IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT COURT 16 BWARI, ABUJA

BEFORE HIS LORDSHIP:- THE HON. JUSTICE A. O. EBONG – JUDGE

THIS THURSDAY, THE 20TH DAY OF MARCH, 2025

SUIT NO: CR/985/2024

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .... COMPLAINANT

AND

1. LEO STAN EKEH
2. CHIOMA EKEH
3. MR. CHRIS EZE OZIMS
4. OYEBODE FOLASHADE
5. CHARLES ADIGWE
6. OBILO ONUOHA
7. AGARTHA UKOHA
8. ANYA O. ANYA
9. FEMI DOSUMU
10. NNENNA KALU
11. ADMAS DIGITAL TECHNOLOGIES LTD
12. TECHNOLOGY DISTRIBUTIONS LTD
13. ZINOX TECHNOLOGIES LTD

.... DEFENDANTS

RULING ON PRELIMINARY OBJECTIONS

This 15-count charge was filed by Mr. Femi Falana, SAN relying on a fiat granted by the Honourable Attorney-General of the Federation and Minister of Justice, Mr. Lateef Fagbemi, SAN. The fiat is dated 20/12/2023.

HIGH COURT OF THE F.C.T ABUJA
CERTIFIED TRUE COPY
WADA U. ABDULAZIZ
25 MAR 2025
DATE...
SIGN.................................REGISTRAR

The charge discloses various offences ranging from criminal misappropriation to obtaining by false pretence, abetment of theft, false personation, criminal conspiracy, forgery, abetment of forgery, theft, etcetera. The charge is laid under the Penal Code, except Count 3 for obtaining by false pretence which is brought pursuant to Advance Fee Fraud and other Fraud Related Offences Act, 2006. There are 13 defendants implicated unevenly across the charge.

Upon being served with the charge, the 12th and 13th defendants filed notices of preliminary objection praying the Court to dismiss or strike out the charge for abuse of process and lack of jurisdiction. The 12th defendant's objection is dated and filed on the 7/1/2025, while that of the 13th defendant was filed on the 8/1/2025, dated the same day.

The 12th defendant's objection seeks eight (8) orders with an omnibus prayer, as follows:

(a) An order of this Honourable Court suspending the arraignment of the applicant and other defendants in this Charge No. FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKE & ORS pending the determination of this application.

(b) An order of this Honourable Court dismissing in its entirety, Charge No FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & ORS for being an abuse of the judicial process of this Court in the light of the decision of this Court in Charge No. FCT/HC/CR/469/2022: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & 10 ORS per Honourable

Justice A. S. Adepoju delivered on the 19th of March, 2024, wherein this Court held inter alia as follows:

> *"The Court has carefully gone through its record and agree with the submission of the Learned Counsel to the 1st, 4th, 7th and 10th defendants that this matter was brought in dead, extinct and should be confined into the dustbin of history...*
>
> *In the circumstances therefore, I hold that the instant suit is an abuse of the process of Court and it is struck out accordingly."*

(c) An order of this Honourable Court dismissing/striking out Charge No: FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & ORS filed by Femi Falana, SAN on the 28 of November, 2024, as there is no competent fiat authorising the filing of the said Charge.

(d) An order of this Honourable Court striking out Charge No: FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & ORS for lack of territorial jurisdiction.

(e) An order of this Honourable Court dismissing the Complainant's Charge No: FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & ORS filed against the Defendants for being an abuse of the judicial process of this Court in the light of the Judgement of this Honourable Court in Charge No: FCT/HC/CR/244/2018: FEDERAL REPUBLIC OF NIGERIA V. PRINCESS KAMA & ANOR delivered on the 24th day of February, 2021 on the same subject matter and allegations herein.

(f) An order striking out charge No: FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & ORS on the grounds that it is illegal, unconstitutional and unethical by reason of the fact that it was filed by Messrs Femi Falana, SAN who is now Counsel to Mr. Benjamin Joseph, who was the Defendant in Charge No: FCT/HC/CR/216/2016, and the nominal complainant in Charge No: FCT/HC/CR/244/2018: FEDERAL REPUBLIC OF NIGERIA V. PRINCESS KAMA & ANOR and also the nominal complainant and prosecutor in this charge.

