

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : CHARGE NO: CR/70/2022
DATE: : FRIDAY 14TH JULY, 2023

BETWEEN

FEDERAL REPUBLIC OF NIGERIA } **COMPLAINANT/
RESPONDENT**

AND

1. ROCHAS OKOROCHA
2. ANYIM NYERERE
(a.k.a ANYIM NYERERE CHINENYE)
3. NAPHTALI INTERNATIONAL LTD.
**4. PERFECT FINISH MULTI PROJECTS
CONSULTING LTD.**
5. CONSOLID PROJECTS CONSULTING LTD.
6. PRAMIF INTERNATIONAL LTD.
7. LEGEND WORLD CONCEPTS LTD.

DEFENDANTS

RULING

This is a Ruling predicated upon Motion on Notice dated 12th December, 2022 and filed on the 13th December, 2022 by Applicant, praying the Court for the following reliefs;

- a. An Order discharging and/or acquitting the 1st Defendant/Applicant, pursuant to prayer (1) supra.
- b. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

Grounds upon which the application is based are as follows;

1. The Economic and Financial Crimes Commission (EFCC), on 14th November, 2022 instituted

Charge No. FCT/HC/CR/70/2022 before this Honourable Court.

2. The said Charge contained allegation of acts of the 1st Defendant/Applicant as Governor of Imo State and/or acts of the same 1st Defendant and/or other persons during the 1st Defendant's tenure as Governor of Imo State between 29th May, 2011 and 29th May, 2019.
3. The said Charge was instituted/preferred, in furtherance of purported investigations of the Economic and Financial Crimes Commission (EFCC) into activities of the Applicant in the course of his tenure of office as Governor of Imo State, between 29th May, 2011 and 29th May, 2019.

4. The list of Exhibits and the Proof of Evidence filed along with the instant Charge are products of the same purported investigation carried out by the said Economic and Financial Crimes Commission (EFCC).
5. That same investigation had however been adjudged illegal, unlawful, unconstitutional and nullity by the Federal High Court, Coram Pam, J. in Suit FHC/PH/FHR/165/2021 on 6th December, 2021.
6. The Economic and Financial Crimes Commission (EFCC) was fully aware of the said extant judgment and orders in the said Suit (to which it was a party and recently filed an Appeal and where the Federal High Court also made an order of prohibition of the same Economic and

Financial Crimes Commission (EFCC) from further proceeding, having been adjudged to be unlawful and prejudicial in the mode and manner of its investigation.

7. Being of concern over the Economic and Financial Crimes Commission's continuous breach of the Constitution and noncompliance with extant Court Orders, in the course of the subject matter investigation, the Hon. Attorney - General of the Federation had to issue written directives to the EFCC to obey all Court Orders, but was serially ignored, until 12th September, 2022, when the Hon. Attorney - General wrote to the EFCC, demanding the case file, for review.
8. Nevertheless, the same Economic and Financial Crimes Commission (EFCC) yielded neither to

extant Court orders in Suit FHC/PH/FHR/165/2021 nor to the directives of the Hon. Attorney General of the Federation in furtherance of Section 105 ACJA and Section 174 CFRN 1999; but has continued to taunt its disobedience by preferring the instant Charge No. FCT/HC/CR/70/2022 before this Hon. Court on the same judicially damnified investigation, in blatant breach of judicial orders and process; and naked abuse of prosecutorial powers.

In support of this application is a 4 paragraph Affidavit deposed to by Adebayo Abidemi, a litigation executive in law firm of the Applicant. It is the deposition of the Applicant, that;

That on 31st January, 2022, the Economic and Financial Crimes Commission (EFCC), preferred

Charge No.FHC/ABJ/CR/28/2022 against him and 6 others persons, on account of purported investigation into acts and transactions occurring during his tenure as Governor of Imo State between 2011 and 2019;

That the said Charge, which is Exhibit “OKOROCHA 1” hereto, is now pending before the Hon. Justice Inyang Ekwo of Federal High Court No. 5, Abuja Division;

Subsequently, the Economic and Financial Crimes Commission (EFCC) proceeded to prefer the instant Charge No. FCT/HC/CR/70/2022 before this Hon. Court, against the Applicant on 14th November, 2022, predicating it on same investigation which the Federal High Court had quashed in Suit FHC/PH/FHR/ 165/2021 on 6th December, 2021;

That the said investigation was commenced by the Economic and Financial Crimes Commission (EFCC) towards the tail end of the Applicant's administration in Imo State as Governor, whereas the said Economic and Financial Crimes Commission (EFCC), under the pretext of investigating alleged acts of impropriety against him, embarked on marking and attendant defacing and restriction of title to his real assets, which were indeed acquired before his assumption of office as Governor of Imo State;

That, in that predicament he had no option than to apply to the Honourable Federal High Court, for enforcement of his Fundamental Human Right. On 8th May, 2019, the Hon. Federal High Court, Coram Taiwo Taiwo, J. issued an Order restraining the Economic and Financial Crimes Commission

(EFCC) to stay further action in connection with their investigation, being the subject matter of the Suit, pending the Hearing and determination of the substantive Suit. The enrolment of that Order is hereto annexed as Exhibit “OKOROCHA 2”;

That despite the above mentioned extant Order Exhibit “OKOROCHA 2”, the EFCC continued in asset restriction and other acts of harassment/intimidation against the Applicant, until he left office;

That the succeeding administration in Imo State subsequently set up various Panels of Enquiry on same matters/allegations which the Economic and Financial Crimes Commission (EFCC) claimed to be investigating and further embarked on police harassment of the Applicant;

That the Applicant had to institute Suit No. FHC/ABJ/CS/508/2022 for Direction before the Federal High Court, Coram A.R. Muhammad to seek protection from multiple investigative jeopardy and determine which Agency had the competence to conduct the investigation;

That despite being a party to the said Suit and proceedings thereat, the EFCC ignored the Suit's prayers to determine which Agency to investigate and proceeded in reckless allegations of misappropriation against the Applicant, whereupon the Hon. Attorney-General of the Federation had to intervene, at the complaint of the Applicant, directing the Chairman of the Economic and Financial Crimes Commission (EFCC) to comply with Court Orders which were made in respect of matters concerning their subject investigation of the

Applicant, but the Hon. Attorney General of the Federation was serially ignored. The Attorney General of the Federation's directive is contained in the letter hereto attached as Exhibit “OKOROCHA 3”;

That the Zonal Head of the Port Harcourt Zonal Office of the Economic and Financial Crimes Commission (EFCC) Mr. Usman Imam had in June, 2022 organized a press conference where he gleefully announced to the whole world that the Applicant stole N7.9 Billion of the Imo State Government fund and that the Economic and Financial Crimes Commission (EFCC) had recovered it. This was at a time when the Applicant was yet to be invited for interrogation by the Economic and Financial Crimes Commission (EFCC);

That in view of the foregoing, he (the Applicant) later sought legal advice and subsequently approached the Port-Harcourt Division of the Federal High Court for enforcement of his Fundamental Human Rights to Presumption of Innocence and Fair Hearing. After due hearing, Pam, J. granted on 6th December, 2021, among other prayers of his, the following:

(5)A Declaration that “... the 1st Respondent's (EFCC) investigation is not conducted in a lawful way and manner, and in accordance with Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria (As Amended), which mandates the preservation of the Applicant’s Fundamental Human Right to Freedom from arbitrary arrest and prejudicial investigation”.

(6). “An order setting aside all other investigative actions/activities of the 1st Respondent conducted in flagrant breach of the subsisting Order of this Honourable Court ...”

(7) “That an Order prohibiting the 1st Respondent from further interrogation of the Applicant in respect of subject matter investigation of activities of the Applicant's Administration of the Imo State Government between 2011 and 2019” Certified Copy of the Judgment and Enrolment of the Judgment Orders are hereto attached as Exhibits “OKOROCHA 4 & 5”.

