**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**HOLDEN AT ABUJA**
**ON WEDNESDAY2NDNOVEMBER 2022**
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**
**SITTING AT COURT NO. 8, MAITAMA, ABUJA**

SUIT NO: FCT/HC/CV/0536/17

**BETWEEN:**

1. BENEDICT PETERS
2. COLINWOOD LTD.CLAIMANTS
3. ROSEWOOD INVESTMENTS LTD.
4. WALWORTH PROPERTIES LTD.

**AND**

1. ATTORNEY-GENERAL OF THE FEDERATION
2. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)
3. CROWN PROSECUTION SERVICE (UNITED KINGDOM)
4. HELEN HUGHES DEFENDANTS
5. THE NATIONAL CRIME AGENCY (UNITED KINGDOM)
6. STACEY BONIFACE

7. JOHN BAVISTER

# JUDGMENT

According to processes filed to commence the instant suit, the 1st Claimant is described as a successful, wealthy and reputable businessman, with strategic investments in oil and gas, power and agriculture sectors, *interalia*. He claims to be the beneficial owners of the 2nd to the 4th Claimants. The case of the 1st Claimant, in a nutshell, is that sometime in July, 2013, the Defendants commenced and undertook money laundering investigations against the then Nigerian Minister of Petroleum Resources, **Mrs. Diezani Alison-Madueke**, and in the process, relied on unsubstantiated and false information to wrongly obtain forfeiture orders from Courts, both in Nigeria and in the United Kingdom, against properties belonging to the Claimants, situate in the United

Kingdom and the United States of America, on the pretext that the properties were proceeds of financial crimes allegedly committed by the said **Mrs. Diezani Alison-Madueke**. All efforts to resolve the matter amicably, particularly with the 2nd Defendant proved abortive.

As a result of the Defendants' purported fraudulent misrepresentation of the true ownership of the Claimants' properties, for which the Claimants have purportedly suffered loss and damages, the Claimants commenced the present action, *vide*_*Writ of Summons and Statement of Claim*_ filed in this Court on 11/05/2017, and by _*Amended Statement of Claim*_ filed on 31/01/2019, the Claimants claimed against the Defendants, jointly and severally, the reliefs set out as follows:

***1. A declaration that the Defendants, by fraudulent design, suppressed and misrepresented facts in***

***supposition that the Plaintiffs' properties legitimately acquired as listed hereunder belonged to Mrs. Diezani Alison-Madueke, former Minister of Petroleum in Nigeria, and/or were unlawfully acquired, a fact they knew or ought to know as untrue, incorrect, which act constitutes the tort of carousel fraud. The properties are namely: 270-17 Street, Unit #4204, Atlanta, Georgia; Flat 5, Parkview, 83-86, Prince Albert Road, St John's Wood, London; Flat 58, Harley House, Marleybone, London; and Apartment 4, 5 Arlington Road, London.***

2. ***A declaration that the predominant purpose of the deceitful sham allegations by the Defendants that the Assets/Properties listed in relief one above belonged to persons other than the Plaintiffs was directly intended (albeit to inflict economic loss on the Plaintiffs just as much as it was to unlawfully profit the Defendants.***

***3. A declaration that the unlawful means conspiracy of the Defendants was to extract by intimidation, coercion, the Assets, properties and monies to which the plaintiff is legitimately entitled.***

***4. The sum of $5,000,000,000 (USD Five Billion) being general damages against the defendants jointly and severally; or its Naira equivalent of 1.5 trillion Naira at the current exchange rate of ₦315 per US Dollar, for the carousel tort of unlawful interference, economic loss, loss of corporate goodwill from creditors, expropriation of personal Assets and proprietary rights of the Plaintiffs enumerated in relief one above.***

***5. An order of perpetual injunction restraining the Defendants either jointly or severally, their operatives, officers, agents, servants in whatever manner and howsoever called from interfering with***

***the proprietary rights and/or interests of the plaintiffs, their agents, alter-ego or privies in relation to the properties listed in this suit.***

6. ***An order of perpetual injunction restraining the defendants either by themselves jointly/severally, their operatives, officers, investigators, servants, agents, associates and howsoever called from interfering/continued interference with the person of the 1st Plaintiff either by way of arrest, criminal indictment, charge, interdiction, extradition, or in any other manner infringing on his personal liberty and freedom of movement on the facts and circumstances of this case.***

The two sets Defendants joined issues with the Claimants with respect to their claims. The 1st, 3rd – 7th Defendants' operative <u>*Statement of Defence*</u> was filed on 08/12/2020; whilst the 2nd Defendant's operative

*Amended Statement of Defence* was filed on 06/11/2020.

In turn, the Claimants filed *Reply* to the 1st, 3rd – 7th Defendants' *Statement of Defence* on 10/12/2020; whilst they filed *Reply* to the 2nd Defendant's *Amended Statement of Defence* on 13/11/2020.

At the plenary trial, the Claimants fielded a sole witness, by name, **Andrew Onyearu**. He claimed to be the Property Manager of the 1st Claimant and Director of Corporate Services of the 2nd – 4thClaimants. He adopted four (4) *Statements on Oath* he deposed to at different times in support of the Claimants' case. He equally tendered in evidence a total of fourteen (14) sets of documents in evidence as exhibits. He was subjected to cross-examination by learned counsel for the respective Defendants.

On behalf of the 2nd Defendant, one **Sambo Mu'azuMayana** testified. He claimed to be a Chief Superintendent in the employment of the 2nd Defendant. He identified and adopted his *Statement on Oath* and tendered in evidence five (5) sets of documents as exhibits. The witness was subjected to cross-examination only by the Claimants' learned senior counsel.

For the 1st, 3rd – 7th Defendants, learned counsel informed the Court that they shall not call evidence; but that they shall rely on the evidence adduced by the 2nd Defendant.

Parties filed and exchanged written final addresses as prescribed by the Rules of this Court. The 2nd Defendant's final address was filed on 16/12/2021, wherein its learned counsel, **Faruk Abdullah, Esq.**, formulated two issues as having arisen for determination in this suit, namely:

1. ***Whether this Suit No. FCT/HC/CV/0536/17 is not an abuse of Court process, having regards to the Stay of Execution of Judgment in Suit No. FHC/ABJ/CS/228/2016, the pending Appeals in Exhibit C3B, C3C, Appeal No. CA/A/843/2018 and Exhibit C5B?***

2. ***Whether the Claimants have proved their case on the strength of the evidence led.***

The Claimants in turn filed their final address on 27/01/2022, wherein their learned senior counsel, **Chief Mike Ozekhome, SAN**, raised four (4) issues as having arisen for determination in this suit, namely:

1. ***Having due regard to the ruling of this Honourable Court on 25/9/2018, whether this suit is an abuse of Court process?***

2. ***In view of the admission made by the 2nd Defendant's witness under cross-examination,***

***whether this Honourable Court can attach any probative evidential weight to the evidence of the 2nd Defendant?***

3. ***Whether the 1st, 3rd – 7th Defendants, having failed to lead evidence in support of their case are not deemed to have admitted the case put forward by the Claimants?***

4. ***Whether the Claimants have proved their case as to be entitled to the reliefs sought?***

In turn the 1st, 3rd – 7th Defendants filed their final address on 14/02/2022, wherein their learned counsel, **Suleiman Jibril**, equally formulated four issues as having arisen for determination in this case, namely:

1. ***Whether the Claimants' case as constituted is not an abuse of Court process?***

2. ***Whether the 2nd Defendant's witness has led credible evidence to warrant the dismissal of the Claims of the Claimants?***

3. ***Whether the 1st, 3rd - 7th Defendants' reliance on the witness called by the 2nd Defendant, are deemed to have admitted the case put forward by the Claimants?***

4. ***Whether the Claimants have proved their case as to be entitled to the reliefs sought?***

The Claimants subsequently filed a Reply on Points of law on 21/02/2022, in response to the final address filed by the 1st, 3rd – 7th Defendants.

In my view, upon a proper understanding of the case put forward by the Claimants through their witness, the defence on record and the totality of the circumstances of this case, the only focal issue that has arisen for determination in this suit, without prejudice to the other

issues formulated by learned counsel for the respective parties, can be succinctly formulated as follows:

> ***Whether or not the Claimants established that the Defendants wrongly and by acts of misrepresentation and suppression of facts obtained forfeiture orders against their properties already listed on the record; and if so, whether the Defendants are liable in damages to the Claimants for the tort of carousel tort?***

I have proceeded to carefully consider the totality of arguments canvassed by learned counsel for the respective parties in their written submissions on record. I shall only endeavour to make reference to specific arguments of learned counsel as I deem needful in the course of this judgment.