(g) An order that Messrs. Femi Falana, SAN, or any Counsel in his firm cannot prosecute this Charge or any other charge relating to the transaction that led to the institution of this Charge by reason of the fact that they are known Counsel to Mr. Benjamin Joseph, who was the defendant in the withdrawn Charge No. FCT/HC/CR/216/2016, and are, therefore, not competent in law to prosecute the Defendants, some of whom were nominal complainants and/or witnesses in the said withdrawn Charge.

(h) An order that Messrs. Femi Falana, SAN or any Counsel in his firm cannot prosecute this charge or any other charge relating to the transaction that led to the institution of this charge by reason of the fact that they are known Counsel to Mr. Benjamin Joseph in the appeal filed against the decision of this Court in FCT/HC/CR/244/2018: FEDERAL REPUBLIC OF NIGERIA V. PRINCESS KAMA & ANOR by virtue of a Motion on Notice dated 25th February, 2021, and are therefore not competent in law to prosecute, at the instance of same Mr. Benjamin Joseph, the Defendants, some of whom were witnesses in the said Charge No. FCT/HC/CR/244/2018: FEDERAL REPUBLIC OF NIGERIA V. PRINCESS KAMA & ANOR, in the judgement which had dismissed as false all the allegations of Mr. Benjamin Joseph and imposed the sum of

N20,000,000.00 (Twenty Million Naira) as damages for false petitioning against him.

c) And for such order or orders as this Honourable Court may deem fit to make in the circumstances.

The objection is premised on 24 grounds, and supported by a 47-paragraph affidavit deposed to by one Gordon Apina, a Litigation Secretary in the Law Firm of Matthew Burkaa (SAN) & Co., counsel to the 12th defendants. Attached to the affidavit are 15 exhibits marked Exhibits TD1 – TD15. The objection is argued in the written address of Matthew Burkaa, SAN, filed along with the application.

In response to the objection, the complainant filed a 62-paragraph counter-affidavit on the 12/2/2025, to which are attached several exhibits marked Exhibits A – K. The counter-affidavit is deposed to by one Benjamin Joseph, the nominal complainant in the case. Filed along with the counter-affidavit is the written address of Bob James, Esq., holding the brief of Femi Falana, SAN.

The 13th defendant's objection is similar in all respects to that of the 12th defendant. It seeks two orders thus:

1. An order of this Honourable Court suspending the arraignment of the applicant and other defendants in this Charge No. FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKE & ORS pending the determination of this application.

2. An order of this Honourable Court striking out/dismissing this charge in its entirety for being unconstitutional,

flagrant abuse of judicial process and for want of jurisdiction in this Honourable Court to entertain same.

There are 13 grounds for the application, supported with a 4-paragraph affidavit and the written address of Gboyega Oyewole, SAN. The complainant's response to the 13th defendant's objection is virtually a duplication of their counter-affidavit and written address to the 12th defendant's objection. In view of the similarities between the two objections, it was agreed that the fate of the 13th defendant's objection will abide the outcome of the 12th defendant's objection.

The material facts, as can be gleaned from the papers filed on the objections, including the judgment in Case No. CR/244/2018 delivered by Senchi, J. (ahtw) on the 24/2/2021, are that in December 2012, the Federal Inland Revenue Service (FIRS) awarded contracts to some companies for the supply of computers and laptops. One of the companies was Citadel Oracle Concept Ltd, owned by one Benjamin Joseph, the nominal complainant in this case, and deponent of the counter-affidavits in this matter. The award of the contracts was facilitated by one Princess Kama, a long-time friend to whom Benjamin Joseph had given a letter of authority to act for Citadel.

Evidence in charge CR/244/2018 indicated that Princess Kama was responsible for the entire bidding process which led to the award of the contracts, and that after the award, the products were obtained on credit for supply to the FIRS, from a company known as Technology Distribution Ltd (TD Ltd), a major distributor of ICT products. Evidence in the said case further revealed that this arrangement had to be resorted to because Citadel had no money to fund the execution of the contract.

Part of the conditions imposed by TD Ltd for granting the credit was that a bank account would be opened in the name of the contractor into which the proceeds of the contract would be paid, and some officers of TD Ltd would be appointed signatories to the account, in order to safeguard the company's interest in the transaction. This led to the opening of an account for Citadel with Access Bank, for which Benjamin Joseph himself was said to have provided the necessary documentation, including a Board Resolution of the company. Two officers of TD Ltd, namely, Christian Eze Ozims and Mrs Shade Oyebode, were also appointed signatories to the said account.