That in the said Suit No. FHC/PH/FHR/165/2021, all the investigative actions/activities of the Commission/EFCC, relating to the 1st Defendant's

administration of Imo State from 2011 to 2019, were declared unlawful and set aside;

That the respondent recently filed an Appeal against the said Judgment, which is now pending for determination before the Court of Appeal, Port Harcourt Division;

That upon information that Charges were preferred and predicated on investigation which had been quashed by a Court of competent jurisdiction, the Honourable Attorney General of the Federation, on 26th April, 2022, by means of a letter under his hand and addressed to the Chairman Economic and Financial Crimes Commission (EFCC) in person, Mr. Abdulrasheed Bawa, CFE, annexed as Exhibit “OKOROCHA 6” hereto, directed compliance with the Federal High Court, Port-Harcourt Judgment

“declaring the entire investigation of Senator Okorocha by the Commission as being contrary to the presumption of innocence and right to fair hearing guaranteed to Senator Okorocha under Sections 6(6) and 35 of the 1999 Constitution ...”

That rather than comply with the Attorney General's directive, the Economic and Financial Crimes Commission (EFCC), on 30th May, 2022, arraigned the Applicant before the Federal High Court, Abuja Division on Counts alleging the offences of Stealing and Money Laundering and as justification for its brazen disregard for the extant Declaratory and Prohibitory Orders of the Federal High Court (supra), and the Attorney General's directive of 26th April, 2022, it obtained a letter of consent to prosecute, dated 27th May, 2022 and written by the

office of the Honourable DPP. That letter is Exhibit “OKOROCHA 7” hereto;

That in view of the foregoing and especially the said letter of consent to Prosecute, the Hon Attorney General of the Federation, on 12th September, 2022 wrote to the Chairman of the Economic and Financial Crimes Commission (EFCC), reiterating compliance with all Court Orders and demanding the case files relating to the allegations and investigations against the Applicant, for a possible review. That letter is Exhibit “OKOROCHA 8” hereto;

That the Honourable Attorney General of the Federation (HAGF) also wrote further, by means of Exhibit OKOROCHA 9 hereto, to reiterate that notwithstanding the said Exhibit “OKOROCHA 7”,

the EFCC must comply with all extant Court Orders in its conduct and operations. Yet rather than comply, the Economic and Financial Crimes Commission (EFCC) proceeded to prefer yet this instant Charge No. FCT/HC/CR/70/2022 on same facts and transactions, before this Honourable Court, in defiance of the directive/request of the Honourable Attorney General of the Federation.

In line with procedure, written address was wherein two (2) issues were formulated for determination to-wit;

- 1. “Whether the instant charge no. FCT/HC/CR/70/2022, predicated on the same investigative actions/activities which the federal high court has declared unlawful in suit no. FHC/PH/ FHR/165/2021, is not bound to be*

quashed as an abuse of prosecutorial powers and judicial process”

2. Whether proceedings in charge no. FCT/HC/CR/ 70/2022 is not bound to be quashed for failure of the Prosecutor/Economic and Financial Crimes Commission (EFCC) to comply with the request for the case file, made by the hon. Attorney general of the federation.

On issue one, learned counsel submits, that the instant Charge No. FCT/HC/CR/70/2022 contained allegation of acts of the 1st Defendant/Applicant as Governor of Imo State and/or acts of the same 1st Defendant and/or other persons during the 1st Defendant’s tenure as Governor of Imo State between 29th May, 2011 and 29th May, 2019.

Learned counsel submits, that the said Charge No. FCT/HC/CR/70/2022 was instituted/preferred, in furtherance of purported investigations of the Economic and Financial Crimes Commission (EFCC) into activities of the Applicant in the course of his tenure of office as Governor of Imo State, between 29th May, 2011 and 29th May, 2019.

Learned counsel also submits, that the list of Exhibits and the Proof of Evidence filed along with the instant Charge are products of the same purported investigation carried out by the said Economic and financial Crimes commission (EFCC).

Learned counsel further submits, that the same investigative actions/activities of the Commission/EFCC relating to 1st Defendant's Administration of

Imo State from 2011 to 2019, had been previously adjudged to have been conducted in breach of subsisting Orders of Court and Constitutional provisions relating to is Defendant/Applicant's Fundamental Rights; and thus declared unlawful, null, void and set aside by the Federal High Court, Coram: Honourable Justice S.D. Pam, on 6/12/2021, in Suit No. FHC/PH/FHR/165/2021. The certified true copy of the Judgment and the enrolment of final Judgment Order in the said Suit No. FHC/PH/HR/165/2021, are exhibited before this Honourable Court.

Counsel submits, that its avowed leg having been nullified by Court of competent jurisdiction, the instant Charge is based on nothing and there is no-ground whatsoever to proceed with trial. The law is long settled that one cannot put something on

nothing and expect it to stand. That principle was reiterated by the Supreme Court in the case of ***OKPE V. FAN MILK PIC & ANOR (2016) LPELR-42562(SC); (2016) 2 NWLR(P.T. 1549) 282*** was cited.

Furthermore, In recognition of the foregoing, the Hon. Attorney - General of the Federation, by means of Exhibit “OKOROCHA 6” hereto, dated 26th April, 2022, specially requested the EFCC to comply with this Hon. Court's order, Coram Pam, J., nullifying the investigations but the EFCC disobeyed its supervisory minister’s-directive, arraigned the Applicant on Stealing and Money Laundering Charges before the same Federal High Court on May 30th, 2022; and had further proceeded on 14th November, 2022 to prefer a Charge before this

Honourable Court on Counts of Conversion and Criminal Breach of Trust.

Learned counsel accordingly submits and urge this Honourable Court to hold that the instant Charge, having been built on nothing, cannot stand in view of the established fact that it was founded on the same investigative activities/actions which the Honourable Federal High Court has already set aside, due to non-compliance with statutory and constitutional provisions, in its process, mode and conduct.

Learned counsel further submits, that on what constitutes abuse of court process: the supreme court in *DURU V. NWOSU (1989) 4 NWLR (PART 113) PAGE 24* said “*it seems to me the simplest definition is that which says that there is ground*

for proceeding. In other words that something has been produced to make it worthwhile to continue with the proceedings” Per Nnamani JSC at Page 81 and ratio 6 page 27. Using this test, is there any ground for proceeding with this case? The Applicant has deposed that there is no ground in that the investigation has been quashed.

Learned counsel also submits, that the power and duty to stop proceeding in abuse of judicial process, this Court does not only have power to stop the proceeding but a duty to do so. ***FAWEHIMI VS A.G OF LAGOS (1) (1989) 3 NWLR PART 112 AT PAGE 707*** especially ratio 8 *at Pages 711 and 739* was cited.

Learned counsel further submits, that the final Judgment of the Honourable Justice S. D. Pam in

Suit No. FHC/PH/HR/165/2021, which declared the investigation activities of EFCC unlawful, remains extant and subsisting. By dint of the mandatory provisions of Section 287(3) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), all authorities and persons, including the prosecutor herein, are bound to give effect/enforce the aforesaid decision. For ease of reference, Section 287(3) of the Constitution (supra) is herein reproduced:

“The decisions of the Federal High Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons and by other courts of law with subordinate jurisdiction to that of the Federal

High Court, a High Court and those other courts respectively.”

Counsel submits and urge this Honourable Court to hold that in view of the said final Judgment of the Federal High Court in Suit No. **FHC/PH/FHR/165/2021** i.e Exhibits “OKOROCHA 4&5”, the instant Charge No. **FCT/HC/CR/70/2022** is an abuse of prosecutorial powers and judicial process; and accordingly, we further urge your lordship to quash all charges/counts contained in the said Charge.

