IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 18TH DAY OF OC TOBER 2020
BEFORE HIS LORDSHIP, HON JUSTICE TAIWO O. TAIWO
JUDGE

SUIT NO: FHC/ABJ/CS/1067/2020

BETWEEN:

1. TRANSNATIONAL ENERGY LIMITED
2. BRESSON A.S. NIGERIA LTD } **PLAINTIFFS**

AND

1. MINISTER OF PETROLEUM RESOURCES
2. MINISTER OF STATE PETROLEUM RESOURCES
3. DEPARTMENT OF PETROLEUM RESOURCES
4. NATIONAL PETROLEUM INVESTMENT AND MANAGEMENT SERVICES
5. ATTORNEY GENERAL OF THE FEDERATION } **DEFENDANTS**

JUDGMENT

By an Originating summons dated the 28th day of August 2020 and filed on the 31st day of August 2020, the plaintiffs seek the determination of the following questions from this Honorable court:

1. *Whether the Hely Creek and the Abigborodo Marginal Fields in the OML 49, were validly farmed-out by Chevron Nigeria Limited to the 1ST PLAINTIFF.*

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2. *Whether the approval of consent given by the Honourable Minister of Petroleum Resources, [who is also the President Muhammadu Buhari] and conveyed by Letter Ref: PI.LM/3900/3.2/VOL.3/560 of 20th February, 2017 did not amount to full compliance with Section 16A (1) of Petroleum [Amendment] Decree No 23 of 1996 (Amendment of CAP 350 LFN).*
3. *Whether the letter dated 4th February 2019 Ref No: NAP/GGM/LD/02.03 issued by National Petroleum Investment Management Services (NAPIMS), purportedly conveying that* ***"the President has declined the CNL JV farm-out of Hely Creek and Abigborodo fields to Transnational Energy Limited"*** *is not wrongful, unlawful, and ultra vires NAPIMS.*
4. *Whether the said NAPIMS letter [in Question 3 above] does not amount to a violation of Section 16A (1)(2) and (3) of Decree No 23 of 1996 (Amendment of CAP 350 LFN) and therefore illegal, of no effect, and null and void.*

5. *Whether in the circumstance of this case and in the circumstance of the letter dated 20th February 2017 (referred to in Question 1 above) as well as the letter from Ministry of Petroleum Resources dated 4th April 2018 acknowledging receipt of payment of* ***$639,820.65 (Six Hundred and Thirty Nine Thousand, Eight Hundred and Twenty United States Dollars, Sixty Five Cents)*** *paid by the Plaintiffs as approved premium demanded by the Defendants for the consent granted to be effective, the Defendants can still validly revoke, refuse or deny the consent already granted to the Plaintiffs.*
6. *Whether in the circumstance of this case and in view of the fact that the Defendants knew that the purpose of this farm-out arrangement is very critical, strategic for our national development, and was also to enable the Plaintiffs develop the two fields for a gas-to-power projects, develop, produce and generate 90 Megawatts in the Magboro Power Projects as well as provide feed stock for production of polypropene polymer, the refusal of the Defendants to allow the Plaintiffs to proceed with*

the farm-out agreement is not unconscionable, unlawful, unpatriotic and malicious .

Upon the determination of these questions in favor of the plaintiffs, the plaintiffs hereby seek the following reliefs against the defendants:

1. ***A DECLARATION*** *that the Hely Creek and the Abigborodo Marginal Fields in the OML 49 were validly farmed out by Chevron Nigeria Limited to the 1ST PLAINTIFF.*
2. ***A DECLARATION*** *that the approval of consent by the Honourable Minister of Petroleum Resources, [who is also President Muhammadu Buhari] conveyed by Letter Reference PI.LM/3900/3.2/VOL.3/560 of 20th February 2017 amounted to full compliance with Section 16A (1) of Petroleum [Amendment] Decree No 23 of 1996 (Amendment of CAP 350 LFN), without any further ado.*
3. ***A DECLARATION*** *that the letter dated 4th February 2019 Ref No: NAP/GGM/LD/02.03 issued by National Petroleum Investment Management Services (NAPIMS, a Division of Nigeria National Petroleum Corporation NNPC) purportedly conveying that "the President has*

declined the CNL JV Farm-out of Hely Creek and Abigborodo fields to Transnational Energy Limited" is wrongful, unlawful, and ultra vires both NAPIMS and NNPC powers.

4. ***A DECLARATION*** *that the said NAPIMS letter [in Prayer 3 above] amounts to a violation of Section 16A (1)(2) and (3) of Decree No 23 of 1996 (Amendment of CAP 350 LFN) and therefore illegal, null and void. And of no effect whatsoever.*
5. ***A DECLARATION*** *that in the circumstance of this case and in the circumstance of the letter dated 20th February 2017 (referred to in Prayer 1 above) as well as the letter from Ministry of Petroleum Resources dated 4th April 2018 acknowledging receipt of payment of $639,820.65 (Six Hundred and Thirty Nine Thousand, Eight Hundred and Twenty United States Dollars, Sixty Five Cents) by the Plaintiffs as approved premium paid by the Plaintiffs for the consent granted to be effective, the Defendants can no longer purport to revoke, refuse or deny the consent (already) granted to the Plaintiffs.*
6. ***A DECLARATION*** *that in the circumstance of this case and in view of the fact that the Defendants knew*

that the purpose of this farm-out arrangement critical to our national development, and was to enable the plaintiffs to develop the two fields for a gas-to-power project to produce, develop, and generate 60 Megawatts in the Magboro Power Projects as well as provide feed stock for production of polypropene polymer, the refusal of the Defendants to allow the Plaintiffs proceed with the farm-out agreement is unconscionable, oppressive, unlawful, unpatriotic and malicious.

7. ***AN ORDER*** *of this Honourable Court affirming/validating the consent already granted in the letter dated 20th February 2017, by the Honourable Minister of Petroleum Resources (who is also President Muhammadu Buhari) "to Chevron Nigeria Limited to farm-out Hely Creek and Abigborodo located in OML 49 to 1ST PLAINTIFF, Transnational Energy Limited, as Marginal Fields".*

8. ***AN ORDER*** *validating the payment of* ***$639,820.65 (Six Hundred and Thirty-Nine Thousand, Eight Hundred and Twenty United States Dollars, Sixty-Five Cents)*** *as approved premium for the said*

consent (acknowledged by the Defendants' letter of 4th April 2018).

9. ***AN ORDER*** *directing the Defendants to take all formal steps, and to sign and or issue every necessary documentation or certificates, permits, licences, whatsoever to enable the Plaintiffs have access to, take possession of and operate the said Hely Creek and Abigborodo marginal fields in the OML 49, without any let or hindrance.*

10. ***AN ORDER*** *directing the Defendants, jointly and severally, to pay the Plaintiffs the sum of* ***USD $20,000,000 (Twenty Million US Dollars)****, being liquidated damages as at 4TH of August, 2020 as a result of the malicious act of impunity and breach of contract by the Defendants and their agents.*

IN THE ALTERNATIVE TO PRAYERS 7-10

11a. ***AN ORDER*** *DIRECTING THE DEFENDANTS to REFUND the sum of* ***USD 639,820.65*** *being the approved Premium demanded by and paid to the Defendants in April 2018 by the 1st Plaintiff.*

11b. *20 percent interest per annum on the said* ***USD $639,820.65*** *from 5th April 2018 to 4th August, 2020*

amounting to ***USD $404,719.72 (Four Hundred and Four Thousand, Seven Hundred and Nineteen US Dollars, Seventy-Two Cents).***

11c. Special and Aggravated damages in the sum of ***$100,000,000 (One Hundred Million United States Dollars)*** *for receipted costs and expenses incurred as per the attached financial model.*

AND

11d. The costs of this action and legal fees assessed at ***N55 Million*** *only.*