Evidence in CR/244/2018 further indicates that when the FIRS paid the contract price into the said Account, TD Ltd took out the value of its computers and released the balance of the contract payment to Admas Technology Ltd, whose chief executive officer had guaranteed the credit sale arrangement with TD Ltd. It appears a disagreement arose between Benjamin Joseph and the said Princess Kama on the sharing formula of the profit of the contracts after receipt of the contract payment from the FIRS. Effort to mediate the disagreement by Chief Afe Babalola, SAN, among others, was unsuccessful.

Subsequently, Benjamin Joseph began writing petitions to various Government offices and Government officials, claiming that the FIRS contract was executed in his company's name without his knowledge and that Citadel's board resolution used to open the Access Bank account into which the contract proceeds was paid was forged. Among the offices/officials Joseph petitioned were the Vice President of Nigeria; the Special Fraud Unit of the Nigeria Police Force, Ikoyi Lagos; the Deputy Inspector General of Police (DIG), Force CID, Abuja;

the Inspector-General of Police (IGP); the office of the Honourable Attorney-General of the Federation (HAGF), etc. The petition to the Vice President was referred to the Economic and Financial Crimes Commission (EFCC) for investigation and resulted in Charge No. CR/244/2018 against Princess Kama and one Chief Onny Igbokwe in the FCT High Court, which terminated in their favour, and they were acquitted.

It appears the conclusions from Police investigation reports on the matter by the SFU, the DIG Force CID, and even the final investigation report issued on the 1/12/2020 (based on a counter-petition to the IGP) did not favour the nominal complainant Benjamin Joseph, but actually indicted him for providing false information to the Police against Princess Kama and others including some of the defendants herein. On account of this, he was arraigned and tried on Charge No. FCT/HC/CR/216/2016, but the trial was later terminated via a nolle prosequi entered by the current HAGF on the 20/6/2024.

On the other hand, a number of other criminal charges have been filed in the FCT High Court against these defendants at the instance of Benjamin Joseph, including Charge No. CR/469/2022: FRN V. LEO STAN EKEH & 10 ORS, which came successively before two Honourable Judges of this Court and was struck out. There is also presumably Charge No. CR/827/2013: FRN V. CHRIS EZE OZIMS AND 6 ORS; and then the present charge (being Charge No. CR/985/2024: FRN V. LEO STAN EKEH & 12 ORS).

Charge No. CR/469/2022 was filed in September 2022, about nineteen (19) months after the judgment of Senchi, J. in CR/244/2018, which was delivered in February 2021 acquitting Princess Kama and Chief Onny Igbokwe of the charge of conspiracy and forgery of the Citadel board resolution preferred against them. Charge No. CR/469/2022 was filed by Femi Falana, SAN, pursuant to a fiat obtained from the HAGF, and at a time when Charge CR/216/2016 against Benjamin Joseph was still pending. Among the defendants in Charge CR/469/2022, were the same Princess Kama and Chief Igbokwe, who had earlier been acquitted by Senchi, J. in his said judgment. Following a petition to the HAGF by learned counsel for the defendants, the fiat issued to Femi Falana, SAN for the purpose of Case No. CR/469/2022 was withdrawn and that case was consequently struck out by C. O. Oba, J, on the 8/11/2022, and by A. S. Adepoju, J., on the 19/3/2024.

About eight (8) months later, however, Mr. Femi Falana, SAN, again filed the instant charge based on another fiat issued by the current HAGF. The charge is founded on the same facts which grounded Charge Nos. CR/244/2018, CR/469/2022, and indeed CR/216/2016. Mr. Femi Falana, SAN is counsel for Benjamin Joseph, the nominal complainant both in this case as well as Charge No. CR/469/2022; and also the accused/defendant in Charge No. CR/216/2016.

It is in these premises that the preliminary objections now being considered, have been brought.

Mr. Matthew Burkaa, SAN formulated three issues for the determination of the 12th defendant's objection. They are as follows:

1) Whether the instant charge filed by Mr. Femi Falana, SAN, a private legal practitioner, is competent same having been filed without a competent fiat of the Honourable, the Attorney General of the Federation.

2) Whether the charge before this Honourable Court is not an abuse of the process of Court and liable to be dismissed by this Court.

