IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA

SUIT NO: FCT/ HC/BW/CV/14/2021

BETWEEN:

1. TALEVERAS PETROLEUM TRADING DMCC
2. MR. IGHO CHARLES SANOMI ------ CLAIMANTS

AND

1. MR SIBUSISO SYDNEY GAMEDE1
2. MR RUDZANI GODFREY MULAUDZI ----- RESPONDENTS

JUDGMENT

DELIVERED ON THE 9TH MARCH, 2021

By an Originating Motion dated the 12th day of January, 2021 and filed on the same day, the Claimants herein sought the following reliefs from this Court:

1. A DECLARATION that the conduct and business of the Respondents at the material time to this suit having misled Honourable Justice O. L. Rogers of High Court of South Africa, Western Cape Division to make allegation of collusion and corruption against the Claimants in his Judgment of Friday 20th November, 2020 has occasioned a miscarriage of justice to the Claimants.
2. A DECLARATION that the failure of the 2nd Respondent to take reasonable care as a dire tor of a company of the 2nd Claimant in his personal business and relationship with the 1st Defendant which occasioned a damage to the business name and reputation of the

claimants in the Judgment of Honourable Justice O. L. Rogers of High Court of South Africa, Western Cape Division delivered on Friday 20th November, 2020 in Case No. 4305/18 was as a result of the breach of fiduciary relationship and duty of care owned to the Claimants by the 2nd Respondent.

3. Damages against the Respondents for the damage to the business reputation of the Claimants.
4. AN ORDER directing the Respondents to write a letter of apology to the Claimants individually.
5. Cost of this action.
6. AND for such or other Order(s) as the Honourable Court may deem fit to make in the circumstance of this case.

The grounds supporting the Claimants' application were outlined by them in these words:

i. On or about the 24th April, 2015 and 181'1 day of May, 2015 respectively the 1st Claimant signed a memorandum of Agreement, Storage Agreement and Commodity Swap Agreement with the Strategic Fund of South Africa.

ii. However an application was brought to the High Court of South Africa (Western Cape Division) by the Central Energy Fund and the Strategic Fuel Fund for judicial review of the Transactions relating to the three (3) Agreements in Case No. 4305/18 on the ground, inter alia, that the transactions were not approved by the Minister of Energy, the Boards of the Central energy and Strategic Fuel Fund.

iii. In the Judgment delivered in the case by Honourable justice O. L. Rogers on Friday 20th November, 2020, the following

pronouncements and decisions were defamatory of the Claimants in the way of their business in the industry of oil am gas were published:

a. At page 82 paragraph 283 of the Judgment it was held as follows:

"In the case of Taleveras transactions, if the Board was told what price Taleveras was paying for the Bonny, they did not have enough information to make a proper decision. If Board was told the price, they could not rationally have approved it. And obviously the Board did not know that Gamede had been bribed. For these reasons alone, the Board's approval of Taleveras transactions cannot stand."

b. At page 115 paragraph 420 of the Judgment it urns held as follows:

"I have found that Taleveras paid bribes to Gamede... "

c. At page 115 paragraph 421 of the Judgment it Teas held as follows:

"Taleveras' complicity in wrongdoing must thus weigh heavily against it in the scales when assessing a just and equitable remedy."

d. At page 151 paragraph 561 of the Judgment it was held as follows: "In the circumstances, I consider it just and equitable to set aside the transactions between SFF and Taleveras"

iv. In consequence, the Claimants' reputation both personal and as a major player in oil and gas industry all over the world has been seriously injured and then have suffered considerable distress and embarrassment.

v. Further to the above, apart from those words and pronouncements of court which aw in circulation in oil and gas industry all over the world, the said words and pronouncements have disparaged the Claimants in their oil and gas business.

vi. It is the grant of these reliefs that would prevent the injustice being currently done and orchestrated by the Respondents against the Claimants.

The Applicants' Motion is supported by an affidavit of twenty (20) paragraphs deposed to by one MR ALEX SCHOOL said to be the Head of Legal of the 1st Claimant. In the said affidavit, four (4) exhibits were attached and numbered serially as Exhibits A, B, C and D traceable to paragraphs 5 and 7 of the said affidavit. Exhibit A is a MEMORANDUM OF AGREEMENT entered into between The Strategic Fuel Fund Association NPC of South Africa and Taleveras Petroleum Trading DMCC. Exhibit B is a COMMODITY SWAP AGREEMENT between Strategic Fuel Fund Association (Registration No. 1964/010277/08) and Taleveras Petroleum Trading DMCC (Trade License No. DMCC-3124). Exhibit C is the STORAGE AGREEMENT between Strategic Fuel Fund Association NPC and Taleveras Petroleum Trading DMCC. Finally, Exhibit D is the Judgment of O. L. Rogers J. of the High Court of South Africa, Western Cape Division, delivered on Friday 20th November, 2020.