In support of the Application is a 27 paragraphs Affidavit deposed to by **Gbenga Olawepo-Hashim** on 31/8/2020 to which was annexed thirteen (13) exhibits marked as **EXH A to EXH M** respectively. **EXH A** is a document containing transaction advisory service agreement, **EXH A 2** are passport visa pages belonging to the CEO of the Plaintiffs, EXH B are documents relating to financing of the contract in form of Buyers credit to Magboro Power Company Ltd, **EXH C** is a letter from Chevron dated 24th February, 2015 to the Group General Manager Of NNPC and NAPIMS titled " Proposal to Farm-out Abigborodo Field and Hely Creek Field in OML 49 to Transnational Energy Limited", **EXH D** is a letter in response to EXH C dated February 16th, 2016

on the NNPC letterhead signed by the Group General Manager of NAPIMS to the Managing Director Of Chevron Ltd, which conveyed the position of NAPIMS Management. There is a document attached to EXH D which is a letter from the Honorable Minister of Power to the Honorable Minister, Federal Ministry of Petroleum dated March 2nd 2015 titled" RE: GAS SUPPLY FOR THE 90MW POWER PLANT AT MAGBORO, OGUN STATE". EXH E is HELY CREEK AND ABIGBORODO FIELDS FARMOUT AGREEMENT between NNPC and CHEVRON NIGERIA LIMITED as Farmor and TRANSNATIONAL ENERGY LIMITED As Farmee. This agreement runs into 50 pages. **EXH F** is a letter addressed to the President and Commander in Chief of the Armed Forces, Federal Republic of Nigeria dated the 17th August, 2020, from the 1st plaintiff titled "Request for Presidential Consent On Farm-Out of Hely Creek and Abigborodo Marginal Fields in OML 49 jointly owned by Chevron and NNPC. **EXH G** is a letter dated 20th February, 2017 from the Ministry of Petroleum Resources to the Managing Director of Chevron Nigeria Limited captioned "Re: Request for Consent to Farm-Out Hely Creek and Abigborodo Marginal Fields". **EXH H** is a copy of DPR receipt for the payment of $639,820.65cents. **EXH I** is a copy of a letter addressed to the Managing Director of the 1st plaintiff from the Ministry of Petroleum Resources acknowledging payment and

instructing Chevron and Transnational Energy Limited to conclude the execution of the Farm-Out agreement between the 1st plaintiff and Chevron/NNPC. **EXH J** is a MEMO dated 2nd January 2020 signed by the then Chief of Staff to the President directed to the Minister of State, Federal Ministry of Petroleum. **EXH K is a** letter dated 7th of June, 2019 from the 1st plaintiff to the President and Commander in Chief of the Armed Forces, Federal Republic of Nigeria captioned "Re: Farm-Out of Hely Creek and Abigborodo Marginal Fields". **It** is a letter of appeal to Mr. President. **EXH L is a letter** from the Ministry of Petroleum Resources to the Honorable Minister of State for Petroleum Resources dated 13th of March 2020, titled "Request for Approval to Conduct 2020 Marginal Field Bid Round Exercise "Of 52 Oil Wells. Attached to the letter is the Guidelines for Farmout and Operation of Marginal Fields, 2020. **EXH M** is a copy of an annual report and financial statement of the plaintiffs. Also in support is a Written Address dated same day to which Learned Counsel for the Applicant **Dr. Sijuade Kayode Esq** formulated and argued a sole issue for determination to wit;

> "*Whether, in the circumstances of this case, the consent issued to the plaintiffs Conveyed by Letter Ref. No: P1.LM/3900/S.2/VOL.3/560dated 20th February, 2017, is valid and subsisting.*"

The plaintiffs also filed a further and better affidavit in support of the originating summons dated 31/08/2020. The affidavit was deposed to by **Godfrey Omoha.** Attached is Exhibit T1 containing the list of the consultants and partners said to be engaged by the Plaintiffs. Exhibit T2 is the Financial Statement of Affairs of the 1st plaintiff with the Auditor's Reports for the year ended, 31st December, 2018. Exhibit T3 is the projected capital expenses for the Hely Creek and the Abigborodo Marginal Fields (OML 49).

Upon service of the plaintiff's processes, the 1st and 2nd defendants filed some processes thereto. First filed for the 1st and 2nd defendants is a Memorandum of Conditional Appearance dated the 15th of September 2020 and filed same day. There is also a Counter Affidavit of 19 paragraphs deposed to by **Sunday Odey** dated 15/09/2020 and filed same day in response to the motion on notice of the plaintiffs dated the 28th of August, 2020. Also filed is a written address dated same day wherein counsel for the 1st and 2nd defendants, **Samuel Adokwe Esq** formulated and argued two (2) issues for determination to wit;

1. *Whether or not the court lacks jurisdiction to entertain the suit for failure of the requisite condition precedent to the commencement thereof;*

2. *Whether the suit/action against the 1st and 2nd defendants is statute barred*

The 1st and 2nd defendants also filed a counter-affidavit to the plaintiffs originating summons dated the 28th of August, 2020 and filed the same day. The said counter affidavit is dated 21/09/2020 and filed same day. There is a written address filed along also dated the 21st September 2020 and filed same day. The issues for determination in the written address are *(1) Whether or not the court lacks jurisdiction to entertain the suit for failure of the requisite condition precedent to commence the action and (2) Whether the suit/ action against 1st and 2nd Defendants is statute barred.*

In opposition thereto, the plaintiffs filed a reply on points of law to the 1st and 2nd defendants written address on the 22/09/2020 but dated the 21st of September, 2020. The plaintiffs also replied on points of law to the 1st and 2nd defendants counter-affidavit in opposition to the plaintiffs originating summons dated the 28th of September, 2020 and filed same day. It must be noted that the 1st and 2nd defendants on the 29th of September, 2020 also filed a further affidavit against the plaintiffs originating summons dated 25th September, 2020. Exhibits A, B, C, D and E from the affidavit of Sunday Odey at paragraphs 8, 10,11,12 and 13 were said to

have been attached. They were not attached to the said further affidavit directly but at the back of the written address filed along with the further affidavit. In the interest of justice, I cannot ignore them but counsel should please kindly assist the court by affixing exhibits appropriately instead of giving the court added job of having to sift for documents from papers filed at the registry. The said exhibits are same as attached to the affidavit in support of the plaintiffs originating summons.

The 3rd defendant filed a memorandum of conditional appearance dated the 21st of September, 2020 and also a Notice of Preliminary Objection dated 21/09/2020 and filed same day. The NPO is premised on the following grounds:

1. *The plaintiffs have not fulfilled the requirement of section 12 (2) of Nigeria National Petroleum Act Cap N123, LFN2004, which is mandatory and a condition precedent before instituting this action.*
2. *This suit is caught by section 12 (1) of the Nigeria National Petroleum Act Cap N123, LFN2004, having been filed outside the 12 months period prescribed by the law.*

3. *This suit is caught up by section 2 (a) of the Public Officers Protection Act, same having been filed outside the three months period prescribed by the law.*
4. *The Plaintiffs failure to fulfill the condition precedent before the institution of this suit as well as failure to commence the same within the time allowed by the statutes deny this honourable court the jurisdiction to hear this matter.*

In support of the NPO is a Written Address dated 21/09/2020 to which Learned Counsel to the 3rd defendant, **Chief Paul C. Obi Esq** formulated and argued three (3) issues for determination to wit:

1. *Whether or not the failure of the plaintiff to serve a pre-action notice to the 1st defendant does not deny this honourable court of jurisdiction to hear and determine this matter.*
2. *Whether the instant suit is not caught up by the limitation period for institution of a court action against a public officer as provided in section 2(a) of the Public Officers Protection Act.*
3. *Whether the instant suit is not caught up by the limitation period for institution of a court action*

against the 3rd defendant as provided in section 12 (1) of the Nigeria Petroleum Act Cap N123, LFN2004.

In opposition thereto, the plaintiffs filed a reply on points of law to the 3rd defendant's NPO dated 21/09/2020 and filed on 22/09/2020. Also in response to the reply on points of law of the plaintiffs, the 3rd defendant further filed a reply on points of law dated 28/09/2020 and filed same day.

