



2. **AN ORDER** of this Honourable Court quashing the instant charge No: CR/581/2021 between F.R.N V MUSA JEJELOLA YUSUF for non-disclosure of a prima facie case owing to the withdrawal of the complaint leading to the instant charge by the Nominal Complainant.
3. **AND FOR SUCH FURTHER OR OTHER ORDERS** as this Honorable Court may deem fit to make in the circumstance of this charge.

The grounds on which this Application is brought are as follows:-

1. The Honourable Court does not have jurisdiction to hear and determine this charge same being an improper use of judicial process to achieve what the Respondent/Complainant had already achieved.
2. This Honourable Court does not have jurisdiction to enforce an illegal contract/transaction of securing employment (job) at Petroleum Product Pricing Regulatory Agency (PPPRA).
3. The Nominal Complainant petitioned the Defendant alleging that she paid the sum of N1, 500, 000.00 to the Defendant to secure employment for her at the Petroleum Product Pricing Regulatory Agency (PPPRA).
4. The transaction the subject matter of the petition is illegal which made the Complainant an Accomplice.
5. The Nominal Complainant was not charged alongside the Defendant or charged before any court for any offense as a result of the transaction.
6. The Complainant/Respondent suppressed and misrepresents facts with respect to the equity he seeks from this Court, the Court should not exercise its discretion in their favor.
7. There is no proper party before this Court as Christiana Onazi the Nominal Complainant is an accomplice.

The Application was supported by a 4 paragraphed Affidavit deposed to by **Mr. Musa Jejejola Yusuf, (The Defendant/Applicant)** of No. 12 Cape Town Street, IBB Way, Abuja. **Attached to the Statement on Oath are three (3) Exhibits marked Exhibits A-C.**

The Application is also supported by a Written Address in support of the Notice of Preliminary Objection.

The Complainant/Respondent in response to the Application on 28<sup>th</sup> February,2022 filed a 14 Paragraphed Counter-Affidavit deposed to by **Prince Akpan Udosen**, Investigating Officer with the Economic and Financial Crimes Commission, Plot 301/302, Institutions & Research District, Jabi, Abuja. **Attached to the Counter-Affidavit is an Exhibit marked Exhibit EFCC 1.**

A Written Address is also attached in support of the Counter- Affidavit.

The Defendant/Applicant in response to the Complainant/Respondent's Counter-Affidavit filed a Reply on Points of Law dated 8<sup>th</sup> March,2022.

The Defendant/Applicant in their Written Address raised a sole issue for determination to wit:-

***"Whether in the circumstances of the case, the Defendant/Applicant has placed enough evidence before this Court to be entitled to grant of the reliefs sought herein"***

It is the case of the Applicant that the grounds of this Objection are premised on the fundamental and crucial issue of jurisdiction and competence of the Honourable Court to entertain this suit. Counsel cited the case of ***SHELIM V GOBANG (2009) 12 NWLR (PT. 1156) 435*** in stating when the jurisdiction of a court can be exercised.

Counsel cited **SECTION 355 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015** contending that the above section of the law gives opportunity to the complainant to withdraw her complaint before a final order is made which was what prompted Mrs. Christiana Onazi who wrote Exhibit B to the EFFCC withdrawing her complaint the subject matter leading to the charge raised herein long before same was filed before this Honourable Court.

The Applicant contends that the Petitioner having withdrew the petition against the Defendant/Applicant, the foundation upon which the case is predicated upon is destroyed as you cannot put something on nothing and expect it to stand; they referred to the Court to the case of **LEMNA ENERGY RESOURCES LIMITED V MUSA (2013) LPELR- 20367 (CA)** in support of the position.

Counsel to the Applicant also contended that the case before this Court borders on illegal contract/transaction of getting employment by payment of the sum of ₦1, 500, 000 as consideration which was paid by Mrs. Christiana Onazi to the Defendant/Applicant for onward execution of an illegal contract as burn out of Exhibit A and B. The Applicant states that given the above scenario which subject matter is tainted with illegal transaction of buying job from PPPRA and same failed and therefore this Court has no jurisdiction to sanction same owing to the illegality. Counsel cited the case of **EKWUNIFE V WAYNE WESST AFRICA LTD (1989) LPELR- 1104** in support of the above position.