3) Whether this Honourable Court possesses the requisite jurisdiction to entertain the instant charge.

At page 2 of their written address on this objection, learned counsel for the complainant also distilled three issues for determination as follows:

1) Whether Mr. Femi Falana, SAN, has a valid fiat of the Hon. Attorney-General of the Federation to file this charge.

2) Whether the charge before this Court is an abuse of court process.

3) Whether the case falls within the territorial jurisdiction of the Court.

The issues framed on behalf of the 13th defendant in its preliminary objection are the same in all respects with those of the 12th defendant set out above.

I have studied and given due consideration to all the arguments presented by both sides in the matter. I will start with issue 3 on jurisdiction.

The contention here is that this Court lacks jurisdiction over the present charge for the reason that the entire facts leading to the charge occurred outside the territorial jurisdiction of the Court.

By section 4 of the Penal Code, the High Court of the FCT will have jurisdiction to entertain a charge if any act or omission constituting the offence charged occurred in the FCT. See JOSHUA DARIYE V. FRN (2015) LPELR-24398(SC); NYAME V. FRN (2010) 7 NWLR (Pt.1193) 344; PATRICK NJOVENS & ORS. V. THE STATE (1973) 8 NSCC 257.

With due respect, I do not think the facts contained in the papers before the Court support this ground of objection. In the first place, by the express wording of the charge, all the 15 offences alleged are said to have occurred *"in the Federal Capital Territory, Abuja within the jurisdiction of* (this Court)." Secondly, there are indications that the documentation for the opening of the Account with Access Bank were submitted to a branch of the bank located at Garki 2 here in Abuja. Thirdly, the FIRS contract which is at the centre of the entire dispute was awarded, performed and paid for here in the FCT. Also, one of the offences relates to a false statement alleged to have been given to officers of the EFCC, and that also occurred here in Abuja. I believe with all the above facts, there is sufficient basis for the assumption of territorial jurisdiction over the present charge by this Court. I therefore resolve issue 3 against the 12th defendant.

I now return to issue 1, questioning whether the fiat relied upon by Mr. Femi Falana, SAN in filing this charge can sustain it. A copy of the said fiat is attached as Exhibit TD3 at paragraph 11 of the 12th defendant's supporting affidavit, and is admitted in paragraphs 6 and 7 of the complainant's counter-affidavit.

The contention of the objector is that a fiat issued to a private legal practitioner is only valid for use for the duration of the case for which it is issued, but cannot be used to initiate a new or fresh charge. That a careful perusal of Exhibit TD3 shows that the fiat was donated to Mr. Femi Falana, SAN for the particular purpose of refiling Charge No. CR/827/2013: FRN V. CHRIS EZE OZIMS & 6 ORS, which is an entirely different case from the instant charge No. CR/985/2024: FRN V. LEO STAN EKEH & 12 ORS. It is submitted that Exhibit TD3 is only valid for the charge clearly mentioned therein and the defendants mentioned therein; that it cannot be unilaterally expanded to include other defendants not mentioned in the fiat or charge or for filing any other charge not stated in the letter. A further contention of learned SAN for the 12th defendant is that the designation of the authority on whose behalf the charge has been filed (being, *"the Honourable Attorney of the Federation and Minister of Justice")* is unknown to the Constitution of Nigeria.

Counter argument on behalf of the complainant is that a lawyer holding a fiat is not to be regarded as a robot or artisan *"employed to do ABC and no more."* That rather he is a professional employed to do all things reasonably incidental to the due execution of the mandate. Thus, a lawyer engaged to prosecute a particular charge has authority to prosecute an appeal arising from the said charge. It is submitted that the construction of Exhibit TD3 advanced by the 12th defendant is a mechanical one, and its effect would be to reduce a lawyer of the status of a senior advocate to a mere filing clerk. That statutes and documents are to be interpreted in a way that aligns with common sense and reason.

Learned counsel submitted that there is no case with Charge No. CR/827/2013, pending in any Court in Nigeria, and that despite the erroneous charge number stated in the fiat, *"everyone knows"* that both the earlier fiat that was withdrawn and the present fiat are in respect of this case. He further submitted that a party lacks competence to challenge the competence of the counsel to his opponent and that a court lacks jurisdiction to conduct such an inquest. Finally, counsel for the complaint said the omission of the word "General" from the title of the HAGF as stated in the charge, is a mere typographical error which does not affect the validity of the charge.