Learned counsel submits, that the proper order to make when process is abusive; in the event that Court holds that the instant Charge No. **FCT/HC/CR/70/ 2022** is an abuse of court process, is an Order dismissing the Charge. Counsel humbly

refer to the case of *AFRICAN RE. CORP. V. J.D.P. CONST. (NIG.) LTD. (2003) 13 NWLR (PI.838)609 (2003) 2 - 3 S.C 47* was cited.

On issue two, learned counsel submits that, the Honourable Attorney General of the Federation is the Chief Law Officer of the Federation. Restating the constitutional position of the Honourable Attorney General of the Federation. *ELELU-HABEEB & ANOR v. A.G. FEDERATION & ORS (2012) LPELR-15515 (SC); (2012) 13 NWLR (PT.1318) 423* was cited.

It was in further recognition of the important constitutional position of the Honourable Attorney General of the Federation that the lawmakers have now gone ahead to provide in Section 105 of the Administration of Criminal Justice Act, 2015 that

the Hon. AGF can issue legal advice OR SUCH OTHER DIRECTIVES to the police and other law enforcement agencies.

Learned counsel submits, that whenever the Honourable Attorney General gives legal advice/directive or request for the Case File, as contemplated under Section 105 of the Administration of Criminal Justice Act, 2015, the relevant law enforcement agency is bound to comply with the directive/request of the Chief Law Officer of the Federation and await his indication or approval to proceed. It was in recognition of this prerogative of the Attorney-General that the Respondent, after having ignored all the directives of the Hon. Attorney-General of the Federation to obey Court Orders in the course of its investigation, proceeded to obtain Exhibit “OKOROCHA 7”, a

letter of Consent to prosecute, from the office of the DPP but which by Exhibit “OKOROCHA 8” the Hon. Attorney General, through the same DPP, later complained bitterly of non-compliance with Court Orders and requested for the case file for a review.

The afore-cited provisions of Section 105 of ACJA recently came up for interpretation in the case of ***FRN V. KABIR TANIMU TURAKI & 3 ORS, CHARGE NO. FHC/ABJ/CR/61/2022*** (unreported) before the Federal Republic of Nigeria, Coram, Inyang Ekwo.

We invite your lordship to take Judicial Notice of the records of this Honourable Court and observe that in our Exhibit “OKOROCHA 8”, the Honourable Attorney General of the Federation advised/directed the Applicant/EFCC herein to

submit the case file in the instant Charge for review, since 12th September, 2022.

Learned counsel submits, that rather than comply with the directive of the Honourable Attorney General of the Federation, the Commission/EFCC came before this Court on 14th November, 2022 to prefer a new Charge on same facts, based on investigation which has been adjudged to be unlawful, unconstitutional, null, void and consequently set aside.

On the whole, this court is urged to grant the reliefs sought herein and quash the instant Charge **NO. FCT/HC/CR/70/2022.**

Applicant filed 4 paragraph Further Affidavit in Support of 1st Defendant Motion on Notice Dated 12/2/2022 and Filed 13/12/2022...deposed to by

Oluchi Richard, litigation executive in the law firm of the Applicant's law firm. It is deposition of the Applicant;

That all the allegations in paragraphs 5, 6 & 7 of the Respondent's Counter-affidavit are not true and relate to the same investigations of the EFCC which Federal High Court, Coram: Hon. Justice S.D. Pam, had quashed in Suit No. FHC/PH/FHR/165/2021. It is not true that the Applicant connived with the then AG. Accountant General of Imo State, the pay officer, the cashier and others, to illegally withdraw the sum of N1,800,000,000 (or any amount whatsoever) from the coffers of the Imo State Government for the purpose of funding Gubernatorial and State House of Assembly election in Imo State;

That the Applicant neither stole/withdrew the sum of N30,000,000,000 (Thirty Billion Naira) from the Treasury of the Imo State nor laundered such amount through any company and no contractor of Imo State Government engaged in unlawful use of state funds to clear containers of goods imported into the country by the 1st Defendant's wife;

That it is neither true that monies were unlawfully transferred from the Local Government Account of Imo State for building of 28 hospitals across every local government in Imo State nor that Imo State funds were unlawfully moved from the Treasury for execution of projects during the Applicant's administration as the Executive Governor of Imo State;

That Contrary to the allegations contained in the Respondent's Counter-affidavit, the Ruling of the Federal High Court, Coram: Hon. Justice Taiwo Taiwo, delivered on 17th December, 2019 in Suit No. **FHC/ABJ/CS/475/2019** and attached as Exhibit "OKOROCHA 2" to the affidavit in support of the Motion to quash the instant Charge, was not surreptitiously procured;

That Further to the above, the proceeding in Suit No. **FHC/ABJ/CS/475/2019** was not geared towards stopping the Respondent from investigating the 1st Defendant/Applicant;

That Respondent's Exhibit "EFCC A" is a Ruling delivered in Suit No. **FHC/ABJ/CS/507 /2019**, commenced by Senator Bukola Saraki against (1) Attorney General of the Federation, (2) Inspector

General of Police, (3) State Security Service, (4) The Economic and Financial Crimes Commission, (5) Independent Corrupt Practices and Other Related Offences Commission, and (6) Code of Conduct Bureau;

That the 1st Defendant/Applicant herein (Senator Rochas Anayo Okorochoa) was not a party to the aforesaid Suit No. FHC/ABJ/CS/507 /2019. From the aforesaid Respondent's Exhibit "EFCC A", no Issue was raised by parties in Suit No. FHC/ABJ/CS/507/ 2019, instituted by Senator Bukola Saraki, on whether the learned trial Judge should recuse himself from hearing Suit No. FHC/ABJ/CS/475/2019 instituted by the 1st Defendant/Applicant herein;

That none of the parties in Suit No. FHC/ABJ/CS/507/2019, instituted by Senator Bukola Saraki, prayed the Honourable Federal High Court to recuse itself from hearing Suit No. FHC/ABJ/CS/ 475/2019 instituted by the Applicant/Respondent herein (Senator Rochas Anayo Okorocho) and no such positive order was made;

That the allegations contained in paragraphs 11, 12, 13 & 14 are not true. No Warrant of Arrest was served on the 1st Defendant/Applicant prior to his arrest and the Applicant never resisted arrest by the Economic and Financial Crimes Commission (EFCC);

That in Suit No. FHC/PH/FHR/165/2021, Federal High Court, Coram: Hon. Justice S.D. Pam of Port

Harcourt Division duly considered issues relating to the press conference held by EFCC Zonal Commander announcing to the whole world that the 1st Defendant stole ₦7,900,000,000 (Seven Billion Nine Hundred Million) and in its final Judgment Order, attached as our Exhibit “OKOROCHA 4”, adjudged the conduct of the Commission/EFCC wrongful;

That the Respondent’s denial of the aforesaid press conference in the instant case and other sundry denial of breach of the is Defendant's fundamental right, is an afterthought and an attempt to reopen issues already decided by Federal High Court in suit No. FHC/PH/FHR/ 165/2021;

That the facts stated and issues raised in paragraph 16(n),(o), (p) and (q) of the Counter Affidavit have

been extensively considered, adjudicated and determined in finality by the Federal High Court, Coram Honourable Justice S.D PAM on 6th day of December, 2021 in Suit No. FHC/PH/FHR/165/2021;

That long after preferment of the instant Charge, the Respondent herein discovered their error of infraction against the extant Court Orders and Declaration; and recently appealed against the Judgment;

That there is no Order of Stay of Execution of the Judgment of the Federal High Court, in Suit No. FHC/PH/FHR/165/2021, setting aside the entire investigation the 1st Defendant/Applicant conducted by EFCC;

That contrary to the deposition of the Complainant/ Respondent purporting that Hon. Attorney General of the Federation approved continued prosecution of the instant Suit vide EXHIBIT “EFCC D” dated 27th May, 2022, the Honourable Attorney General clarified his position vide Letter dated 28th July, 2022, hereto attached as Exhibit “OKOROCHA 10”, by categorically stating inter alia thus:

“Let me state from the onset that the referenced letter dated 27th May, 2022 did not in any way direct the Economic and Financial Crimes Commission (EFCC) to violate the subsisting judgment of the Court neither does it derogate from the earlier directive of the Honourable Attorney General of the Federation and Minister of Justice in his letter of 26th April,

2022 directing the EFCC to obey all subsisting Court judgments on the above matter.”