Still in support of the Originating Motion, there is a verifying affidavit, Statement in support and a written address. In opposition, the 1st Respondent filed a copious counter-affidavit of Forty-Two (42) paragraphs deposed to the 1st Respondent himself who attached two exhibits, marked as Exhibit SGI and SG2 respectively to paragraphs 9 and 26 of his counter affidavit. Exhibit SGI is an application which the

1st Respondent said he 'swiftly filed' before the Western Cape D vision of the High Court of South of Africa in Case 4305/18 wherein he sought to be joined as a defendant in the said case. Exhibit SG2 is a Consultancy agreement he executed in June 2015. There is also a written address attached in support of the counter-affidavit. Following a Motion for Extension of Tin e which the 2nd Respondent file on the 18th day of February, 2021, on the 19th day of February, 2021, the 2nd Respondent filed a bountiful counter-affidavit of Thirty-Four (34) paragraphs.

The deponent of the counter affidavit, VERONICA EZEAKANOBI attached two Exhibits marked as Exhibits A1 and A2 respectively. The two exhibits are the invoices generated by the 1st Respondent, sent to the 2nd Respondent leading to the payments made to the 1st Respondent. There is also a written address in support filed alongside the counter-affidavit of the 2nd Respondent. In reaction, on behalf of the Claimants, a fur her affidavit of terse four (4) paragraphs was filed mainly to reintroduce Exhibit D now as Exhibit E, being the Certified True Copy of the judgment of O. L. Rogers J. of the High Court of South Africa, Western Cape Division, delivered on Friday 20th November, 2020.

Or behalf of the Claimants, the following two issues were distilled for the resolution of this Court:

> (a) Whether or not the failure of the 2nd Respondent to take reasonable care in the course of his personal business and relationship with the 1st Respondent during his employment as a director in the company of the 2nd Claimant -which occasioned a damage to the business name and reputation of the Claimants in the Judgment of Honourable Justice O. L. Rogers of the High Court of South Africa, Western Cape Division, delivered on Friday 20th

November, 2020 in Case No. 4305/18 - was as a result of the breach of fiduciary relationship and duty of care owned to the Claimants by the 2nd Respondent?

(b) If the above issue is answered in the affirmative, whether or not the Claimants are not entitled to compensation and protection from further damage to their business reputation?

For the 1st Respondent, this sole issue was generated for the resolution of this Court:

> Whether the 1st Respondent can be held liable for the indictment made against the 1st Claimant by the Western Cape Division of the High Court of South Africa on November 20th, 2020?

For the 2nd Respondent, a sole issue was distilled for the resolution of this court. It is couched thus:

> Whether with facts as contained in the counter affidavit and exhibits attached thereto, this Honourable Court can grant the reliefs as contained in the Originating Motion against the 2nd Respondent?

Generally, it appears that all the parties in this proceedings are agreed on one thing which is the t the judgment of O. L. Rogers J. of the High Court of South Africa, Western C ape Division, delivered on Friday 20* November, 2020 is in one way or the other flawed for which there are bitter complaints as discernible from the processes of the parties. For example, there is this portion found in the counter-affidavit of the 1st Respondent where he bitterly complained thus:

> 32. That the affidavit in support of the Claimants' Originating Motion is based on the pronouncement and judgment of the South

African Court that is materially flawed both in the findings of fact and law...

33. I know as a fact that the Claimants are also aware that the Judge was biased. There are overwhelming evidence during the hearing which shows clearly that the Judge urns making comments showing that he had preconceived notions.

34. That a close and painstaking read of the Judgment of Rogers J reveals a palpable descent to the arena that made him fail to assess the evidence with an open and enquiring mind and thus accepted false unsubstantiated and untested evidence.

35. I know as a fact that the South African Judge knew that because of apartheid laws that still exit in South Africa, I would not be able to challenge his pronouncements and judgment in any Court of law in South Africa.