In resolving issue 1, I would like to observe first of all that, in my understanding, the issue does not question the power or authority of the HAGF to grant a fiat to Mr. Falana, SAN, or any other legal practitioner to prosecute a criminal case in Court on behalf of the Federal Government. Rather, the issue raised is whether in filing the present charge, Mr. Falana, SAN is acting in accordance with the terms of the fiat granted him by the HAGF.

Now, while the Court would not, on its own, normally question the authority of a counsel to appear on behalf of a party in a matter, it will deal with an objection of this nature once properly raised before it. There are several cases in which such an objections were raised and dealt with by the Court. See for instance, EMEAKAYI V. COP (2003) LPELR-6049(CA); THE STATE V. OKOYE (2007) LPELR-8298(CA). In my very humble opinion, it is proper for the Court to deal with such an issue for obvious reasons: One, the mere fact that a lawyer has been granted a fiat by the HAGF will not turn him into a Knight Errant, like Don Quixote, going everywhere looking for suspected criminals to prosecute. The right of a private legal practitioner to prosecute for the State is limited to the particular case in respect of which he is issued a fiat, and he is bound to keep to the terms of engagement specified in the instrument.

Two, it may raise issues of jurisdiction and abuse of judicial process for a private lawyer to assume the prosecution of a citizen for which he has no legal authority. See KALU V. THE STATE (2022) LPELR-57934(CA), where it was held that the onus is on the prosecution to prove that the HAGF's fiat was obtained prior to the filing of the charge, and that in the absence of such proof the trial Court lacked jurisdiction to proceed, and consequently the appellant's trial was a nullity.

The case of EMEAKAYI V. COP, supra, decided that a private legal practitioner granted a fiat by the Attorney General to prosecute a matter, cannot act outside the terms of his fiat. In that case, the relevant fiat read thus:

> *"In the exercise of powers conferred by section 69(1)(b)(iii) of the High Court Law No. 16 of 1987 of Anambra State of Nigeria and all other powers enabling me in that behalf, I, Chief Udechukwu N. Udechukwu SAN Attorney-General of Anambra State of Nigeria do hereby authorise Faustinus Andi solicitor and advocate of the Supreme Court of Nigeria, to prosecute the above case, namely: Charge No. O/205M/2003: Prince Kenneth Emeakayi v. Commissioner of Police.*
>
> *It is hereby specifically provided that this authority includes powers by the prosecutor to amend and or add to the said charge if necessary.*
>
> *Dated at Awka this 5th day of September 2003.*
>
> *Signed.*
> *Chief Udechukwu N. Udechukwu SAN*
> *Hon. Attorney-General."*

The Court held that the terms of the fiat granted Mr. Andi did not include the power to prosecute any other ancillary proceedings that might arise out of the bail application then pending in Court.

In the present case, the fiat granted Mr. Falana SAN is in the following terms (see Exhibit TD3):

> *"In the exercise of the powers conferred upon the Attorney General of the Federation and Minister of Justice by section 174(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, I, Lateef Olasunkanmi Fagbemi, SAN, Honourable Attorney General of the Federatiion and Minister of Justice, hereby authorise;*
>
> *Mr. Femi Falana of Falana & Falana & Co., of 22 Mediterranean Street, Imani Estate, Abuja – FCT, Nigeria to exercise the powers on my behalf with particular reference to the refiling and effective prosecution of Charge No. CR/827/2013 between Federal Republic of Nigeria and Chris Eze Ozim and 6 Ors at the expense of the nominal complainant, Mr. Joseph Benjamin as requested.*
>
> *You are to also ensure diligent prosecution and consistent update on the progress report of the case to my office without let or hinderance.*
>
> *Dated this 20th day of December, 2023.*

Signed
Lateef Olasunkanmi Fagbemi, SAN
Honourable Attorney General of the Federation
And Minister of Justice"

The first principles of interpretation is that where the words used in a document are clear and unambiguous, they must be given their natural and ordinary meaning: see UBN LTD V. SAX (NIG) LTD. (1994) LPELR-3390(SC) at 18 A-D; ANTONIO OIL CO. LTD V. AMCON (2024) LPELR-62610(SC) at 23F-24F. On the ordinary words used in the above instrument, the authority conferred on Mr. Falana, SAN is for the *"refiling and effective prosecution of Charge No. CR/827/2013 between Federal Republic of Nigeria and Chris Eze Ozim and 6 Ors."* It does not include the power to amend, add to or substitute the charge. If it was intended for him to exercise such powers, the fiat would have said so expressly just as in the EMEAKAYI V. COP case, supra. The relevant principle is *expressio unius est exclusio alterius*. By this principle of interpretation, the express mention of one thing in a provision automatically excludes any other which otherwise would have been included by implication. Thus, where an instrument mentions some particular things or persons, the intention is that those not mentioned are not intended to be included. See OGBUNYIYA V. OKUDO (1976) 6-9 SC 32.

