

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA**

SUIT NO:

BETWEEN

1. Incorporated Trustees of Save Nigeria Group
2. Incorporated Trustees of Kingdom Human Rights Foundation International

Plaintiffs.

AND

1. President Federal Republic of Nigeria
2. The Secretary to the Government of the Federation
3. Mr. David Babachir Lawal
4. The Chairman Economic and Financial Crimes Commission
5. Mr. Ibrahim Magu
6. Attorney General of the Federation
7. The Senate Federal Republic of Nigeria



Defendants

ORIGINATING SUMMONS BROUGHT PURSUANT TO SECTION 88 (1) (B) AND (2) (B), SECTION 89 (1) AND (2) SECTION 171 (1) AND (2) (A) AND PARAGRAPHS 1 AND 2 OF PART 1 OF THE FIFTH SCHEDULE OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED). SECTIONS 3 AND 4 OF THE EFCC (ESTABLISHMENT) ACT, SECTIONS 1,2,3AND 4 OF THE PROCUREMENT ACT, RULES 010101, 020603 AND 020604 OF THE PUBLIC SERVICE RULES; AND ORDER 3, RULES 6 AND 9 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009; AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT.

LET ALL THE DEFENDANTS within 30 days of service of this Summons inclusive of the day of such service cause appearance to be entered for them to the Summons, which is issued upon the application of the Plaintiffs for the determination of the following questions **LAW**.

1. **WHETHER OR NOT** the indictment of the Secretary to the Government of the Federation Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground to **WARRANT AND COMPEL** the President of the Federal Republic of Nigeria to sack or suspend Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) or **COMPEL HIM TO RESIGN AS THE SGF** pending when he is cleared of every allegation of corruption; on the ground that the President (1st Defendant) claims that his administration is fighting corruption **and in view of Section 88 (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).**

2. **WHETHER OR NOT** the indictment for corruption of Mr. David Babachir Lawal (the incumbent Secretary to the Government of the Federation SGF) by the Senate of the Federal Republic of Nigeria, should warrant his **SACK OR SUSPENSION AS THE SGF BY THE 1ST DEFENDANT**, in order to allow the security and anti-corruption agencies investigate the allegations of corruption and prosecute anyone indicted by their investigation, in view of the ongoing fight against corruption.
3. **WHETHER OR NOT** the Senate of the Federal Republic of Nigeria has the constitutional powers to recommend the sack or suspension of Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) on the ground of corrupt allegation found against him and his company, **in view of Section 88(1) (b) and (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**.
4. **WHETHER OR NOT** the award of contracts in March 2016, to a company known as Rholavison Engineering Limited, where the 3rd Defendant was a Director and signatory to the company's bank account, by the Presidential Initiative on the North east amounts to a breach of constitutional provisions and Code of Conduct for public officers, provided for in **Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria**, which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities.
5. **WHETHER OR NOT** the 3rd Defendant has breached the code of conduct for public officers provided for in **Paragraphs 1 and 2 of Part 1 of the Fifth Schedule to the 1999 Constitution** of the Federal Republic of Nigeria (as amended); by failing to resign as a Managing Director occupying an executive position and remaining a signatory to the bank account of a private company, until September 2016 when the Senate started investigating him of corrupt allegation.
6. **WHETHER OR NOT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law offends the provisions of the Public Procurement Act.
7. **WHETHER OR NOT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law amounts to abuse of office and offends the provisions of **Public Procurement Act and Financial Regulations Rules** on award of contracts.

8. **WHETHER OR NOT** the provisions of the Federal Civil Service Rules is applicable to the Economic and Financial Crimes Commission; and whether under the Federal Civil Service Rules, a person appointed in acting capacity can act in such capacity for more than six months, in view of **Rules 010101, 020603 and 020604 of the Federal Civil Service Rules 2008.**
9. **WHETHER OR NOT** the office of the Chairman of the Economic and Financial Crimes Commission (the 4th Defendant) is vacant; on the ground of the Senate's rejection of the nomination and failure to confirm Mr. Ibrahim Magu (the 5th Defendant), who has been acting in that capacity for more than six months.
10. **WHETHER OR NOT** the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to warrant and compel the 1st Defendant to appoint/nominate **ANOTHER PERSON** as the Chairman of the Economic and Financial Crimes Commission without any further delay.
11. **WHETHER OR NOT** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive Chairman.
12. **WHETHER OR NOT** the appointment of Mr. Ibrahim Magu who has been acting in that capacity for more than six months is illegal, null and void on the ground of non-provisions and recognition of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act.

AND UPON THE DETERMINATION OF THE ABOVE QUESTIONS, THE PLAINTIFFS WILL SEEK THE FOLLOWING DECLARATIONS:

- (a) **A DECLARATION OF THE HONOURABLE COURT THAT** the indictment of the Secretary to the Government of the Federation, Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground **TO WARRANT AND COMPEL** the President of the Federal Republic of Nigeria to sack or suspend **Mr. David Babachir Lawal** as the Secretary to the Government of the Federation (SGF) **OR COMPEL HIM TO RESIGN AS THE SGF**, pending when he is cleared of every allegation of corruption; **on the ground that the President claims that his administration is fighting corruption.**
- (b) **A DECLARATION OF THE HONOURABLE COURT THAT** the indictment for corruption of Mr. David Babachir Lawal (the incumbent Secretary to the Government of the Federation SGF) by the Senate of the Federal Republic of Nigeria, should warrant his sack or suspension as the SGF by the 1st Defendant, in order to allow the security and anti-corruption agencies investigate the allegations of

corruption and prosecute anyone indicted by their investigation, in view of the ongoing fight against corruption.

- (c) **A DECLARATION OF THE HONOURABLE COURT THAT** the Senate of the Federal Republic of Nigeria as the constitutional powers to recommend the sack or suspension of Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) on the ground of corrupt allegation found against him and his company, in view of section 88(1) (b) and (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- (d) **A DECLARATION OF THE HONOURABLE COURT THAT** the award of contracts in March 2016 to a company where the 3rd Defendant was a Director, by the Presidential Initiative on the North east amount to breach of constitutional provisions and Code of Conduct for public officers, provided for in **Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution** which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities.
- (e) **A DECLARATION OF THE HONOURABLE COURT THAT** the 3rd Defendant has breached the code of conduct for public officers provided for in **Paragraphs 1 and 2 of Part 1 of the Fifth Schedule to the 1999 Constitution** of the Federal Republic of Nigeria (as amended); by failing to resign as a Managing Director occupying an executive position and remaining a signatory to the bank account of a private company, until September 2016 when the Senate started investigating him of corrupt allegation.
- (f) **DECLARATION OF THE HONOURABLE COURT THAT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law offends the provisions of the Public Procurement Act.
- (g) **DECLARATION OF THE HONOURABLE COURT THAT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law amounts to abuse of office and offends the provisions of Public Procurement Act and Financial Regulations Rules on award of contracts.
- (h) **DECLARATION OF THE HONOURABLE COURT THAT** the provisions of the Federal Civil Service Rules is applicable to the Economic and Financial Crimes Commission, and that under the Federal Civil Service Rules, a person appointed in acting capacity cannot act in such capacity for more than six months, in view of **Rules 010101, 020603 and 020604 of the Federal Civil Service Rules 2008.**

- (i) **DECLARATION OF THE HONOURABLE COURT THAT** the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to **WARRANT AND COMPEL** the 1st Defendant to appoint/nominate **ANOTHER PERSON** as the Chairman of the Economic and Financial Crimes Commission without any further delay.
- (j) **DECLARATION OF THE HONOURABLE COURT THAT** the office of the Chairman of the Economic and Financial Crimes Commission **IS VACANT** on the **GROUND OF THE SENATE'S REJECTION AND FAILURE TO CONFIRM MR. IBRAHIM MAGU** who has been acting in that capacity for more than six months.
- (k) **DECLARATION OF THE HONOURABLE COURT THAT** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive Chairman.
- (l) **DECLARATION OF THE HONOURABLE COURT THAT** the appointment of Mr. Ibrahim Magu who has been acting in the capacity of the Chairman of EFCC for more than six months is illegal, null and void on the ground of non- recognition of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act.

AND UPON THE FOLLOWING DECLARATIONS, THE PLAINTIFFS WILL SEEK THE FOLLOWING ORDERS:

- (i) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the President of the Federal Republic of Nigeria (the 1st Defendant in this suit) to **SACK, SUSPEND OR COMPEL Mr. David Babachir Lawal to resign as the Secretary to the Government of the Federation (SGF)** pending when he is cleared of every allegation of corruption **on the ground that the President claims that his administration is fighting corruption.**
- (ii) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the 1st Defendant in this suit who is the President and Commander in Chief of the Armed Forces of Nigeria, to immediately direct the State Security Service, the Inspector General of Nigeria Police and the Economic and Financial Crimes Commission to immediately and without any further **DELAY COMMENCE THE INVESTIGATION AND PROSECUTION** of Mr. David Babachir Lawal on the ground of the allegation of corruption established by the Nigerian Senate.

- (iii) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the 1st Defendant in this suit to immediately **NOMINATE ANOTHER PERSON** for Senate's Confirmation as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's rejection of Mr. Ibrahim Magu at the Senate's votes and proceeding of Thursday 15 December 2016.
- (iv) **AN ORDER OF THE COURT PROHIBITING AND RESTRICTING** the 1st Defendant in this suit **FROM RE-NOMINATING** Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's rejection of his nomination at the votes and proceeding of Thursday 15 December 2016.
- (v) **AND SUCH OTHER ORDERS** as the Court may deem fit to make in the circumstance of the case.

Dated this day of..... 2016.

THIS SUMMONS WAS TAKEN OUT BY:

Okere Kingdom Nnamdi Esq

Marcus Eshinamie Saturday

Counsel appearing for Plaintiffs.