37. That the miscarriage of justice that the Claimants are alleging to be suffering was not occasioned by the conduct and business relationship myself and the 2nd Respondent but by the decision of a Judge that was partial, with preconceived notions which led him to make pronouncements and findings that are: flawed based on untested and unsubstantiated evidence.

At paragraphs 14 to 17 of the 2nd Respondent's counter affidavit, the following appears:

14. That the 1st Claimant has been deliberately targeted with a view to tarnishing its images, that some persons seem to have chosen to relentlessly pursue and agenda of implication the 1st Claimant without any substance, let alone any shreds of evidence to support their allegations.

15. That the Claimants never had any corrupt relationship with the Strategic Fuel Fund of South Africa.

16. That the facts in Case No. 4305/18 before the High Court of South Africa were presented deliberately to publicly inflict maximum reputational damage on the Claimants to cover their wrongdoing even those who presented the facts obviously knew that they were false. The intention was to provoke public condemnation of the Claimants without any chance of meaningful rebuttal by the Claimants whose team has worked so hard to build a reputable image in enjoys globally.

17. That the hearing and pronouncements of the Judge in South Africa was devoid of fair hearing and tainted by racism as the 1st Respondent applied to be joined to set the records straight, but was denied an opportunity to be joined to give accurate account and evidence to prove that these allegations of any bribery were false as there was never one.

The issues generated by the mammoth documents with which the parties have besieged the Court in these proceedings are rather bifurcated. I shall, regardless, untangle them, for that is the contract of my hire, so that all issues will be adequately attended to on their own individual merit and a damper put on all the agitations of the parties as already ventilated. The nature and colourations of t he issues thrown up by the parties would require this Court to walk a tight rope as this Court has to undertake a clinical survey of the judgment of the South African High Court in Case No. 4305/18.

Despite their bifurcated tenor, a common thread appears to be running across the agitations o the parties. The base of their agitations appears

rooted in or traceable to Exhibit "E" (the Certified True Copy Judgment of South African High Court in Case No. 4305/18), a judgment for which all the parties seem to have enough missiles to shoot down using principally the deadly arrow of violation of the universally-accepted and upheld right to fair hearing.

Both the European Court of Human Rights and the Inter-American Court of Human Rights lave clarified that the right to a fair trial applies not only to judicial proceedings, but also administrative proceedings. If an individual's right under the law is at stake, the dispute must be determined through a fair process. The European Court of Human Rights and the Inter-American Court of Human Rights have re-echoed the universally accepted norm which is that the right to a fair trial applies to all types of judicial proceedings, whether civil or criminal. The right to a fair trial has been accepted beyond dispute by every country (even if they do not always honour it). Fair trials not only protect suspects and defendants, they make societies safer and stronger by solidifying confidence in justice and the rule of law.

The contentions of the warring parties are suggestive that the proceedings before the Honourable Justice O. L. Rogers, including the decision arrived at is somewhat disjunctive of the concept of judicial hearing to the extent that that Court excluded the 1st Respondent from putting across his side of the story during the pendency of the said suit.

To show the unanimity of judicial view across the globe on the sanctity of the audi alterem partem rule, a somewhat tour-de-horizon would be undertaken in review of same The Indian Supreme Court is the first port of call. In the case **of Mohinder Singh Gill v. Chief Election**

Commissioner 2AIR 1978 SC 851, the illuminating passage therein contained may be usefully quoted:

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam-and of Kautllya's Arthashastra-the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not newfangled. Today its application must be sustained by current legislation, case law or other Extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

Baker v. Canada Minister of Citizenship & Immigration) 2 S.C.R. 817 [1999] at para 21 is the leading Canadian case in which the Supreme Court of Canada expressed this fundamental principle of natural justice in the following way:

> The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.

This principle goes back to several centuries and has been applied in various circumstances; it is recognized as one of the foundation of English justice. Therefore, it is considered one of the fundamental requirements of adjudication that, whenever the interest of a person is affected by a judicial or administrative decision, that person be provided the opportunity to know and to understand the allegations made against him/her, and to make representations to the decision-maker to confront those allegations. For instance, a fair adjudication of a matter requires the following steps:

i. The right to be informed in advance of the case to be met - i.e. the factual basis on which the decision-maker may act;
ii. The right to a reasonable time in which to prepare a response;
iii. The right to be heard verbally or in writing; iv. the right to cross- examine persons who may have made prejudicial statements to the decision-maker;
iv. The right to be legally represented;
v. The right to reasons for the decision. Irrespective of the nature of the body making the decision whether that is judicial/quasi-judicial or administrative, the main aim is that a person should be treated fairly

Refer to CONSTITUTIONAL AND ADMINISTRATIVE LAW 4th ed. By Hilaire Barnett, pp.901-902 (2002).