Applying this principle to the charge at hand, it is evident even from what appears on the face of the fiat that Mr. Falana, SAN has exceeded the authority given him, firstly, by purporting to alter and add more defendants to the charge that he was required to refile and prosecute. This is obvious from the fact that Charge No. CR/827/2013 which he was asked to handle has just seven (7) persons listed as defendants, whereas the instant charge filed by him has 13 defendants, almost double the number of persons he was authorised to prosecute.

I do not accept the contention of Bob James, Esq, that there is no such charge as that mentioned in the fiat in existence, having regard to Exhibits D1 and H attached to their counter-affidavit. But assuming the allegation is true, the remedy, in my humble view, is not for Mr. Falana, SAN to take matters into his hands and charge persons indiscriminately, including those not covered by his letter of authority. His remedy is to revert to his appointor for a correction of the error. A fiat for criminal prosecution is a serious instrument that puts the life and liberty of citizens at risk. It cannot therefore be treated with the sort of levity that is being urged on this Court by learned counsel for the complainant, as if it were a mere formality.

This issue is resolved in favour of the 12th defendant/objector.

Issue 2 is on the proliferation of charges against the defendants, at the instance of the nominal complainant and based on the same facts and transactions. The Court's attention is called to Case Nos. CR/244/2018, CR/469/2022, and CR/216/2016, all of which were filed at one time or the other in this Court, and arose out of the same transaction. It is contended that in view of the circumstances of these various cases, the filing of the instant case constitutes an abuse of judicial process, considering in particular the outcome of Charge No. CR/244/2018.

On their part, learned counsel for the complainant see no abuse in the entire circumstances. They argue that case No. CR/469/2022 was merely struck out and so can be refilled, and that CR/244/2018 only affected two defendants, and hence does not prevent proceedings being brought against others who were implicated in the transactions forming the grounds for the charge.

The term "abuse of process" has been defined and explained in numerous decisions of our appellate Court. The Supreme Court put the matter this way in DIKE GEO MOTORS LTD & ANOR V. ALLIED SIGNAL INC. & ANOR (2024) LPELR-61780(SC) at 18F-19A:

> *"The term 'abuse of court process' is generally applied to proceedings that are wanting in bona fides, frivolous, oppressive and vexatious. It may also mean the improper use of the Court process which involves malice, deliberateness and desire to misuse or pervert the process of the Court or system of administration of justice to the annoyance or embarrassment and irritation of an opponent."*

In CENTRAL BANK OF NIGERIA V. AHMED (2001) 11 NWLR (Pt. 724) 369, the Supreme Court threw more light on situations in which an allegation of abuse of court process would be sustained, when it stated per Ejiwunmi JSC, as follows:

> "In my respectful view, the authorities envisaged a situation where the erring party was re-opening issues already closed by the decision of the court, and/or (where the erring party was) generally pursuing the other party with multifarious actions in respect of the same subject matter to the annoyance of the other party." (Underlining for emphasis)

It is important to appreciate that the nominal complainant has been the prime cause of all the litigations, both civil and criminal, which the defendants have suffered over the FIRS contract. He wrote several petitions to the Police, the HAGF and even the Vice President of Nigeria, against the defendants. There have been at least three Police investigation reports to the effect that his accusations against the defendants are untrue. On top of that, the Police went further to put him on trial in Charge No. CR/216/2016 for giving them false information about the defendants.

Notwithstanding this, and despite the fact that he was himself standing trial over the same issue, the nominal complainant kept pushing until he succeeded in getting two persons among those he had petitioned over the contract, arraigned in court on charges of forgery of his board resolution, among others. That was in Charge No. CR/244/2018. The said two persons, namely, Princess Kama and Chief Igbokwe, were however acquitted at the end of the trial. Not only were they acquitted, but the trial Court also affirmed what the Police had already discovered in their investigations into the nominal complainant's various petitions, to wit: that his allegations of forgery of his company's board resolution was false. The Court consequently slammed him with an award of N20M as compensation to the defendants in the case.