## PRELIMINARY ISSUE

Learned counsel for the respective Defendants have contended, in their respective final arguments, that the present suit is an abuse of Court process. Learned counsel had hinged their arguments on and made reference to *Suit No. FHC/ABJ/228/2017*. The present 2nd Defendant, by that suit, had filed an Originating *ex parte* motion at the Federal High Court for interim forfeiture order against nineteen (19) properties alleged to have been acquired by the former Minister of Petroleum Resources, **Mrs. Diezani Allison-Madueke**. The Federal High Court, *coram***Nyako, J.**, granted the said interim forfeiture order with respect to the said nineteen (19) properties. Upon becoming aware of the interim forfeiture order, the present 1st – 3rd Claimants filed applications before the same Court to contend that three (3) of the said nineteen (19) properties, subject of the said interim forfeiture order, belonged to them. The said

three (3) properties are those referred to as Nos. 1 – 3, of the four (4) properties listed in relief (1) prayed for in the present action. The 1st – 3rd Claimants thus urged the Federal High Court, *coram***Nyako, J.**, to discharge the said properties from interim forfeiture.

In its Ruling of 06/07/2018, tendered in evidence as **Exhibit C5/D3**, the Federal High Court, was satisfied that the said properties listed as belonging to the to the 2nd and 3rd Claimants herein (who were Applicants in the said application at the FHC) belonged to them as established, the Court then ordered the release of the said properties claimed by the said 2nd and 3rd Claimants herein. The Federal High Court predicated its decision upon a subsisting judgment of the High of the FCT in *Suit No. FCT/HC/CV/0093/2017 – Moses Uyah vs Benedict Peters*, in which, according to the Court, the said **Mr. Benedict Peters** (1st Claimant) had

been vindicated from all allegations of complicity and corruption.

Learned counsel for the respective Defendants have thus contended that the present suit constitutes abuse of Court process in that the parties, subject matter and reliefs sought in the present suit are the same with respect to the said forfeiture proceedings at the Federal High Court, referred to in the foregoing.

I consider it needless to belabour this issue. It seems to me that the response of the Claimants' learned senior counsel in the Reply address filed clearly resolves the issue of abuse. This is to the extent that the subject-matter of the two actions is clearly not the same. Whilst the matter at the Federal High Court related to interim forfeiture and release of properties wrongly forfeited; the instant action, by my understanding, focuses on the consequences of wrongfully forfeited properties or better put, remedies available to the

Claimants as a result of the Defendants' purported suppression and misrepresentation of facts that resulted in the wrongful seizure of their properties.

It is pertinent that I further make reference to the ruling of this Court, dated 25/09/2018, rendered with respect to the Notice of Preliminary Objection filed against this suit by the 1st, 3rd – 7th Defendants, on grounds of abuse, wherein I had expressed my understanding of the case put forward by the Claimants in the instant action, on the basis of their pleadings before the Court. I take liberty to reproduce a portion of the ruling as follows:

> ***"…. Fundamentally, the grouse of the Claimants, by my understanding of their claim, and as correctly restated by Chief Ozekhome, SAN, relates to allegations of conspiracy between the Defendants to suppress the correct facts relating to the purported legitimately acquired properties of the Claimants***

***which were said to belong to Mrs. Diezani Alison-Madueke, former Nigeria's Petroleum Minister, with the intention of inflicting economic loss on the Claimants, a situation described as tort of carousel fraud...."***

Clearly, the cause of action in the present case has nothing to do with what the 2nd Defendant sought to do with respect to the suit at the Federal High Court, which sought to temporarily forfeit properties alleged belonging to the said former Nigeria's Petroleum Minister.

The circumstances with respect to these two cases are well captured by the decision of the Supreme Court in *Christian Outreach Ministries Inc. & 2 Ors. Vs Cobham& Anor [2006] 15 NWLR (Pt. 1002) 1692,* cited by the Claimants learned senior counsel. It was held in that case as follows:

***"It is not the law that once a party files another suit before another Court on the same subject matter, there is abuse of Court process. An act can give rise to different suits. A subject matter may verily well give rise to different rights. In other words, different suits can emanate from the same subject-matter but with different rights and reliefs."***

In the instant action, even though the parties and properties in issue are substantially the same as with the action at the Federal High Court; however, the causes of action in the two actions are totally unrelated, as I had found in the foregoing.

The 2nd Defendant's learned counsel had also made reference to the appeal processes and the order of stay of execution of the said Ruling contained in **Exhibit D3 – Exhibits D3A, D3B**and**D4**respectively and had contended that in view of the pending order of stay of execution, this Court could not determine

ownership of the said properties and invariably would render the present action an abuse.

However, by letter dated 19th May, 2022, the Claimants' learned senior counsel brought to the attention of the Court judgment of the Court of Appeal, Abuja Division, with respect to the Appeal and Cross-Appeal referred to in **Exhibits D3A** and **D3B** respectively. The said judgment, in effect, affirmed the Ruling of the Federal High Court contained in **Exhibit D3**.

I am mindful that the said judgment, delivered on 29/05/2022, was rendered after final arguments have been taken in this matter. But the Appellate Courts have settled the position a Court faced with such situation should adopt. In *James vs INEC &Ors [2013] LPELR-20322(CA)*, it was held as follows:

***"It is an acceptable practice in the conduct of a case for a counsel to file list of authorities. The practice has been stretched further to accommodate counsel who discovers relevant authorities at the close of address or even when a matter has been adjourned for judgment. The rule of practice allows such counsel to forward the same by a letter, making the name and citation of the authority available to the Court. However, owing to our adversary system of adjudication and to ensure fair hearing, the counsel is duty bound to also make the authorities available to the opposing parties. See African ReinsurranceCorportation vs JDP Construction Ltd. [2003] 2 SCJB 28."***

It is not in question that the judgment of the Court of Appeal to which the Claimants' learned senior counsel referred this Court, is directly relevant to the determination of this suit. The judgment affirms the ruling in **Exhibit D3** relied upon by the respective

Defendants to contend that the present action is an abuse of Court process. Rather, the said judgment, in my view, seemed to have supported the contention of the Claimants in the substantive action as shall be seen anon. This Court is therefore bound to apply the same.

I should therefore waste no time in overruling and dismissing the respective objections of the respective Defendants to the suit on the ground of abuse of Court process.

It is perhaps equally pertinent to state, as a further preliminary issue, that the failure of the 1st, 3rd – 7th Defendants to call evidence in this suit, does not necessarily add benefits to the case of the Claimants. This is so because the Claimants, having claimed three (3) substantive declaratory reliefs in this action, are bound to adduce credible and cogent evidence to establish the declarations they sought. By law, the Claimants are not entitled to the declarations sought,

merely by admission of the adverse party or by default of defence. The Supreme Court had laid down this legal principle from time immemorial. In *Bello vs Eweka[1981] LPELR- 765*, it was held, *per***Obaseki, JSC**, as follows:

> ***"It is true as was contended before us by the Appellant's Counsel that the Rules of Court and Evidence relieve a party of the need to prove what is admitted, but where the Court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the Court by evidence, not by admission in the pleadings of the Defendant that he is entitled. The necessity for this arises from the fact that the Court has a discretion to grant or refuse the declaration and the success of a claimant in such an action depends entirely on the strength of his own case and not on the weakness of the defence."***

See also _Dumez Nig. Ltd. vs Nwakhoba_ *[2008] 18 NWLR (Pt. 1119) 361;* _Addah&Ors. vs Ubandawaki_ *[2015] LPELR-24266 (SC).*

As such, the success of the Claimants at the end of the day will be determined ultimately by the quality of evidence it is shown that they have mustered; although the law is further that in appropriate circumstances, the weakness of the defendant's case may strengthen the claimant's case. See _Elias vs Omo-Bare_ *[1982] 5 SC 25.*

## DETERMINATION OF MAIN ISSUE

For ease of appreciation, I reckon that the following focal questions must be established positively by the Claimants in order to succeed in this action. They are:

1. Did the Defendants misrepresent that the four properties in issue in this case belong to **Mrs.**

**Diezani Alison-Madueke,** Nigeria's former Petroleum Resources Minister?

2. Did the Claimants establish ownership and/or proprietary rights over the said four properties in issue in this suit?

3. Was the alleged misrepresentation intended to inflict economic loss to the Claimants?

**ON OWNERSHIP**:

I proceed to deal with questions (2) first, since the other two questions are interwoven.The case of the Claimants is that the 1st Claimant is the *alter ego* and beneficial owner of the 2nd – 4th Claimants. The properties involved in this action are listed as follows:

i. Property at 270-17 Street, Unit #4204, Atlanta, Georgia – purportedly owned by the 1st Claimant.

ii. Property at Flat 5, 83-86, Prince Albert Road, St. John's Wood, London – purportedly owned by the 2nd Claimant;

iii. Property at Flat 58, Harley House, Marylebone, London – purportedly owned by the 3rd Claimant; and

iv. Property at Apartment 4, 5 Arlington Road, London – purportedly owned by the 4th Claimant.

