result and outcome of the exercise?"*

4. *"Whether it is not appropriate should Question 1, 2 and 3 be resolved in favour of Plaintiffs to compensate Plaintiffs by way of damages for the cost of this action?"*

In the event that each of these questions are answered in such a way and manner as it is favourable to the Plaintiffs' expectations, the Plaintiffs seek six (6) reliefs against the Defendants. These reliefs are:

- a. **"A DECLARATION** that it is wrongful for the anti graft agency, and the police to refuse, neglect and deliberately decline to investigate criminal activities brought to their attention and for the Defendants to do nothing about it even after same has been brought to their attention."
- b. **"A DECLARATION** that the refusal of the Defendants to take step to ensure that the allegations of abuse of office, fraudulent practices and criminal activities ongoing at the Federal Polytechnic is unconstitutional, illegal and wrongful."
- c. **"AN ORDER** directing the Defendants to forthwith constitute and or ensure the constitution of a panel of

*enquiring into the activities bordering on the commission of crime, abuse of office, mismanagement and fraudulent activities at the Federal Polytechnic, Auchi, the collusion between the management of the Polytechnic headed by the Rector Mrs. Philipia Idogo and the Governing Board in this regard."*

- d. **"AN ORDER** directing the Defendants to forthwith order the Rector and Head of the Polytechnic and the Chairman of the Governing Board to step aside during the period of the enquiry by the Board or Panel to be set up."
- e. **"AN ORDER** directing that the Board or Panel of enquiry within a week of the conclusion of their findings to send their reports to the Defendants and the Plaintiffs with necessary recommendations."
- f. **"AN ORDER** that the Defendants pay the sum of Five Million Naira (N5,000,000.00) only being general damages and the cost of prosecuting this action, for failure of Defendants to act, the pains and inconvenience occasioned Plaintiffs as a result."

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*[Handwritten signature]*

When I read the *reliefs being sought* by the Plaintiffs, I was wondering if it was not necessary, that the Plaintiffs join the concerned "*anti graft agency*" they had in view as some of the Defendants including, the Federal Polytechnic, Auchi; its Rector, Mrs. Philipia Idogo and the Governing Board against whom some of the *reliefs being sought* are directed at as "Defendants" so that they too can be hard on the allegations made by the Plaintiffs which informed the necessity for these reliefs against them or their interests.

The "Originating Summons" is supported by a 25 paragraph Affidavit which the 2<sup>nd</sup> Plaintiff who in its paragraph 2, says that he is "*the Chief Executive Officer of the 1<sup>st</sup> Plaintiff*" deposed to support the "Originating Summons".

Again, when I read the 2<sup>nd</sup> Plaintiff's "Affidavit filed in Support of the Originating Summons", the temptation to ask as to why "Originating Summons" was considered as a *mode of commencement* of this suit, is almost *irresistible* when one reads the clear provisions of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009** in order to ask as to which written instrument, deeds, writs or contract, the Plaintiffs' suit calls for *interpretation* or *construction* in order to ground the grant of the reliefs which the Plaintiffs seek.

The Affidavit has a host of *documentary exhibits* which are listed in paragraph 23 of the Affidavit as Exhibit "Afesco-1" – "Afesco-16".

Having regard to the facts deposed to in the Affidavit filed and when read with some of the *documentary exhibits*, it is almost impossible to assume that the Plaintiffs' suit is not one that is *mired* in *hostile disputation of facts* which really, by my assessment even at this preliminary stage, are not such that calls for any form of *interpretation* or *construction* of any written instrument within the provision of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009**.

The Plaintiffs' "Originating Summons" is supported by a written address dated 23/3/15 and filed on 26/3/15. The Plaintiffs' Counsel, M.A. Ofeoshi, Esq. having done a preface of the address by reproducing the four (4) questions set down in the "Originating Summons" and the six (6) *reliefs sought* by the Plaintiffs also did what he titled "*Facts Relevant to the Application*".