On the substantive suit, the 3rd defendant filed a 32 paragraph Counter Affidavit deposed to by **Shalom Wahama Windbiziri** on 28/09/2020, attached are five (5) Exhibits marked as EXH A to EXH E respectively. Also in support is a written address wherein counsel for the 3rd defendant, **Chief Paul C. Obi Esq.** formulated and argued a sole issue for determination thus;

Whether form the totality of the facts placed before this honourable court, the plaintiffs are entitled to the reliefs sought in their Originating Summons

The plaintiffs in response to the Counter Affidavit of the 3rd defendant filed a reply on points of law dated 28/09/2020 and filed same day. Also filed is an additional reply on points of law dated 28/09/2020 but filed on the 29/09/2020. It is pertinent to

note at this juncture that counsel to the 3rd made oral submissions in court to the fact that the plaintiffs did not file any further affidavit in response to the 3rd defendant's counter affidavit, counsel submitted that the plaintiffs merely filed two (2) replies on point of law to the 3rd defendant's counter affidavit both dated 28/09/2020 and 29/09/2020. And that the law is trite counsels address, no matter how brilliant and robust cannot replace facts contained in an affidavit. It was further contended that where a party fails to file a response to a counter affidavit, the court must act on them. I will respond to this issue later in this judgment.

Filed for the 4th defendant is a Notice of Preliminary Objection dated 25/09/2020 and filed same day. The NPO is based on the following grounds:

1. *That the suit is incompetent against the 4th defendant/applicant.*
2. *That by virtue of its incompetence, this honourable court lacks jurisdiction to entertain this suit against the 4th defendant/applicant.*
3. *The 4th defendant/applicant is not a juristic person.*

Also in support is an affidavit of four (4) paragraphs deposed to by **Ogechukwu Ikwueme** on 25/09/2020. Also filed is a written

address dated same day wherein counsel for the 4th defendant, **John O. Erameh Esq** formulated and argued three (3) issues for determination to wit;

1. *Whether this court can proceed against the 4th defendant/applicant where the 4th defendant/applicant is not a juristic personality known to law.*
2. *Whether this court can proceed against the 4th defendant/applicant, the instant matter being statute barred against the 4th defendant.*
3. *Whether the court is divested of jurisdiction to entertain this suit by virtue of the action being statute barred.*

The plaintiffs in reaction to the NPO of the 4th defendants filed a Reply on points of law dated 28th September 2020 and filed same day.

For the 5th defendant is a Notice of Preliminary objection dated the 22nd day of September 2020 and filed same day. The NPO prays the Court for the following:

1. *The plaintiffs' claims are hinged on the President's letter dated 4th February 2019, (Exhibit j) declining*

consent to farm out Hely Creek and Abigborodo Marginal fields.

2. *The plaintiffs were informed of this development of the 18th of February, 2019 (the plaintiffs acknowledged this fact in paragraph 5).*
3. *The plaintiffs' cause of action arose on the 18th of February, 2019 when they were informed of the President's decision.*
4. *The plaintiffs commenced this suit on the 31st August 2020, Eighteen months after the President's decision declining consent was communicated to them.*
5. *The plaintiffs in seeking redress in relation to the subject matter of this suit, has three months from the date the cause of action arose to institute this suit.*
6. *The defendants are public officers by section 2 of the Public Officers Protection Act; any action commenced against a public officer must be within three months from the date of commencement of the cause of action.*
7. *The plaintiffs commenced this suit outside the period of three months as required under the Public Officers Protection Act.*

8. *The plaintiffs' failure to commence this suit within three months period required under section 2 of the Public Officers Protection Act has robbed this honourable court of its jurisdiction to entertain this suit.*

Also filed is a written address in support dated the 22nd day of September 2020, wherein counsel for the 5th defendant, **T. D. Agbe Esq** formulated and argued a sole issue for determination to wit;

Whether in view of Exhibit J and K as attached by the plaintiffs, this matter is not statute barred.

The plaintiffs filed a reply on points of law to the 5th defendant's NPO on 28th September 2020 and filed same day.

On the substantive application, the 5th defendant filed a Counter Affidavit of 5 paragraphs deposed to on the 29th of September 2020 by **Friday Atu**. Also in support is a Written Address. The single issue formulated for determination therein is:

"Whether the plaintiffs have proved their case to be entitled to the reliefs sought?"

The plaintiffs filed a reply on points of law in response to the 5th defendant's counter affidavit on the 28th September 2020 but

filed on the 30th September 2020. It is equally pertinent to note that counsel to the 5th defendant aligns itself to the oral submissions of the 3rd defendant's counsel as stated earlier. Counsel further called the attention of the court to the fact that the plaintiffs raised evidence in their written address rather than filing a further affidavit.

On 2/10/2020 when the matter came up for adoption and final argument, learned counsel for the plaintiffs **Dr. Sijuade Kayode Esq, with E.G. Ekeruche Esq and Mojisola Adeyekun (miss), Samuel Adoke Esq** for the 1st and 2nd defendants, **Chief Paul C. Obi with Ify Ikeatuegwu** for the 3rd defendant, **John Erameh Esq** for the 4th defendant and **T.D Agbe** with **O. A. Halliday Esq** for the 5th defendant all adopted their processes, adumbrated on same and urged the Court to resolve the Suit in favor of the parties that they represent.

The fact of the case is as stated on the affidavit of the plaintiff in support of its originating summons. It was stated therein that on February 27, 2013, Transnational Energy Limited officially presented its proposal to farm-in into Hely Creek and Abigborodo in OML 49 to Chevron Nigeria Limited (CNL), and to Chevron United States (CVX) on 1st July 2013. On February 24, 2015, Chevron applied to NAPIMS and Department of Petroleum

Resources (DPR) of the Ministry of Petroleum Resources for their concurrence on the farm-out. Both defendants concurred after a rigorous Technical, Commercial and Corporate due diligence on Transnational Energy Limited. On February 16, 2016 NNPC/NAPIMS/Chevron JV partners conveyed a no objection to Chevron, and approved the farm-out proposal, consequent upon which Chevron and TEL initialed the farm-out agreement. On 20th February, 2017 by a letter Ref: No: PI. LM/3900/S.2/Vol.3/560, DPR conveyed the consent of the Hon Minister of Petroleum Resources (who is also PRESIDENT MUHAMMADU BUHARI) for the farm-out and stated inter-alia, that once the 1st plaintiff, paid the sum of US$639,820.65 demanded as premium, the consent to farm out becomes effective. On 3rd April, 2018, the plaintiffs paid the said premium. DPR immediately acknowledged receipt and gave go ahead for the plaintiffs to conclude farm-out process with Chevron. On the 2nd of January 2019, the former Chief of Staff, to the President, late Alhaji Abba Kyari, purportedly as alleged by the plaintiffs, without any statutory authority, issued a MEMO "refusing" the consent already granted. The Department of Petroleum Resources (DPR) the regulator of the sector, ignored the said MEMO. But on the 4th February 2019, NAPIMS the 4th defendant herein by letter Ref No: NAP/GGM/LD/02.03, purportedly conveyed that "the President has declined the CNL JV

Farm-out of Hely Creek and Abigborodo fields to Transnational Energy Limited". After a change of leadership at the DPR, the said Hely Creek and Abigborodo Marginal Fields, though not originally on the list of marginal fields to be bided for in 2020 Marginal bid round, were smuggled into the bid basket. The list was only displayed on the portal of the DPR on Sunday 16th August 2020, two months after the bid round was announced. All efforts to get the Presidency, NNPC or the Ministry of Justice to resolve this matter was ignored. And up to the time of filing this case, DPR has not officially notified the plaintiffs that the consent for the farm-out between her and CNL has been withdrawn.