I make reference to the testimony of the **CW1** in *paragraphs 4 – 7*, and *41-42* of his *Statement on Oath* of 31/01/2019, in this regard.

The case of the Claimants is that sometime in July, 2013, the Defendants conspired and commenced money laundering investigation arising from open-source information which suggested that the Nigerian former Minister for Petroleum Resources, **Mrs. Diezani**

**Alison-Madueke**, was corrupt and had links with the United Kingdom; as a result of which the Defendants, through the 2nd Defendant, approached the Federal High Court, Abuja, vide ex parte applications dated 30/03/2016 and 08/06/2016 respectively, to obtain interim forfeiture orders over assets purporting to belong to the said former Petroleum Minister. Whilstthe properties listed as (i) – (iii) in the foregoing were included in the interim forfeiture order obtained by the 2nd Defendant from the Federal High Court in Nigeria, an interim restraint order prohibiting the disposal of the property listed as (iv) on the list, purporting to belong to the 4th Defendant, was obtained from the Crown Court, sitting in private as Southwark, United Kingdom, on 19/10/2017, on the strength of the application of the 4th Defendant and relying on the witness statement of the 6th Defendant.

The Defendants did not deny that at the material time, such interim forfeiture orders were sought and obtained by the 2nd Defendant, as touching the properties in issue in this case. I refer to the averments in paragraph 8(vi)(b), (vii) and 9(iii), (x) of the *2nd Defendants' Amended Statement of Defence*.

The case of the Claimants is further that, the 2nd Defendant, rather than rely on advice of lawyers available at its disposal, proceeded to rely on open-source information, which it knew or ought to know were unreliable, to have properties belonging to the Claimants (as listed in the foregoing) forfeited on the unsupported assumption that the properties belonged to the former Petroleum Minister.

On its part, the case of the 2nd Defendant is that the basis of its suspicion that properties, subject of the interim forfeiture orders obtained at the Federal High Court, including the properties in issue in the instant

suit, were directly and indirectly linked to the said former Petroleum Resources Minister, **Mrs. Diezani Alison-Madueke,**were the Petition of an organization known as **Coalition Against Corrupt Leaders (CACOL)** dated 2nd October, 2013, tendered by the **DW1** as **Exhibit D1**; and secondly the document captioned **"Highly Confidential Attorney Work Product – August Report,"**tendered by the **DW1** as **Exhibit D2. Exhibit D2**was purported to have been recovered from the premises of one **Donald Chidi Amamgbo**, who, the **DW1** claimed was lawyer to **Mrs. Diezani Alison-Madueke**. The said **Exhibit D2** was said to have been prepared by the said **Donald Chidi Amamgbo** for **Mrs. Diezani Alison-Madueke.**

The case of the Claimants is further that the 1st – 3rd Claimants took steps by filing applications before the Federal High Court to have the interim order forfeiture made with respect to their properties set aside; whilst

through their United Kingdom Solicitors, **Messrs. Samuel & Co.**, they filed an application to vacate the restraint order of the UK Crown Court sitting in private at Southwark, with respect to the 4th Claimant's property in the United Kingdom. I make reference to the testimony of the **CW1** in *paragraphs 35 and 36* of his *Statement on Oath* of 31/01/2019.

The **CW1** further testified that when the applications filed by the 1st – 3rd Claimants at the FHC came up for hearing on 20/01/2017, the learned trial Judge encouraged parties to explore out of Court settlement. The Defendants did not deny this assertion. I make reference to *paragraph 9* of the 2nd Defendant's *Amended Statement of Defence*.

The Claimants' case is further that they, especially the 1st Claimant, made several representations to the 1st and 2nd Defendants to establish that the said

properties, subject to the interim forfeiture order of the Federal High Court, belonged to him and not the said former Petroleum Minister. The **CW1** tendered letters **Exhibit C3** series, written severally by the 1st Defendant to the 2nd Defendant, copying the 1st Defendant, to chronicle how he acquired the properties affected by the interim forfeiture order of the FHC. The 1st and 2nd Defendants did not deny receiving these letters.

The **CW1** further tendered letters written on behalf of the 1st Claimant by his Solicitors, **A. U. Mustapha, SAN**, **Exhibits C7 – C10** respectively which confirmed that the Claimants representatives met with the officers of the 2nd Defendant at the material time. Also attached to these letters were documents purporting to establish the connection between the 1st Claimant and the 2nd and 3rd Claimants and further purporting to

establish ownership of the properties subject of the forfeiture order of the FHC.

The Defendants did not deny receiving these letters. They also did not deny having meetings with the 1st Claimant's representatives with a view to resolving the issues surrounding the disputed properties, made subject to interim forfeiture by the 2nd Defendant's application to the FHC.

In any event, by its ruling of 6/07/2018, **Exhibit D3**, the Federal High Court, upon the application of the 1st – 3rd Claimants, ordered the release of the properties of the 2nd and 3rd Claimants from interim forfeiture, but did not make similar order with respect to the 1st Claimant's property in the USA.

It is pertinent to further state, as I mentioned earlier on, that the Claimants' learned senior counsel availed this Court of the judgment of the Court of Appeal,

dated 29/04/2022, which was rendered after final addresses in this suit had been taken by the Court; affirming the ruling of the FHC to the effect that the properties listed against the names of the 2nd and 3rd Claimants belonged to them and ought not have been subject of the interim forfeiture order made against properties allegedly belonging to the former Petroleum Minister. The Court of Appeal equally affirmed the decision of the FHC that the 1st Claimant was unable to satisfy the Court that the property in the US belonged to him or as to the source of the resources for the acquisition of the said property or that the property was not linked to the former Petroleum Minister.

Effectively, the Claimants have clearly established, by Court affirmation, that the properties listed as (2) and (3) on the list of properties in context in this suit belonged to them. In other words, it is affirmed that

the 2nd Defendant wrongly linked the said properties to the former Petroleum Minister, **Mrs. Diezani Alison-Madueke**. I so hold.

Now, with respect to the property listed as (1) in the list of the Claimants' properties, situate in the USA, it is pertinent to make reference to the decision of the FHC contained in **Exhibit D3**, against which the 1st Claimant cross-appealed and which cross-appeal was dismissed. The trial FHC held as follows:

> ***"However, as regards the property listed as Benedict Peters which is the property in respect of 270/17 Street, unit #4202, Atlanta, Georgia, USA, this is an entirely different consideration.***
>
> ***This property has not been thoroughly addressed, the source of income for the property has not been determined as in the 2 previous cases and have not given cogent, concrete and convincing evidence as to why this property should still not be forfeited in the***

***interim until more credible and concrete evidence is placed before this court in a more thorough trial that will determine the legitimate source of income of the Applicant to acquire the said property and to also disassociate the said Mrs. Alison Madueke from any relationship with the Applicant in respect of the said property. …***

***However, the property listed as Benedict Peters will still be forfeited in the interim until further cogent, concrete and convincing evidence can be placed before the court as to why the properties should be released."***

It is pertinent to further state that the Court of Appeal, in its judgment referred to *supra*, held that the judgment of **Ashi, J** (of blessed memory) in *Mr. Moses Uyah vs Benedict Peters* (**Exhibit C5**), which affirmed that the 1st Claimant legitimately acquired the properties acquired in the names of the 2nd and 3rd Claimants, and relied upon by the FHC to release the

said properties of the 2nd and 3rd Claimants herein, subject of the interim forfeiture order, did not cover the property which the 1st Claimant claimed he owned in the USA. It was on that basis that the Court of Appeal affirmed the decision of the FHC and dismissed the cross-appeal.

Not satisfied with the decision of the trial FHC regarding the status of the property in the USA, inter alia, the 1st – 3rd Claimants instituted a proper action against the 1st and 2nd Defendants herein at the High Court of the FCT in *Suit No. CV/2935/2020 – Mr. Benedict Peters & 2 Ors. vs Economic and Financial Crimes Commission & 2 Ors*. The action, which was commenced whilst proceedings in the instant suit were still pending, apparently was in response to the decision of the FHC in **Exhibit D3**. It is safe to state that in the said judgment, rendered also after final addresses in the present action had been taken, and

of which the Claimants' learned senior counsel drew this Court's attention to,*vide* letter dated 19th May, 2022, (supra), the High Court of FCT, *coram***Binta Mohammed, J**, affirmed that the 1st Claimant (1st Claimant in the present action), established his proprietary ownership of property situate at No. 270-17th Street, Unit #4204, Atlanta, Georgia, 30360, inter alia.

Having regard to the fact that there is no material before me to suggest that the said judgment of the FCT High Court had been upturned, I am bound to recognize and apply the same as the determination therein is focally relevant to the determination of the case at hand.