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FOR SERVICE ON:

1. **President of the Federal Republic of Nigeria, Aso Villa Abuja. c/o AGF**
2. **The Secretary to the Government of the Federation, office of the SGF, Three Armas Zone, Abuja.**
3. **Mr. David Babachir Lawal c/o, office of the SGF, Three Armas Zone, Abuja.**
4. **The Chairman Economic and Financial Crimes Commission, EFCC Head office, Wuse, Abuja.**
5. **Mr. Ibrahim Magu, EFCC Head office, Wuse, Abuja.**
6. **Attorney General of the Federation, Fed Ministry of Justice, Abuja.**
7. **The Senate Federal Republic of Nigeria, National Assembly, Abuja.**

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- 4. The Chairman Economic and Financial Crimes Commission**
- 5. Mr. Ibrahim Magu**
- 6. Attorney General of the Federation**
- 7. The Senate Federal Republic of Nigeria**



Defendants

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

I, **Favour Arubi**, female, Christian, Nigerian citizen of full adult age and a litigation Secretary with Kingdom Human Rights Foundation Int'l, 9 Yola Street, Area 7 Gariki, Abuja, do hereby make oath and state as follows:

1. That I am a litigation Secretary of Kingdom Human Rights Foundation International, and I have the consent of my employer to depose to this affidavit, by virtue of which I am familiar with the facts of the case.
2. That I have been informed by Benedict Ezeagu Esq, the National Coordinator of Save Nigeria Group (SNG) and I verily believe him that SNG a non-governmental organization was registered to promote democracy and good governance, work for the entrenchment of social Justice and constitutionalism and to promote accountability, transparency and popular participation in governance and in the management of public fund, among other objectives. The certificate of incorporation and Constitution of SNG are hereby pleaded and shall be relied upon in this suit as exhibit SNG 1.

3. That I have also been informed by Okere Kingdom Esq, the Executive Director of Kingdom Human Rights Foundation International (KHRF) and Counsel in this matter and I verily believe him that KHRF was founded to promote constitutional democracy, human rights and accountability in Nigeria, among other objectives. The certificate of incorporation and Constitution of the Foundation of KHRF are hereby pleaded and shall be relied upon in this suit as **exhibit KHRF 1**.
4. That as non-governmental organizations, both Kingdom Human Rights Foundation and Save Nigeria Group achieve their aims and objectives contained in the constitution of Incorporated Trustees through independent monitoring, investigation and evaluation of the extent of compliance with accountability, transparency, due process and rule of law and tacking corrupt practices in public offices.
5. That this matter is a matter of public interest and public morality; and the Plaintiffs' interest in this matter is public interest, being corporate citizens established to lawfully pursue the aims and objectives stipulated in the constitution of the plaintiffs.
6. **That OKERE KINGDOM NNAMDI, Counsel in this matter, has further informed me and I verily believe him as follows:**
 - (a) That the Senate of the Federal Republic of Nigeria on Wednesday 14th December 2016 indicted the incumbent Secretary to the Government of the Federation Mr. David Babachir Lawal and his company Rholavison Engineering Limited, over corruption and corrupt practices in the award of contract at the internally displaced persons (IDP) camp. The report of the senate proceeding was reported in all major national newspapers, particularly the Sun newspaper of Decembers 15 2016. The said newspaper is herein pleaded as **exhibit SNG 2**.
 - (b) That the report of the Senate was in exercise of the powers conferred on the Senate of the Federal Republic of Nigeria in the Constitution and that the said report constitutes a compelling ground to warrant the 1st defendant to sack or suspend Mr. David Babachir Lawal as the Secretary to the Government of the Federation. **The senate of the Federal Republic of Nigeria (7th defendant in this suit) is hereby put on notice to produce the said report for introspection and perusal in this suit.**
 - (c) That the failure of the 1st Defendant to react to the Senate's indictment of Mr. David Babachir Lawal (3rd Defendant in this suit) by failing to suspend the 3rd Defendant as requested by the Senate negates the 1st Defendant's fight against corruption is which the major highpoint of the current administration.
 - (d) That the fight against corruption of the 1st Defendant's administration must in the interest of the public morality and overall public interest not be lopsided, vindictive, selective and only targeted against some perceived oppositions or supposed political enemies of the 1st Defendant.
 - (e) That the **fight against corruption of the 1st Defendant's administration must not be seen to be covering/assisting those serving under the administration of the 1st Defendant to perpetrate more and worse corruption.**

(f) That in the said Senate report as presented by Senator Shehu Sani, the Senate of the Federal Republic of Nigeria accused the 3rd Defendant of using his office to enrich himself through the Presidential Initiative for the North east by awarding/persuading inflated contracts to his company contrary to the public procurement Act.

(g) That in paragraphs 6 and 7 of the Sun newspaper pleaded as **exhibit SNG 2** the Senate of the Federal Republic of Nigeria indicted the 3rd Defendant and his company thus:

“the said contracts were awarded to companies belonging to top government officials’ cronies, family members and close associates. For example Rholavision Engineering limited incorporated in 1990 with RC NO 159855 at the Corporate Affairs Commission Abuja to carry out information and communications technology services, a company anchored by the SGF was awarded consultancy contract for the removal of the invasive plant species in Yobe State on march 8 2016” and

“although Lawal resigned the directorship of the said company in September 2016, it is on record that he is still the signatory to the account of the company. About 95 to 100 percent payment of all contracts awarded to PINE has been paid even as some contracts are yet to be fully executed”.

(h) That paragraphs 14, 15 and 16 of the Sun newspaper pleaded as **exhibit SNG 2** the Senate of the Federal Republic of Nigeria further indicted the 3rd Defendant and his company thus:

“Senator Dino Melaye alleged that Lawal did not resign as a Director of a company which handled some contracts in the North east despite his appointment as SGF”

“the SGF rushed to the Corporate Affairs Commission of Nigeria in September only when the Senate started investigating him. He awarded contracts to his company where he is a signatory. The SGF has exhibited anti-Buhari tendencies”

“this is gross abuse of his office. I call for his immediate resignation and after that he should be prosecuted . it is time to call a spade a spade. It is time for the Senate President to Act”.

(i) That the award of contracts in March 2016 to a company where the 3rd Defendant was a Director, by the Presidential Initiative on the North east amount to breach of **constitutional provisions and Code of Conduct for Public Officers, provided for in Paragraph 1, part 1 of the Fifth Schedule to the 1999 Constitution** which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities.

- (j) That Rholavision Engineering Ltd is owned by the Secretary to the Government of the Federation (SGF), Babachir Lawal and that Rholavision gave N200m kickback to the SGF from a contract the SGF awarded to it for the clearing of “invasive plant species” (GRASS) in Yobe state.
- (k) That JOSMON TECHNOLOGIES LTD got the contract from the Presidential Initiative on Northeast (PINE) to clear grass for N248, 939, 231 and that the Presidential Initiative on Northeast (PINE) which was under the direct supervision SGF, Lawal.
- (l) That the Senate report indicates that (PINE) and could not account for N2.5bn allocated to it for the alleviation of the suffering of IDPs in the northeast, the reason for the suffering in the camp, irrespective of the huge resources allocated to it.
- (m) That JOSMON TECHNOLOGIES LTD made cash deposits of N10 million into Lawal’s company’s (Rholavision Engineering Ltd) bank account 20 different times, from March 29, mounting to N200m.
- (n) That the 3rd Defendant claimed that he resigned from his company on August 15, 2015, and as a result was not a party to whatever business it contracted, yet he was still a signatory to the account, and that document from the Corporate Affairs Commission (CAC) showed that the incumbent SGF was a director of Rholavision until September 16, 2016 when he wrote to the Commission informing it of his intention to relinquish 1, 500, 000 ordinary shares.
- (o) That the documents in connection with the facts pleaded in **paragraphs j to n** above shall be produced as exhibits in the cause of this suit.
- (p) That the 3rd Defendant has breached the code of conduct for public officers provided for in **paragraphs 1 and 2 of part 1 of the fifth schedule to the 1999 constitution** of the Federal Republic of Nigeria (as amended) by failing to resign as a managing director occupying an executive position and remaining a signatory to the bank account of a private company until September 2016 when the senate started investigating him of corrupt allegation.
- (q) That the report of the Senate Ad Hoc committee should be investigated and acted upon by the 1st Defendant by suspending the 3rd Defendant as the Secretary to the Government of the Federation and by directing the security and anti corruption agencies to arrest and prosecute the 3rd Defendant without further delay.
- (r) That since after the Senate indictment of the 3rd Defendant on the 14th of December 2016 the 3rd Defendant is making efforts to contradict the said report using the Senate leader Senator Ali Ndume. A certified true copy of the Blueprint newspaper of December 20th 2016 captioned **“Senate divided over SGF”** is herein pleaded as **exhibits SNG 3**.
- (s) That Judicial interpretation in this matter is of essence to determine the extent of breach of the constitution, particularly the provisions provided for Code of Conduct for public officer.

7. That OKERE KINGDOM NNAMDI, Counsel in this matter, has further informed me and I verily believe him as follows:

- (a) The 1st Defendant more than six months ago appointed the 5th Defendant as the Acting Chairman of the Economic and Financial Crimes Commission (EFCC) (the 4th Defendant in this suit).
- (b) That the EFCC Establishment Act did not make any provision for an acting Chairman of the Commission.
- (c) **That** the provisions of the Federal Public Service Rules is applicable to the Economic and Financial Crimes Commission, and that under the Federal Civil Service Rules, a person appointed in acting capacity cannot act in such capacity for more than six months.
- (d) That the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to warrant and compel the 1st Defendant to appoint/nominate another person as the Chairman of the Economic and Financial Crimes Commission without any further delay.
- (e) **That** the Senate of the Federal Republic of Nigeria has rejected the 5th Defendant as the Executive/substantive Chairman of the 4th Defendant. A certified true copy of the Nation newspaper of 16th December 2016 at page 2, disclosing the report of the proceeding of the Senate of the Federal Republic of Nigeria on Thursday 15 December 2016 is herein pleaded as **exhibit KHRF 2**.
- (f) That office of the Chairman of the Economic and Financial Crimes Commission is vacant, on the ground of the Senate's rejection and failure to confirm Mr. Ibrahim Magu who has been acting in that capacity for more than six months.
- (g) That the Senate of the Federal Republic of Nigeria based its decision on a security report by the department of State Security Services (SSS). **The 7th Defendant is hereby put on notice to produce the said security report for introspection and perusal in this suit.**
- (h) That in **paragraphs 4 to 7 of exhibit KHRF 2** the Senate of the Federal Republic of Nigeria expressly rejected the nomination of the 5th Defendant as the Chairman of the 4th Defendant thus:

“This is an official statement from the Senate of the Federal Republic of Nigeria, “it is a statement on the confirmation of the nomination of the Chairman and members of the Economic and Financial Crimes Commission, EFCC. “the Senate of the Federal Republic of Nigeria wishes to inform the general public that based on security reports available to the Senate, the Senate cannot proceed and confirm the nomination of Ibrahim Magu Mustapha as the Executive Chairman of the EFCC”. “ACCORDINGLY THE SENATE HEREBY REJECTS THE SAID NOMINATION and has returned the said nomination to Mr. President for further action”.