In page 3 of the written address, he sets down three (3) issues for determination. These are:

1. *"Whether given the circumstance of this case, it is not an appropriate case where a panel of enquiry should be set up."*
2. *"Whether given the antecedent of this matter, it is not proper that the head of the Institution and the governing board be requested by the Defendants to*

*step aside pending the determination of the outcome of the findings by the Panel so set up."*

3. *"Whether or not Plaintiffs should not be compensated by way of damages for the cost of this action."*

The Plaintiffs' Counsel advanced arguments on issue one as set down to submit that the *"Plaintiffs possesses the requisite powers to invoke the machinery of justice to ensure that this public derelict where some people are having a field day while the observance of the Law is put in abeyance and while those responsible to ensure compliance are docile, looking the other way"*. I am still trying to connect this submissions with issue one which I have just reproduced as I am unable to see how an issue of *locus standi* can be argued under issue one which I have just reproduced.

The Plaintiffs' Counsel thereafter reproduced the provision of Section 5(1)(a) and (b) of the **Constitution** and Sections 130(1) and (2); 148(1) and 150(1) of the **Constitution**. Reference was also made to **the 7<sup>th</sup> Schedule of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended** and in page 6, the Plaintiffs' Counsel submitted that *"a combined reading of the provisions afore-stated, clearly shows that the Defendants are the persons statutorily vested with the responsibility to ensure that the Constitution and in fact all the laws, appertaining to educational system and in particular, the subject matter of this case are complied with"*. The Plaintiffs'

*[Handwritten signature]*

Counsel submitted that *"the Defendant has a duty to ensure that the matters complained by Plaintiffs are investigated and that an enquiry is conducted to discover all the abuse and illegalities complained about by Plaintiffs"*.

It does not appear that the Plaintiffs' Counsel argued each of the 3 issues he has set down separately because, in page 7 of his address, he submitted that *"the Plaintiffs having to go to Court expend their personal money to ensure that Defendants perform their obligation is entitled to compensation"*. In the paragraph that follows, the Plaintiffs' Counsel argued that *"General Damages are the damages which flow from the Defendant naturally, the law presume that the need not be pleaded or proved"*. He cited the decision in **UBA PLC v. UTUKS (2003) 16 NWLR (pt.845) 183** and **ROCKONOH PROPERTY CO. LTD. v. NITED PLC (2001) FWLR (pt.67) 885 S.C.** The address was concluded by submitting that *"there is therefore a duty on all persons and including this Honourable Court to ensure that the Defendants are compelled to perform their statutory duty"*.

When I read the Plaintiffs' Counsel's written address, I have good reasons, having regard to the illogical manner it was presented and by his failure to argue the three (3) issues he had set down distinctly, to raise a query as to whether the Plaintiffs' Counsel is indeed a *bona fide* Lawyer called to practice as a "Solicitor" and "Advocate" of the Supreme Court of Nigeria. At the beginning of this Judgment, I did not



only raise query as to whether the persons against whom some of the *reliefs being sought* will be affected ought not to have been joined as "co-Defendants", but I also queried whether having regard to the facts of this case, it is such that should have been commenced by way of "Originating Summons" on the strength of the provisions of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009**.

The written address which I have just reviewed, appears to be meaningless given the facts in the "Affidavit in Support" and the questions which were set down for resolution.


The 1<sup>st</sup> and 3<sup>rd</sup> Defendants when served, through their Counsel, Chiesonu I. Okpoko, Esq. filed a "Notice of Preliminary Objection" dated 11/7/16. The said objection challenges "*the jurisdiction of the Honourable Court to hear and/or adjudicate on the Plaintiffs/ Respondents' suit as constituted and conceived*". The objection is predicated on three (3) main grounds: (1) "*The Plaintiffs' suit did not disclose any cause of action against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/ Applicants*"; (2) "*This suit was wrongly initiated*;" and (3) "*That the non-exercise of Hon. Attorney of (sic) Federation prosecutorial powers as enshrined in Section 174 of the **1999 Constitution** cannot be enforced in Court.*"