With respect to the property purportedly belonging to the 4th Claimant, against which the 3rd Defendant obtained restraining order of the Crown Court of the United Kingdom, the **CW1** tendered in evidence as

**Exhibit C5**, judgment of the High Court of FCT, *coram* **Valentine B. Ashi**, J (of blessed memory), in *Suit No. CV/0093/17 – Moses Uya vs Benedict Peters*, delivered on 05/12/2017. Significantly, the Court held in that judgment as follows:

***"I therefore hold that:***

> ***a. from the material evidence before me, the Defendant has a reasonable and verifiable means of livelihood and cannot be said to be living above his means.***
>
> ***b. that in the absence of any specific offence and proof of commission of crime, the Defendant legitimately and lawfully acquired the assets and properties, the subject matter of this suit; to wit:***
>
> > ***i. …***
> >
> > ***ii. Apartment 4, 5 Arlington Street, London worth 11,800.00 Pounds."***

It is to be recalled that the FHC had relied on this same judgment in reversing the interim forfeiture order with respect to the properties of the 1st Claimant, acquired through the 2nd and 3rd Claimants, subject of its earlier interim order, upon the 2nd Defendant's application.

It is pertinent to make the finding that it was whilst the said suit was pending before **Ashi, J**, that the 1st and 2nd Defendants, through the other Defendants, sought and obtained restraint order at the Crown Court, Southwark, UK, over the property acquired by the 1st Claimant through the 4th Claimant, which was part of the *res* of the action in the suit before **Ashi J**.

From the evidence led on the record and materials at the disposal of this Court, as analyzed in the foregoing, it is safe to hold that the Claimants have firmly established proprietary ownership of the four (4) properties to which the instant action relate.

**ON MISREPRESENTATION/RESULTING DAMAGES:**

Having found that the Claimants established ownership of the properties in issue in the present suit, through subsisting Court decisions, it becomes pertinent to proceed to inquire into the Claimants' allegations that the Defendants, by fraudulent design, suppressed and misrepresented facts in supposing that the Claimants' properties to which the present action related, belonged to the former Nigerian Petroleum Minister, **Mrs. Diezani Alison-Madueke**.

The **CW1** had given extensive evidence as variously captured in his *Statements on Oath* to the effect that the Defendants were parties to series of conspiracies to the carousel tort which caused and resulted in the Claimants, particularly the 1stClaimant, to suffer damages to his person, third party dealings and commercial interests; that the dominant purpose of the

actions of the Defendants was to inflict loss/injury onthe Claimants just as much as it was to profit the Defendants.

The witness further testified that the Defendants engaged in a scheme of conspiracies, carousel fraud, misrepresentation and suppression of material facts which occasioned hardship, grave damages, loss of earnings, loss of goodwill andsubjectedthe Claimants, particularly the 1st Claimant,to public contempt, odium and opprobrium; that the fraud committed and/or being committed by the Defendants against the Claimants consisted in a dishonest misrepresentation of the true ownership of the assets/properties of the Claimants in issue in this case; and in furtherance thereof, on or around July 2013, the Defendants conspired and commenced money laundering investigation arising out of open source information which suggested that the former Nigerian Minister for

Petroleum Resources, **Mrs. Diezani Alison-Madueke,** was corrupt and had links to the United Kingdom.

The **CW1** further testified that the 2nd Defendant has a number of lawyers that advise it including the office of the 1st Defendant whichsupervises its prosecutorial function and that despite the availability of the said lawyers, the Defendants proceeded on the said open source information which they knew or ought to know are unreliable, to apply to have the properties belonging to the Claimants forfeited, albeit in the interim, but on the unsupported assumption that the properties belonged to **Mrs. Diezani Alison-Madueke**.

The witness made reference to the properties in question, already captured *supra*, which were said to be wrongly listed in the said schedules to the respective orders for interim attachment/forfeiture.

The witness further testified that the 1st and 2nd Defendants wrote to the Government of the United Kingdom to help them seize the said properties of the Claimant in the interim and that the 3rd Defendant, acting on the request for a mutual legal assistance by the 1st Defendant to the United Kingdom, Central Authority dated 17th June, 2016, and which request was referred to the 3rd Defendant via a letter dated 15th July 2016, approached the United Kingdom Crown Court sitting at Southwark in private for a restraint order against the 2nd and 3rd Claimants with respect to propertiesat **Flat 5, Parkview, 83-86 Prince Albert Road, St. John's Wood, London; Flat 58, Harley House, Marylebone, London,** respectively.

The witness further testified that when the application to set aside the orders forinterim forfeiture in *Suit No. FHC/ABJ/CS/228/2016* eventually came up on the

20th day of January, 2017, for hearing, and upon application of the parties, the Honourable Court ordered parties to explore out of Court settlement of the matter; and notwithstanding the foregoing, on the 19th of October, 2017, His Honour**Judge Beddoe** of the Crown Court sitting in private at Southwark, on an application of the 3rd Defendant, and on the footing of the witness statement of **Stacy Boniface**, the 6th Defendant and a financial investigator accredited under the **Proceeds of Crime Act, 2002, UK** at Southwark Crown Court, without notice to the Claimants and without giving them a hearing, made a restraint order inter alia prohibiting disposal of the Claimants' Assets in the United Kingdom which now includes the **Apartment 4, 5 Arlington Road, London,** belonging to the 4th Claimant.

The witness testified that the Claimants have not been arrested or charged with any financial crime in Nigeria or any other part of the world and they are not parties to any criminal charge involving financial crime nor are they standing trial for any criminal offence whatsoever in Nigeria or anywhere else.

The witness testified that by the interpretation clause of the said order of **Beddoe J.**, made in private in the United Kingdom, on **19th October, 2017**, the interests of the Claimants, particularly the 1st Claimant, in any assets both within and outside the United Kingdom were made part and subject of the said order and the said ex-parte restraint order was granted on the basis of gross mis-statements, misrepresentations and concealment of material facts, couched in mischief; that the 6th Defendant stated in her witness statement on oath that her sources of information are 'open source' and suspicion; and 'Open source' is information

derived from open sources including the internet and other similar media gossip sources which are unverifiable and oftentimes unreliable; that the Defendants' conspiracies were fraudulent schemes to expropriate the assets and properties of the Claimants.

The witness further testified that the 1st Claimant has been found by a Court of competent jurisdiction in Nigeria to have a reasonable and verifiable means of livelihood, and has legitimately acquired the properties involved in the instant case.

The witness further testified that the Claimants and other companies associated with the 1st Claimant have suffered considerably as a result of theconspiracies of the Defendants to run down the 1st Claimant and any company associated with him and most of the lenders of the 1stClaimant's businesses had to be seeking the

clearance of the 2nd Defendant to confirm whether the 1st Claimant's name had been removed from the wanted list, and/or whether he and his businesses have stopped being investigated before they can deal with him; that as a result the 1st Claimant and his companies are finding it difficult to access the international and local finance markets due to the said conspiratorial acts of the Defendants; and that the Defendants jointly and severally are persons involved in the conception, preparation and implementation of the tort of carousel and the loss, and divestiture of the personal assets and properties of the Claimants was obvious and inevitable being the intended result of the sole purpose of the conspiracies carried out by the Defendants.

The **CW1** testified that the 2ndDefendant, with the tacit connivance of the 1st, 3rd – 7th Defendants dishonestly and fraudulently misrepresented the true ownership of

the assets/properties of the Claimants aforementioned to the Federal High Court, in*Suit No. FHC/ABJ/CS/228/2016* and without the knowledge of the Claimants, and by so doing secretly procured an order of interim forfeiture of the Claimants' properties; that upon becoming aware of the interim forfeiture order, the 1st Claimant wrote letters to the 2ndDefendant and copied the 1stDefendant explaining his ownership of the said properties and setting out in details the true position of the state of his ownership of the said properties; that the Defendants did not reply the said letters including the reminders. See **Exhibits C3** series.

The witness also testified that the Defendants, particularly the 1st and 2nd Defendants, armed with the said interim forfeiture orders which they obtained by fraudulent misrepresentation of facts as to the true state of ownership of the Claimants' properties,

through the instrumentality of a contrived letter requesting for mutual legal assistance written to United Kingdom Central Authority to help it seize the said properties of the Claimants in the United Kingdom,in pursuance of a pre-arranged design to cripple, manacle and undo the Claimants and their businesses; that the 3rd Defendant with the tacit connivance and support of the other defendants and in furtherance of their conspiracy to commit the fraud of carousel tort against the Claimants, particularly against the 1st Claimant, without disclosing to the Court the true state of affairs in relation to the status of the Claimants' ownership of the properties, and indeed the state of the judicial proceedings in both the Nigerian and United Kingdom Courts, stealthily applied and obtained, during the subsistence of the previous interim forfeiture order and the restraint order of the Nigeria Court and United Kingdom Court, respectively, yet

another restraint order (2nd restraint order), on the **19th October, 2017**, on the strength of the witness statement of **Stacy Boniface**, without notice to the Claimants and without giving them a hearing; that at all times material to the procurement by the Defendants of the interim forfeiture orders of the Federal High Court Abuja, and the two restraint orders of His Honour, **Hughes** and **Judge Beddoe** of the English Crown Court, respectively, they were fully aware and had due knowledge of the facts of the status of the Claimants' ownership of the properties, and indeed the state of the judicial proceedings in the both the Nigerian and United Kingdom Courts, but concealed, misrepresented and suppressed those material facts with the ulterior intent and in propagation of their motive of fraudulent scheme to commit the tort of carousel fraud against the Claimants; that the object of the Defendants' unlawful

conduct was to subject the Claimants, particularly the 1st Claimant, to public odium, contempt and opprobrium and to inflict loss and injury on the Claimants and by so doing expropriate, compulsorily acquire and convert the Claimants' properties for their selfish aggrandizement and profit.