- (i) That in **paragraph 8 of exhibit KHRF 2** the Senate of the Federal Republic of Nigeria expressly rejected the nomination of the 5th Defendant as the substantive Chairman of the 4th Defendant thus:

“...there is no confusion here. We have said it is based on security reports. Please all of us public officers go for security screening, everybody. And we are saying based on security reports, we cannot proceed and confirm and we are ejecting it and returning it back to Mr. President for further action, that is just the statement...”

- (j) **That** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive chairman.
- (k) **That** the appointment of Mr. Ibrahim Magu who has been acting in that capacity for more than six months is illegal, null and void, on the ground that there is provisions recognizing of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act
- (l) **That** a person illegally appointed as acting Chairman of the EFCC cannot act in that capacity for more than three or six months irrespective of the non-statutory recognition of the office of the Acting Chairman of the EFCC.
- (m) That all purportedly official functions performed by the 5th Defendant as Acting Chairman of the 4th Defendant since after the rejection of the 5th Defendant’s nomination by the Senate of the Federal Republic of Nigeria are nullity in the eyes of the law, and should be so declared by this Hon. Court.
- (n) That it was not the intention of the lawmaker to make an acting Chairman perform the function of the 4th Defendant for such a long period of time as is the case of the 5th Defendant.
- (o) That since after the rejection of the 5th Defendant as the Chairman of the 4th Defendant, there are moves to contradict the report of the Senate proceeding g of Thursday December 15 2016.
- (p) That further to paragraph (o) above, the Senate Leader, Senator Ali Ndume was reported to be making move to perpetrate the 5th Defendant in office despite Senate’s rejection. **A certified true copy of the punch newspaper of 20th December 2016** captioned **“Senate leader Ndume seeks to save Magu, visits Buhari”** is hereby pleaded as exhibit in this suit as **exhibit KHRF 3**.

- (q) That in the said exhibit KHRF 3 in paragraphs 12, 15, 16, 17, 18, 19,20 and 21 the Senate leader was reported to be making efforts to contradict the Senate decision rejecting the 5th Defendant as the substantive Chairman of the 4th Defendant thus:

“it was gathered that a private meeting between Buhari and Ndume on Monday was part of efforts to save the EFCC Boss” “Ndueme made the President to understand that there is a conspiracy against the man but the truth will always prevail and evil will never succeed over evil. Somebody must be there to do the job and it cannot be business as usual”

“Ndume told the President that the Senate had not rejected Magu. He also told the President that the content of the DSS report was not an indictment but a mere allegation, the reason why the President ordered the Attorney General to conduct an investigation” “ but Ndume in an interview with State House Correspondents after the meeting with the President on Monday said there was no truth in the report that the Senate has rejected the nomination of Magu as the EFCC Chairman”

“he said the Senate step down Magu’s screening until the security report concerning him were cleared” “Ndume stated, let me say categorically that the Senate did not reject Ibrahim Magu as the EFCC Chairman” “what happened was that we slated his confirmation for Thursday. Then we had an issue of a letter from the department of state security services that could not allow us to continue with the confirmation without further clarifications”.

- (r) That this statement by the Senator Ali Ndume is a gross misrepresentation of the Senate’s proceedings of 15th December 2016; and it was this misrepresentation that compelled the Senate spokesman, Senator Sabi Abdullahi to issues a counter press statement reaffirming Magu’s rejection. A certified true copy of the Sun newspaper of December 21 2016 at page 8 is hereby pleaded as **exhibit KHRF 4**.
- (s) That in the said **exhibit KHRF 4**, the Senate of the Federal Republic of Nigeria maintained that Magu remain rejected as EFCC substantive Chairman and that his nomination has been returned to the 1st Defendant.
- (t) That in the said **exhibit KHRF 4** the Senate of the Federal Republic of Nigeria stated categorically thus *“our votes and proceeding are the official records of what transpired in the chambers. I briefed you on Thursday to the effect that in view of security reports we are unable to confirm Magu. We then rejected and returned the nomination to Buhari for further action”.*
- (u) That all the exhibits in this deposition are to satisfy this Hon. Court that the controversy surrounding the 7th Defendant’s indictment of the 3rd Defendant, and rejection of nomination of the 5th Defendant as Chairman of the 4th Defendant are matters of public interest, relating to democracy, good governance and accountability, which are within the aims and objective of the plaintiffs as corporate citizens of the Federal Republic of Nigeria.

(v) That democracy is built on the principles of rule of law, constitutional supremacy, separation of power, checks and balances.

(w) That the Executive cannot usurp the functions of the legislature and vice versa.

(x) That is the constitutional/statutory duty of the President to nominate the Chairman of the 4th Defendant, and it is also the constitutional /statutory powers of the 7th Defendant to confirm such appointment.

(y) That if the 7th Defendant rejects the confirmation of such nomination made by the 1st Defendant, the principles of rule of law, separation of powers and constitutional supremacy demands that the 1st Defendant must nominate another person and send same for confirmation since the non of the Arms of government can usurp the constitutional powers of any other arm of government.

8. That it will be in the best interest of justice and of public interest if this application is granted.

9. I make this Oath conscientiously in good faith, believing same to be true in accordance with the Oath Act.

.....
DEPONENT

SWORN TO AT THE FEDERAL HIGH COURT REGISTRY, ABUJA.

THISDAY OF2016.

BEFORE ME

COMMISSIONER FOR OTHS

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA**

SUIT NO:

BETWEEN

- 1. Incorporated Trustees of Save Nigeria Group**
- 2. Incorporated Trustees of Kingdom Human Rights Foundation International**

Plaintiffs.

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- 3. Mr. David Babachir Lawal**
- 4. The Chairman Economic and Financial Crimes Commission**
- 5. Mr. Ibrahim Magu**
- 6. Attorney General of the Federation**
- 7. The Senate Federal Republic of Nigeria**



Defendants

WRITTEN ADDRESS IN SUPPORT OF ORIGINATING SUMMONS.

1.0 INTRODUCTION: THIS IS A MATTER INSTITUTED THROUGH ORIGINATING SUMMONS, PURSUANT TO SECTION 88 (1) (B) AND (2) (B), SECTION 89 (1) AND (2) SECTION 171 (1) AND (2) (A) AND PARAGRAPHS 1 AND 2 OF PART 1 OF THE FIFTH SCHEDULE OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED). SECTIONS 3 AND 4 OF THE EFCC (ESTABLISHMENT) ACT, SECTIONS 1,2,3AND 4 OF THE PROCUREMENT ACT, RULES 010101, 020603 AND 020604 OF THE PUBLIC SERVICE RULES; AND ORDER 3, RULES 6 AND 9 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009; AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT.

1.01. The suit is seeking constitutional interpretation on the sections of the law sought for interpretation, as stated above. The suit is also seeking declaration orders, upon determination of the sections of the law sought for interpretation. The main gist in the plaintiff's action is that the plaintiffs as corporate citizens of the Federal Republic of Nigeria, has the statutory mandate to pursue the aims and objectives of promoting and defending constitutional democracy, as provided in the constitution of the plaintiffs.

2.0 BRIEF SUMMARY OF FACTS:

2.01 This can be distilled from the origination processes filed, particularly in the affidavit.

3.01 ISSUES FOR DETERMINATION:

- 1. WHETHER OR NOT** the Senate of the Federal Republic of Nigeria has the constitutional powers to constitute or conduct investigate panel/committee to investigate the conduct and activities of any Federal Government Official or Agency in other to expose corruption.
- 2. WHETHER OR NOT WHETHER OR** the award of contracts in March 2016 to a company where the 3rd Defendant was a Director and signatory to the companies bank account, by the Presidential Initiative on the North east; and the 3rd Defendant's failure to resign his position as an Executive Director involved in the day to day running of a private company amount to breach of constitutional provisions and Code of Conduct for public officers, **provided for in Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria (As amended).**
- 3. WHETHER OR NOT** the indictment of the Secretary to the Government of the Federation Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground to **WARRANT AND COMPEL** the President of the Federal Republic of Nigeria to sack or suspend **Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF)** or compel him to resign as the SGF, pending when he is cleared of every allegation of corruption; **on the ground that the President claims that his administration is fighting corruption.**
- 4. WHETHER OR NOT** the provisions of the Federal Civil Service Rules is applicable to the Economic and Financial Crimes Commission; and whether under the Federal Civil Service Rules, a person appointed in acting capacity can act in such capacity for more than six months, in view of **Rules 010101, 020603 and 020604 of the Federal Civil Service Rules 2008.**
- 5. WHETHER OR NOT** the office of the Chairman of the Economic and Financial Crimes Commission (the 3rd Defendant) is vacant; on the ground of the Senate's rejection of the nomination and failure to confirm Mr. Ibrahim Magu, who has been acting in that capacity for more than six months.
- 6. WHETHER OR NOT** in the exercise of the powers conferred it to confirm the appointments of certain government Appointees, the Senate of the Federal Republic of Nigeria has the constitutional powers to reject the nomination of Mr. Ibrahim Magu as the Chairman of the Economic and Financial Crimes Commission on the grounds of security reports.