A "written address was filed in support of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Notice of Preliminary Objection", and in its paragraph 2.0, the 1<sup>st</sup> and

3<sup>rd</sup> Defendants' Counsel sets down only one issue for determination. It is: "*Whether the Plaintiffs' suit discloses any cause of action against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Applicants as constituted and conceived.*"

It was contended that "*where the Plaintiff suit did not disclose any cause of action against the Defendant, the Courts will decline to entertain such suit*". The Supreme Court's decision in **UWAZURUONYE v. GOVT. OF IMO STATE (2013) 8 NWLR (pt.1355) 28 @ 50** was cited.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted, that "*the Plaintiffs in paragraphs 14 and 15 of the "Affidavit in Support of the Originating Summons" stated that they petitioned the Police and EFCC on the fraudulent activities of the Rector of the Federal Polytechnic Auchi*". He argued that: "*It is the statutory duty of the Police and EFCC to investigate crimes since the Plaintiffs had reported to two agencies that are responsible for crime investigation, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants cannot direct them on how to carry out their investigation or what to investigate on the issue.*" The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted in paragraph 3.6 of the written address filed, that "*reliefs b, c, d, e and f, as sought in the Plaintiffs' "Originating Summons" cannot be granted by this Honourable Court by virtue of Sections 5 and 6 of the **1999 Constitution as amended**, which depicts, the doctrine of separation of powers between the Judiciary and the Executive Arm of Government*".

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It was contended that by virtue of the provision of Section 174(1) of the **Constitution** which vests *prosecutorial powers* in the 3<sup>rd</sup> Defendant, that *"the 3<sup>rd</sup> Defendant cannot be compelled to initiate criminal proceedings against any person at all"*. The Supreme Court's decision in **STATE v. ILORI (1983) 1 SCNLR 94** was cited to buttress this *legal* submission.

The Court was urged to dismiss the Plaintiffs' suit as it was considered by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants as *"frivolous, malicious, vexatious, lacking in merit and amount to an abuse of civil processes of this Honourable Court with substantial costs"*.

The Plaintiffs' Counsel filed a "Motion on Notice" dated 27/9/16 and therein seeks for: (1) *"An order of this Honourable Court striking out the Notice of Preliminary Objection of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/ Respondents filed on the 11<sup>th</sup> day of July 2016"*; (2) *"An Order of this Honourable Court setting down this suit for hearing on the basis of and terms of the Plaintiffs/Applicants"*.

These prayers are predicated on three (3) grounds. These are: (1) *"The 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Respondents filed the Preliminary Objection 14 months after the service of the originating process of this suit and so were out of time;"* (2) *"The 1<sup>st</sup> and 3<sup>rd</sup> Defendants/ Respondents did not obtain leave of Court to regularize their being out of time before filing the Preliminary Objection;"* and (3) *"By the*

*rules of this Court, an objection or challenge to jurisdiction made out of time may be taken along with the substantive suit during the trial."*

The Plaintiffs' "Motion on Notice" was supported by a four (4) paragraph Affidavit deposed to by one Hodo Samuel Bassey, an "Administrative Secretary" of the Plaintiffs' Counsel's Law Firm.

The Plaintiffs' Counsel also filed a written address to argue the said application. It was argued that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" was filed "well over 16 months of filing the and serving the Defendants/Respondents the "Originating Summons" and the Plaintiffs' Counsel submitted that the issue which calls for determination on the Plaintiffs' "Motion on Notice" is "whether the Plaintiffs/Applicants has made out a case to be entitled to the reliefs being sought in this application?"