That in the aforesaid referenced Letter dated 26th April, 2022, the Honourable Attorney General of the Federation mandated the Economic and Financial Crimes Commission (EFCC) to comply with all existing orders and Judgment, including the Judgment of Federal High Court in Suit No. FHC/PH/FHR/165/2021 ***“declaring the entire investigation of Senator Okorochoa by the Commission as being contrary to the presumption of innocence and right to fair hearing ..”***

That on 6th February, 2023, Hon. Justice Inyang Ekwo of the Federal High Court struck out Charge No. FHC/ABJ/28/2022(Exhibit “OKOROCHA 1” herein) which referenced in paragraph 3 (a) & (b) of

the Affidavit in Support of our Motion to quash the instant Charge. In that case, it was held that EFCC/the Commission's failure to comply with the Letter dated 12th September, 2022 (Exhibit "OKOROCHA 8" herein), written by the Hon. Attorney General of the Federation, directing the Commission to submit its case file relating to the 1st Defendant for review, is fatal;

That the Enrolled Final Order and the Ruling of Federal High Court delivered on 6th February, 2023 are hereto attached and marked Exhibits "OKOROCHA 11" and "OKOROCHA 12", respectively;

That the instant Charge No. FCT/HC/CR/70/2022 and Charge No. FHC/ABJ/28/2022, were both predicated on the same investigation which was set

aside by Federal High Court in Suit No. FHC/PH/FHR/165/2021 and in respect of which the Hon. Attorney General of the Federation wrote Exhibit “OKOROCHA 8” asking for the case file of the Commission (EFCC) for review.

In line with procedure, Applicant filed Reply On Points of Law to Complainant’s Counter Affidavit and Written Address filed on 24th of January, 2023.

Learned counsel argued, that all the arguments canvassed by the Complainant/Respondent herein were also canvassed in the sister Charge No. FHC/ABJ/28/2022 recently determined by Hon. Justice Inyang Ekwo of the Federal High Court and that the Economic and Financial Crimes Commission (EFCC) failed to comply with the Letter dated 12th September, 2022 (Exhibit

OKOROCHA & herein), written by the Hon. Attorney General of the Federation, directing the Commission to submit its case file, relating to the 1st Defendant, for review. The 1st Defendant challenged the said Charge No. FHC/ABJ/28/2022 and prayed the trial Federal High Court to quash same. In its Ruling delivered on 6th February, 2023, the learned trial Judge agreed with the 1st Defendant and made an Order quashing the sister Charge. The

Enrolled Final Order and the Ruling of Federal High Court are attached to the Further Affidavit as Exhibits “OKOROCHA 11” and “OKOROCHA 12”, respectively.

Learned counsel further argued that the instant Charge No. FCT/HC/CR/70/2022 and Charge No. FHC/ABJ/28/2022, were both predicated on the

same investigation which was set aside by Federal High Court in Suit No. FHC/PH/FHR/165/2021 and in respect of which the Hon. Attorney General of the Federation wrote Exhibit “OKOROCHA 8” asking for the case file of the Economic and Financial Crimes Commission (EFCC) for review. Thus, this court is urged to be persuaded by the reasoning of Federal High Court in the Ruling/Exhibits “OKOROCHA 12” delivered on February, 2023, in Charge No. FC/ABJ/28/2022.

It is the submission of learned counsel, that the Complainant/Respondent submitted in paragraph of its Written Address that in the case of Orji ***UZOR KALU V. FRN (2016) LPELR-40108 (SC)***, the Supreme Court described an Order, similar to the one made by this Honourable court, Coram: Hon. Justice S.D. Pam J., as a creeping Order akin to a

weapon of mass destruction that seeks to restrain everything. Counsel insists that such Order is aimed at stopping the Economic and Financial Crimes Commission (EFCC) from carrying out their statutory duties and should be discountenance. The prosecuting counsel placed reliance on the cases of ***A.G. ANAMBRA STATE V. CHIEF CHRIS UBA (2005) 15 NWLR (PT. 947)*** and ***EFCC V. FAYOSE & ANOR (2018) LPELR 44131 (CA)***.

Counsel contends, that the fact and circumstances in ***ORJI UZOR KALU V. FRN (Supra)*** and other cases cited, are completely different from this case. In ***ORJI UZOR KALU V. FRN (Supra)*** the application to quash Charge was not predicated on an Order of Court setting aside the entire investigation conducted by Economic and Financial Crimes Commission (EFCC). In that case, the

application to quash Charge was based on an Ex-parte Order for stay of action. in the instant case, our application is predicated inter alia on 1st Defendant's Exhibit “OKOROCHA 5” the Final Judgment Order of this Honourable Court, Coram: Hon. Justice S.D. Pam, setting aside the entire investigation on which the instant Charge No. FCT/HC/CR/70/2022 was predicated. Furthermore, the powers exercised by Hon. Attorney General of the Federation in the instant case vide Exhibits “OKOROCHA 3, 6, 8, 9 & 10”, was not exercised in the case of *ORJI UZOR KALU V. FRN (Supra)*.

Further, in the cases of *A.G, ANAMBRA STATE, VS. CHIEF CHRIS UBA (Supra)* and *EFCC VS. FAYOSE & ANOR (Supra)* cited by the prosecution, the issues raised and considered had nothing to do with application to quash a criminal

Charge. In fact, both cases were civil matters and none of the cases decided that where a court of competent jurisdiction has made an Order setting aside investigation upon which a subsequent charge is predicated, the prosecuting agency can still competently proceed with the Charge founded on an unlawful investigation.

Accordingly, this court is urged your lordship to hold that the case of ***ORJI UZOR KALU V. FRN (Supra)*** is not in all fours with the facts of the instant case.

In paragraphs 3.12, 3.13 & 3.14 of their Written Address, the prosecution contended that Economic and Financial Crimes Commission (EFCC) conducted its investigation in accordance with the law. Learned prosecuting counsel proceeded to urge

this Honourable Court to discountenance the earlier decision of Federal High Court in Suit No. FHC/PH/FAR/165/2021 setting aside the investigation upon which the instant Charge is predicated.

In reply, it is submitted that the above contention of the prosecution is an open invitation for this Honourable Court to sit on appeal over the earlier decision of Federal High Court, Coram: Hon. Justice S.D. Pam, in suit No. FHC/PH/FHR/165/2021, setting aside same investigation which the prosecution is herein contending to be valid and lawful. This court is further urged to resist this unholy invitation and hold that this Honourable Court cannot sit on appeal over the decision of Court it coordinate jurisdiction. ***COLE W. JIBUNO & ORS (2016) LPELR-40662(SC)*** was cited.

It was also submitted in paragraphs 4.01, 4.02 & 4.03 of the Complainant/Respondent's Written Address that this Honourable Court is not bound by the decision, in Suit No. FHC/PH/FHR/165/2021, setting aside the entire investigation on which the instant Charge is predicated. Reliance was placed on yet the same ***ORJI UZOR KALU V. FRN (Supra)***.