4.0 ARGUMENT OF ISSUES:

4.01 ISSUES ONE. It is respectively submitted that the Constitution of the Federal Republic of Nigeria 1999 (as amended) has placed enormous responsibilities and powers on the Senate of the Federal Republic of Nigeria to constitute Committees to investigate the activities of every public office for the purpose of exposing corruption. **Section 62 of the 1999 Constitution** provides thus ***"(1) the Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee and may by resolution, regulation or otherwise as it thinks fit delegate any functions exercisable by it to any such committee."***

4.02 Section 88 of the Constitution provides thus: ***"(1) subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published I its journal or in the official Gazette of the Government of the Federation to direct or cause to be directed, an investigation into – (a) any matter or thing with respect to which it has power to make laws and (b) the conduct of affairs of any person, authority, ministry or government department charged or intended to be charged with the duty of or responsibility for (i) executing or administering laws enacted by National Assembly and (ii) disbursing or administering laws enacted by the National Assembly."***

" (2) the powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to – (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws and (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and the disbursement or administration of funds appropriated by it." (underlining for emphasis)

4.03 Section 89 of the Constitution further provides thus: ***"(1) for the purpose of any investigation under Section 88 of this Constitution and subject to the provisions thereof, the Senate of the House of Representatives or any Committee appointed in accordance with section 62 of this Constitution shall have the power to - (a) procure all such evidence written or oral, direct or circumstantial, as it may think necessary or desirable and examine all persons as witness whose evidence may be material or relevant to the subject matter (b) require evidence to be given on oath (c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all juts exceptions and (d) issue a warrant to compel the attendance of any person who after having been summoned to attend, fails refuses or neglects to do so and does not execute such failure, refusal or neglect to the satisfaction of the House or the Committee in question and order him to pay all costs which may have been occasioned in compelling his***

attendance or by reason of his failure, refusal or neglect to obey the summons and also to impose such fine as may be prescribed for any such failure, refusal or neglect, and any fine imposed shall be recoverable in the same manner as a fine imposed by a court of law”.

4.04 MY Lord, in exercise of these constitutional powers conferred on the Senate of the Federal Republic of Nigeria, the Senate constituted a committee under the Chairmanship of Senator Shehu Sani which investigate the involvement of the Secretary to the Government of the Federation, Mr. David Babachir Lawal and his company on some contracts awarded by the Presidential Committee on the North east, indicating that over 95 to 100 percent of the contract sum has been paid, yet the contracts are yet to be fully executed. My Lord, it is hereby submitted that the failure of the 1st Defendant to react to the Senate’s indictment of Mr. David Babachir Lawal (3rd Defendant in this suit) by failing to suspend the 3rd Defendant as resolved by the Senate negates the 1st Defendant’s fight against corruption is which the major highpoint of the current administration.

4.05 My Lord, this country belongs to us all and every citizen, either natural or corporate citizens have the responsibility to help the government to get it right. This is also in line with the ongoing campaign by the Federal government that **“change begins with you”**, which a lot of taxpayers money has been invested into. This suit is a clarion response to the change begins with you campaign. In addition, it is in exercise of the plaintiffs’ power to lawfully pursue the aims and objectives provided for in the constitution of the plaintiffs that has necessitated this public interest action. My Lord, the fight against corruption of the 1st Defendant’s administration must in the interest of the public morality and overall public interest not be lopsided, vindictive, selective and only targeted against some perceived oppositions or supposed political enemies of the 1st Defendant. The fight against corruption of the 1st Defendant’s administration must not be seen to be covering/assisting those serving under the administration of the 1st Defendant to perpetrate further corruption.

4.06 My Lord, in the said Senate report as personated by Senator Shehu Sani, the Senate of the Federal Republic of **Nigeria accused the 3rd Defendant of using his office to enrich himself through the Presidential Initiative for the North east by awarding and influencing the award of inflated contracts contrary to the public procurement Act.** This was reported paragraphs 6 and 7 of the Sun newspaper pleaded as exhibit SNG 2, where the Senate of the Federal Republic of Nigeria indicted the 3rd Defendant and his company thus: ***“the said contracts were awarded to companies belonging to top government officials’ cronies, family members and close associates. For example Rholavision Engineering limited incorporated in 1990 with RC NO 159855 at the Corporate Affairs Commission Abuja to carry out information and communications technology services, a company anchored by the SGF was awarded consultancy contract for the removal of the invasive plant species in Yobe State on march 8 2016” and “although Lawal resigned the directorship of the said company in September 2016, it is on record that he is still the signatory to the account of the company. About 95 to 100 percent payment of all contracts awarded to PINE has been paid even as some contracts are yet to be fully executed”.***

4.07 Furthermore, paragraphs 14, 15 and 16 of the Sun newspaper pleaded as exhibit SNG 2, the Senate of the Federal Republic of Nigeria further indicted the 3rd Defendant and his company thus: ***“Senator Dino Melaye alleged that Lawal did not resign as a Director of a company which handled some contracts in the North east despite his appointment as SGF” “the SGF rushed to the Corporate Affairs Commission of Nigeria in September only when the Senate started investigating him. He awarded contracts to his company where he is a signatory. The SGF has exhibited anti-Buhari tendencies” “this is gross abuse of his office. I call for his immediate resignation and after that he should be prosecuted . it is time to call a spade a spade. It is time for the Senate President to Act”***. My Lord, it is my humble submission that the establishment of corruption by the Senate of the Federal Republic of Nigeria is enough ground to warrant the 1st defendant to suspend or sack the 3rd Defendant.

4.08 ISSUE TWO: it is my humble submission that the 3rd Defendant has reached the code of conduct which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities and from managing and running a private business or profession, while at the same time holding a public office. It is my submission that the award of contracts in March 2016 to a company where the 3rd Defendant was a Director, by the Presidential Initiative on the North east amount to breach of constitutional provisions and Code of Conduct for public officers, provided for in **Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution** which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities. The 3rd Defendant has also breached the code of conduct for public officers provided for in **paragraphs 1 and 2 of part 1 of the fifth schedule to the 1999 constitution** of the Federal Republic of Nigeria (as amended) by failing to resign as a Managing Director, occupying an executive position and remaining a signatory to the bank account of a private company until September 2016, when the senate started investigating him of corrupt allegation.

4.09 The Constitution provides ***“a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities” “without prejudice to the generality of the foregoing paragraph, a public officer shall not (a) receive or be paid the emoluments of any public office at the same time as he receives or is paid the emolument of any other public office or (b) except where he is not employed on full time basis, engage or participate in the management or running of any private business, profession or trade - but nothing in this subparagraph shall prevent a public officer from engaging in farming”***.

4.10 My Lord, the words of the above constitutional provision is clear, and the investigation of the Senate Committee indicates that the 3rd defendant was still managing his company in an executive position and was a signatory to the company’s bank account until September 2016 when the Senate started investigating him. This is a clear breach of the constitutional provisions and I urge my Lord to apply simple literal interpretation to **paragraphs 1 and 2 of part 1 of the fifth schedule to the 1999 constitution** of the Federal Republic of Nigeria (as amended). It is also submitted that the report of the Senate Ad Hoc committee adopted by the entire Senate urging the 1st Defendant to suspend the 3rd Defendant as the Secretary to the Government of the Federation must be acted upon. In addition,

the apparent failure of the 1st Defendant to look into the report of the Senate necessitates Judicial interpretation in this matter, to determine the extent of breach of the Constitution, particularly the provisions provided for Code of Conduct for public officer.

4.11 My Lord, Emerging Facts on Buhari's SGF, Babachir Lawal Fraud discloses that (a) Rholavision Engineering Ltd is owned by the Secretary to the Government of the Federation (SGF), Babachir Lawal. (b) That Rholavision paid N200m kickback to the 3rd Defendant from a contract the SGF awarded to it for the clearing of "invasive plant species" (GRASS) in Yobe state. (c) That JOSMON TECHNOLOGIES LTD got the contract from the Presidential Initiative on Northeast (PINE) to clear grass for N248, 939, 231. (d) that the Presidential Initiative on Northeast (PINE) which was under the SGF, Lawal, could not account for N2.5bn allocated to it for the alleviation of the suffering of IDPs in the northeast, the reason for the suffering in the camp, irrespective of the huge resources allocated to it, as confirmed by the Senate report. (e) That JOSMON TECHNOLOGIES LTD made cash deposits of N10 million into Lawal's company's (Rholavision Engineering Ltd) account 20 times, from March 29, mounting to N200m.(f) That Lawal awarded the contract to Josmon Technologies on March (g) That the company made the cash deposits until September when he resigned from Rholavision. (h) The SGF claimed that he resigned from his company on August 15, 2015, and as a result was not a party to whatever business it contracted, yet he was still a signatory to the account. (i) That document from the Corporate Affairs Commission (CAC) showed that the SGF was a director of Rholavision until September 16, 2016 when he wrote to the Commission informing it of his intention to relinquish 1, 500, 000 ordinary shares.

4.12 The big question to ask to a government purporting to be fighting corruption is '*when will Daura's DSS and Buhari's EFCC invade SGF Babachir Lawal's residence in the NIGHT to arrest him and put him in the back of HILLUX VAN like they did to those Judges*'. It is my humble submission that corruption cannot not be fought in such a selective manner that suggests that some people are supported to perpetrate corruption, and the supposed opposition and enemies of the government are persecuted/prosecuted.

4.13 My Lord, democracy is built on rule of law, constitutionalism and strong institutions. The Senate of the Federal Republic of Nigeria is an institution established by the Constitution, and it will amount to a constitutional aberration for the 1st Defendant to ignore the report of the Senate indicting the 3rd Defendant and also the call for his immediate suspension. Doing so will amount to lawlessness. The sanctity of the various arms of government must be respected within the ambit of constitutional provisions, under a democratic system of government. This is the crux of the matter in this suit. (underlining for emphasis).

4.14 **ISSUE THREE:** it is hereby submitted that the indictment of the Secretary to the Government of the Federation, Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground to warrant and compel the President of the Federal Republic of Nigeria to sack or suspend **Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF)** or compel him to resign as the SGF, pending when he is cleared of every allegation of corruption; **on the ground that the President claims that his administration is fighting corruption.** My Lord, the issue of corruption affects all of us as Nigerians and it is the

responsibility of every citizen, corporate or natural to assist the government in fighting this corruption, and that is what this suit intends to achieve.

4.15 Section 88 of the Constitution is clear to the effect that the Senate of the Federal Republic of Nigeria has the powers to constitute investigative panel into the activities of every public office holder, with regard to the conduct of the affairs of any person, authority, ministry or department charged or intended to be charged with the duty or responsibility for – executing or administering, disbursing or administering moneys appropriated or to be appropriated by the National Assembly. My Lord, the Office of the Secretary to the Government of the Federation (SGF) is a public office, disbursing public fund and executing laws, decisions and government policies under the legislative competence of the National Assembly. The Office of the SGF is created and recognized in **section 171 (1) of the 1999 Constitution** (as amended) and the power to make such appointment is vested on the President, and not subject to any Legislative approval. **Section 171 (6)** of the Constitution is to the effect that any appointment made pursuant to paragraphs (a) and (e) of subsection (2) of section 171 is at the pleasure of the President. This justified the relief sought in this suit seeking to compel the 1st Defendant to perform his constitutional duty, based on the Senate indictment, following the finding of the committee constituted in accordance with constitutional provisions. The 1st Defendant has the constitutional responsibility to critically look into the Senate report and to act accordingly without delay.