In the United States of America, the following passage is found in the judgment of Justice Black in Re Oliver 333 U.S. 257 (1948) [333 U.S. 257,258]

> The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the

Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the lettre de cachet. All of these institutions obviously symbolized a menace to liberty. In the hands of despotic groups each of them had become an instrument for the suppression of political and religious heresies in ruthless disregard of the right of an accused to a fair trial. Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, tin guarantee has alivays been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. One need not wholly agree with a statement made on the subject by Jeremy Bentham over 120 years ago to appreciate the fear of secret trials felt by him, his predecessors and contemporaries. Bentham said: '* * * suppose the proceedings to be completely secret, and the court, on the occasion, to consist of no more than a single judge,-that judge will be at once indolent and arbitrary: how corrupt soever his inclination may be, it will find no check, at any rate no tolerably efficient check, to oppose it. Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance.'

In England, natural justice has been described as fair play in action. According Lord Justice Omrord in Lewis v Heifer [1978] 3 All ER 354 (CA) at 367:

> **'Natural justice is but fairness, writ large and juridically. It has been described as "fair play in action". Nor is it leaven to be associated with judicial or quasi-judicial occasions.'**

In an opinion b; one of the most eminent judges of his day, the US Supreme Court [FrankFurter, J] in **Sacher v. United States, 343 U.S. 1 [1952]** emphasized the pre-eminence of natural justice in all judicial proceedings in this illuminating language:

> To recognize the generality of a power is the beginning not the end of the inquiry whether in the specific circumstances which invoked the power due regard was had for the implied restrictions. Among the restrictions to be implied, as a matter of course, are two basic principles of our law- that no judge should sit in a case in which he is personally involved and that no criminal punishment should be meted out except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness and affording the feeling that fairness has been done. Observance of these commonplace traditions has its price. It sometimes runs counter to public feeling that brooks no delay. At times it seems to entail a needlessly cumbersome process for dealing with the obvious, but as a process it is one of the cherished and indispensable achievements of western civilization.

The above apart, the Supreme Court of the United Kingdom in AL RAWI AND OTHERS (RESPONDENTS) V THE SECURITY SERVICE AND OTHERS (APPELLANTS) TRINITY TERM [2011] UKSC 34 has this to teach:

"Secondly, trials are conducted on the basis of the principle of natural justice. There are a number of strands to this. A party has a right to know the case against him and the evidence on which it is based. He is entitled to have the opportunity to respond to any such evidence and to any submissions made by the other side. The other side may not advance contentions or adduce evidence of which he is kept in ignorance. The Privy Council said in the civil case of Kanda v Government of Malaya [1962] AC 122, 337: "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them." Ai other aspect of the principle of natural justice is that the parties should be given an opportunity to call their own witnesses and to cross-examine the opposing witnesses. As was said by the High Court of Australia in Lee v The Queen (1998) 195 CLR 594, at para 32: "Confrontation and the opportunity for cross examination is of central significance to the common law adversarial system of trial."

In Nigeria, audi alteram right has been recognized. OGLI OKO MEMORIAL FARMS LTD & ANOR v. NACB LTD & ANOR (2008) LPELR-2306(SC) speaks eloquently to the concept of fair hearing thus:

"It is settled law that the principle of fair hearing is fundamental to all Court procedure and proceedings. Like jurisdiction, the right to fair hearing is both fundamental and a Constitutional right of every party to a dispute who is to be afforded an opportunity to present

his case to the adjudicating authority without let or hindrance from the beginning to the end. It also envisages that the Court or Tribunal hearing a case should be fair, impartial and without showing any degree of bit-s against any of the parties. Every party must therefore be given equal opportunity of presenting his case See Ekpeto v. Wanogho (2004) 18 NWLR (Pt. 905) 394; Salu v. Egeibon (1994) 6 NWLR (Pt.348) 23; Ceekay Traders Ltd v. G.M. Co Ltd (1992) 2 NWLR (Pt. 222) 132; Isiyaku Mohammed v. Kano N.A. (1968) 1 All NLR 424; and U.B.A. Ltd v. Achoni (1990) 6 NWLR (Pt. 156)254."