In its reply, learned senior counsel contended that the decision of the Supreme Court is Orji ***UZOR KALU V. FRN (Supra)*** is not in all fours with the instant case. It is further submitted that under Section 287 (3) of the 1999 Constitution of the Federal Republic of Nigeria, all authorities and persons are mandated to give effect to the decision of the Honourable Court, Coram: Hon. Justice S. D. Pam, in Suit No. FHC/PH/FHR/ 165/2021. Section

287 (3) of the 1999 Constitution of the Federal Republic of Nigeria was cited.

Learned counsel insists, that it will be an aberration for this Honourable Court to proceed to try the 1st Defendant on the basis of an investigation which has been set aside.

It was submitted at paragraphs 5.02 - 5.05 of the Respondent's Written Address that the Honourable Attorney general of the Federation approved and has not retracted his approval for Erce to prosecute the instant Charge. The Complainant/Respondent contended that vide Exhibit "ROCHAS", the Hon. Attorney General merely requested for the duplicate case file, but never stopped prosecution. It was further contended, in paragraph 5.06 of the Respondent's Written Address, that the 1st

Defendant/Applicant herein lacks the locus standi to question the competence of the Respondent to prosecute the instant charge. Reliance was placed on ***SARAKI V. FRN (2016) LPELR - 40013(SC)***.

Learned counsel submits, that earlier point was made that every case is an authority for what it decided. ***PDP V. INEC & ORS (SUPRA) AND THOMAS V. FEDERAL JUDICIAL SERVICE COMMISSION (Supra)*** were cited. Learned counsel contends, that the case of ***SARAKI V. FRN (Supra)*** has no application here, given the different circumstances of the case. In ***SARAKI V. FRN (Supra)***, objection was raised against the Charge signed by one Hassan. The contention was that Mr. Hassan did not obtain the fiat of the Hon. Attorney General of the Federation because the office of the Hon. Attorney General was vacant at the time.

Learned counsel submits, the contention of the Respondent that the Honourable Attorney General has not retracted its approval to prosecute, is, with due respect, non sequitur. Counsel relies on section 122(2) (m) of the Evidence Act, 2011 to invite this Court to make judicial notice of our Exhibit “OKOROCHA 10” by which the Honourable Attorney General clarified his position by restating/mandating Economic and Financial Crimes Commission (EFCC) to obey existing Court Orders, including the Order setting aside the entire investigation on which the extant Charge is predicated. It was upon persistent disobedience to Court Orders, especially the Order setting aside the entire investigation conducted by Economic and Financial Crimes Commission (EFCC), that the

Honourable Attorney general has now requested the Case file vide our Exhibit “OKOROCHA 7”.

On the whole, this court is urged to discountenance the submissions of the Complainant/Respondent and quash the instant Charge No. FCT/HC/CR/70/2022.

On their part, Complainant/Respondent filed 17 paragraph Counter Affidavit in opposition to 1st Defendant’s motion on notice dated 12th December, 2022...deposed to by Aso Larry, Lawyer with the Economic and Financial Crimes Commission. It is the deposition of the Complainant/Respondent that Sometime in 2019, the Respondent received various Intelligence Reports from members of the public amongst which were:

That Applicant connived with the then Ag. Accountant General of Imo State, the Pay Officer,

the Cashier and others to illegally withdraw the sum of N1,800,000,000 (One Billion, Eight Hundred Million Naira) from the coffers of Imo State Government for the purpose of funding the Gubernatorial and State House of Assembly election in the state; The sum of N30,000,000,000 (Thirty Billion Naira) was embezzled and stolen from the Treasury of the Imo State Government by the Applicant under the guise of projects execution and laundered through companies, and that based on the Intelligence mentioned in paragraph above, officials of the Respondent commenced investigation which include making inquiries from Zenith Bank Pl on the State's Federal Account Allocation Committee (FAAC) and Joint State Local Government Committee (JAAC) Accounts; interviewing the signatories to the accounts: interviewing some of the

contractors to the Imo State Government: conducting inquiries with banks having loan transactions with the State Government: making inquiries from the Code of Conduct Bureau; and interview of former and present government officials.

That preliminary findings from the investigation revealed that:

Between 2014 and 2018, the aggregate sum of N1,845,000,000 (One Billion, Eight Hundred and Forty Five Million Naira) was transferred from the Local Government Account of the State under the guise of mobilization for building of 28 hospitals across every local government in the State through different companies including Bureau De Change to a company which provided lease of Learjet 45XR Aircraft for the personal use of the 1st Defendant;

That Contractors to Imo State Government used state funds to the tune of N457,000,000.00 (Four Hundred and Fifty Seven Million Naira) to clear containers of goods imported into the country by the wife of the 1st Defendant (then official first lady to the State who is the Managing Director of All Inn Limited and Royal Spring Palm Hotel and Apartments, Owerri;

That Between January and April, 2019, a total sum of N6,040,000,000 (Six Billion, Forty Million Naira) was transferred to different companies from the Imo State Joint State Local Government Project Account domiciled in Zenith Bank based on the directives of the Applicant without contract documentation or evidence of contract execution;

That about N50,000,000,000.00 (Fifty Billion Naira) was moved from the treasury of Imo State Government under the guise of execution of projects through proxy companies and nominees during the Applicant's administration;

That Applicant upon realizing that Respondent had begun investigation as described in paragraphs 5-7 aforesaid rushed to file Suit No. FHC/ABJ/CS/475/19 at Federal High Court, Abuja and surreptitiously secured an order ex parte with a view to stopping the investigation;

That the Respondent challenged the suit and also filed a Motion alleging bias against the Hon. Justice Taiwo Taiwo who granted the said ex parte order. In response, his Lordship, Honourable Justice Taiwo on 17th December, 2019 recused himself from the

case and sent the case file back to the Hon. Chief Judge of the Federal High Court for re-assignment. Attached and marked as Exhibit 'EFCC A' is a copy of the ruling of Hon. Justice Taiwo recusing himself from the case;

That the case was reassigned to Hon. Justice Inyang Ekwo of the Federal High Court, Abuja to start de novo and no ex parte order has been made by the new court;

That while Suit No. FHC/ABJ/CS/175/2019 was pending, the Applicant filed another Suit No. FHC/ABJ/CS/508/20 at the Federal High Court, Abuja with a relief to stop the Respondent and Imo State Government from investigating him. The Honourable Court at all-time material herein has not

made any order to stop the investigation of the Applicant;

That the Respondent in the absence of any restraining order sent invitation letters to the Applicant for interview but the Applicant failed and refused to honour the invitation;

That having refused to honour the several invitation letters courteously extended to him, the Respondent applied and obtained an Order for the Arrest of the Applicant;

That armed with the warrant of arrest, officials of the Respondent sought to arrest the Applicant at his office address in Garki, Abuja on 13th April, 2021 but Applicant resisted the said arrest by locking himself up in the house. Operatives of the Respondent were forced to patiently wait from about

2.00pm

to 4:30pm before they eventually got access to the Applicant and arrested him. During this period, the Applicant called several highly placed persons with a view to stopping officials of the Respondent from arresting him;

That upon his arrest and at the Respondent's office, Officials of the Respondent granted bail to the Applicant but he did not meet the terms until the 15th of April, 2021, Attached and marked Exhibit "EFCC B" are the terms of the administrative bail conditions given to the Applicant by the Respondent;

That contrary to paragraph 3 of the affidavit In support of the 1st Defendant's Motion, based on preliminary findings from investigation described in paragraph above, a 17 Count charge of conspiracy

and money laundering: Charge No. FHC/ABJ/28/22 was filed against the 1st Defendant and others before the Federal High Court, Abuja which had statutory jurisdiction over the offences;