To further support the Claimants' case, the witness tendered in evidence as **Exhibits C2**and**C2A**respectively, publication on EFCC Website declaring the 1st Claimant a wanted person. He also tendered in evidence as **Exhibits C7 – C10**, respectively, letters written on behalf of the Claimants by their Solicitors to the 2nd Defendant, by which evidence of ownership of the properties in question in this case were transmitted to the 2nd Defendant. He also tendered in evidence as **Exhibits C12 – C14**, respectively, judgments of Courts referred to variously in the course of his testimony.

More or less, the evidence adduced by the **CW1** under cross-examination by the respective learned counsel for the respective Defendants did not significantly detract from his evidence – in – chief. The evidence is on record.

As has already been mentioned in the foregoing, even though the $1^{st}$, $3^{rd}$ – $7^{th}$ Defendants filed a defence to the action, they however opted to abandon their defence and adopted the evidence adduced by the $2^{nd}$ Defendant in support of their case.

But then, in his testimony before the Court, the **DW1** did not state that his testimony covered the defence of the $1^{st}$, $3^{rd}$ – $7^{th}$ Defendants or that he gave evidence on their behalves. Again, I have examined the Joint Statement of Defence filed by the Defendants on 08/12/2020. In their defence, the $1^{st}$, $3^{rd}$ – $7^{th}$ Defendants indicated intention to call a witness on

*subpoena* to substantiate their defence. However, at trial, they opted to jettison their defence. The position of the law is trite to the effect that in the absence of evidence to support a statement of defence, the pleadings of the defendant would be deemed abandoned for all time. See *Military Governor of Lagos State &Ors. vs Adeyiga&Ors*. *[2012] LPELR-7836(SC)*.

I am unaware of any rule of practice and procedure, neither did learned counsel for the 1st, 3rd – 7th Defendants draw the attention of the Court to any, that permits a defendant, who opts to abandon his own defence to an action to rely on the evidence adduced by a co-defendant, tailored to establish that defendant's statement of defence, in support of his case. As such, I hold that the decision of the 1st, 3rd – 7th Defendantsto abandon their defence and seek to rely on the evidence adduced by the **DW1** is support

of the 2nd Defendant's defence is unknown to law and accordingly discountenanced.

Learned senior counsel for the Claimants submitted that the tort of carousel fraud is applicable and avails for the Claimants in the circumstances of the instant case. According learned senior counsel, the law enables an action in tort for tortious damages to be brought where two or more persons have joined together with the intention of injuring another person and have successfully carried out their intention. That the tort of conspiracy, unlike the crime, consists not of agreement but of concerted action taken pursuant to agreement. Reference was made to the cases of *Total Networks SL vs Her Majesty's Revenue & Customs [2008]UKHL 19 @ 56*; *Lonrho vs Shell Petroleum Co. Ltd. [1982] AC 173 @ 188.*

Learned senior counsel further relied on the authority of*Mogul Steamship Co. Ltd vs Mcgregor, Gow& Co*. *[1982] AC 25 (HL)*, where it was held by the House of Lords that for a conspiracy to be actionable, the Defendants must either conspire for an object that was unlawful or to use unlawful means in giving effect to the conspiracy, examples of which include unlawful conduct such as intimidation, violence, molestation, inducing breach of contract, trespass, force, fraud, breach of contract, etc.

Learned senior counsel argued further that the tortuous conspiracy is a conspiracy to injure where the overt acts done pursuant to the conspiracy may be lawful or unlawful but the predominant purpose is to injure the claimant and that the conspiracy is tortuous notwithstanding that the means employed to cause the harm are themselves neither criminal nor tortuous. Hence, the essential ingredient is the combination of

people all intent on causing harm to the victim, not on the type of means employed for doing so. Learned senior counsel relied again on _Total Networks SL vs Her Majesty's Revenue & Customs_(supra), wherethe elements of the tort have been summarized as follows:

1. An agreement or combination between a given defendant and one or more others;
2. An intention to injure the claimant;
3. Unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant; and
4. Loss to the claimant suffered as a consequence of those acts.

Learned senior counsel for the Claimants further argued that the Claimants, in establishing the tort, needed not show any express agreement, whether formal or informal on the part of the Defendants;

rather that it is sufficient if two or more persons come together with a common intention, albeit tacitly, to achieve a common end; that the Court can infer the existence of an agreement from the acts of the alleged conspirators; that the parties must be shown to have been sufficiently aware of the relevant circumstances, and to have a sufficiently similar objective, before it can be inferred that they were acting in combination at the time of the unlawful acts.

Learned senior counsel for the Claimants further argued that by the evidence of **CWI**, it was established that that the Defendants were parties to series of conspiracies to the carousel tort which caused and resulted in the Claimants suffering damages and in furtherance of the conspiracy, the Defendants through the 2nd Defendant approached the Federal High Court in Nigeria via two ex-parte applications for interim forfeiture of the plaintiffs' properties

notwithstanding that the sources of the Defendants' information were open sources which are not reliable. This, it was argued, was in order to convince the Federal High Court to grant the order of forfeiture.

Learned senior counsel for the Claimants further argued that the Defendants, by so doing, suppressed and misrepresented facts to the Courts before which they obtained the interim forfeiture orders.

To further buttress the case of the Claimants, learned senior counsel contended that in furtherance of the conspiracy to injure, the Defendants mutually sought a restrainingorder in the United Kingdom for interim forfeiture of the Claimants' assets; and that despite receiving **Exhibits C3 series; and Exhibits C7 – C10**, the Defendants remained adamant and instead, approached another UK Court to obtain a further Restraining – Order dated 19th October, 2017.

Learned senior counsel further submitted that the action of the Defendants emanated from a petition by **CACOL, Exhibit D1**, which contained open-source information and was unsigned and undated, and did not in any way mentionany of the Claimants as confirmed by the **DW1** under cross-examination; and despite these facts, the Defendants proceeded with their unlawful conspiracy to inflict economic loss on the Claimants.

Learned senior counsel therefore submitted that there is incontestable proof that the predominant intention of the Defendants was and is to injure the Claimants and to inflict economic loss on them just as much as it was to unlawfully profit from them; that this submission is further hinged on the fact that till date, despite series of decided cases as shown in **Exhibits C4, C5, C6, C12, C13**and**C14**, bothering on the Claimants and their properties to which the Defendants were aware,

the Defendants still refused to release the Claimants' properties.

As such, senior learned counsel further urged the Court to infer that the Defendants were aware of the fraudulent purpose of the scheme under which they were signed up, and that if they did not know the fraudulent purpose, it is also difficult to believe that their lack of knowledge was not attributable to a decision not to enquire, a convenient adoption of "*a Nelsonian blind eye*."

The fraudulent acts of the Defendants, according to the Claimants'learned senior counsel, constituted the unlawful acts or means that the Defendants employed in giving effects to the conspiracy. In effect, it was further submitted, that the unlawful acts of the Defendants arising from the tortious conspiracy occasioned loss or damage to them, relying on the

case of _Palmer Birch (A partnership) vs Lloyd& Anor_ *[2008]EWHC 2316, par 156, 239*and_Kuwait Oil Tanker Sakvs Al Bader_ *[2002] 2 All ER (Comm.) 271, para 311-312.*

Learned senior counsel further submitted that in relation to unlawful means conspiracy, the claimant must show that the unlawful means relied upon was causative of loss and that each such act was carried out pursuant to the conspiracy.In this regard, learned senior counsel made reference to the testimony of the **CW1** in _paragraphs 16, 57 and 58_ of his *Statement on Oath*, amongst others that the scheme of conspiracies, carousel fraud, misrepresentation and suppression of material facts occasioned grave damages, loss of earnings, loss of goodwill and subjected the Claimants, particularly the 1stClaimant, to public contempt, odium and opprobrium; and that the Claimants and their associates have suffered considerably as a result of

the said conspiracies orchestrated by the Defendants to run down the 1[st]Claimant and companies associated with him.