4.16 ISSUES FOUR, FIVE AND SIX: May I seek the leave of the Hon. Court to address issues four, five and six together. My Lord, the office of the Chairman of the Economic and Financial Crimes Commission (the 3rd Defendant) is vacant; on the ground of the Senate's rejection of the nomination and failure to confirm Mr. Ibrahim Magu, who has been acting in that capacity for more than six months. It is also my humble submission that in the exercise of the powers conferred it to confirm the appointments of certain government Appointees as made by the President, the Senate of the Federal Republic of Nigeria has the constitutional powers to either reject the nomination such nomination, or confirm them; and in this case, the nomination of Mr. Ibrahim Magu as the Chairman of the Economic and Financial Crimes Commission was rejected on the grounds of security reports.

4.17 It is my humble submission that the provisions of the Public Service Rules is applicable to the Economic and Financial Crimes Commission. The Commission is a creation of the law enacted pursuant to the constitution of the Federal Republic of Nigeria. **Rule 010101 of the Public Service Rule 2008 provides** *'it shall be the duty of every officer to acquaint himself/herself with the public service rules, other regulation and extant circulars. This public service rules apply to all officers except where they conflict with the specific terms approved by the federal government and written into the contract of employment or letters of appointment, in so far as the holders of the offices of the President, Vice President, Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, Chief Judge and Judges of the Federal High court and High Court of FTC, Grand khadi of the Sharia Court of Appeal of the Federal Capital Territory, President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Chairman and members of the following statutory bodies*

namely, the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the Federal Character Commission, the Code of conduct Tribunal, Revenue Mobilization, Allocation and Fiscal Commission, National Population Commission, the Police Service Commission, the Auditor General of the Federation; and any other similar organs that derive their appointment from the constitution of the Federal Republic of Nigeria are concerned, these rules apply only to the extent that they are not inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria in so far as their conditions of service and any other law applicable to these officers are concerned”.

4.18 **Rules 020603 and 020604 of the Public Service Rule 2008 provides** “Acting appointment are not intended as a means of testing the suitability of officers for promotion, they will normally be made only in order to fill posts that are temporary vacant and their duration should be limited accordingly”. “...appointment will be gazette by the Federal civil service commission but will on no account be backdated to a period in excess of six months of the date of receipt of the recommendation by the commission”.

4.19 My Lord, it is my humble submission that the rule of the public service is applicable to the Economic and financial crimes Commission and the effect is that no acting appointment can be extended or backdated for more than six months. This is also in consonance with the Interpretation Act as regard to the definition and tenure of office of a person appointed in acting capacity in any government establishment.

4.20 Section 2 (1) of the Economic and Financial Crimes Commission (Establishment) Act, in this written address referred to as EFCC ACT provides “the Commission shall consist of the following members –(a) a Chairman who shall be (i) the Chief executive and accounting officer of the Commission,(ii) a serving or retired member of any government security or law enforcement agency. Subsection (2) the members of the Commission other than the Chairman and the Director General shall be part-time basis. Subsection (3) the Chairman and members of the commission other than ex-officio members shall be appointed by the President subject to confirmation of the Senate”.

4.21 Section 3 (1) “the Chairman and members of the Commission other than ex-officio members shall hold office for a period of **FOUR YEARS** and may be re-appointed for a further term of **FOUR YEARS** and no more”. My Lord, there is no provision in the EFCC Act recognizing the position of an Acting Chairman for the Commission. Therefore, since there are no such provisions in the Act, it is the appointments/nomination to the Senate for confirmation, by the President that gives legitimacy by operation of law to anybody so nominated to act in the capacity as Acting Chairman of EFCC, pending his confirmation by the Senate. **In my jurisprudential submission, once the Senate rejects the person’s appointment/confirmation, the person so nominated cannot no longer legitimately act in that capacity, thereby by operation of law rendering that office vacant.** As soon as this becomes the situation, as in the instant case, the Acting Chairman can no longer act or perform the functions of the Chairman of EFCC, legally and lawfully.

This is because in the eyes of the law, the that office is vacant and any continuous stay in office after his nomination has been rejected by the Senate is null and void, illegal, unconstitutional and of no effects whatsoever. (emphasis added).

4.22 In the exercise of the powers conferred it to confirm the appointments of certain government Appointees, the Senate of the Federal Republic of Nigeria has the constitutional powers to reject the nomination of Mr. Ibrahim Magu as the Chairman of the Economic and Financial Crimes Commission on the grounds of security reports. There is no law compelling the Senate to accept whatever or approve very nomination made by the President, provided such rejection was made in good faith and in accordance with the law. My Lord, in the instant case, the Senate acted within the ambit of the law by refusing Magu's confirmation based on the security report and it is incumbent of the President, the 1st Defendant in this suit to immediately and without any further delay nominate another person and send same for confirmation by the Senate, as doing otherwise would be detrimental to the doctrine of rule of law and separation of powers. This is my humble submission.

4.23 Lord Denning in the famous **MacFoy V UAC 1961, AC**. Propounded this doctrine thus "if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado. Though it is sometimes more convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stand. It will collapse..". In the case of **AGIP v AGIP 2010, vol 181, LRCN, PG 156, PARAG Z-EE**, the Supreme Court of Nigeria held "a nullity is a void act with no legal effect. So also a proceeding which has been declared a nullity is void and without any legal effect". I submit that all actions performed by illegal any occupant as in the instant case are of no effect. Also in the case of **Marwa V Nyako, 2012, 204 LRCN at page 47, parag F-K Onnoghen JSC** adopted the wisdom of Lord Denning while emphasizing on the need to have all illegal acts set aside by the Court thus "...secondly the Court is in many cases and circumstances required to declare an act void...otherwise it may remain valid and binding ... in such a situation, if you put something on the illegal act, the period prior to the nullification, it will surely stay put contrary to the dictum of nullity as propounded by Lord Denning".

4.24 CONCLUSION: I pray my Lord to do the needful by applying simple literal rule of interpretation of statute in construing sections of the law sought for interpretation in the originating summons. My Lord, over the years, the Supreme Court of Nigeria has devised guideline to the interpretation of not only statute, but most importantly our constitutional provisions". **Obaseki JSC** in the case of **AG Bendel V AG Federation 1981, 10 SC, 1. 1981, 1 FNLR, 179** held among others that "effect should be given to every word used in the constitution" that "constitutional powers should not be used to attain unconstitutional results" that "the language of the constitution where clear and unambiguous must be given its plain and evident meaning' and that "constitutional provisions should not be construed in such a way as to defeat its evident purpose". see also **Global Excellence Communication V Donald Duke, 2007, 16 NWLR PT 1059, 22,**

4.25 My Lord, in the case of **Ishola V Ajiboye 1994, 1-8 SCNJ, Part 1, 1 at 35, Ogundare JSC** held on the interpretation of the constitution among others “**constitutional provisions dealing with same subject matters are to be construed together**” that “**seemingly conflicting part are to be harmonized if possible so that effect can be given to all the parts of the constitution**”. My Lord, the constitution of the Federal Republic of Nigeria is supreme and its provisions must be strictly complied with. The Constitution is the composite document that holds the Nation together and has binding force its provisions must be obeyed and enforced by all authorities.

4.26 May I humbly remind this Honourable Court of what is expected of the COURT whenever the question of constitutional interpretation is in issue, as **Belgore JSC AT PAGES 736-737 PARAGS H-A in the case of AG FEDERATION V AG ABIA STATE AND ORS , 2001, 11 NWLR, PT 725** stated “it must be remembered that the fountain of all our Laws is the Constitution, it is also the composite document setting out how the Country is to be held together. It is not a document to be read with levity or disdain, every section must be given its meaning, ie, every section has meaning and not devoid of adequate interpretation. It is the very foundation of the nation’s existence, any slightest disruption of the Constitution be it a dispute apparent or lurking must be addressed in the Court when the Court’s intervention is sought”. My Lord, based on the strength of my submission and the authorities cited, I pray my Lord to grant all reliefs sought in the Originating summons. This is my humble submission.

5.0 LIST OF AUTHORITIES

1. **Ishola V Ajiboye 1994, 1-8 SCNJ, Part 1, 1 at 35,**
2. **Marwa V Nyako, 2012, 204 LRCN at page 47, parag F-K**
3. **AGIP v AGIP 2010, vol 181, LRCN, PG 156, PARAG Z-EE**
4. **MacFoy V UAC 1961, AC**
5. **AG FEDERATION V AG ABIA STATE AND ORS , 2001, 11 NWLR, PT 725.**
6. **Global Excellence Communication V Donald Duke 2007, 16 NWLR PT 1059, 22,**
7. **AG Bendel V AG Federation 1982, 3 NCLR 1,**
8. **The Constitution of the Federal Republic of Nigeria 1999 (as amended)**
9. **Federal High Court Rules.**

DATED THISDAY OF.....2016.

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FOR SERVICE ON:

8. **President of the Federal Republic of Nigeria, Aso Villa Abuja. c/o AGF**
9. **The Secretary to the Government of the Federation, office of the SGF, Three Armas Zone, Abuja.**
10. **Mr. David Babachir Lawal c/o, office of the SGF, Three Armas Zone, Abuja.**
11. **The Chairman Economic and Financial Crimes Commission, EFCC Head office, Wuse, Abuja.**
12. **Mr. Ibrahim Magu, EFCC Head office, Wuse, Abuja.**
13. **Attorney General of the Federation, Fed Ministry of Justice, Abuja.**
14. **The Senate Federal Republic of Nigeria, National Assembly, Abuja.**



RC. 73518

KINGDOM HUMAN RIGHTS FOUNDATION INT'L

...Advocating for the downtrodden masses.

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**The Deputy Chief Registrar,
Federal High Court,
Abuja.**

Dear Sir,

UNDERTAKING SERVICE

RE SUIT NO.....

I apply to undertake service of the originating processes in this suit.