That Applicant was arraigned along with the other Defendants in respect of the said charge on 30th May, 2022 before Hon. Justice Inyang Ekwo of Federal High Court 5 Abuja and the matter was adjourned to 7th November, 2022 for commencement of trial;

That on 28th October, 2022 Applicant filled a Motion on Notice similar to the one before this Honourable Court seeking to quash Charge No. FHC/ABJ/28/22 and this stalled the trial fixed for 7th November, 2022. The Motion on Notice was eventually argued

on 25th November, 2022 and ruling is adjourned to 6th February, 2023 by the Honourable Court;

That Charge No. FCT/HC/CR/70/2022 before this Honourable Court is the predicate offence consequent to the outcome of investigation carried out by Respondent;

That whilst in office as the Governor of Imo State between May 2011 to May 2019, the Applicant had constitutional Immunity from Prosecution and not investigation of his activities bothering on financial crimes;

That the Respondent conducted investigation into accounts of financial improprieties alleged against the Applicant and in the course of its investigation, the Applicant was not subjected to any harassment or intimidation;

That Complainant/Respondent did not violate any known law by commencing investigation into the activities of Applicant as the former Governor of Imo State;

That Complainant/Respondent challenged the Fundamental Rights Suit filed by the Applicant and also filed a Motion alleging bias against the Honorable Justice Taiwo Taiwo who granted the Ex-Parte Order referred to in Paragraph 3(e) of the Applicant's affidavit. In response, his lordship, Hon. Justice Taiwo Taiwo (as he then was) on 17th December, 2019 recused himself from the case and sent the case file back to the Honorable Chief Judge for reassignment. We refer to Exhibit “EFCC A”;

That the case was reassigned to Hon. Justice Inyang Ekwo to start de novo and no Ex-Parte order was made by the Honorable Court in the case;

That while Suit No. FHC/ABJ/CS/175/2019 was pending, the Applicant filed another Suit No. FHC/ABJ/CS/508/20 at the Federal High Court, Abuja with the relief to stop the Respondent and Imo State Government from investigating him. The Honourable Court at all-time material herein did not make an order to stop the investigation of the Applicant;

That the Respondent in the absence of any restraining order took the steps and actions described in paragraphs 12-15 described aforesaid;

That the Honorable Attorney General of the Federation (AGF) and Minister of Justice is well

aware of the investigation and on-going prosecution against the Applicant and other Defendants in this case and specifically directed the Complainant/ Respondent to ensure that the case is prosecuted to a Logical Conclusion. Attached herewith and marked as Exhibits “EFCC C” and Exhibit “EFCC D” is a letter written to the AGF by the complainant and the response thereto;

That the Honourable Attorney General of the Federation can at any time either directly or through officers of his department take over or discontinue in this case without the prompting of the Applicant or any other person;

That Usman Imam was neither a staff of the Economic and Financial Crimes Commission (EFCC) nor was he the Zonal Commander, Port

Harcourt Zonal Command of the Commission in June 2022;

That ACE 1 Nwokike Nwanneka who was the Zonal Commander of the Port Harcourt Zonal Command in June 2022 did not organize a press conference and gleefully announce to the whole world that the Applicant stole N7.9 Billion of the Imo State Government funds and the Economic and Financial Crimes Commission (EFCC) has recovered same;

That the processes filed by the Respondent to counter the Applicant's Fundamental Rights Suit No. FHC/PH/FHR/165/2021 at the Port Harcourt Division of the Federal High Court was transmitted by the Central Registry of that Division to Court 2 presided over by Hon. Justice E. Obile occasioning grave injustice to the Respondent whereupon Hon.

Justice Pam gave judgment on 6th December, 2021 without considering Respondent's processes duly filed. The said Counter Affidavit and Written Address is attached and marked as Exhibit "EFCC E";

That the Respondent filed a Motion to set aside the judgment of 6th December, 2021 and this was refused by Hon Justice Pam on 27th May, 2022 necessitating the filing of a Notice of Appeal by the Respondent against the said ruling. The Motion to set aside the judgment and the Notice of Appeal are attached herewith and marked Exhibits "EFCC F" and "EFCC G";

That the Order granted by Hon. Justice Pam referred to in Paragraph of the affidavit in support of the Applicant's Motion is a gagging order designed to

frustrate, prevent and discourage the Respondent from discharging its statutory functions of investigation and prosecution of Economic and Financial Crimes Commission (EFCC);

That the Order was not directed at proceedings before this Honorable Court; Hon. Justice Pam's Court and this Honorable Court are courts of coordinate jurisdiction;

That the charge filed against the Defendants including the 1st Defendant/Applicant has three voluminous and comprehensive proof of evidence which shows the nexus of the Defendants with the charges filed and the list of documentary evidence to be relied upon by the Prosecution during the trial;

That it will be in the interest of justice to refuse the 1st Defendant's application.

In line with procedure, written address was filed wherein four (4) issues were formulated for determination to wit;

On issue one, *Whether the Federal High Court per Hon. Justice Pam can restrain, prevent and foreclose the Economic and Financial Crimes Commission from performing and discharging its statutory functions of investigation and prosecution of Economic and Financial Crimes.*

Learned counsel submits, that court Order is crucial to the survival of any constitutional democracy. Therefore, parties, individuals and government agencies must obey and comply with every subsisting order of a court.

Learned counsel further submits, that it has been held that the peculiar circumstances of a case and the

nature of the order made by a court may constitute an exception to the above rule. In this vein, we respectfully submit that the criminal charges preferred against the Applicant herein cannot respectfully be quashed on account of the judgment/orders of Honourable Justice Pam which was based on an ex parte order made by Honourable Justice Taiwo of the Federal High Court, Abuja (as he then was) in civil suit No. FHC/ABJ/CS/475/19.

It is the submission of learned counsel, that The Supreme Court of Nigeria in Orji ***UZOR KALU VS. FEDERAL REPUBLIC OF NIGERIA (2016) LPEL - 40108 (SC)*** described the nature of the Orders made by Honourable Justice Pam as "creeping order" akin to a weapon of mass destruction as it restrains everything.

On the rights of the Complainant/Respondent to investigate anyone without interference, Section 13(1) and 8(5) of the Economic and Financial Crimes Commission (Establishment) Act 2004 is in pari materia with Section 4 of the Police Act.

Learned counsel refer this court to paragraphs 8, 9, 10, 11, 12, 16(a) and 16 (b) of our counter affidavit and submit that the Respondent did not in fact carry out any investigation in disregard of the orders made ex parte by Honourable Justice Taiwo Taiwo (as he then was) of the Federal High Court, Abuja.

Consequently, My Lord, Hon. Justice Dalyop Pam's order against investigating the 1st Defendant/Applicant ran foul of the principle of Stare Decisis and cannot stand in the way of Whether the Orders made by Hon. Justice Pam in Civil Suit No.

FHC/PH/FHR/165/2021 is binding on this Honorable Court in respect of Criminal Charge No. FCT/HC/CR/70/2022.

On issue two, *whether the Orders made by Hon. Justice Pam in Civil Suit No. FHC/PH/FHR/165/2021 is binding on this Honourable Court in respect of Criminal Charge No. FCT/HC/CR/70/2022.*

Learned counsel referred the Court to the decision in *KALU VS. FRN (Supra)*.

Learned counsel submits, that this Court is enjoined in line with the principle of stare decisis to follow the above decision of the Supreme Court and hold that this Honourable Court is not bound by the decision of Hon. Justice Pam delivered in a civil case.