In conclusion, learned senior counsel submitted that the Claimants are entitled to the sum of **$ 5,000,000,000.00 (USD Five Billion**) being general damages against the Defendants jointly and severally or its Naira equivalent of **₦1.5Trillion Naira** at the current exchange rate of **₦ 315***per***US Dollar**, for the carousel tort of unlawful interference, economic loss, loss of corporate goodwill from creditors, expropriation of personal assets and proprietary rights of the Claimants.

I had also considered the arguments canvassed by respective learned counsel for the respective Defendants. It is needless to re-engage learned counsel's arguments on the issue of abuse of Court process, especially having been availed of the

decision of the Court of Appeal of 29/04/2022, affirming the Ruling of the FHC with respect to the ruling contained in **Exhibit D3**.

Learned counsel for the 2nd Defendant went on to argue that the Claimants failed to presented any documents of the properties in question in this case, and therefore that the claim for declaration of ownership of the properties is devoid of merit.

Learned counsel further argued that following the judgment in _Suit No: FCT/HC/CV/23/17_, which declared the declaration of the 1stClaimant as a "*wanted person*", it promptly complied and delisted his name accordingly.

Learned counsel further argued that it led evidence through the **DW1** to the effect that a petition was received from a non-governmental organization about the activities of **Mrs. Diezani Alison-Madueke** and

investigation was carried out which showed embezzlement of public funds and laundering of the proceeds, and that the properties which the Claimants laid claims to were acquired with the proceeds of crime; in essence, that the Claimants were conduits for a grand money laundering scheme orchestrated by **Mrs. Diezani Alison-Madueke**; that on this basis the 2nd Defendant was therefore entitled to apply and obtain order for temporary attachment and forfeiture of the assets pending conclusion of investigation. Reliance was placed on the provisions of **s. 44(2)(k)** of the **1999 Constitution** and **s. 24(a), 26(1)(b), 27(4), 28** and **29** of the **Economic and Financial Crimes (Establishment etc) Act, 2004**.

Learned counsel further submitted that the ex parteorder for interim forfeiture did not violate the Claimants' right to fair hearing because it is merely preservatory in nature; that the restraint order made

by the Crown Court was in line with the Mutual Legal Assistance Treaty with the United Kingdom which bothers on tracing, seizing and forfeiture of assets derived from criminal activities, placing reliance on **Article xvii(1)(c)** of the **Mutual Legal Assistance Treaty**; that the Crown Court is bound to adjudicate and make orders touching on persons or properties abroad.

Learned counsel submitted that that **Exhibit D2,** the document titled **"Highly Confidential Attorney Work Product"** is real evidence and listed several properties which propelled the investigation of the Claimants' ownership of the properties. According to learned counsel, the document is relevant to this case.

The 2nd Defendant argued that the Claimants are not entitled to any damages having not placed before this Court any evidence as award of damages is not

hinged on nothingness and urged the Court to dismiss the Claimants' action.

As I had found earlier on, the foundation of the accusation laid by the 2nd Defendant against the Claimants and their properties as erroneously belonging to the former Nigerian Petroleum Minister and invariably alleging that the properties were acquired by corrupt means, as revealed by evidence on the record, were the Petition contained in **Exhibit D1** and the document, **Exhibit D2** referred to *supra*. The 2nd Defendant made reference to the Petition in *paragraph 8(i)* of its *Amended Statement of Defence*; whilst the document, **Exhibit D2** is referred to in **paragraph 9(iii)** of its*Amended Statement of Defence*.

Now, under cross-examination by the Claimant's learned senior counsel, the **DW1**, who tendered **Exhibit D1**, testified as follows:

***"Exhibit D1 is a Petition against Diezani Alison-Madueke, the then Hon. Minister of Petroleum Resources. The names of the Claimants are not mentioned in Exhibit D1."***

The witness further stated, still under cross-examination, that he had examined the Petition, **Exhibit D1**, but that the four properties in issue in the instant case were not mentioned therein.

Still under cross-examination, the **DW1** was further referred to *paragraph 11(ii)* of his *Statement on Oath* where he deposed as follows:

***"Further in 2016, 2nd Defendant received an Intelligence Report about allegations of conspiracy, stealing and money laundering of Public funds involving Mrs. Alison Madueke and other persons including the 1st Plaintiff."***

The witness was thus questioned as to the whereabouts of the said Intelligence report he made reference to in his evidence – in – chief and he had this to say:

> ***"The intelligence report is not in Court. It was a verbal intelligence report. Our investigation report is not tendered in Court. It is correct that the Claimants were not public servants in the Federal Republic of Nigeria."***

The **DW1**, still under cross-examination, was referred to his testimony in _paragraph 11(v)(d)_ of his *Statement on Oath*, where he stated as follows:

> ***"The 2nd and 3rd Plaintiffs were used to acquire Flat 5, Parkview, 83-86, Prince Albert Road, St. John's Wood, London and Flat 58, Harley House, Marylebone, London, for Mrs. Diezani Alison Madueke by the 1st Plaintiff."***

When asked as to the source of the allegation reproduced above, the witness further stated as follows:

> ***"The confidential Attorney Work Product is the report I tendered to establish that the 2nd and 3rdClaimants were used by Diezani Alison Madueke to acquire properties."***

Still under cross-examination by the Claimant's learned senior counsel, the **DW1** was referred to his testimony in paragraph 11(v)(e) of his *Statement on Oath*, where he stated as follows:

> ***"Mrs. Diezani Alison Madueke, Bernard Otti, Aiteo Energy Resources Limited, Northern Belt Oil and Gas Company Limited and other serving and retired public servants in the Nigerian National Petroleum Corporation (NNPC) and its subsidiaries were involved in conspiracy, stealing, money laundering***

***and other sundry offences to the tune of over three hundred million dollars."***

When questioned again as to the source of the allegation contained in the testimony reproduced above, the **DW1** further testified as follows:

***"We have the reports of the investigation of the allegations made in this paragraph in other Courts but not before this court, to the best of my knowledge."***

Upon being further referred to the allegation he made in paragraph 11(vi)(a) of his *Statement on Oath* where he stated as follows:

***"2nd Defendant instituted Criminal Charge No. FHC/ABJ/CR/121/2016 – FRN v Jide Omokore & 6 Ors. against Messrs. Jide Omokore and others at the Federal High Court."***

With respect to this deposition, the **DW1** further testified under cross-examination as follows:

> ***"None of the Claimants is a defendant in that Charge."***

The attention of the **DW1** was again drawn to the document he tendered as **Exhibit D2** and when questioned thereupon by the Claimant's learned senior counsel, he had this to say:

> ***"I can see Exhibit D2 now shown to me. I cannot see that it is shown on the document that the Claimants were present in the meeting between Diezani and Amamgbo. There is no letter head on which Exhibit D2 is written. Exhibit D2 is not EFCC report. The document is not addressed to anyone. The document is not definitely dated. The document is also not signed by anyone."***

The **DW1** was again referred to his testimony in <u>paragraph 12(vi)</u> of his *Statement on Oath* and when further questioned thereon, he had this to say:

***"I do not have any report to show that Bear Rock Construction Limited carried out renovations. The name of Bear Rock Construction Limited is not written on the statement of account attached to Exhibit D2. There is no date on the attachment to Exhibit D2. The document was not also signed. The document has no letter heading. The names of any of the 4 claimants are also not on the document"***

The witness was again shown the judgment he tendered as **Exhibit D5**, by which the High Court of the FCT, *coram***O. A. Musa, J,** invalidated the 2nd Defendant's act in declaring the 1st Claimant a wanted person, and when questioned thereon by the Claimant's learned senior counsel, he testified further as follows:

***"I am not aware of any other judgment or ruling staying execution of the judgment or overruling the judgment in Exhibit D5."***

I have again examined the document, **Exhibit D2,** on which the Defendants relied, largely, to go after the Claimants' properties. The document is said to have been put together by one **Donald Chidi Amamgbo,** lawyer to **Mrs. Diezani Alison-Madueke**. The said **Donald** was said to have made a statement chronicling the history and ownership of the 1st – 3rd Claimants' properties in issue in this case. The 2nd Defendant pleaded the statement and indicated that it shall rely on the same at the trial, but failed to do so.

Again, the evidence of the **DW1** is that the said **Exhibit D2** was recovered from the custody of the said **Donald Amamgbo**; and that the said document was prepared by the said **Donald Amamgbo** for said **Mrs. Diezani Alison-Madueke.**

Apart from the fact that the **DW1** verified under cross-examination, that **Exhibit D2** was unsigned and undated; more crucial is the fact that the only person

who could have been in a position to give evidence with respect to the content of **Exhibit D2**, is the said **Donald Chidi Amamgbo** himself, being the maker. This would have given the Claimants the opportunity to cross-examine him as to the veracity of the contents of the document. Failure of the 2nd Defendant to call the said **Donald Chidi Amamgbo**, rendered the totality of **Exhibit D2**, on which the 2nd Defendant built its defence, incredible and unreliable. Accordingly, the document shall be accorded no probative value. See *<u>Buhari vs INEC</u> [2008] 19 NWLR (Pt. 1120) 246*.