I undertake to file affidavit of service in compliance with the Rules of the Court.

Kindly grant my application.

Okere Kingdom Esq.

Counsel.

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA**

SUIT NO:

BETWEEN

- 1. Incorporated Trustees of Save Nigeria Group**
- 2. Incorporated Trustees of Kingdom Human Rights Foundation International**

Plaintiffs.

AND

- 1. President Federal Republic of Nigeria**
- 2. The Secretary to the Government of the Federation**
- 3. Mr. David Babachir Lawal**
- 4. The Chairman Economic and Financial Crimes Commission**
- 5. Mr. Ibrahim Magu**
- 6. Attorney General of the Federation**
- 7. The Senate Federal Republic of Nigeria**

Defendants

Defendants/Respondents

Defendants

**MOTION ON NOTICE BROUGHT PURSUANT TO ORDER 26 RULES 1 AND 2 AND ORDER 28
RULE 1 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009 AND UNDER THE
INHERENT JURISDICTION OF THE HONOURABLE COURT.**

TAKE NOTICE that this Honourable Court will be moved on the day of.....2017 at the hour of 9 O'clock in the forenoon or so soon thereafter as Counsel may be heard seeking the following reliefs:

- (a) **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the 1st Defendant in this suit who has the statutory responsibility of nominating the Chairman of the Economic and Financial Crimes Commission (**the 4th Defendant in this suit**) from re-nominating Mr. Ibrahim Magu (**5th Defendant in this suit**) who nomination was rejected by the Senate of the Federal Republic of Nigeria (**7th Defendant in this suit**) pending the final determination of this suit.

(b) **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the Senate of the Federal Republic of Nigeria (7th Defendant in this suit) from receiving, accepting, considering or otherwise acting on the re-nomination of Mr. Ibrahim Magu (5th defendant) whose nomination it rejected as the Chairman of the Economic and Financial Crimes Commission (4th Defendant) pending the final determination of this suit.

(c) **SUCH FURTHER OTHER ORDER** as the Honourable Court may deem fit to make in the circumstances

DATED THIS DAY OF 2016

**Okere Kingdom Nnamdi Esq
Marcus Eshinamie Saturday**

Counsel appearing for Plaintiffs.

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FOR SERVICE ON:

1. **President of the Federal Republic of Nigeria, Aso Villa Abuja. c/o AGF**
2. **The Secretary to the Government of the Federation, office of the SGF, Three Armas Zone, Abuja.**
3. **Mr. David Babachir Lawal c/o, office of the SGF, Three Armas Zone, Abuja.**
4. **The Chairman Economic and Financial Crimes Commission, EFCC Head office, Wuse, Abuja.**
5. **Mr. Ibrahim Magu, EFCC Head office, Wuse, Abuja.**
6. **Attorney General of the Federation, Fed Ministry of Justice, Abuja.**

The Senate Federal Republic of Nigeria, National Assembly, Abuja.

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA**

SUIT NO:

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- 3. Mr. David Babachir Lawal**
- 4. The Chairman Economic and Financial Crimes Commission**
- 5. Mr. Ibrahim Magu**
- 6. Attorney General of the Federation**
- 7. The Senate Federal Republic of Nigeria**

Defendants

Defendants/Respondents

Defendants

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Favour Arubi, female, Christian, Nigerian citizen of full adult age and a litigation Secretary with Kingdom Human Rights Foundation Int'l, 9 Yola Street, Area 7 Gariki, Abuja, do hereby make oath and state as follows:

1. That I am a staff of Save Nigeria Group and litigation Secretary Kingdom Human Rights Foundation, and I have the consent of my employers to depose to this affidavit, by virtue of which I am familiar with the facts of the case.
2. That I have been informed by Benedict Ezeagu Esq, the National Coordinator of Save Nigeria Group (SNG) and I verily believe him that SNG a non-governmental organization was registered to promote democracy and good governance, work for the entrenchment of social Justice and constitutionalism and to promote accountability, transparency and popular participation in governance and in the management of public fund, among other objectives. The certificate of incorporation and Constitution of SNG are hereby pleaded and shall be relied upon in this suit as exhibit SNG 1.
3. The I have also been informed by Okere Kingdom Esq, the Executive Director of Kingdom Human Rights Foundation International (KHRF) and Counsel in this matter and I verily believe him that KHRF was founded to promote constitutional democracy, human rights and accountability in Nigeria, among other objectives. The certificate of incorporation and Constitution of the Foundation of KHRF are hereby pleaded and shall be relied upon in this suit as exhibit KHRF 1.

4. That as non-governmental organizations, both Kingdom Human Rights Foundation and Save Nigeria Group achieve their aims and objectives contained in the constitution of Incorporated Trustees through independent monitoring, investigation and evaluation of the extent of compliance with accountability, transparency, due process and rule of law and tacking corrupt practices in public offices.
5. That this matter is a matter of public interest and public morality; and the Plaintiffs' interest in this matter is public interest, being corporate citizens established to lawfully pursue the aims and objectives stipulated in the constitution of the plaintiffs.
6. **That OKERE KINGDOM NNAMDI, Counsel in this matter, has further informed me and I verily believe him as follows:**
 - (a) That having filed originating summons in this suit, one of the subject matter of the action in this suit may be destroyed should the 1st Defendant re-nominate the 5th Defendant as the Chairman of the 4th Defendant.
 - (b) That it takes application for injunction to preserve the subject matter of the suit such circumstances.
 - (c) The 1st Defendant more than six months ago appointed the 5th Defendant as the Acting Chairman of the Economic and Financial Crimes Commission (EFCC) (the 4th Defendant in this suit).
 - (d) That the EFCC Establishment Act did not make any provision for an acting Chairman of the Commission.
 - (e) That the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to warrant and compel the 1st Defendant to appoint/nominate another person, and not to reappoint the 5th Defendant as the Chairman of the Economic and Financial Crimes Commission without any further delay.
 - (f) **That** the Senate of the Federal Republic of Nigeria has rejected the 5th Defendant as the Executive/substantive Chairman of the 4th Defendant. A certified true copy of the Nation newspaper of 16th December 2016 at page 2, disclosing the report of the proceeding of the Senate of the Federal Republic of Nigeria on Thursday 15 December 2016 is herein pleaded as **exhibit KHRF 2**.
 - (g) That office of the Chairman of the Economic and Financial Crimes Commission is vacant, on the ground of the Senate's rejection and failure to confirm Mr. Ibrahim Magu who has been acting in that capacity for more than six months.
 - (h) That the Senate of the Federal Republic of Nigeria based its decision on a security report by the department of State Security Services (SSS). **The 7th Defendant is hereby put on notice to produce the said report for introspection and perusal in this suit.**
 - (i) That in **paragraphs 4 to 7 of exhibit KHRF 2** the Senate of the Federal Republic of Nigeria expressly rejected the nomination of the 5th Defendant as the Chairman of the 4th Defendant thus:

“This is an official statement from the Senate of the Federal Republic of Nigeria, “ it is a statement on the confirmation of the nomination of the Chairman and members of the Economic and Financial Crimes Commission, EFCC. “ the Senate of the Federal Republic of Nigeria wishes to inform the general public that based on security reports available to the Senate, the Senate cannot proceed and confirm the nomination of Ibrahim Magu Mustapha as the Executive Chairman of the EFCC”. “ ACCORDINGLY THE SENATE HEREBY REJECTS THE SAID NOMINATION and has returned the said nomination to Mr. President for further action”.

- (j) That in **paragraph 8 of exhibit KHRF 2** the Senate of the Federal Republic of Nigeria expressly rejected the nomination of the 5th Defendant as the substantive Chairman of the 4th Defendant thus:
“...there is no confusion here. We have said it is based on security reports. Please all of us public officers go for security screening, everybody. And we are saying based on security reports, we cannot proceed and confirm and we are ejecting it and returning it back to Mr. President for further action, that is just the statement...”.
- (k) **That** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive chairman.
- (l) **That** the appointment of Mr. Ibrahim Magu who has been acting in that capacity for more than six months is illegal, null and void, on the ground that there is provisions recognizing of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act.
- (m) That since after the rejection of the 5th Defendant as the Chairman of the 4th defendant, there are moves to contradict the report of the Senate proceeding g of Thursday December 15 2016, and to persuade the 1st Defendant to renominate the 5th Defendant as Chairman of the 4th Defendant.
- (n) That further to paragraph (m) above, the Senate Leader, Senator Ali Ndume was reported to be making move to perpetrate the 5th in office despite Senate’s rejection. I certified true copy of the punch newspaper of 20th December 2016 captioned “Senate leader Ndume seeks to save Magu, visits Buhari” is hereby pleaded as exhibit in this suit as **exhibit KHRF 3**.
- (o) That in the said exhibit KHRF 3 in paragraphs 12, 15, 16, 17, 18, 19,20 and 21 the Senate leader was reported to be making efforts to contradict the Senate decision rejecting the 5th dedans as the substantive Chairman of the 4th Defendant thus:

“it was gathered that a private meeting between Buhari and Ndume on Monday was part of efforts to save the EFCC Boss” “Ndueme made the President to understand that there is a

conspiracy against the man but the truth will always prevail and evil will never succeed over evil. Somebody must be there to do the job and it cannot be business as usual"

"Ndume told the President that the Senate had not rejected Magu. He also told the President that the content of the DSS report was not an indictment but a mere allegation, the reason why the President ordered the Attorney General to conduct an investigation" "but Ndume in an interview with state house correspondents after the meeting with the President on Monday said there was no truth in the report that the Senate has rejected the nomination of Magu as the EFCC Chairman"

"he said the Senate step down Magu's screening until the security report concerning him were cleared" "Ndume stated, let me say categorically that the Senate did not reject Ibrahim Magu as the EFCC Chairman" "what happened was that we slated his confirmation for Thursday. Then we had an issue of a letter from the department of state security services that could not allow us to continue with the confirmation without further clarifications".