It is also the contention of the Applicant that Mrs. Christiana Onazi is an accomplice in the offence alleged and it does not matter what role each of them plays as each of them is liable for the consequences of giving money to secure employment which is an offence in the eyes of the law. Counsel referred this Court to the case of **NWANCHI V THE STATE (1976)**

***LPELR 2103 (SC)*** where the Supreme Court defined who is an accomplice for the purpose of bringing such person before it.

The Applicant further states that the legal implication of refusal to make Mrs. Christiana Onazi an accomplice a party to this case has rendered this case to be incompetent, void and incurably bad when viewed alongside with the illegal transaction, Counsel to the Applicant referred to the case of ***LEMNA ENERGY RESOURCES LIMITED V MUSA (2013) (SUPRA)*** in support of the above position.

Counsel to the Applicant in conclusion urged the Court in light of the foregoing circumstances to accordingly answer the sole issue for determination in favor of the Defendant/Applicant and against the Complainant/Respondent and accordingly dismiss this case and discharge the Defendant.

The Complainant/Respondent in response to the submissions of the Defendant formulated two issues for determination by this Court to wit:-

1. Whether the Respondent has the Powers to Investigate/Prosecute a Suspect reported to have committed an Offence.
2. Whether the Applicant has placed sufficient material before this Court to warrant the grant of the reliefs sought against the Respondent?

On issue 1, the Complainant/Respondent submits that being a statutory body with powers to Arrest, Investigate and Prosecute Offenders of Economic and Financial Crimes and other related offences, it can only invite or arrest, investigate and prosecute any suspect when there is a petition or complaint against such suspect for which he or she is required to make an explanation and if there is reasonable suspicion that he has committed or is about to commit a crime as in this case. The Complainant/Respondent submitted citing **SECTION 6 (H) OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT, 2004** that it

possesses the statutory powers to arrest, investigate and prosecute offenders of Economic and Financial Crimes and that in the instant case, the Respondent received a petition from the nominal complainant (Mrs Onazi) alleging that she had been defrauded by the Applicant. The Respondent contends that upon conclusion of their investigations, it was revealed that the Applicant had committed an offence (obtaining money by false pretence) and he was subsequently charged to Court.

On issue 2, the Complainant/Respondent submitted that the case of **NWEDE V F.R.N (2019) LPELR – 46946 (SC)** explained the extensive nature of the provisions of the Advance Fee Fraud Act and how it can affect a wide range of economic activities which may be contractual in general.

The Respondent also contended that assuming without conceding that the nominal complainant is an accomplice in the alleged offence, it is their prerogative to determine who to charge and who to use as witnesses. Counsel in support cited the case of **AKPA V STATE (2008) LPELR – 368 (SC)** in support of the above position.

The Complainant/Respondent concluded that the EFCC is not a recovery agency and the Applicant has been charged for the offence bordering on obtaining money under false pretence. Therefore the Respondent urges this Court to refuse the Applicant's application and dismiss same for lacking in merit.

The Defendant/Applicant in its Reply on Points of Law to the Complainant/Respondent's counter-affidavit contended that it is the nominal complainant who has the right to withdraw the complaint which right has been exercised since 28<sup>th</sup> October, 2021 via Exhibit B attached to the main application and not the prosecution. Counsel referred the Court to the case of **FRN V ONONYE (2018) LPELR – 45067** in support of the above position to justify the dismissal of the charges against him. Counsel

similarly argued that the nominal complainant has the right to complain or condone the offences and cause a withdrawal of the charges against the Applicant. Counsel referred this Court to the case of ***PML (NIGERIA) LIMITED V F.R.N (2017) LPELR- 43480*** in support of the above position.

Counsel to the Defendant/Applicant concluded that Mrs. Christiana Onazi has collected some form of compensation for what she has suffered via Exhibit B, so compounding the offences terminates this legal proceedings against the Defendants and he is entitled to an acquittal while urging this Honourable Court to so hold and dismiss the instant charges.