Let me say that I find no basis for the arguments of learned counsel for the 1st, 3rd – 7th Defendants that it was incumbent on the Claimants to call **Donald Amamgbo** as witness to prove **Exhibit D2,** when no mention of him was made in the Claimants' claim.

I must further hold, contrary to learned counsel's further contention, that the fact that the **CW1** stated under

cross-examination, that the acquisition of the Claimants' properties in issue in this case preceded his employment by the 1st Claimant does not make him incompetent to give evidence in this case; more so that the Claimants' case is built predominantly on documents and decisions of various Courts of the land.

By my further assessment of the pleadings and evidence of the 2nd Defendant on record, my finding is that the 2nd Defendant failed to materially rebut the specific allegations of the Claimants. Rather, the case of the Claimants is corroborated largely by documentary evidence, Court judgments, including a decision of the Court of Appeal, which clearly established that the properties in issue in this suit belong to the Claimants.

In particular, **Exhibits C4, C5, C6, C12, C13 and C14** were all judgments delivered at various times in favour

of the Claimants in this case with the 1st and 2nd Defendants being parties to most of the cases. These judgments are juridical decisions of Courts of competent jurisdiction on diverse issues regarding the jural rights and obligations of the Claimants particularly the 1stClaimant and allegations made against him by the 2ndDefendant.

It is a clear misconception of the law to contend that the decisions in **Exhibits C4, C5, C6, C12, C13**and**C14** are not binding on the Defendants particularly the 1st and 2nd Defendants. The position of the law is that a judgment of Court is effective, binding and conclusive evidence of the issues determined therein. Once issues have been judicially resolved, such issues cannot be re-opened, except by way of an appeal. In fact, any person or authority whose legal right or interest is in any way affected by the said judgment, even if not a party thereto, has a bounden legal duty to take steps

to set it aside, either by way of an appeal or recourse to the inherent powers of the court that gave the judgment. This is consistent with the settled judicial position that decisions of court, even if irregular, must be enforced, obeyed and complied with, as long as it subsists. In the case of*Kubor vs Dickson* *[2013] 4 NWLR (Pt. 1345) 5349 @ 5392*, it was held as follows:

> ***"An order of a competent court of law, no matter its nature is absolute and binding on all and sundry without question until it is legally and legitimately set aside by a competent Court of appellate jurisdiction."***

Also in *Ebang vs The State* *[2010] 1 NWLR (Pt. 1176) 565 @ 580*, it was held as follows:

> ***"The judgement or ruling of a Court is presumed to be valid and binding until it is set aside on appeal. In otherwords, an Order of a Court of competent jurisdiction subsists until it is set aside."***

Again, in <u>*Rossek vs ACB Ltd*</u>. *[1993] 8 NWLR (Pt. 312) 382 @ 503*, it was held as follows:

> ***"An invalid order of Court remains an order of the Court until necessary proceedings are taken to question it or set it aside. It remains an order and will not be ignored. It carries the stamp of validity, a valid order which must be obeyed"***

As such, going by their clear import or character the aforementioned decisions in **Exhibits C4, C5, C6, C12, C13 and C14**, are judgments*in rem* and had judicially determined and resolved the various issues regarding the civil rights and obligations of the parties therein with regard to the ownership of the assets/properties as well as allegations against the 1stClaimant in particular. Therefore, being judgments*in rem*, they are binding on all persons, authorities as well as non-parties, including all the Defendants herein, with respect to the issues in controversy settled therein.

My finding is further that by the unsuccessfully controverted evidence of **CWI**, the Defendants were shown have conspired with the dominant intent of causing the Claimants suffering and damages and in that regard proceeded against the assets and properties of the Claimants before the Federal High Court in Nigeria based on open source information which are not reliable. By the conspiracy to injure the Claimants, the Defendants mutually sought and obtained a Restraint Order in the United Kingdom for interim forfeiture of the assets and properties of the claimants and even after becoming aware of the true facts, are yet to release the properties of the claimants.

The decisions of the Courts as relevant to the present action, are very fundamental. By _Suit No:FCT/HC/CV/0093/2017 – Moses Uyah vs_

*Benedict Peters*(**Exhibit C5**), the Court reached fundamental findings and conclusions that:

i. **Mr. Benedict Peters** (the 1st Claimant) has a reasonable and verifiable means of livelihood from the evidence before the court and cannot be said to be living above his means;

ii. **Mr. Benedict Peters** legitimately and lawfully acquired his assets and properties both in Nigeria and the UK including the properties herein; as well as the monies in his bank accounts;

iii. The assets and properties of **Mr. Benedict Peters** having been legitimately acquired cannot be subject of forfeiture under any circumstance.

Also, in *Suit No FCT/HC/CV/0091/2017 – Chief AkinmojuJero vs Benedict Peters & Anor.*(**Exhibit C4**), the Court in its Judgment also exonerated **Mr.**

**Benedict Peters** and held that the case lacked merit and therefore dismissed the case while holding that **Mr. Peters** did not violate any law with respect to the donations made to a political party.

In *Suit No. FCT/HC/BW/CV/23/2017 – Benedict Peters vs EFCC &AGF***(Exhibit C12)**, the Court resolved all the issues involved in the case in favour of **Mr. Benedict Peters** and held, significantly, that the declaration of **Mr. Peters** as a "Wanted Person" is unconstitutional and constitutes a violation of his Fundamental rights to personal liberty and freedom of movement as guaranteed under **Ss. 34** and **41** of the **Constitution** of the Federal Republic of Nigeria, 1999 (as amended).

Again, in *Suit No. FHC/ABJ/CS/228/2016 – In the matter of an application by the Chairman of the Economic and Financial Crimes Commission***(Exhibit**

**C6/D3)**,the Court specifically quashed an earlier order of interim forfeiture of properties belonging to **Mr. Benedict Peters** and companies connected to him. With this Order, two of the properties of **Mr. Benedict Peters** which are part of the subject of the present action, were judicially vindicated and held not to be liable to any forfeiture. As I noted earlier on, this particular judgment has been affirmed by the Court of Appeal, Abuja Division.

Again, the judgment of **Binta Mohammed, J** in Suit No. CV/2935/2020, delivered on 14/05/2020 (referred to *supra*), of which this Court is entitled to take judicial notice, equally vindicated the Claimants' ownership of the properties in issue in this action.

Essentially, the document, **Exhibit D2**, the **'Highly Confidential Attorney Work Product,'**which seemed to be the Defendants' **"star evidence"** (if I could put it that way); and upon which they based their conclusions

that the Claimants' properties were purchased for or linked with the former Minister of Petroleum Resources, turned out to be weightless and without any probative value, thereby further strengthening the case of the Claimants that the Defendants proceeded merely on open air information and suspicion, to deprive them of their properties; and in the process putting them through needless hardships and odium.

The Court's finding is further that despite being aware of the judgments highlighted in the foregoing, the Defendants took active steps to oppress and repress the Claimants, their assets and properties upon unjustifiable grounds.

Evidence on record clearly demonstrated that the conduct of the Defendants was clearly deliberate particularly as it was established that they were aware of the true state of affairs, going by the various letters and correspondence served or caused

to be served on them by the Claimants wherein the fidelity of the Claimants were brought to their attention.

The position of the law is that when issues have been litigated in another case, they cannot be re-opened. Since the judgments evidenced by **Exhibits C4, C5, C6, C12, C13**and**C14**are extant and subsisting on whatever issues decided thereon, it is utterly wrong and I must hold, it constituted abuse of power and of Court process for the Defendants to proceed under any other guise to re-open the issues already decided by the court in those judgments. See *Igwemma& Anor v. Obidigwe&Ors[2019] LPELR – 48112 (SC); Flow Farm Industries Ltd vs University of Ibadan[1993]NWLR (Pt 290) 719 at 724 and Cole vsJibunoh&Ors[2016]LPELR – 40662 (SC).*

It is therefore unlawful for the Defendants, acting in concert, to have approached the Crown Court of the United Kingdom to divest the Claimants their interests over their assets and properties in preference over and in disregard of the orders of the Nigerian Courts.

Even though the Claimants' cause of action seems novel and recondite, what is however sure is that every established right deserves a remedy (ubi jus ibiremedium). I must agree with the detailed exposition of the Claimants' learned senior counsel that tortuous conspiracy is a conspiracy to injure another by the overt acts done pursuant to the lawful or unlawful act with the predominant purpose of injuring another and the conspiracy is tortuous notwithstanding that the means employed to cause the harm are themselves neither criminal nor tortuous.