- (p)** That this statement by the Senator Ali Ndume is a gross misrepresentation of the Senate's proceedings of 15th December 2016; and it was this misrepresentation that compelled the Senate spokesman, Senator Sabi Abdullahi to issues a counter press statement reaffirming Magu's rejection. A certified true copy of the Sun newspaper of December 21 2016 at page 8 is hereby pleaded as **exhibit KHRF 4.**
- (q)** That in the said exhibit KHRF 4, the Senate of the Federal Republic of Nigeria maintained that Magu remain rejected as EFCC substantive Chairman and that his nomination has been returned to the 1st Defendant.
- (r)** That in the said exhibit KHRF 4 the Senate of the Federal Republic of Nigeria stated categorically thus " our votes and proceeding are the official records of what transpired in the chambers. I briefed you on Thursday to the effect that in view of security reports we are unable to confirm Magu. We then rejected and returned the nomination to Buhari for further action".
- (s)** That the balance of convenience is in favour of the Plaintiff/Applicant.
- (t)** That the Defendant /Respondent's right will not be affected in any way if this application is granted.
- (u)** That there is a serious question of law and substantial issue to be tried in the originating summons, necessitating that status quo should be maintained pending the determination of the substantive action.
- (v)** That the Plaintiff/Applicant undertake to pay cost as may be directed by this Hon. Court Should this application ought not to be granted.
- (w)** That it will be in the best interest of justice and of public interest if this application is granted.

7. I make this Oath conscientiously in good faith, believing same to be true in accordance with the Oath Act.

.....
DEPONENT

SWORN TO AT THE FEDERAL HIGH COURT REGISTRY, ABUJA.

THISDAY OF2016.

BEFORE ME

COMMISSIONER FOR OTHS

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA

SUIT NO:

BETWEEN

1. Incorporated Trustees of Save Nigeria Group
2. Incorporated Trustees of Kingdom Human Rights Foundation International

Plaintiffs.

AND

1. President Federal Republic of Nigeria
2. The Secretary to the Government of the Federation
3. Mr. David Babachir Lawal
4. The Chairman Economic and Financial Crimes Commission
5. Mr. Ibrahim Magu
6. Attorney General of the Federation
7. The Senate Federal Republic of Nigeria

Defendants

Defendants/Respondents

Defendants

WRITTEN ADDRESS IN SUPPORT OF THE APPLICATION.

1.0 INTRODUCTION:

1.1 With respect my Lord, before this Honourable Court is a motion on notice praying the Court to grant **INTERLOCUTORY INJUNCTION** against the 5th Defendant/Respondent and in favour of the Plaintiff/Applicant as prayed in the motion paper.

2.0 BRIEF SUMMARY OF FACTS:

2.1 This can be distilled from the affidavit attached to this application.

3.0 ISSUES FOR DETERMINATION:

Whether the Plaintiff/Applicant is entitled to the prayers sought.

4.0 ARGUMENT OF ISSUES:

4.1 My Lord, Injunctions are preservative reliefs designed to maintain the status quo between the parties pending the determination of the suit. It is a settled Law that an application for Injunction requires the equitable discretion of the Court, and the grant of

such is a matter that a great burden is placed on the Applicant to show that he deserve the Order sought. **Sarki V Kotoye 2001, 48 WRN 1.**

4.2 This application is brought at the right time and under the right circumstances, being the fact that the 1st Defendant is preparing to re-nominate and submit the 5th Defendant as the Chairman of the 4th Defendant, despite the rejection of the 5th Defendant's nomination by the Senate, as pleaded in the affidavit in support of the originating summons. And also in the affidavit in support of this application.

It is our humble submission that this is the appropriate to grant this application, as the 1st Defendant is intending to denominate the 5th Defendant for Senate's confirmation, after the Senate rejected the nomination on the 15th on December 2016. My Lord, an Order of Court, whether an interim order or a final decision cannot be given in vain, that is when the subject matter has been destroyed. This is the whole essence of an application of this nature. See the case of **Buhari V Obasanjo, 2003, 17 NWLR, PT 850, 587.** We pray the Hon. Court exercises her discretion in favour of the Plaintiff/Applicant.

4.3. On how the discretionary power of the Court to grant Order of interlocutory injunction can be exercised, it has long been settled by the Court that "the grant of an Order of Interlocutory injunction is purely discretionary, even though it must be judicially and judiciously exercised. An Appellate Court can only interfere with a Trial Court's exercise of its discretion if the former was exercised injudicially and injudiciously. There can only be an injudicious exercise of discretion where it has led to miscarriage of justice". **Nnadi V Amadi, 2011, 4 NWLR, PT 1238 553 CA. Banna V Telepower Nig Ltd. 2006, 15 NWLR, PT 1001, 198 PG 571 PARAG A-E.**

4.4 **on the principles governing the grant of injunction**, the Supreme Court in the case of **Buhari V Obasanjo, 2003, 17 NWLR, PT 850, 587** held that "an Interlocutory Injunction which is granted in the litigation process is basically aimed at maintaining the **status quo pending the determination of the issues submitted** for adjudication by the Court. It is an equitable jurisdiction which the Court is called upon to exercise in the light of the facts presented before it by the applicant..."

4.5 My Lord, the Applicant has in their affidavit in support of this application and also in the affidavit in support of the originating summons shown that the Defendant had actually made move to re-nominate the 5th Defendant as the EFCC Chairman, and that the Senate leader, Ali Ndume is championing the cause, and therefore this is a deserving case to warrant the granting of the prayers sought in this application, because injunction is granted in such deserving cases, to safeguard the subject matter of the action. .

4.6 **ON THE CONDITIONS FOR GRANTING INJUNCTION:** The Supreme Court further held in the case of **Buhari V Obasanjo** that the Applicant must present convincing facts

which in themselves indicate the well laid down principles for granting the injunction. The principles governing the application for injunction are:

- (a) There must be a subsisting action.
- (b) The subsisting action must clearly denote a legal right which the Applicant must protect.
- (c) The Applicant must show that there is a serious question or substantial issue to be tried, necessitating that status quo should be maintained pending the determination of the substantive action.
- (d) The Applicant must show that the balance of convenience is in favour of granting the application.
- (e) The Applicant must show that there was no delay on his part in bringing the application.
- (f) The Applicant must show that damages cannot be adequate compensation for the injury he wants the Court to protect.
- (g) The Applicant must make an undertaking to pay damages in the event of a wrongful exercise of the Court's discretion in granting the injunction.

4.7 In the instant case, I humbly submit that all these principles are inherent and exist, and there is need for status quo to be maintained pending the final determination of the suit. The cases of **Praying Band of C&S V Udokwu 1991, 3 NWLR, PT 182, 716, KOTOYE V CBN 1989 1 NWLR PT 98, PG 419 and Woluchem V Wokoma 1974, 3 SC, 153**, are relevant.

4.8 With great respect my Lord, the issues sought to be determined in the originating summons are serious questions of law and substantial issues to be tried, necessitating that status quo should be maintained pending the determination of the substantive action. In the case of **Obi V INEC , 2007 11 NWLR, PART 1046**, the Supreme Court of Nigeria held that "what amounts to substantial question of Law is a point which is capable of more than one interpretation. It is also a point of law of general public importance or interest. It must be directly and substantially affect the rights of the parties..." page 488 parag. B-E.

4.6 On the balance of convenience, the Supreme Court held in the same case of **Buhari V Obasanjo** (supra) thus "in determining the balance of convenience in the consideration of injunction, the Trial Court is expected to pose one or two questions: who will suffer more inconvenience if the application is granted, who will suffer more inconvenience if the application is not granted , and the Court has a duty to provide answers and must be guided by facts before it. The balance of convenience is a basic determinant factor and the Court must measure the Scale of Justice to see where the pendulum tilts..." page 651-652 parag G-E. **ABC V Awogboro 1991, 2 NWLR, PT 176, 711.**

These established principles of Law are in our favour and we pray that the application be granted.

5.0 CONCLUSION

It is therefore my humble submission that this application is on the merit and should be granted as prayed. In **Colitor Nig Ltd V Daibu 2010, 2 NWLR PT 1178 213 AT 271-272 PARAG G-C** the Court of Appeal held that "all that the Applicant needs to do for interlocutory injunction was to show that they had a claim which was not frivolous or vexatious and there are serious questions or substantial issues to be tried by the Court. Also In the case of **Dekit Consts V Adebayo, 2010, 15 NWLR PT 1217, 590 AT PAG 612 PARAG B-C** , the Court held "a claim for interlocutory injunction is won and lost on the basis of competing legal rights. All that the Applicant is required to do is to satisfy the Court that he has a **prima facie legal right which ought to be protected by the Court...**".

I so humbly submit.

DATED THISDAY OF2016.

Okere Kingdom Nnamdi Esq
Marcus Eshinamie Saturday
Counsel appearing for Plaintiffs.
B.C.O Ezeagu and Associates.
(Libration Chambers) no 9 Yola Street,
Area 7, Gariki, Abuja.
Tel: 08036288528, 08099075484
Email: ezeaguafrica@yahoo.com, group5.2012@yahoo.com,

FOR SERVICE ON:

1. **President of the Federal Republic of Nigeria, Aso Villa Abuja. c/o AGF**
2. **The Secretary to the Government of the Federation, office of the SGF, Three Armas Zone, Abuja.**
3. **Mr. David Babachir Lawal c/o, office of the SGF, Three Armas Zone, Abuja.**
4. **The Chairman Economic and Financial Crimes Commission, EFCC Head office, Wuse, Abuja.**
5. **Mr. Ibrahim Magu, EFCC Head office, Wuse, Abuja.**
6. **Attorney General of the Federation, Fed Ministry of Justice, Abuja.**
7. **The Senate Federal Republic of Nigeria, National Assembly, Abuja.**

LIST OF AUTHORITIES

1. ABC V Awogboro 1991, 2 NWLR, PT 176, 711
2. Colitor Nig Ltd V Daibu 2010, 2 NWLR PT 1178 213 AT 271-272 PARAG G-C
3. Dekit Consts V Adebayo, 2010, 15 NWLR PT 1217, 590 AT PAG 612 PARAG B-C
4. Praying Band of C&S V Udokwu 1991, 3 NWLR, PT 182, 716,
5. KOTOYE V CBN 1989 1 NWLR PT 98, PG 419
6. Woluchem V Wokoma 1974, 3 SC, 153,
7. Buhari V Obasanjo, 2003, 17 NWLR, PT 850, 587
8. Sarki V Kotoye 2001, 48 WRN 1.
9. Obi V INEC , 2007 11 NWLR, PART 1046.



RC. 73518

KINGDOM HUMAN RIGHTS FOUNDATION INT'L

...Advocating for the downtrodden masses.