On issue three, *Whether the Honorable Attorney General of the Federation and Minister of Justice restrained the Economic and Financial Crimes Commission (EFCC) from the investigation and prosecution of this case.*

Learned counsel submits, that Section 174(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) recognizes that other authorities like Economic and Financial Crimes Commission can initiate and undertake criminal proceedings against any person. Comptroller of *PRISONS VS. ADEKANYE (2002) 15 NWLR (PT.790) 318 a329; FRN VS. OSAHON (2006) 5 NWLR (PT.973) 361 AT 406* were cited.

Learned counsel further submits, that in paragraph 16(L) of their counter affidavit, the Respondent

annexed Exhibits “EFCC C & D” wherein they wrote to the Honourable Attorney General for specific directives in respect of investigation and prosecution of this case and the Honourable Attorney General directed that the case be prosecuted to logical conclusion.

Applicant did not in their application before this Honourable Court exhibit any document showing a retraction of the above clear directive. They only exhibited a document Exhibit “OKOROCHA 7” wherein the Attorney General merely requested the Respondent to forward the duplicate case file and comment on the alleged contemptuous action raised by the Applicant and Exhibit “OKOROCHA 9” which was written to one Oyenkwe.

Learned counsel contends, that the Hon. Attorney General did not in any way restrain the Respondent from the investigation and prosecution of this case.

On issue four, *whether the Charge against the Applicant is Competent.*

It is the submission of learned counsel that, on the competence of the Charge, the 1st Defendant's application is contrary to the provision of Section 221 of the Administration of Criminal Justice Act, 2015.

However, if the court overrules the Respondent which is unlikely, then learned counsel submits that the offences contained in the counts which the 1st Defendant/Applicant is being charged is criminal conspiracy to commit Criminal Breach of Trust and

Criminal Breach of Trust, which are well provided for in the Penal Code Law.

Learned counsel submits further, that the current position of the law on the issue is that where a person is tried for an existing offence or for an offence covered by an existing law, such as the Penal code Law his Prosecution will stand as the argument of the Defense Counsel to the 1st Defendant/Applicant it allowed to stand will lead to absurdity.

Where the proof of evidence discloses an offence and only links the accused with it circumstantially, the indictment would be allowed to stand, even if the evidence would not be enough to sustain a conviction at the trial. ***IKOMI & ORS V. THE STATE (Supra)*** was cited. Furthermore, it is trite

Law that even when a Charge is brought under a wrong law once an offence is disclosed under any Law, it becomes irrelevant that the Charge is not brought under the appropriate law.

This Honourable Court is urged to hold that the information filed by the prosecution against all the Defendants particularly the 1st Defendant/Applicant is competent and constitutional and to dismiss the application of the Is Defendant dated the 12th day of December, 2022.

Complainant/Respondent similarly filed Reply on points of law to 1st Defendant/Applicant's and Better Affidavit wherein it was stated as follow;

That the entire depositions in the counter affidavit sworn to on 24th January, 2023 in opposition to Defendant/Applicant's motion on notice dated 12th

December, 2022 and filed 13th December, 2022 are true and correct.

Contrary to paragraph 3 of the 1st Defendant/Applicant's further affidavit in support of his Motion on Notice dated and filed 12th December, 2022, Complainant/Respondent further stated that;

1. The depositions in paragraphs 5, 6 and 7 of my earlier counter affidavit of 24th January, 2023 are true and correct.
2. The ruling of Honourable Justice Taiwo Taiwo (as he then was) in Suit No. FHC/ABJ/CS/507/2019 annexed as Exhibit "EFCCA" in paragraph 9 of his earlier counter affidavit covers three Suits namely:

a. Suit No. FHC/ABJ/CS/507/2019

b. Suit No. FHC/ABJ/CS/474/2019

c. Suit No. FHC/ABJ/CS/475/2019.

3. That one of the grounds for the reliefs sought by the Economic and Financial Crimes Commission as 4th Respondent in Suit NO. FHC/ABJ/CS/507/2019 was stated thus:

“The Honourable Court also granted similarly worded Order on 8th May, 2019 in Suit No. FHC/ABJ/CS/474/2019 and Suit No. FHC/ABJ/CS/475/2019 instituted by the former Executive Governor of Imo State, Owelle Rochas Okorocha seeking to stop the 4th Respondent/ Applicant (Economic and Financial Crimes Commission) from investigating his activities as a Governor”

That two of the prayers/reliefs sought by the Economic and Financial Crimes Commission as 4th Respondent in Suit No. FHC/ABJ/CS/507/2019 by the Court were also stated thus:

1. AN ORDER of this Honourable Court recusing itself from further hearing this suit on the grounds of likelihood of bias.
2. AN ORDER directing that the case file be transferred to the Chief Judge of the Federal High Court for reassignment to another Judge.”

That Honourable Justice Taiwo Taiwo (as he then was) in Suit No. FHC/ABJ/CS/507/2019 after considering the reliefs sought and issues raised also held as follows at pages 9, 18 and 19 of his ruling delivered on 17th December, 2019 (Exhibit EFCCA):

“It is pertinent to note at this point that whatever decision I take in this case apply to the sister case which is Suit No. FHC/ABJ/CS/508/2019 and also the case of OWELLE ROCHAS OKOROCHA VS. AGF & 5 ORS SUIT NO. FHC/ABJ/CS/474/19.”

“I am therefore withdrawing from this case for the reasons which I have stated above and for personal reason, the ultimate of which, sorry for my repetition, has to do with the integrity and the confidence of the judicial process in the eyes of the ordinary man on the street. I shall therefore transfer the file back to my Lord, the Chief Judge of this court for the hearing of the suit and all pending applications in the file by another judge in this court. This ruling as stated earlier also relate to the sister case in this suit

and the cases filed by Chief Rochas Okorocha against other parties since similar applications were filed by the 4th Respondent in all these cases. This is my ruling”.

That the depositions in paragraphs 11, 12, 13 and 14 my earlier counter affidavit of 24th January, 2023 are true and correct;

That it did not feature and neither was it considered in the judgment delivered by Hon: Justice Pam in Suit No. FHC/PH/FHR/165/2021 that:

- (a) Usman Imam was the Zonal Commander of the Port-Harcourt Zonal Command of Economic and Financial Crimes Commission in June 2022.
- (b) ACE I Nwokike Nwanneka, the Zonal Commander of the Port-Harcourt Zonal Command of Economic and Financial Crimes

Commission in June 2022 allegedly organized a press conference where he gleefully announced to the whole world that the Applicant stole N7.9Billion Naira of the Imo State Government fund which the EFCC has recovered same.

That the facts stated and issues raised in paragraph 16(n) and 16(o) were not considered, adjudicated and determined in finality by Hon. Justice Pam in Suit No. FHC/PH/FHR/165/2021;

That Respondent filed an appeal against the decision of Hon. Justice Pam in Suit FHC/PH/FHR/165/2021 in line with its constitutional rights;

That Exhibit Rochas 8 referred to in paragraph 3(xviii) of Applicant's Further and Better Affidavit was not addressed to the Respondent;

That the Respondent is statutorily empowered to initiate criminal prosecution on its own without recourse to the Honourable Attorney General of the Federation;

That the Honourable Attorney General of the Federation has the powers without the prompting of anyone including the Applicant to take over and discontinue any prosecution initiated by the Respondent.

In specific response to paragraph 3(xx) of the 1st Defendant's Further Affidavit of 28th February, 2023, it is further stated as follows:

- i. That the Federal High Court and the High Court of the FCT are courts of coordinate jurisdiction.
- ii. That Exhibits "OKOROCHA I1 & 12" delivered by Hon. Justice Inyang Ekwo of the Federal High

Court, Abuja is a persuasive decision which is not binding on this Honourable Court.

That it will be in the interest of justice to refuse Applicant's motion.

COURT:-

I have abreast myself with the legal arguments of both counsel, vis-a-vis the annexed exhibits for and against the Instant application.