The Plaintiffs' Counsel adverted to the provision of Order 29 Rule 1(a) and (b) of the **Federal High Court (Civil Procedure) Rules, 2009**. It was submitted that "when a party does anything that he need to be done on default of provision of law or any Rule of Court, he can only regularize same by obtaining leave of Court". It was argued that the Rules of Court are meant to be obeyed and that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants "have failed to comply with the provision of law and so have nothing before this Honourable Court". It was also argued, that by the provision of Order 51 Rules 1 and 2 of the **Federal High Court (Civil Procedure) Rules, 2009**, "the

*Plaintiffs/Applicants have the statutory right to bring this application to ask this Honourable Court to set aside the preliminary objection of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Respondents dated and filed on the 11<sup>th</sup> day of July, 2016". The Court was urged to "set down this matter for hearing on the basis and terms of the Plaintiffs/Applicants' Originating Summons".*

When the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, Chiesonu I. Okpoko, Esq. was served with the Plaintiffs/Applicants' "Motion on Notice" and the "Written Address" which I have just reviewed, he filed "*the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Written Address in Opposition to the Plaintiffs' Motion on Notice dated 27<sup>th</sup> September, 2016*". In the address, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted, that the "*issue of jurisdiction can be raised at any time even for the first time on Appeal*". The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted that "*having due regard to the jurisdictional issue raised in our preliminary objection, the Plaintiffs' argument that our objection was filed in breach of Order 7 Rule 1 of the Rules of this Honourable Court is of no moment at all*".

The written address was concluded by the submission that "*when a party raises the issue of jurisdiction which goes to the root of the suit, he is not in breach of the Rules of the Court for failure to comply with any provision of the Rules until the decision on the issue of jurisdiction is determine*".

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On 12/1/17, I listened to the oral submissions of the Plaintiffs' and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel on the Plaintiffs' substantive "Originating Summons" and on their "Motion on Notice" dated 27/9/16.

The Plaintiffs' Counsel, O. Osuagwu, Esq. adopted the written address filed to argue the Plaintiffs' "Originating Summons" and urged the Court to grant the reliefs which the Plaintiffs seek. The Plaintiffs' Counsel also argued the "Motion on Notice" dated 27/9/16 wherein the Plaintiffs' Counsel urged this Court to set down the Plaintiffs' "Originating Summons" for hearing and to discountenance the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" on the ground that it was not filed within the period prescribed by the Rules.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, C.I. Okpoko, Esq. was also heard on the adoption of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" dated 11/7/16. The learned Counsel adopted the "written address filed in Support of the Notice of Preliminary Objection". The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted that the "Notice of Preliminary Objection" "*having regard to its nature can be filed at any time*" and he urged the Court to dismiss the Plaintiffs' suit.

The Plaintiffs' Counsel when he adopted the "Motion on Notice" filed, submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel has not shown that he has paid the penalty for late filing of the "Notice of Preliminary Objection" and cited the provision of Order 48 Rule 4 of the **Federal**

**High Court (Civil Procedure) Rules, 2009.** He urged the Court to strike out the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection".

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel in his "Reply on Points of Law", submitted that the Plaintiffs' Counsel has not stated the Rules of Court which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants violated by their "Notice of Preliminary Objection" and that the issue of jurisdiction can be of two (2) types, i.e. "*a void and a voidable jurisdiction*". He urged the Court to discountenance the objection.

After both Counsel were heard, I reserved the Judgment till 24/2/17. But, by the said date, I was out of the country attending a training program on "*Case Management on Counter-Terrorism Cases*" in the U.K. It was organized by the U.K. National Judicial College for Judges of the Federal High Court, Court of Appeal and Supreme Court. When I returned on 27/2/17, I advised the Registrar to re-schedule the Judgment for 30/3/17, but on 21/3/17, I received a letter that we are to attend a workshop in the National Judicial Institute from 27/3/17 to 31/3/17. In order that this Judgment can be captured in my 1<sup>st</sup> Quarter returns to the National Judicial Council, I advised the Registrar to advance the date of its delivery for today.