Put differently, tort of conspiracy is committed where two or more persons combine to do a lawful act by an

unlawful means for the purpose of causing damage to another person's business or economic interest which caused damage to the claimant.

Tort of conspiracy is an aspect of economic torts and generally protects a person's business interest from unlawful interference. To be consummated, there must a conspiracy with the predominant purpose to injure resulting in damage to the claimant. See *Crofter Hand-Woven Harris Co. Ltd vs Veitch [1942] A.C. 435* and*Quinn vs Leatham[1901] AC 495.*

In the instant case, the Claimants have strenuously led evidence of the acts of the Defendants targeted at misleading the Court or misusing the legal process to injure their economic interests.I agree that the existence of a common agreement between the Defendants can be rightly inferred from their concerted acts. Their actions and steps towards or against the Claimants were purposeful, calculated and

predetermined. This is even more obvious, when, despite becoming aware of the true ownership and various pronouncements by the Courts, remained recalcitrant and resolute in their common acts against the Claimants by refusing to release the properties.

The Court cannot but conclude, on the basis of the testimony of the **CW1**, that it was abundantly clear that Defendants, particularly the 2nd Defendant, armed with the said interim forfeiture orders which it obtained by unlawful misrepresentation of facts as to the true state of ownership of the Claimants' properties, acted in concert with the 1st Defendant through the instrumentality of the letter requesting for mutual legal assistance to the United Kingdom Central Authority, seized the Claimants' properties with the common design to injure the Claimants' economic interests. This, by my understanding, was part of the

unlawful acts/means that the Defendants employed in giving effects to the conspiracy against the Claimants.

Upon a careful assessment of the evidence of the Claimants, it is abundantly clear, by the pleadings and uncontroverted testimony of the**CW1**, that the unlawful acts of the Defendants occasioned damage to the Claimants. This is evident particularly at paragraphs **16**, **57** and **58** of the **CW1's** Statement on Oath of 31/01/2019, which were to the effect that by the scheme of conspiracies, carousel fraud, misrepresentation and suppression of material facts by the Defendants, the Claimants suffered grave damages, loss of earnings, loss of goodwill and were subjected to public contempt, odium and opprobrium; and that the 1st Claimant, in particular, had suffered considerably as a result of the established conspiracies of the Defendants.

Evidently, the 2nd Defendant did not lead material or credible evidence to rebut evidence of commission of tort of conspiracy and consequent damage against the Claimants and the 1st, 3rd – 7th Defendants having also not called evidence, will invariably suffer the same fate with the 2nd Defendant. The law is that where a party fails or refuses to lead evidence in support of his pleadings, the trial court must resolve the case against the defaulting party. See the case of *Osadim vsTawo[2010] 6 NWLR (Pt. 1189) 155 at 164.*

In the case of *Onyekwere vsOkwulehie&Ors.[1966/67] 10 ENLR 140*, the Claimant, who was a Councilor of the Umuahia Urban County Council, was suspended from office by a resolution and stopped from participating in the activities of the council and collecting his sitting allowances, due to a disagreement with the Council Chairman and other Councilors. He brought an action for declaration that the alleged

resolution of the council was illegal, unconstitutional, null and void. The High Court of Eastern Nigeria held that the Defendants combined willfully to cause the Claimant injury in his office and interest by preventing him from sitting with the Council and by preventing him from collecting his sitting allowance. In that case, the tort of conspiracy found judicial approval in the Nigerian legal lexicon. I am persuaded to apply the decision to the case at hand.

It is in a similar way that the Defendants herein, while acting in common purpose, knowingly and unlawfully formed a common intention or design against the Claimants with a view to seizing their legitimately acquired assets and properties and hamper their economic interests.

I therefore hold that the Claimants have clearly satisfied the relevant factors as set out in the case of

*Total Networks SL vs Her Majesty's Revenue & Customs* *(supra)*, and are thus entitled to damages as claimed.

In the present case, I am convinced beyond reproach that the Claimants are entitled to some sort of damages on account of the hardships they have been made to suffer on account of the inappropriate and unlawful actions of the Defendants. Despite definite and subsisting Court orders, there is no evidence before the Court that the 2nd Defendant has released the Claimants' properties from interim forfeiture.

As it is well known, the essential aim of law of tort is to compensate persons harmed by the wrongful conduct of others with damages to be determined by the Court exercising its discretionary jurisdiction. In other words, injury is presumed whenever man is hampered as to his rights or interest by the unlawful actions of another.See*Rockonoh Property Co. Ltd. vs Nigerian*

*Telecommunications Plc*. *[2001] 14 NWLR (Pt. 733) 468 @493*; *Mulima&Ors.vs Bagoms Co. Ltd*. *[2022] LPELR-38834(CA)*.

In the final analysis, having carefully considered and evaluated the case of the respective parties and the evidence led, it is the considered conclusion of this Court that the acts of the Defendants were indeed unlawful and constitutes a common design targeted against the interests of the Claimants over their assets and properties; which acts no doubt caused injury to the Claimants. This indeed is a peculiar case of misuse of state powers, oppression and crass victimization through a tacit design to undermine the economic interests of the Claimants; and this Court must not shy away from declaring so.

Accordingly, I resolve the issue formulated in the foregoing in favour of the Claimants. I find merit in

their case and the same accordingly succeeds. For avoidance of doubts and abundance of clarity I hereby enter judgment in favour of the Claimants against the Defendants, jointly and severally, as follows:

1. ***It is hereby declared that the Defendants, by fraudulent design, suppressed and misrepresented facts in supposition that the Claimants' properties namely: (1) 270-17 Street, Unit #4204, Atlanta, Georgia; (2) Flat 5 Parkview, 83-86 Prince Albert Road, St. John's Wood, London; (3) Flat 58 Harley House Marylebone, London; and (4) Apartment 4, 5 Arlington Road, London, legitimately acquired, belonged to Mrs. Deziani Alison Madueke, former Minister of Petroleum in Nigeria, and/or were unlawfully acquired, a fact they knew or ought to know as untrue, incorrect, which act constitutes the tort of carousel fraud.***

2. ***It is hereby further declared that the predominant purpose of the deceitful sham allegations by the Defendants that the Assets/Properties listed in relief 1 above belonged to persons other than the Claimants was directly intended (albeit to inflict economic loss on the Claimants just as much as it was to unlawfully profit the Defendants.***

3. ***It is hereby further declared that the unlawful means of conspiracy of the Defendants was to extract by intimidation, coercion, the assets, properties and monies to which the Claimants are legitimately entitled.***

4. ***The Defendants, their operatives, officers, agents, servants in whatever manner and howsoever called, are hereby jointly or severally restrained from interfering with the proprietary rights and/or interests***

***of the Claimants, their agents, alter-ego or privies in relation to the properties listed in this suit.***

5. ***The Defendants either by themselves jointly/severally, their operatives, officers, investigators, servants, agents, associates and howsoever called, are hereby restrained from interfering/continued interference with the person of the 1st Claimant, either by way of arrest, criminal indictment, charge, interdiction, extradition, or in any other manner infringing on his personal liberty and freedom of movement on the facts and circumstances of this case, especially in the face of subsisting judgments of various Courts on the issues.***

6. ***The sum of ₦200,000,000.00 (Two Hundred Million Naira) onlyis hereby awarded as general damages, jointly in favour of the Claimants against the Defendants, jointly and severally, for the unlawful***

*interference, economic loss, loss of corporate goodwill from creditors, expropriation of personal Assets and proprietary rights of the Claimants.*

7. *I make no order as to costs.*

**OLUKAYODE A. ADENIYI**

*(Presiding Judge)*

**02/11/2022**

***Legal representation:***

***Chief Mike Ozekhome, SAN** (with **Emeka Ozoani, Esq., SAN; Chief Andrew Oru; Ozonma N. C. Nobis-Elendu, Esq.; Joseph Nwatu, Esq.; G. N. Chukwukere, Esq.;IjesieEzeana, Esq.; OnyedikaOffor, Esq.; Ovie Ali, Esq.; Akintayo Balogun, Esq.; Justin Omogbeme, Esq.; ViviaOluchi Uche (Miss); Akintola Makinde, Esq.; KasiemobiOranugo, Esq.; OpemipoOlorunfemi, Esq.; Kolawole Aro, Esq.; Hauwa Farouk Ibrahim (Miss);***

***Blessing Eyee (Miss) &OpeMuritala, Esq.)*** *– for the Claimants*

***Suleiman Jibrin, Esq.*** *(with**Ndahi Hassan, Esq. & O. D. Okoronkwo, Esq.)*** *– for the 1st, 3rd – 7th Defendants*

***Farouk Abdullah, Esq. (with Elizabeth Alabi (Mrs.))*** *– for the 2nd Defendant*