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Press release

RE: INDICTMENT OF THE SECRETARY TO THE GOVERNMENT OF THE FEDERATION AND SENATE'S REJECTION OF IBRAHIM MAGU AS THE SUBSTANTIVE CHAIRMAN OF THE EFCC: GROUP SEEKS JUDICIAL INTERPRETATION.

Save Nigeria Group and Kingdom Human rights Foundation have jointly instituted a suit against the secretary to the government of the federation, Mr. David Lawal and the Acting Chairman of the Economic and financial crimes commission Mr. Ibrahim Magu, seeking court order to compel the President to sack the duo and appoint other better qualified individuals into the positions, following the outcome of the Senate sitting on the 14th and 15th December 2016.

In suit no:.....the organization is praying the court to determine the following questions of law.

1. **WHETHER OR NOT** the indictment of the Secretary to the Government of the Federation Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground to **WARRANT AND COMPEL** the President of the Federal Republic of Nigeria to sack or suspend Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) or **COMPEL HIM TO RESIGN AS THE SGF** pending when he is cleared of every allegation of corruption; on the ground that the President (1st Defendant) claims that his administration is fighting corruption **and in view of Section 88 (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).**
2. **WHETHER OR NOT** the indictment for corruption of Mr. David Babachir Lawal (the incumbent Secretary to the Government of the Federation SGF) by the Senate of the Federal Republic of Nigeria, should warrant his **SACK OR SUSPENSION AS THE SGF BY THE 1ST DEFENDANT**, in other to allow the security and anti-corruption agencies investigate the allegations of corruption and prosecute anyone indicted by their investigation, in view of the ongoing fight against corruption.

3. **WHETHER OR NOT** the Senate of the Federal Republic of Nigeria has the constitutional powers to recommend the sack or suspension of Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) on the ground of corrupt allegation found against him and his company, **in view of Section 88(1) (b) and (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**.
4. **WHETHER OR NOT** the award of contracts in March 2016, to a company known as Rholavison Engineering Limited, where the 3rd Defendant was a Director and signatory to the companies bank account, by the Presidential Initiative on the North east amount to breach of constitutional provisions and Code of Conduct for public officers, provided for in **Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria**, which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities.
5. **WHETHER OR NOT** the 3rd Defendant has breached the code of conduct for public officers provided for in **Paragraphs 1 and 2 of Part 1 of the Fifth Schedule to the 1999 Constitution** of the Federal Republic of Nigeria (as amended); by failing to resign as a Managing Director occupying an executive position and remaining a signatory to the bank account of a private company, until September 2016 when the Senate started investigating him of corrupt allegation.
6. **WHETHER OR NOT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law offends the provisions of the Public Procurement Act.
7. **WHETHER OR NOT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law amounts to abuse of office and offends the provisions of **Public Procurement Act and Financial Regulations Rules** on award of contracts.
8. **WHETHER OR NOT** the provisions of the Federal Civil Service Rules is applicable to the Economic and Financial Crimes Commission; and whether under the Federal Civil Service Rules, a person appointed in acting capacity can act in such capacity for more than six months, in view of **Rules 010101, 020603 and 020604 of the Federal Civil Service Rules 2008**.
9. **WHETHER OR NOT** the office of the Chairman of the Economic and Financial Crimes Commission (the 4th Defendant) is vacant; on the ground of the Senate's rejection of the nomination and failure to confirm Mr. Ibrahim Magu (the 5th Defendant), who has been acting in that capacity for more than six months.

10. **WHETHER OR NOT** the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to warrant and compel the 1st Defendant to appoint/nominate **ANOTHER PERSON** as the Chairman of the Economic and Financial Crimes Commission without any further delay.
11. **WHETHER OR NOT** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive Chairman.
12. **WHETHER OR NOT** the appointment of Mr. Ibrahim Magu who has been acting in that capacity for more than six months is illegal, null and void on the ground of non-provisions and recognition of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act.

AND UPON THE DETERMINATION OF THE ABOVE QUESTIONS, THE PLAINTIFFS WILL SEEK THE FOLLOWING DECLARATIONS:

- (a) **A DECLARATION OF THE HONOURABLE COURT THAT** the indictment of the Secretary to the Government of the Federation, Mr. David Babachir Lawal by the Senate of the Federal Republic of Nigeria is a sufficient and reasonable ground **TO WARRANT AND COMPEL** the President of the Federal Republic of Nigeria to sack or suspend **Mr. David Babachir Lawal** as the Secretary to the Government of the Federation (SGF) **OR COMPEL HIM TO RESIGN AS THE SGF**, pending when he is cleared of every allegation of corruption; **on the ground that the President claims that his administration is fighting corruption.**
- (b) **A DECLARATION OF THE HONOURABLE COURT THAT** the indictment for corruption of Mr. David Babachir Lawal (the incumbent Secretary to the Government of the Federation SGF) by the Senate of the Federal Republic of Nigeria, should warrant his sack or suspension as the SGF by the 1st Defendant, in order to allow the security and anti-corruption agencies investigate the allegations of corruption and prosecute anyone indicted by their investigation, in view of the ongoing fight against corruption.
- (c) **A DECLARATION OF THE HONOURABLE COURT THAT** the Senate of the Federal Republic of Nigeria as the constitutional powers to recommend the sack or suspension of Mr. David Babachir Lawal as the Secretary to the Government of the Federation (SGF) on the ground of corrupt allegation found against him and his company, in view of section 88(1) (b) and (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- (d) **A DECLARATION OF THE HONOURABLE COURT THAT** the award of contracts in March 2016 to a company where the 3rd Defendant was a Director, by the Presidential Initiative on the North east amount to breach of constitutional provisions and Code of

Conduct for public officers, provided for in **Paragraph 1, Part 1 of the Fifth Schedule to the 1999 Constitution** which prohibits a public officer from putting himself in a position where his personal interest conflicts with his duties and responsibilities.

- (e) **A DECLARATION OF THE HONOURABLE COURT THAT** the 3rd Defendant has breached the code of conduct for public officers provided for in **Paragraphs 1 and 2 of Part 1 of the Fifth Schedule to the 1999 Constitution** of the Federal Republic of Nigeria (as amended); by failing to resign as a Managing Director occupying an executive position and remaining a signatory to the bank account of a private company, until September 2016 when the Senate started investigating him of corrupt allegation.
- (f) **DECLARATION OF THE HONOURABLE COURT THAT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law offends the provisions of the Public Procurement Act.
- (g) **DECLARATION OF THE HONOURABLE COURT THAT** the award of contract to Rholavison Engineering Limited, a company belonging to Mr. David Babachir Lawal, Secretary to the Government of the Federation (SGF) without following due process of the law amounts to abuse of office and offends the provisions of Public Procurement Act and Financial Regulations Rules on award of contracts.
- (h) **DECLARATION OF THE HONOURABLE COURT THAT** the provisions of the Federal Civil Service Rules is applicable to the Economic and Financial Crimes Commission, and that under the Federal Civil Service Rules, a person appointed in acting capacity cannot act in such capacity for more than six months, in view of **Rules 010101, 020603 and 020604 of the Federal Civil Service Rules 2008**.
- (i) **DECLARATION OF THE HONOURABLE COURT THAT** the Senate's rejection of the 1st Defendant's nomination of Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's votes and proceeding of Thursday 15 December 2016 is a reasonable and lawful ground to **WARRANT AND COMPEL** the 1st Defendant to appoint/nominate **ANOTHER PERSON** as the Chairman of the Economic and Financial Crimes Commission without any further delay.
- (j) **DECLARATION OF THE HONOURABLE COURT THAT** the office of the Chairman of the Economic and Financial Crimes Commission **IS VACANT** on the **GROUND OF THE SENATE'S REJECTION AND FAILURE TO CONFIRM MR. IBRAHIM MAGU** who has been acting in that capacity for more than six months.
- (k) **DECLARATION OF THE HONOURABLE COURT THAT** the four year term of office provided for in section 3 (1) of the Economic and Financial Crimes Commission (Establishment) Act is only applicable to a substantive Chairman of EFCC who is appointed by the President and confirmed by the

Senate; and not applicable to a person appointed to act in the capacity of Chairman of the Commission, pending the appointment and confirmation of a substantive Chairman.

- (1) **DECLARATION OF THE HONOURABLE COURT THAT** the appointment of Mr. Ibrahim Magu who has been acting in the capacity of the Chairman of EFCC for more than six months is illegal, null and void on the ground of non- recognition of an Acting Chairman in the entire provisions of the Economic and Financial Crimes Commission (Establishment) Act.

AND UPON THE FOLLOWING DECLARATIONS, THE PLAINTIFFS WILL SEEK THE FOLLOWING ORDERS:

- (vi) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the President of the Federal Republic of Nigeria (the 1st Defendant in this suit) to **SACK, SUSPEND OR COMPEL Mr. David Babachir Lawal to resign as the Secretary to the Government of the Federation (SGF)** pending when he is cleared of every allegation of corruption **on the ground that the President claims that his administration is fighting corruption.**
- (vii) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the 1st Defendant in this suit who is the President and Commander in Chief of the Armed Forces of Nigeria, to immediately direct the State Security Service, the Inspector General of Nigeria Police and the Economic and Financial Crimes Commission to immediately and without any further **DELAY COMMENCE THE INVESTIGATION AND PROSECUTION** of Mr. David Babachir Lawal on the ground of the allegation of corruption established by the Nigerian Senate.
- (viii) **AN ORDER OF THE COURT DIRECTING/COMPELLING** the 1st Defendant in this suit to immediately **NOMINATE ANOTHER PERSON** for Senate's Confirmation as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's rejection of Mr. Ibrahim Magu at the Senate's votes and proceeding of Thursday 15 December 2016.
- (ix) **AN ORDER OF THE COURT PROHIBITING AND RESTRICTING** the 1st Defendant in this suit **FROM RE-NOMINATING** Mr. Ibrahim Magu as the substantive Chairman of the Economic and Financial Crimes Commission (EFCC) following the Senate's rejection of his nomination at the votes and proceeding of Thursday 15 December 2016.
- (x) **AND SUCH OTHER ORDERS** as the Court may deem fit to make in the circumstance of the case.

The matter is yet to be assigned to any court for hearing.

**Okere Kingdom Nnamdi
Director.**