In the course of reviewing the processes filed, I had critically examined some of the Plaintiffs' processes and expressed certain remarks which pertain to the suitability of the *mode of*

*commencement* of this action by way of "Originating Summons" when the Plaintiffs' suit has not really called up for the *interpretation* of any written documents or Act which when construed, will entitle the Plaintiffs to the grant of the reliefs they seek.

Secondly, I have also expressed the view, that the Rector of Auchi Federal Polytechnic, one Mrs. Philipia Idogo whom the Plaintiffs' relief (c) directly indicted ought to have been joined as a "co-Defendant" along with the Governing Board of the said Polytechnic. The *rationale* for this is because, the Court has no jurisdiction to grant a relief or make any order that will affect persons or interests of persons who were not joined as "Defendants" in the suit. The implication of relief (c) in the Plaintiffs' "Originating Summons" will lead to that result. See the Supreme Court's decision in **EHIDINIHEN v. MUSA (2000) 8 NWLR (pt.669) 569.**

In order to come to a decision on the Plaintiffs' suit, it is expedient to first of all rule on the *propriety* or otherwise of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" by which the jurisdiction of this Court was challenged on three (3) grounds. By the Plaintiffs' "Motion on Notice" dated 27/9/16, the said objection was not filed in accordance with the Court's Rules and as such, it should be discountenanced.

When I read the Plaintiffs' Counsel's submissions on the said "Motion on Notice", he seems to misapprehend the whole purport of the



provision of Order 29 of the **Federal High Court (Civil Procedure) Rules, 2009** which needs to be read and *contextualized* with the provision of Order 1 Rule 4 of the same Rules. The provision of Order 29 of the **Federal High Court (Civil Procedure) Rules, 2009** does not *bar* a Defendant from filing an objection to "*dispute the jurisdiction of the Court*" at any time. What it says is that a Defendant, who wants its objection to be heard in priority to the substantive suit it challenges, must file such objection within 21 days of being served with the Plaintiffs' originating processes. The *underlining philosophy* is to prevent a situation where an objection is being filed on the day fixed for hearing of the substantive suit. Where an objection was not filed within 21 days of the Defendant being served with the Plaintiffs' originating processes, the "penalty" for not doing so, is not to *debar* the Defendant from filing an objection, but that an objection so filed outside the 21 days prescribed by Order 29 Rule 4(a) of the **Federal High Court (Civil Procedure) Rules, 2009** will only be heard at the *conclusion* of the hearing and not in *priority* to the *Plaintiffs' substantive suit*. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" was heard *alongside* the Plaintiffs' "Originating Summons" and *not in priority to it*. By this, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" filed in July 2016 is competent in so far as it was not heard in priority to the Plaintiffs' "Originating Summons". The submission of the Plaintiffs' Counsel to the effect that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary

Objection" filed after 16 months of their being served and ought not to be heard was a *misapprehension* and *misapplication* of the provision of Order 29 of the **Federal High Court (Civil Procedure) Rules, 2009** which was a new provision to prevent the hearing of a substantive suit from being *stalled* by a "Notice of Preliminary Objection" filed either a day to hearing or on the day when the substantive suit is fixed for hearing because, the overall *objective* and *goal* of the **Federal High Court (Civil Procedure) Rules, 2009** by its Order 1 Rule 4 is for "*expeditious disposal of cases*". The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Notice of Preliminary Objection" to the extent that it was heard along with the Plaintiffs' substantive "Originating Summons" is competent, and being an objection to jurisdiction, it can be filed at any time and stage of the proceedings.