Times without number, it has been stated that courts are bound to give all the parties before them the ample opportunity of hearing before coming to a decision. See Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) 587. Fair hearing includes hearing all the evidence the parties intend to place before the court (especially through their witnesses) with a view to establishing their case. See Aladetoyinbo v. Adewumi (1990) 6 NWLR (Pt. 154) 98. The audi alterem partem principle as guaranteed under section 36(1) of the 1999 Constitution (as amended) remains a binding and indispensable requirement of justice applicable to and enforceable by all courts of law. See Akpamgbo-Okadigbo v. Chidi (No. 1) (2015) 10 NWLR (Pt. 1466) 124 @ 197. Any decision reached in violation of the principle of fair hearing must go down under the sledge-hammer of the appellate court. See **Mohammed vs. Olawuntni (1990) 2 NWLR (Pt. 133) 458.**

After reproducing section 36 of the constitution and in showing the fatal implication of the violation or curtailment of this sacred right of a defendant bestowed by the Constitution, the Supreme Court, in the case

of **Akpamgbo- Okadigbo v. Chidi (No. 1) (2015) 10 NWLR (Pt. 1466) 124** has this to say;

> "This is a constitutional provision which must not be toyed with. It is well settled that the right to fair hearing entrenched in section 36 (1) of the 1999 Constitution (supra) entails not only hearing a party on any issue which could be resolved to his prejudice but also ensuring that the hearing is air and in accordance with the twin pillars of justice, namely, audi alteram partem and nemo judex in causa sua. Thu, where a party is not heard at all in a matter which affects his right or the trial is adjudged unfair, any judgment generated therefrom, becomes a nullity and of no legal consequence. It is bound to be set aside."

Going further at pages 197 to 198, the Supreme Court, per Muhammad, J.S.C. stated with a tone of finality thus;

> "One outrightly agrees with learned appellant's counsel that it is trite that where a person's legal rights or obligations are challenged he must be given full opportunity of being heard before any adverse decision is taken against him with regard to such rights or obligations. This "audi alterem partern" principle as guaranteed under section 36(1) of the 1999 Constitution as amended remains a binding and indispensable requirement of justice applicable to and enforceable by all court of law. The principle affords both sides to a dispute, ample opportunity of presenting their case to enable the enthronement of justice and fairness. In the application of the principle, a hearing is said to be fair and in compliance with the dictates of the Constitution when, inter alia, all the parties to the dispute are given a hearing or an

opportunity of a hearing. If one of the parties is refused or denied a hearing or the opportunity of being heard, the court's proceedings being perverse will be set aside on appeal."

In coming to definite disposal of the case at hand on merit, I make to observe that the grant of thie reliefs as tabled by the Claimants in this suit would suppose that this Court is enforcing the judgment of the South African Court which almost all the parties to the instant proceedings are agreed has the incurable vice of breach of natural justice rule as its Achilles heels. I have very painstakingly waded through the labyrinth of Exhibit E, a judgment remarkably spanning over 160 pages and other mammoth documents assembled by the various parties to the instant. The outcome of my intimate study of them all is that the 1st Respondent was indeed shut out from presenting his own account of what transpired and to my uncommitted mind, that Court deprived itself of f he wide range of facts from which a just determination of the issues before it could have been reached. It is not in my place to vary the said judgment for I cannot possibly sit in appeal over same. The territorial jurisdiction is lacking. Nigerian Courts are known not to give judgment over foreign lands. In AG Cross River State v. AG Federation & Anor [2012] LPELR-SC 250/2099, the Nigerian Supreme Court plainly re-stated this settled principle thus:

This court has no jurisdiction to decide ownership of Oil wells located on oil rich Bakassi Peninsula for the simple reason that Bakassi Peninsula is foreign territory. It is Cameroon land. Supreme Court jurisdiction is restricted to Nigeria land.

I am therefore forbidden from interfering with the judgment of the South African High Court (Exhibit E) which has been so pilloried and impugned with blazing gusto by the parties before me. While, indeed, I am not in a position to overturn the said judgment, however, it is within the exclusive province of this Court to refuse to give effect to same. Acceding to the claims of the Claimants in the terms prayed and holding the Respondents liable would mean that I am enforcing the said South African High Court judgment which in my independent assessment is a product of a grave breach of the rules of natural justice as has been neatly outlined against which all known existing authorities across the globe lean.