From the facts of this case and submissions advanced by Counsel on both ends as well as the exhibits presented before this Court, I have no doubt that the pith and substance of the Application of the Defendant/Applicant against the Complainant/Respondent is rooted in efforts made by the Complainant/Respondent to exercise her statutory duties based on a petition presented by a nominal complainant.

In the determination of the above issue, it is my informed view to adopt the sole issue as raised by the Applicants in its Written Address to wit:-

*"Whether in the circumstances of the case, the Defendant/Applicant has place enough evidence before this court to be entitled to grant of the reliefs sought herein?"*

Indeed it is true that the Nigeria Police or other law enforcement agencies which the Respondent falls under by decisions of Court are not debt collectors, but the law has empowered them to act properly whenever a report is brought to them to conduct an investigation, arrest and prosecute suspects of crimes within their statutory duties to protect as circumstances demand.

The contention of the Defendant/Applicant that the charges brought forward by the Complainant/Respondent is predicated upon an illegal contract is unfounded in law as the subject matter of the action is criminal in nature and substance by virtue of the charges before this Court preferred against the Applicant. It would have been the case if an action was brought by the nominal complainant seeking an enforcement of the alleged illegal contract under a civil claim. The substance of this case being criminal charges and brought forward by the Respondent being an independent and statutory agency accorded prosecutorial powers by virtue of **SECTION 6(H) OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) ACT 2004**, and the alleged offence falling under the powers it can exercise therefore extinguishes the issue of illegality of contract by all understanding.

The Respondent acted on a petition exhibited before this Court, the Petition having been withdrawn only puts the case to rest at the instance of the nominal complainant and does not on the overall extinguish the powers of the Complainant/Respondent to act on same. It is the position of our Courts that no person is allowed by law to stop the Respondent being a law enforcement agency recognized by our law in performing their designate duties as provided for by the constitution of Nigeria 1999 and the EFCC Act, 2004.

It should be noted that the Court have severally decried the practice of taking steps towards being shielded against actions of law enforcement agencies, that is, arrest, investigation and prosecution. The Court in **NWAFOR V EFCC (2021) LPELR -52949 (CA)** stated in principle thus:-

*" In the circumstances of this Appeal, it may be apt to point it out at once here and now that whilst performing its legitimate duties, no Court of law has the power to stop the EFCC from investigating a*



*crime and therefore, no person against whom there is a reasonable suspicion of having committed an offence or likely to commit an offence would be granted any relief capable of shielding him against criminal investigation and prosecution since no citizen has any right to be an outlaw under the laws of this country."*

The above decision of the Court goes to buttress the fact that law enforcement agencies possess independent rights as provided by their enabling legislation to carry out duties which include investigations, arrest and prosecution as it is the case in this matter.

On the contention of the Defendant/Applicant that the nominal complainant ought to be joined as a party to this suit, I agree with the submission of the Respondent relying on the Supreme Court case of ***AKPA V STATE (2008) LPELR – 368 (SC)*** that the prosecution has an unfettered discretion to prosecute persons in court and because the discretion is unfettered, Courts of law do not have the power to question same.

I therefore state that the Court is only bound to try persons brought before it as suspects of a crime and not those not charged.

It is therefore the submission of this Honourable Court that the Defendant/Applicant has not credibly substantiated its claims that the charges brought before this Honourable Court by the Complainant/Respondent be dismissed.

On this note, this Court hereby resolves the sole adopted issue in favour of the Complainant/Respondent against the Defendant/Applicant. The Court directs that the case be heard and determined on its merits and the Complainant/Respondent must prove the allegations as contained in the

charge preferred against the Defendant/Applicant beyond reasonable doubt.

I would like to add a careful construction and analysis of the judicial authorities of the case of ***NURAFOR VS EFCC (SUPRA) AND AKPA VS STATE SUPRA*** gives the prosecution the power to prosecute any person allegedly suspected to have committed a particular crime which is triable by a Court of competent jurisdiction. In this circumstances' I have no reason whatsoever to have interfere with such powers from the above, it is very obvious that the preliminary objection filed by the lead defence Counsel ca not hold water reason can be seen from the cases cited above. I therefore safely and convincingly hold so.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

Yetunde Alabi:- For the prosecution.

M.M Yusuf:- Appearing with Nasir Saudu for the  
Defendant/Applicant