I shall first determine all the NPO filed by the 3rd, 4th, and 5th defendants, if it succeeds, it will be needless to go into the merits. I will in the determination of the objections raised by the defendants, consider the standing of the 4th defendant first, that is whether or not it is a juristic person. In urging the court to grant its application that is its NPO, the 3rd defendant contends that Section 12(2) of the NNPC Act mandates anybody to give pre-action notice to the corporation before instituting action against it. Counsel submits that there is no record before this honourable court to show that the plaintiffs complied with the above requirement and failure to do so deprives the court of jurisdiction. It was also argued that the 1st, 2nd, 3rd, and 4th,

defendants were sued in execution of their public duty. It was contended that Section 2 (a) of the Public Officers Protection Act provides for a limitation period of three (3) months to institute an action, otherwise same becomes statute barred. Counsel submitted further that this matter arose in February 2019, far beyond the limitation period prescribed by the Act.

The plaintiffs on their part contended that the 3rd defendant's reliance on the NNPC Act on service of pre-action notice relates to NNPC and any of its staff. Counsel submits that NNPC is not a party in this case. It was further averred that this suit is being tried on affidavits and documents but the 3rd defendants did not produce any document challenging the case of the claimant. Counsel submits further that the limitation period argued by the 3rd defendant does not apply in this case because the facts contained in the affidavit in support of the originating summons shows that this is a clear case of contract.

For the 4th defendant, it was argued that the 4th defendant is not a juristic personality which can sue and be sued; the 4th defendant is not registered with the Corporate Affairs Commission; and it is simply a department of the NNPC to carter for certain needs in the oil sector. Counsel submits that the 4th defendant being a department of the NNPC, section 12 of the

NNPC Act prohibits any action from being brought against the corporation or any member of the board of employees of the corporation after the expiration of twelve (12) months commencing from the date of accrual of the cause of action. It was further argued that this action was commenced outside the limitation period of 12 months.

On their part, the Plaintiffs submitted that the 4th defendant did not present any document or credible evidence before this honourable court to back up its claims that it is not a juristic person. Counsel submits that it is trite law that he who asserts must prove. It was further canvassed that the provisions of the NNPC Act has two dimensions, the first is for a complainant to commence an action 12 months after the cause of action arose, the second is for the complainant to commence an action 12 months after the ceasing of the act complained of, where such act is a continuous injury to the rights of the complainant. Hence the second dimension is what the plaintiffs are instituting this action against. Counsel submitted further that the injury caused by the defendants is a continuous one which has only ceased about a month ago.

The arguments canvassed by counsel for the 5th defendant is similar to the arguments of the 3rd defendant on the issue of

limitation period. Therefore, in order not to repeat myself, I shall adopt the arguments of the 3rd defendant stated earlier as submissions of counsel to the 5th defendant. Same applies to the response canvassed by the plaintiffs in opposition thereto. I have gone through all the processes filed with respect to the objections of all the defendants whether formally by filing of notices of preliminary objections or informally, by incorporating the objections in their respective written addresses in support of the various counter affidavits. One thing is certain, the objections overlap, that is to say they are the same in certain instances. Thus where they are the same, they will be treated holistically thus saving the time of the court from treating each formal notice of preliminary objection separately. I will this deal with the issues of limitation or statute barred as argued with reference to Section 2(a) of the Public Officers (Protection) Act and that premised on Section 12 of the NNPC Act.

But first, what is the position of the 4th defendant in this matter in view of the objection of this entity to this action on the basis that it is not a juristic person and thus not liable to sue or be sued. Generally, the objections of the defendants, whether meritorious or not is a challenge to the jurisdiction of this court and it is trite law that the issue of the competence of the court must be taken first. The law is trite that jurisdiction is the legal capacity of a

court to hear and determine judicial proceedings. It is the power to adjudicate concerning the subject matter of the controversy. See **Nsirim v Amadi (2016) 5 NWLR pt. 1504 pg.42.** Jurisdiction in its strict sense is the limit which is imposed on a validity constituted court to hear and determine issues properly brought before it by due process by reference to: (1) The subject matter in issue (2) The persons between whom the issue is joined and; (3) The kind of relief sought. In the locus classicus case of **Madukolu v Nkemdilim (1962) 1 ANLR pg.581**, a court is said to be competent to adjudicate over a matter before it only when: (i) It is properly constituted with respect to the number and qualification of its members (ii) The subject matter of the action is within its jurisdiction (iii) The action is initiated by due process of law; and (iv) Any condition precedent to the exercise of its jurisdiction has been fulfilled. See also Lokpobiri v Ogola (2016) 3 NWLR pt.1499 pg. 328.

Jurisdiction, which is the nerve centre of adjudication, which is akin to the blood that gives life to a human being must be determined first. Being a radical and crucial question of the court's competence, it must be determined otherwise where a court lacks jurisdiction to determine a case, the proceedings, no matter how well conducted becomes a nullity ab innitio and remain so. See **Yar'Adua v Yandoma (2015) 4 NWLR pt.1448 pg.123;**

Shell Petroleum Development Company of Nigeria Ltd v Anaro (2015) 12 NWLR pt.1472 pg.122 and INEC v Ogbadibo Local Government (2016) 3 NWLR pt.1498 pg.167. Permit me to add that the issue of jurisdiction can be raised at any time by any of the parties before the court since it is a threshold issue because of its fundamental and crucial nature. See **Sule v Kabir (2011) 2 NWLR pt.1232 pg.515.**

The jurisdiction of a trial court or court of first instance is determined by the Writ of Summons and Statement of Claim of the plaintiff or where the case was initiated as in this case, by the originating summons processes, by the questions for determination, the reliefs sought and affidavit in support of the Plaintiff's claim and not the defence put forward by the defendant. See **James v INEC (2015) 12 NWLR pt.1474 pg.538; Sun Insurance Nigeria Plc v Umez Enginering Construction Company Ltd (2015) 11 NWLR pt.1471 pg.576; A.G. Kwara v Adeyemo (2017) 1 NWLR pt.1546 pg.210**. The law is also trite that jurisdiction of court as to subject matter is determined by when a cause of action arose and not when it is invoked. See **Shell Petroleum Development Company of Nigeria v Anaro (supra); Ibafon Co. Ltd v Nigerian Ports Authority Plc (2000) 8: NWLR pt.667 pg.86.** The end result of the consideration of the issue of

jurisdiction is that where the court holds that it has jurisdiction to proceed in a matter, it does so, without much ado. However, where the court holds that it has no jurisdiction to hear a matter, that matter is liable to be struck out. See **Okolo v Union Bank of Nig. Ltd (2004) 3 NWLR pt.859 pg.87; NDIC v CBN (2002) 7 NWLR pt.766 pg. 272.** These are the general principles applicable to the issue of jurisdiction or competence of a court, where there is a challenge to same. Lest I forget, I need to add, as I will have to decide and act on it vis a vis the defendants before the court that, it is trite law that joinder/ misjoinder of a party, even a necessary party does not affect the jurisdiction of the court. See **Okwu v Umeh (2016) 4 NWLR pt.1504 pg.120; Anyanwoko v Okoye 5 NWLR pt. 1189 pg.497 SC; Believers Fisheries Dredging Nig Ltd v UTB Trustees Ltd (2010) 6 NWLR pt.1189 pg.185.**

I think it is appropriate to quickly take the issue of non-joinder at this point. The 1st and 2nd defendants have submitted in their counter affidavit that the plaintiffs ought to have joined NNPC or Chevron Nigeria Ltd as necessary parties in this suit. They can properly raise this issue but then are they right? While it is the law that no cause or matter shall be defeated by reasons of the mis-joinder or non-joinder of any party, yet in the absence of a proper party or necessary party before the court, it appears an

exercise in futility for the court to make an order or a decision which will affect a stranger to the suit who was never heard or given an opportunity to defend himself. This will be against the tenets and tenor of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See **Okwu v Umeh (supra)**. The law is trite that a plaintiff is not bound to sue a particular party. It is only where the outcome of the suit will affect that party one way or the other, that it will be foolhardy not to join him in that suit. It will thus be an exercise in futility as the said party will not be bound by the outcome of the case. See Okwu v Umeh (supra). A plaintiff has a duty to bring before a court all parties whose presence are crucial to the resolution of the case and failure to so do means the action is liable to be struck out. See **Adisa v Oyinwola (2000) 6 SC (pt.11) 47**. However, it has been settled that if parties before the court are competent parties and the cause of action, if substantiated by the plaintiff, entitles him to a remedy against the defendant, that will suffice. See **Osun State v Dalami Nig. Ltd (2003) 7 NWLR pt.818 72.** After all parties to an action has been classified into three namely: (1) proper parties; (2) desirable parties; and (3) necessary parties.