The scenario that played out here is simply curious.

The Central Energy Fund SOC Ltd and Strategic Fuel Fund Association NPC are both public entities listed in Schedule 2 of the Public Finance Management Act 1 of 1999. They entered into 3 sets of agreement Exhibits 'A', 'B' and 'C. In a rather curious twist of events, after about three years the South African Public entities brought an application for judicial review against the foreign investors alleging collusion and corruption. It is this finding of the High Court of South Africa (Western Cape Division) Coram the Honourable Justice O.L Rogers, that the claimants have argued occasioned a miscarriage of justice on them as it relates to the defendants. It was also their contention that the facts upon which those findings v ere arrived at by the Honourable Justice O.L Rogers damaged their business name and reputation and are a breach of the fiduciary relationship and duty of care owned the claimants by the 2nd respondent.

The law is that or a judicial review of this nature to take place, there ought to be a criminal trial where the companies like Venus rays Trade (PTY) Ltd, Glencore Energy UK Ltd, Taleveras Petroleum Trading DMCC or VITOL Energy (SA) (Pty) Ltd or Mr. Sibusiso Sydney Gamede and Mr. Rudzani Godfrey Mulaudzi were tried and found guilty of collusion and corruption. In my view, it is after this prosecution that the Central Energy Fund SOC Ltd and the Strategic Fuel Fund Association NPC can bring an application for judicial review to set aside the transaction on the basis of collusion and corruption. I say so because in the instant suit, that is, Central Energy Fund SOC Ltd & Anor v. Venus Rays Trade (PTY) Ltd & 9 ORS (Case No: 4305/18), the applicants and the court refused to make the 1st respondent a party and proceeded to find that the transactions between Strategic Fuel Fund Association NPC and Taleveras Petroleum Trading DMCC is tainted by collusion and corruption.

It is the same Court who excluded a South African citizen (Mr. Sibusiso Sydney Gamede) from joining to state clearly the facts and to join issues with Taleveras Petroleum Trading DMCC which would have exposed the full facts surrounding the transaction.

In my view, the refusal of the South African Court to make the 1st respondent a party in the proceedings before it did not merely breach the 1st respondent's right to be heard, but also had the collateral effect of violating the Claimants' right to fair hearing. I say this because the Claimants were deprived of the right to cross-examine the 1st respondent for the purpose of extracting the truth of the matter. Ian afraid that the magnitude of fair hearing right as affects Taleveras Petroleum Trading DMCC in those impugned proceedings is far worse

where a party to a proceeding is deliberately denied the opportunity for his 'whole case' to be heard.

In ONUWA KALU v. THE STATE (2017) LPELR-42101 (SC), Nweze J.S.C. gave a far-reaching insight into the entire purport of the rule of natural hearing and how catastrophic its breach could be. For its beneficial impact on the fortune of our discussion, we take the liberty of this exercise to quote his leading judgment in extensor;

> This, unarguably was the context that yielded this Court's opinion in Kim v State (1992) LPELR -1691 (SC) 11-12; F-E that: Human rights in our written Constitution mark a standard of behavior which we share with all civilized countries of the word. Since the United Nations Universal Declaration of Human Rights in 1948, though it is still left for various member nations to determine which rights from the plethora of rights then declared they would wish to incorporate into their domestic laws, once incorporated, their application lose the character of insular isolationism. Rather they assume a universal character in their standard of interpretation and application. One of those universal character of their breach is that, in case of a right to fair hearing, once it is duly established that it has been breached in a judicial proceeding, it vitiates the proceeding. If therefore, I find that it was breached in this case, l shall have no alternative but to allow the appeal. See- Michael Uda Udo v. The State (1988) 3 NWLR (P 82) 316; Galas Hired v. The King (1944) A.C. 149; Dixon Gokpa v. IGP (1961) All NLR 423; R v. Mary Kingston 32 C. App. R. 183; and Godwin Josiah v. The State (1985) 1 NWLR (pt 1) (sic).

I will at this stage pause to recap the effects of a proceedings of this nature in several civilized nations and continent of the earth.