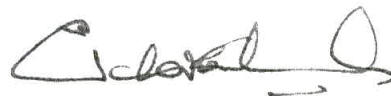
I had earlier observed that the Plaintiffs' suit, having regard to the facts in issue, is *ill suited* to be heard via "Originating Summons" which is a *mode of commencement* prescribed by the provision of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009**. Although, the Court may, where the issue was properly addressed, order the parties to file pleadings. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants raised this issue in the "Notice of Preliminary Objection" as the ground 2. I am more concerned with two (2) issues which goes to the jurisdiction of the Federal High Court in determining the Plaintiffs' suit: Firstly, certain persons against whom some of the

*reliefs being sought* will affect were not sued as “co-Defendants”. The second issue is that the Plaintiff ought to have joined the Inspector General of Police and the EFCC as a “co-Defendants” having regard to the Plaintiffs’ petitions and complaints to both organizations. But even if they were joined, there is no law by which the Court can *compel* the EFCC or the Nigeria Police Force to conduct investigations into allegations of commission of crime. The *rationale* for this *judicial principle* is based on the fact that it’s not an issue which the Court, can nor has the wherewithal to *supervise* in order to know if its order was being complied with. Closely related to this, is the fact that the 3<sup>rd</sup> Defendant by virtue of the provision of Section 174(1) of the **Constitution** enjoys a privilege by which it can decide on when and or who to prosecute. The 1<sup>st</sup> Defendant has no *constitutional powers* to *supervise* the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on how to exercise their *statutory* and or *constitutional powers*. By virtue of the provision of Section 214 of the **Constitution**, when read with Section 4 of the **Police Act**, Cap.P.19, LFN 2004, it is as much as the duty of the Police to receive complaint of this nature as the Plaintiffs were advised in Exhibit “Afesco-7” – being a letter written by the EFCC to the Plaintiffs when it received their letter Exhibit “Afesco-6”. By Sections 6 and 7 of the **EFCC Act, 2004**, it also has the powers to receive complaints such as the Plaintiffs sent to it and for which Exhibit “Afesco-7” was its reply. The point is that although, these duties as prescribed, whether by Section 4 of the **Police Act** or Sections 6 and

7 of the **EFCC Act** are of "public" nature to investigate allegations or complaints of commission of crimes against any citizen or non citizen. But the basic issue of law is that in the performance of these duties, Courts created by the **Constitution** will hardly exercise its jurisdiction, by way of an *equitable order of mandamus* to *compel* them to conduct investigations on complaints submitted to them. The *rationale* for this *judicial posture* is simple: The Court does not have the wherewithal by its Rules to "investigate" or conduct an enquiry into whether or not when such order is made, the Police or the EFCC complies with it because, they can easily inform the Court, that the matter is under a *discrete investigation* where non may be taking place. It is significant that the Plaintiffs, for whatever it is worth, never deemed it fit to join both the EFCC and the Office of the Inspector General of Police as "co-Defendants", but have chosen to sue the President, who although, is the Commander-in-Chief of the Armed Forces, but can hardly be involved in overseeing the performance of the *statutory duties* vested in both the Police and the EFCC. The 2<sup>nd</sup> Defendant is not empowered under any law to conduct criminal investigations as such; it was my view, a party wrongly joined as a "Defendant". In relation to the 3<sup>rd</sup> Defendant, it exercises its *prosecutorial powers* on the basis of reports of investigations handed over to it and by Section 174(1) of the **Constitution**, cannot be *compelled* to prosecute any person even if it has received a report of investigation.

It is in this regard that it can be safely stated, that the Plaintiffs' suit as constituted, does not *disclose a cause of action* which can be *judicially* settled. It is for these reasons and by the failure of the Plaintiffs to join persons who ought to be heard, that I take the objection filed by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel as meritorious. The Plaintiffs' suit fails and its accordingly dismissed.

This shall be the Judgment of this Court. There shall be no order as to costs.



**HON. JUSTICE G.O. KOLAWOLE  
JUDGE  
24/3/2017**

**COUNSEL'S REPRESENTATION:**

- 1. O. OSUAGWU, ESQ. for the PLAINTIFFS.**
- 2. C.I. OKPOKO, ESQ. with him is MRS. H.U. CHIME for the 1<sup>ST</sup> and 3<sup>RD</sup> DEFENDANTS/APPLICANTS.**
- 3. 2<sup>ND</sup> DEFENDANT is not represented by COUNSEL.**

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