Proper parties are those who, though not interested in the plaintiff's claim are made parties for some reasons, and desirable

parties are those who have an interest or who may be affected by the result. A necessary party to a suit is not only interested in the subject matter of the proceedings but also a party in whose absence the proceedings could not be fairly dealt with. Consequently, without his being a party to the suit, the court may not be able to effectually and completely adjudicate upon and settle all questions involved in the suit. See **Diapialong v Lalong (2007) 5 NWLR pt. 1026 pg. 199; Green v Green (1989) 3 NWLR pt. 61 480 SC; Ojo v Ogbe (2007) 8 NWLR pt.1040 pg.542 CA; B.O.N Ltd v Saleh (1999) 9 NWLR pt.618 pg.331 CA; A.D.C. V Bello (2017) 1 NWLR pt.1545 pg.112 SC and Okobiemen v U.B.N. Plc (2019) 4 NWLR pt. 1662 pg. 265 CA**. I have looked at the processes before me. I cannot fathom why the 1st and 2nd defendants insists that NNPC and Chevron Nig. Ltd ought to be made parties in this suit. They are not necessary, or desirable parties in the matter before the court. If I may ask, in what capacity should the plaintiffs join them and what will be the relief or reliefs the plaintiffs are expected to ask the court concerning the them? I see none. I find and I hold that the 1st and 2nd defendants have failed to show the importance of these entities before the court to warrant them to be joined as parties. Parties are not joined just for the asking, for

no reason and without any basis. NNPC and Chevron Nigeria Ltd are therefore not important in this matter. I so hold.

The next issue is the legal standing of the 4th defendant in this matter, that is, whether or not it is a juristic person. The 4th defendant has said it is not a juristic person and thus ought not to be brought into this matter. As a general principle, only natural persons, that is human beings and juristic or artificial persons such as body corporate are competent to sue and be sued. Consequently, where either of the parties is not a legal person, the action is liable to be struck out as being incompetent and if I may add where there are other defendants as in this case, against the person or entity who says he or it is not a juristic person. It is trite law that an action can only be maintained against a juristic person. It is also trite law that a suit in the name of a juristic person may be bad but it need not fail, for the name of the non-juristic person wrongly joined could be struck out retaining the juristic person and sustaining the suit. See **Pfizer Incorporated v Mohammed (2013) 16 NWLR pt. 1379 pg. 155 CA.** The only thing the court would do in the event that the court finds that the 4th defendant is not a juristic person is to strike out the 4th defendant as a party.

The 4th defendant has in its affidavit deposed to by Ogechukwu Ikwueme stated that it is not a juristic person. The 4th defendant is said to be a department of the NNPC and its duty is to manage government's investment in the upstream sector of the oil industry and that it is not registered with the Corporate Affairs Commission or under any law in Nigeria and thus not a legal personality recognized by law. Rather than respond to the affidavit in support of the 4th defendant's NPO, the Plaintiffs counsel filed a reply on points of law. The position of the law is that an unchallenged and uncontroverted averment in an affidavit remain the truth and the court must believe and act on same. See **Honda Place Nig Ltd v Globe Motors Holdings Nig Ltd (2005) 14 NWLR pt.945 pg.273; Long John v Blakk (1998) 6 NWLR pt.555 pg.524.** Where no counter affidavit is filed, facts are deemed undisputed, except incredible. See **Mabamije v Otto (2016) All FWLR pt.828 pg.883**. The plaintiffs cannot answer the averment in the counter affidavit vide a reply on points of law. Written address is not evidence and no matter how brilliant a written address, without any evidence to back it up, it is useless and the court will not act on an abstract. The 4th defendant has asserted that it is not a juristic person and thus its legality has been put on the line. It is stated in its affidavit and as such the plaintiffs ought to debunk the assertion

by proving that the 4th defendant is indeed a juristic person. The law still remains that he who asserts must prove. See Sections 131, 132 and 136 Evidence Act 2011. With due respect to the learned counsel for the plaintiffs, contrary to his submission that the 4th defendant must show that it is a juristic, it is the Plaintiffs that must show, having been served with the notice of preliminary objection and an affidavit in support that the 4th defendant is duly registered and thus a juristic person. The Supreme Court in the case of **Ataguba & Co v Gura Nig Ltd (2005) 6 M.J.S.C 156** has decided who the law ascribes legal personality. It was held at page 184 paras A-B per Tobi JSC thus:" The principal and jural units to which the law ascribes legal personality to are: (a) Human beings; (b) Companies Incorporated under the various Companies Acts; (c) Corporation sole with perpetual succession; (d) Trade Unions; (e) Partnerships and (f) Friendly Societies. See also **Chief Gani Fawehinmi v N.B.A. (no 2) (1989) 2 NWLR (pt.105 pg.558**. Having being put on notice that it is not a juristic person, the Plaintiffs ought to go the extra mile to prove that the 4th defendant is indeed a legal entity. The plaintiff could approach the Companies Affairs Commission to conduct a search in order to debunk the averment of the 4th defendant that it is not a juristic person. There is no law to which the attention of the court has

been called to by the plaintiffs in proof of their counter allegation that the 4th defendant is a juristic person.

I therefore come to the conclusion and I hold that the objection of the 4th defendant as regards it legal personality ie. that it is not a juristic person succeeds. As stated earlier, the position of the law is clear as to what the court should do when it holds that a party is not a legal person. I therefore in line with the law strike out the name of the 4th defendant from this suit. I will not consider any other grounds on the NPO of the 4th defendant now struck out as a party in this suit. To continue on the other issues will be a sheer waste of time of the court and the court will not embark on mere academic or hypothetical exercise. I therefore overlook and ignore any reference to the 4th defendant by any of the parties in any of the processes before me. I say this in view of the argument by the 1st and 2nd defendants that the 4th defendant was not served with pre action notice under the NNPC Act. However, the standing of the letter of the 4th defendant dated the 16th February, 2016 will be considered later in this judgement.

The preliminary objections is also to the effect that the action of the plaintiffs is statute barred. The submissions of the learned counsels for the 3rd and 5th defendants is that this suit is caught

by Section 2 (a) of the Public Officers protection Act since it was filed outside the three months period prescribed by the law. The objection on limitation is premised on exhibits J and K which are letters dated 2nd of January 2019 signed by the former Chief of Staff to the President and Commander in Chief of the Armed Forces another dated the 7th of June, 2019 addressed to the President by the 1st plaintiff respectively. The contention of the objectors is that since the objectors are Public Officers, this suit ought to have been filed months before it was filed been out of the three months for bringing an action against public officers under the Public Officers Protection Act. Sections 2(a) states thus: "*Limitation of time – the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neiglect or defult complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof:*

Provided that if the action prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from person;"