1. THE EUROPEAN COURT OF HUMAN RIGHTS

In ISMERI EUROPA V COURT OF AUDITORS (LAW GOVERNING THE INSTITUTIONS) [2001] EUECJ C-315/99 (10 JULY 2001), the European Court emphatically stated that:

> "However, observance of the principle of the right to a hearing which requires persons to be heard before adoption of decisions concerning them is said to be a basic condition governing exercise of a discretionary power by a public authority ...None the less, the principle of the right to a hearing is a general principle of law whose observance is ensured by the Court of Justice. It applies to any procedure which may result in a decision by a Community institution perceptibly affecting a person's interests (see, in particular, judgment in Case 17/74 Transocean Marine Paint v Commission [1974] ECR 1063, paragraph 15)."

2. IN THE UNITED STATES SUPREME COURT

In America, the Supreme Court in Sacher v. United States (supra) has forcefully held that:

> "...Among the restrictions to be implied, as a matter of course, are two basic principles of our law-that no judge should sit in a case in which he is personally involved and that no criminal punishment should be meted out except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness and affording the feeling that fairness has been done. Observance of these commonplace traditions has its price. It

sometimes runs counter to public feeling that brooks no delay. At times it seems to entail a needlessly cumbersome process for dealing with the obvious,. But as a process it is one of the cherished and indispensable achievements of western civilization."

3. IN THE UNITED KINDGOM

1. In the English decision of Local Government Board v. Arlidge (1915) AC 120 (138) E L Viscount Haldane observed:

"...those whose duty it is to decide must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice."

2. In Haughey v. Moriarty [1999] 3 I.R. 1.

"Fair procedures require that before making such orders, particularly orders of the nature of the orders made in this case, the person or persons likely to be affected should be given notice by the tribunal of its intention to make such order, and should have been afforded the opportunity prior to the making of such order, of making representations with regard thereto...."

3. Lord Hew art in R v. Sussex Justices, ex p. McCarthy,(1924) I KB 256(259) opined thus:

It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seem to be done"-

4. State of Maharashtra vs. Public Concern for Governance (2007) 3 SCC 587-

In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are one-sided and do not merit any consideration. We are surprised to find that in spite of catena of decisions of this Court, the High Court did not give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gainsaid that the nature of remarks made in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice."

5. In AL RAWI AND OTHERS (RESPONDENTS) V THE SECURITY SERVICE VND OTHERS (APPELLANTS) (Supra):

A party has a right to know the case against him and the evidence on which it is based. He is entitled to have the opportunity to respond to any such evidence and to any submissions made by the other side. The other side may not advance contentions or adduce evidence of which he is kept in ignorance. The Privy Council said in the civil case of Kanda v Government of Malaya [1962] AC 322, 337: "If the right to be hear l is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them." Another aspect of the principle of natural justice is that the parties should be given an opportunity to call their own witnesses and to cross-examine the opposing witnesses.

The inescapable summation which I now come to is that Exhibit E (the judgment of the South African High Court) which is being impugned in the present proceedings is not such a judgment that ought to be enforced against the Claimants in any civilized nation of the world, for the sole reason that it (the said judgment) threw overboard the universally accepted and applied principles of natural justice. Having evidently been made in violation of the universal principles of natural justice, the said judgment cannot therefore be enforced by this Court. This is because the weight of all existing authorities, both domestic and universal (as can be gleaned from the jurisprudence of other nations), lean heavily against my doing so.

It is for the foregoing reasons, well guided by the galaxy of authorities examined; that I low, pursuant to relief (iv) of the originating motion on notice and in the exercise of the powers of this court enter the following judgment;

1. Prayer one is not granted as the court cannot enforce a Judgment which is a product of a breach of the universally protected fundamental right to fair hearing of the claimants as well as the 1st respondent.

2. It is declared that the judgment sought to be enforced and the basis of the claim in this suit, together with the findings contained therein by the host court, that is the High Court of South Africa sitting in the Western Cape Division in Case No.: 4305A8; between Central Energy Fund SOC Ltd & Anor v. Venus Rays trade (Pty) Ltd & 9 Ors, is unenforceable in Nigeria as same violates the provision of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) for lack of fair hearing.

3. It is ordered that all reliefs in the light of these findings have become spent.

This is the Judgment of this Court.

APPEARANCE

J. U. Chukudi Esq. with me E. A. Adeseemo Esq. for the claimant.

Mariyam C. Osene Esq. for the 1st Respondent.

Peter O. Asa Esq. for the 2nd Respondent.

Sign

Hon. Judge

09/03/2021