It is instructive to mention that Oba Maduabuchi, SAN, who is counsel for the 2nd, 3rd, 4th, 6th and 7th Defendants, and Darlington N.O., Esq. who appeared for the 5th Defendant aligned themselves with the submission of learned counsel for the 1st Defendant/ Applicant, Ola Olanipekun, SAN, on all the arguments in also urging the Court to dismiss the

charge before the Court, as same amounts to an abuse of judicial process.

Permit me to observe that the gamut of the argument of learned senior counsel for the 1st Defendant/Applicant is anchored on the issue of disrespect to lawful existing Order of Court which has dragged the Complainant/Respondent to the domain of abuse of Court process.

It is not in doubt that the Economic and Financial Crimes Commission (EFCC) under the establishment Act, 2004 enjoys a wide range of powers, amongst which are the investigation of all Financial Crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instrument, computer

credit card fraud, contract scam, the coordination and enforcement of all Economic and Financial Crimes Laws and enforcement functions conferred on any other person or authority, the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, etcetera, etcetera.

In the realization of above goal, it is needless to say that Court have played a key role in the success story of the Economic and Financial Crimes Commission (EFCC).

Eventhough learned counsel for the 1st Defendant/Applicant seem to have made expansive and extensive arguments on a wide range of issues and judicial matters, I am minded to fix my gaze on only one issue, i.e *whether or not the Instant*

Charge before this Court falls within the ambit or class of abuse of Court process.

It is not in doubt that the 1st Defendant/Applicant approached the Federal High Court (FHC) Port-Harcourt Division Coram Pam, J. seeking a wide range of reliefs as stated in Exhibit “Okorochoa 2” which has already been mentioned in the preceeding part of this ruling, hence needless to elucidate same here.

It is equally not in doubt that Charge No. **FHC/ABJ/28/2022** was filed at the Federal High Court Coram Hon. Justice Inyang Ekwo and upon objection, the said Charge was dismissed by the Judge.

This is as shown on Exhibits “Okorochoa 11” and “Okorochoa 12” respectively.

It is however worthy of note that the 1st Defendant/Applicant who was being investigated by Economic and Financial Crimes Commission (EFCC) in the course of his tenure as Governor Imo State between 29th May, 2011 – 29th May, 2019, challenged the said investigation in Court, vide Originating Motion under the Fundamental Human Rights Enforcement Rules, 2009.

The said Suit No. FHC/PH/FHR/165/2021 was determined on the 6th December, 2021 wherein the learned Trial Judge declared the investigation of the 1st Defendant/Applicant, Rochas Okorochoa, as illegal, unlawful, unconstitutional and a nullity.

Above Judgment was pursuant to reliefs claimed in an Originating Motion which was contested.

It is further the averment of 1st Defendant/Applicant that Complainant/Respondent appealed against the said pronouncement of the Federal High Court to the Court of Appeal, and that whereas the Appeal is still pending, that the Complainant/Respondent who failed to obey the Judgment of the Federal High Court (FHC) aforementioned, proceeded to file Charges No. FHC/ABJ/CR/28/2022 and FCT/HC/CR/70/2022 pending before Hon. Justice Inyang Ekwo and Hon. Justice Y. Halilu of Federal High Court and FCT High Court respectively.

Pursuant to the Judgment of the Federal High Court (FHC) in favour of the 1st Defendant/Respondent and in view of the other Orders so made touching on the process of the investigation of the 1st Defendant/Applicant by the Complainant/Respondent i.e EFCC, the said criminal charges filed before the

Federal High Court and FCT High Court against the 1st Defendant/Applicant and other are now been construed as abuse of judicial process.

Above represents the grouse of the 1st Defendant/Applicant in a nutshell.

We need to note the fact that the effect of an Order of Court cannot be over emphasized.

An Order made by a court of competent jurisdiction is valid until it is declared void by another Court of competent jurisdiction, or by the same Court.

See *NIDOCCO VS. GBAJABIAMILA (2013) LPELR – 20899 (SC)*.

Permit me to observe with respect that I have read in detail the content of the said charge earlier filed at the Federal High Court (FHC) and the present

charge before the High Court of the Federal Capital Territory, Abuja.

There is no gain saying that both charges are products of the same investigation which had been faulted by Hon. Justice Stephen Dalyop Pam of the Federal High Court (FHC) Port-Harcourt Division.

I am minded to observe that the moment the Federal High Court made pronouncement on the said Originating Motion granting those wide range of orders against the Complainant/Respondent in the present application, the next step was to challenge the said Judgment on Appeal to the Court of Appeal.

Any other step taken in the Prosecution of the 1st Defendant/Applicant as done in this case, shall be protested on grounds of abuse of process.

Even though the number of charges are not the same in both charge sheets, they are both borne out of the investigation that has been declared by the Federal High Court as illegal and unconstitutional.

The argument of Abdullahi of counsel, for Economic and Financial Crimes Commission on the fact that the charges are not the same is most unbelievable.

The law on abuse of court process is clear. Abuse of court process encompasses a wide range of situations wherein a party intentionally misuses the process of the court improperly to achieve an unlawful purpose.

A common feature of abuse of judicial process revolves around the improper use of judicial process by a party in litigation which is aimed at interfering with the due administration of justice.

It is not in doubt that the charge before this court emanated from the same investigation which the Federal High Court Port-Harcourt declared null, void and unconstitutional.

From the averments contained in both the affidavits for and against the application on the one hand, and the annexed exhibits, on the other hand, it is not in doubt that there is a subsisting Order of Court which is being disobeyed by the Complainant/Respondent Economic and Financial Crimes Commission (EFCC)... this is not acceptable.

It is the general rule that Orders of Court are meant to be obeyed by parties and where such Orders and or Judgments are treated disdainfully and scornfully as done by the Economic and Financial Crimes Commission (EFCC) in this case, the Court must

resist such action as same is tantamount to dragging the image of the Judiciary to ridicule.

I have no doubt in my mind that the action of the Economic and Financial Crimes Commission (EFCC) in this situation represents the mother of all abuse of Court Process.

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS. (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D*** - *E* stated thus;

“There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-

- a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.*
- b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
- c. Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.*
- d. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.*

e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.

The Economic and Financial Crimes Commission must be seen to truly and really obey the law moreso that the court is needed for the prosecution of EFCC Cases.

The Rule of law is a constitutional doctrine which emphasizes on the supremacy of the law.

It is still the greatest privilege and prerogative of any person saddled with the responsibility of administration of justice to nip in the bud any such act of abuse of judicial process.

Any suit that impugns the dignity of a Court must be eschewed as same amounts to an abuse.

The following cases are apt on abuse of Court process, ***BENAPLASTIC INDUSTRIES LTD. VS. VASILYEV (1999)10 NWLR (Pt. 624) 620; HARNIMAN VS. HARNIMAN (1989)5 NWLR (Pt. 119) 6; C.B.N VS. AHMED (2001)11 NWLR (Pt. 724) 369; OGBORU & ANOR VS. UDUAGHAN & ORS (2013) LPELR – 20805 (SC).***

Courts have been advised to invoke their coercive powers to punish the party in abuse by dismissing such a case.

See ***IGBEKE VS. OKADIGBO & ORS (2013) LPELR 20664 (SC); DINGYADI & ANOR VS. INEC & ORS (2011) LPELR – 950 (SC).***

Having come thus far, this is a convenient point to dismiss the said charge **No. CR/70/2022** for being an abuse of the process of this court.

Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
14th July, 2023

APPEARANCES

1st Defendant in Court.

M.A Babatunde, Esq. – for the Prosecution.

Ola Olanipekun, SAN, with Chijioke Onyeneke, Esq. and Daniel Alumun, Esq. – for the 1st Defendant.