As stated earlier, jurisdiction is determined by the process filed by the plaintiff in a matter. The law is trite that where a statute of

limitation prescribes a period within which an action should be brought; legal proceedings cannot be properly or validly be instituted after the expiration of the prescribed period. Thus, an action instituted after the expiration of the prescribed period is said to be statute-barred and time begins to run for the purpose of limitation law from the date the course of action accrues. See **Ogunko v Shelle (2004) 6 NWLR pt.868 pg.17; British Airways Plc v Akinyosoye (1995) 1 NWLR pt.374 pg.722; Asabaro v Pen Ocean Oil Nig. Ltd (2006) 4 NWLR pt.971 pg.595 CA**. There are exception to the provisions of the Act as held in a plethora of cases. I refer to **Hassan & Ors v Borno State Govt. & Ors (2016) LPELR-40250 (CA)** and **Energy Marine and Industrial Ltd v Minister of the Federal Capital Territory & anor (2010) LPELR-19774** in a long line of cases. Ibekwe JSC held thus in the case of **Nigerian Ports Authority v Constuzioni Generali Farsura Cogefar SPA & anor (1974) 1 ANLR 945 @ 957** thus:" .....We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the Act, but we are not prepared to give to the section the stress which it does not possess. We take the view that the section does not apply to cases of contract.....recovery of land, breaches of contract, claims for work and labor done etc." The public officer in order to

enjoy the protection offered by the Act must have acted within the confines of their public authority and are not acting outside their statutory or constitutional duty. Thus a public officer can be sued if he acts outside the color or scope of his office or outside his statutory or constitutional duty. In the case of **A.G Rivers State v A.G. Bayelsa (2012) 6-7 MJSC pt.111 pg.148 @181&182**, the Supreme Court states thus:" The Act is intended as much as within the ambit of the law to protect a public officer from detraction and unnecessary litigation, but never intended to deprive a party legal capacity to ventilate his grievance on the face of stark injustice". As stated earlier, the court looks at the processes of the plaintiff and the reliefs sought. I have done so in this case and I am of the well considered view that the case of the plaintiffs is founded on Contract and the breach of same. Consequently, the public officers as conversed are not protected. I therefore see no merit in the objection under the Act and I so hold.

Furthermore, and lastly is the objection that the plaintiffs has not served pre action notice as stipulated under the NNPC Act. There is no doubt that regulations of the right to access to the court abound in the rules of procedure and it is trite that a suit commenced in default of service of Pre-Action notice being a condition precedent, is incompetent against the party who ought

to have been served with the notice. See **Mobil Producing Nig. Ltd v LASEPA (2002) 18 NWLR pt.798 pg.1. Ojo v National Pension Commission & Anor (2019) LPELR-47839(SC).** However, it must be pointed out as held in the case of **Ojo v National Pension Commission (supra),** that an action cannot be entirely struck out if a party does not enjoy an entitlement to pre-action notice. A party cannot enjoy the right not given to it by statute merely because he has been joined in a suit with another party. Every party ought to enjoy the right vested by the statute and mere association or joinder cannot extend that benefit to such a party. In the case of **Mobil Producing Nig. Unlimited v LASEPA & Ors (supra), Emmanuel Ayoola** JSC stated thus:" A suit commenced in default of service of a pre action notice is incompetent as against the person who ought to have been served with a pre-election notice provided that such party challenges the competence of the suit."

Legally speaking and am saying this with my consideration of the law in view, that the issue of service of pre action notice as stated in the NNPC Act is on the NNPC. The NNPC is not a party in this matter and I have stated that above. I am of the well considered view that the 1st and 2nd defendants cannot take benefit under the Act and cannot argue on behalf of an organization who is not made a party in this action. The Pre- Action notice provisions in

the NNPC Act cannot be extended to benefit the 1st, 2nd and 5th defendants. I so hold. With respect to the 3rd defendant, the same scenario apply. The plaintiffs have joined the 3rd defendant in this suit even though it is a department under the Ministry of Petroleum Resources and there is nothing this court can do about that. Furthermore, the court will overlook the joinder of the 3rd defendant by the plaintiffs who has reacted but unlike the 4th defendant, has not raised an objection that it is not a juristic person. With due respect to learned counsel for the 3rd defendant, I am not convinced that the plaintiffs ought to serve it with pre action notice as there is no law backing up this assertion, not even under the NNPC Act. As a judex, I can look at all processes in my records and it is not lost on me by **exhibit L** attached to the affidavit in support of the originating summons that the 3rd defendant is under the Ministry of Petroleum Resources. To draw a close to my review of submission of the parties before me on the issue of pre action notice, it is my finding that all the parties before me are not entitled to be served with pre action notice by the plaintiffs. Consequently, all the issues raised in the objections are resolved against the objectors. I so hold. I find no merit in the objections and same are dismissed.

On the substantive application, the Plaintiffs contends that the MEMO purportedly issued on 2nd January 2019 (**Exhibit J**), by late Abba Kyari, the former Chief of Staff to the President, without authority, purportedly reversing the consent long after the plaintiffs had paid for the consent and the contract had been perfected and become effective, is irrelevant, null and void and of no effect. It was thus argued that the defendants, being public authorities, have a duty to comply with relevant laws of the land and cannot proceed to act with malice. Thus, this honourable court has the authority to set aside both **Exhibit J and Exhibit J1,** being documents issued in flagrant breach of a contract and hold that they are of no effect.

On their part, the 1st and 2nd defendants contended that Section 12 of the NNPC Act provides the mandatory step for an intending plaintiff who wishes to commence an action against the corporation by ensuring that he serves the corporation with a pre-action notice which will last for one (1) month but the plaintiffs has erred in that regard. Counsel submits that the plaintiffs have failed to institute this action within the time prescribed by the Public Officers Protection Act 2004. Therefore, the action is being caught by statute of limitation.

On her part, the 3rd defendant contends that pursuant to the provisions of the law, the defendants do not have the authority to approve the farming out of any marginal field in Nigeria; it is only the President of the Federal Republic of Nigeria that is empowered to grant such consent, which power is not absolute as it is to be exercised in accordance with the law. Counsel submits that the President did not at any time give consent to any third party. Therefore, the purported ministerial approval conveyed to Chevron is null, void and of no effect. Counsel submits that the plaintiffs have not made out any case to be entitled to the reliefs sought.

On the part of the 5th defendant, it was contended that the letter of approval contained in EXH G of the plaintiffs originating summons at paragraph 2 conveyed the consent of the Honourable Minister of Petroleum Resources which office is occupied by the President does not automatically guarantee approval because both offices are distinct from one another. More so, their functions and roles are different. Counsel submits that there is no valid contract between the plaintiffs and the Government that will warrant the court to grant an order of specific performance. It was thus argued that there is nothing on record to show that the refusal of the president to issue consent to the 1st Plaintiff was an act of malice, thus, the plaintiffs have

failed to prove their entitlements to aggravated damages. These are submissions of counsels in brief.

I have painstakingly gone through the processes before me on the originating summons. I have read the affidavit in support of the application and the further affidavit in support as well as the processes filed by the 1st, 2nd, 3rd and 5th defendant's by way of counter affidavits and further affidavits against the originating summons and the affidavits in support of same. One thing that is very clear and undeniably so is that the averments of the Plaintiffs, from the inception of the meetings and correspondences between the plaintiffs, Chevron Nigeria Ltd, the 3rd defendant, NNPC and NAPIMS on the farming out by Chevron Nigeria of the Hely Creek and Abigborodo Marginal Fields within OML 49 were not denied. These includes the averments as to the steps taken by the plaintiffs in preparation for the farming out of the Marginal Fields to them. I refer to paragraphs 2,3,4,5, 6,7,8,9,10,11,12, 13,14 and 15. Equally important and which is disputed is Exhibit G. The letter was directed to the Managing Director of Chevron Nig. Ltd and I refer to paragraphs 2,3,4 and 5 which I hereby reproduce:

2. I am directed to convey the consent of the Honourable Minister of Petroleum Resources to Chevron Nigeria

Limited to Farm-out Hely Creek and Abigborodo, located in OML 49 to Transnational energy Limited as Marginal Fields.

3. *Please note that this consent is granted subject to strict compliance to the terms and conditions contained in the consummated transfer agreement(s) executed between Chevron Nigeria Limited and Transnational Energy Limited.*

4. *Kindly note that the consent of the Honourable Minister of Petroleum Resources shall only be effective upon your payment of the sum of six hundred and thirty nine thousand eight hundred and twenty United State Dollars sixty five cents (US$639,820.65) only, being the approved premium accrued to the Federal Government of Nigeria from the transaction.*

4. *Below is the Bank Account details for the payment of the above stated sum by telegraphic transfer.*

Account Number:	*802906925*
Bank Name:	*JP Morgan Chase, New York, USA*
Swift Code:	*CHASUS 33*
Aba Code:	*021000021*

Purpose:	*Premium for Farm-out of Hely Creek and Abigborodo fields*
Beneficiary:	*Federal Government of Nigeria Federation Account with CBN*

5. *Payment should be made by Telegraphic Transfer only and you are kindly requested to ensure to ensure that exact amount specified is paid and that all the bank charges and costs arising from the transaction are for your account.*

The letter was signed by M.D Ladan a director in the Ministry of Petroleum Resources. Consequent upon the letter, the plaintiffs paid jointly or severally the sum of $639,820.65 as directed. This is evident by a receipt dated the 3rd of April,2018. This is exhibit H. The Ministry of Petroleum Resources on the 4th of April, 2018 not only acknowledged the payment by the 1st plaintiff but at paragraph 4 of the letter stated thus:" *You are hereby advised to proceed with the execution of the Farm-out Agreement between your company and Chevron/ NNPC, copies of which must be deposited with the Department of Petroleum Resources."* A revenue receipt was also attached. I refer to exhibit 1. However by a letter dated the 2nd of January 2019, the then Chief of Staff to His Excellency the President signed a letter directed to the

Honorable Minister of State, Federal Ministry of Petroleum which in the main declined the Farm out of the Marginal Fields to the 1st plaintiff among other things. This is exhibit J. The 1st Plaintiff thereafter wrote a letter to His Excellency the President to reconsider the purported withdrawal of the Marginal Fields vide the letter signed by the former Chief of Staff. There was no response to that letter, at least there is no indication that there is as there is no proof of a response either to the plaintiffs or exhibited by any of the defendants. However, the Ministry of Petroleum Resources by a letter i.e. exhibit L put up for bidding some Marginal Fields including the one farmed out to the Plaintiffs. From the counter affidavit of the 1st and 2nd defendants deposed to by Sunday Odey, the 1st and 2nd defendants chose to ignore the antecedents in this matter and their own participation in the farming out of the Marginal Fields to the Plaintiffs. They, for reasons best known to them they commenced their opposition to the affidavit in support of the from when the plaintiffs wrote a letter to His Excellency the President of the Federal Republic of Nigeria. What of the letters and what transpired before the plaintiffs wrote to the President? The deponent denied that exhibit G was written but he failed to prove that the person who signed the letter was not a Director in the Ministry of Petroleum Resources or that the said letter was forged. He who asserts

must prove. That is the position of the law. Curiously, the said deponent said nothing about the receipt of the money which was acknowledged by the Ministry and its directive that the plaintiff and Chevron/ NNPC should proceed to perfect the farm-out agreement. The position of the law is that a traverse must be specific and not general. The position of the law is that material evidence not specifically denied by the defendant is deemed established. See **Orianzi v A. G Rivers State (2017) 6 NWLR pt.1561 pg.224.** It is also the law as held in the case of **Gbafe v Gbafe (1996) 6 NWLR pt.455 pg.417**, that in civil cases, the onus of proving a particular fact is fixed by pleadings and in this case by the affidavits, further affidavits and counter affidavits and shifts from side to side. I need to add here that documents tendered to establish facts cannot be held to be irrelevant. See **Abubakar v Chuks (2007) 18 NWLR pt. 1066 pg.396.**

The 1st and 2nd defendants cannot ignore the documents attached to the affidavit in support which emanated from their Ministry. The court in the event of nothing to the contrary that the documents were made which was supported by averments in the affidavit in support of the originating summons must act on such evidence. On the part of the 3rd defendant which is a department in the Ministry of Petroleum Resources, there is a counter affidavit deposed to by Shalom Wahama Windibiziri. The 3rd

defendant stated the obvious at paragraph 4 that it has no authority to grant approval to farm out any marginal field. However, it went further without any evidence or documents attached to show how the approval and consent granted by the 1st and 2nd defendants which led to the perfection of an agreement between the 1st plaintiff is invalid and of no effect. Curiously too, the 3rd defendant said nothing about the payment made to the Ministry of Petroleum Resources which was also acknowledged. At paragraph 11 of its counter affidavit, the 3rd defendant stated that he knew for a fact that the Chief of Staff did act in his personal capacity with respect to the letter dated 2nd January 2019 without supplying further facts. The point is this, the deponent is a Staff in the legal department of the 3rd defendant. She did not work under the former Chief of Staff or in the State House. In the case of **Ahmed v CBN (2015) All FWLR pt.803 pg.529,** depositions in affidavits must meet the conditions stipulated in the Evidence Act otherwise the offending averments go to no issue. While the law is to the effect that any person who is competent to give oral evidence of a matter in a suit or to be called by a witness is competent to depose to an affidavit; While it also the law that such person need not be a party to or have personal knowledge of the facts he is deposing to, the deposition must comply with the relevant provisions of the

Evidence Act with respect to taking of affidavit evidence. By virtue of Section 115(1) Evidence Act 2011 a deponent must depose to what he knows personally or from information received which he believes to be true. Sections 115(3) and (4) of the Evidence Act provides that where information is derived from any source other than his personal knowledge, he shall set forth explicitly the facts and circumstances forming his ground of belief and also name the informant, the particulars of the informant and the time, place and circumstance of the information. See **Veepee Industries Ltd v Cocoa Industries Ltd (2008) All FWLR pt.425 pg.1685 and Maja v Samouris (2002) FWLR pt.98 pg.819**.

Where a deponent fails to depose in line with the Section 115 (3)(4) Evidence Act 2011, the offending paragraphs must be struck out by the court and the court will not act on it. I shall therefore not act on paragraphs 11, 14 and 24 of the counter affidavit of the 3rd defendant in opposition to the affidavit in support of the originating summons. Looking further at the counter affidavit of the 3rd defendant and with reference to exhibits A and B, can the 3rd defendant claim ignorance of the facts leading to the farming out of the Marginal Fields to the Plaintiffs? I think not. I therefore find that paragraphs 7, 8,13, 15, 18, 19,20, 22 and 27 are afterthoughts and I will not act on

them. For the 5th defendant, it's counter affidavit did not challenge the material facts in the affidavit in support. It is only hinged on what is said to be the President's letter declining consent to farm out the Marginal Fields.

I have stated above that the 4th defendant who was struck out is not a legal personality. I do not understand why NAPIMS, a division of NNPC will usurp the powers of the NNPC and the 1st and 2nd defendants by its letter dated the 4th of February, 2019. Such a letter must emanate from the 1st and 2nd defendants vested in law and as averred by them in the further affidavit to the plaintiffs' originating summons dated the 2nd September, 2020 deposed to by Sunday Odey at paragraph 7 wherein he stated thus:" *The 1st and 2nd defendants are vested with all matters pertaining to the issuance of licenses , permits and ancillary matters relating to the exploration and exploitation of oil and gas deposits in Nigeria, including its exclusive economic zone and territorial waters, with the President of Nigeria as the exclusive authority vested with powers to grant consent with respect to alienating interests in oil mining leases , oil prospecting licenses , Marginal Fields and etc. The plaintiffs were therefore obligated to seek with respect to the alienation of any proprietary interests."*

It is a notorious fact that the President of the Federal Republic of Nigeria is also the Minister for Petroleum Resources and it is not in doubt as to the effect of Section 17 Schedule 1 of the Petroleum Act which requires a Presidential approval for declaration and farming out of Marginal Fields. It is not in doubt that there was a joint venture agreement between Chevron Nigeria Ltd and NNPC on the Marginal Fields, the subject matter of this suit. It appears from Exhibit G that a request for consent was made by Chevron Nigeria Ltd to farm out the Marginal Fields from the letter which I have had course to reproduce above. The letter is dated 20th February, 2017. I come to this conclusion in view of exhibit D dated the 16th of February 2016, where it was stated among other issues that Chevron must comply with Section 17 Schedule 1 of the Petroleum Act. With due respect to the defendants, the plaintiffs have no business applying for consent or approval as being conversed by them. If there was no consent, the Ministry of Petroleum Resources would not have asked for, received and acknowledged the payment of the sum of $639,820,65cents from the Plaintiffs. Can they now turnaround to feign ignorance that there was no consent or approval before the Marginal Fields were firmed out to the Plaintiffs by Chevron Nigeria Ltd? I think not. The position of the law is that courts and parties must respect the sanctity of contracts entered into

between parties. The court must not allow a term on which there was no agreement to be read into a contract. An agreement, where one is established to exist, binds the parties thereto. Neither the parties nor the court is legally allowed to read into an agreement terms on which parties did not agree. See **Jeric Nig. Ltd v Union Bank Nigeria Plc (2000) 15 NWLR pt.691 pg.447; Artra Industries Nig. Ltd v Nigerian Bank** for **Commerce and Industry (1998) 4 NWLR pt.546 pg.357**. The defendants must not be allowed to turn around that the plaintiffs needed consent or approval since one was communicated to Chevron Nigeria Ltd before the farm out agreement between it, NNPC and the 1st plaintiff was signed. I need to state again that defendants cannot resile from its letter of consent or approval where no illegality is alleged and proved. The defendants cannot be allowed to resile from their obligation under the contract or agreement where they have benefited. Money was paid into the coffers of the Federal Government of Nigeria by the 1st plaintiff. Assuming for the sake of argument but not conceding to same that both parties before the court are wrong should the court allow a party who has benefited from a contract to resile from his obligation under that contract? Again, I think not. To this end I refer to the case of **Stanbic IBTC Bank v Longterm Global Capital Ltd & Ors (2018) LPELR-44053 (CA) and**

what my Lord Georgewill JCA stated at pp 101-102 para A-F thus:" .....*I shall pause to consider albeit briefly, the issue of impari delicto as it touches on the parties if any. I am aware that the law, though not about morality of what is right or wrong, but still, never, allows itself to be used as an engine of fraud by one party against the other, particularly in a Court of law which is as well a Court of justice and equity. It is also true in law that a party would not be allowed to enter into a transaction with the full knowledge of its irregularity, take the benefit and then turn round to repudiate the transaction. See the evergreen words of Sir Jessel in his cerebral work:* ***The Golden Age of Laisser Faire, citing Printing & Numerical Registering C. V. Sampson 1875 LR 19 EQ @ P. 485****, where he aptly stated inter alia thus: If there is one thing more than another which public policy requires, is that men of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by Courts of justice.*

It is also true that in law parties to an illegal contract cannot seek any remedy over such illegal contract in Court, yet in law no one can be allowed in good conscience and in equity, to benefit from his own wrong and resile from a contract after taking the benefit

therefrom. In law therefore, when parties to a transaction are both at fault rendering the transaction irregular or faulty, it is said that the condition of the Defendant is better in that the Claimant who is also in fault would stand no better chance in repudiating the transaction, which though found or turned out to be irregular, he was also in fault. This is buttressed by the Latin maxim: ***'in pari delicto potion est condition defendant'.***

This is a court of justice and equity. The law is trite that "he who comes to equity must come with clean hands". The nature of equity and the rationale for this maxim is that equity generally abhors subterfuge, deception and some other unconscionable conduct because equity acts in personam. The defendants, from the circumstances of this case have not approached the court with clean hands. *Macbeth with his hands covered in the blood of Duncan cannot have it wiped out according to Lady Macbeth even with all of "Neptune's ocean". As the blood on Macbeth's hands symbolizes the guilt of Macbeth, so figuratively speaking are the facts deposed to by the plaintiffs and the documents attached especially exhibits C, G, D, F, G, H, I and J which confirms to the contrary as the defendants will want the court to believe that the Marginal Fields were duly and lawfully farmed out to the Plaintiffs.* The court should not allow the defendants to approbate and

reprobate at the same time. To further buttress that the defendants cannot and should not be permitted to resile from the agreement, consent and approval touching on this suit, I call in aid Section 168 (1) & (2) Evidence Act 2011 which states thus:"

(1) When any judicial or official act is shown to have been done in a manner substantially regular. it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that a person acted in a public capacity, it is presumed that he had been duly appointed and was entitled so to act.

Flowing from the provisions of the Evidence Act now reproduced, this court presume as regular the documents confirming that consent and approval was granted to Chevron Nigeria Ltd to proceed with the process of farming out the Marginal Fields to the Plaintiffs especially after payment of the fee as demanded by the 1st and 2nd defendants. I further buttress my finding of the regularity of the official acts of the public officers i.e. the 1st, 2nd and 3rd defendants with Section 169 Evidence Act 2011 which provides thus:"

"When one person has, either by virtue or an existing court judgment deed or agreement, or by his

declaration. act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such person's representative in interest to deny the truth of that thing".

In this case, the plaintiffs acted on documents emanating from the 1st, 2nd and 3rd defendants and therefore altered their position by going ahead not only with the signing of the agreement, paying the fees demanded but by making elaborate arrangements at home and abroad to implement the purpose for the farming out of the Marginal Fields to them. In the circumstances, principle of estoppel by conduct applies against the defendants. See **Nsirim v Nsirim (2002) 3 NWLR pt. 755 pg. 697; County& City Bricks Development Company Ltd v Hon. Minister of Environment, Housing and Urban Development & anor (2019) 5 NWLR pt.1666 pg. 484 SC**. I have looked at the reliefs of the Plaintiffs and some of them are declaratory in nature. The burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant. A party seeking declaratory relief

must adduce evidence upon which the relief is granted notwithstanding an admission in the defendant's pleading. The court must be satisfied on the evidence led by the plaintiff that he is entitled to the reliefs he seeks. He must succeed on the strength of his case and not on the weakness or even admission of his opponent. See **Addah v Ubandawaki (2015) 7 NWLR pt.1524 pg. 438; Emeka v Chuba- Ikpeazu (2017) 15 NWLR pt. 1589 pg. 345 and Okereke v Umahi (2016) 11 NWLR pt.1524 pg.438.** From the preponderance of the facts and documents attached to the affidavits of the Plaintiffs in support of the application, I find and I hold that the plaintiffs have proved that they are entitled to the declaratory reliefs being sought. Let me quickly state that neither the former Chief of Staff to His Excellency the President of the Federal Republic of Nigeria or the entities tied to NNPC, the 1st and 2nd defendants i.e. NAPIMS and the 3rd have the vires to issue letters declining the farming out of the Marginal Fields. Their acts are not only illegal but also null and void and of no effect.

My decision in this suit is that the application of the plaintiffs are meritorious. All the issues for determination are hereby resolved in favour of the Plaintiffs. In the circumstances, I grant reliefs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Since I have granted the main reliefs there is no need to consider the alternative reliefs. I will fail in my

duties if I do not emphasize that Governments, be they State or Federal and their officials must adhere to agreements reached between them and anyone be the person a corporate or incorporate entity. Governments and its officials must not without legal reasons terminate contracts at will and without recourse to their conscience where as in this case as held above that the plaintiffs have put in substantial efforts and expanded monies in the project. It is even bad that the defendants have not offered to refund the money paid by the 1st plaintiff in this matter. The purported revocation if I may use the word, leaves one to think that there are facts suppressed by the defendants. Having said that and having made my decision known above, this case is closed.

HON. JUSTICE TAIWO O. TAIWO
JUDGE
18/11/2020

PARTIES: **Mr. Ghenga Olawepo Ashiru Esq. C.E.O.** of the 1st and 2nd plaintiffs in court.

APPEARANCE: **Dr. Sijuade Kayode Esq.** with **E.G. Ekeruche Esq.** and **Mojisola Adeyekun (Miss), Samuel Adoke Esq.** for the 1st and 2nd defendants.

Chief Pant C. Obi Esq for the 3rd defendant with **Ify Ikeatuegbu Esq.** for the 3rd applicant.

John Erameh Esq. for the 4th defendant.

T.D. Agbe Esq. with **O.A. Halliday** for the 5th defendant/applicant.