With the judgment in CR/244/2018 still subsisting, the nominal complainant made his way (either alone or with the help of his lawyers) through the office of the HAGF and somehow succeeded in securing a fiat for his counsel to put the defendants on trial in charge No. CR/469/2022. That charge also included Princess Kama and Chief Igbokwe, who had earlier been acquitted of liability by Senchi, J, in Charge No. CR/244/2018.

Charge No. CR/469/2022 was pursued before two High Courts in succession before they were struck out by both Courts, as the fiat granted the nominal complainant's counsel had been withdrawn. Still the nominal complainant was not done. He returned to the HAGF with the aid of his counsel and again somehow got another fiat authorising his counsel to resurrect and prosecute some of these defendants in Charge No. CR/827/2013 over the same subject matter.

In my view, this is a classic case of a party "*generally pursuing* (his opponents) *with multifarious actions in respect of the same subject matter to the annoyance of* (his said opponents)" as the Supreme Court stated in CBN V. AHMED, supra. I also believe that given the finding of Senchi, J. in CR/244/2018 that the nominal complainant's allegation of forgery of his company's board resolution is false, these persistent prosecutions qualify to be described as *"wanting in bona fides, frivolous, oppressive and vexatious."*

To put matters beyond doubt and show his commitment to the continued persecution of the defendants, the nominal complainant undertook to the HAGF that he would bear the expenses for the continued prosecution of the defendants. This fact is revealed in paragraphs 1 and 2 of the fiat (Exhibit TD3) wherein the HAGF wrote inter alia thus:

> *"I, ... hereby authorise Mr. Femi Falana ... to exercise the powers on my behalf with particular reference to the refiling and effective prosecution of Charge No. CR/827/2013 between Federal Republic of Nigeria and*

*Chris Eze Ozim and 6 Ors at the expense of the nominal complainant, Mr. Joseph Benjamin **as requested**."* (Underlining for emphasis)

This undertaking by the nominal complainant speaks volumes! It indicates that the HAGF must have been unimpressed with the bonafides of the nominal complainant's case and was therefore unwilling to commit the resources of the State to its prosecution; and so in his desperation to have his way at all cost, the nominal complainant undertook to foot the bill occasioned by the use of the fiat issued to his lawyer. This further demonstrates to me the nominal complainant's malice and deliberate desire to pervert and misuse the judicial system in order to achieve his personal ends.

It is not correct as argued by learned counsel for the complainant at paragraph 23 of his written address, that the Court in Case No. CR/244/2018 did not make any finding that Mr. Benjamin's allegation that his board resolution was forged was false. His Lordship dealt comprehensively with the issue of forgery of the board resolution at pages 27 – 33 of his judgment. Exhibit 12 that was considered in that regard was the Citadel board resolution of 18/12/2012, and the Court's decision was that the allegation of forgery in relation to the document was not proved.

Then at pages 36 and 37 of his certified judgment in the case His Lordship found and held inter alia as follows:

"Having closely reviewed and examined the evidence adduced by the prosecution, I hold the view that the prosecution failed to establish the offences of criminal conspiracy..., forgery..., using as genuine a forged

document..., and fraudulently and dishonestly using as genuine a forged document....

*I have also seen from the records the various steps taken by the nominal complainant against the defendants. The petition to the office of the Inspector-General of Police, the petition of the complainant to the office of the Vice President of the Federal Republic of Nigeria against the office of the Inspector-General of Police, the arbitration handled by Afe Babalola SAN and the petition of the nominal complainant to the office of the Vice President of the Federal Republic of Nigeria that the defendants and the Federal Inland Revenue Service staff conspired with fraudsters to defraud the Federal Government of Nigeria. It is this petition that the Vice President ... directed the Economic and Financial Crimes Commission (EFCC) to investigate the allegations of defrauding the Federal Government of Nigeria the sum of N216,000,000.00. The findings of the Economic and Financial Crimes Commission is that there was no fraud committed against the Federal Inland Revenue Service to the tune of N216,000,000.00 or any amount. In other words, by the facts and evidence in this case, the nominal complainant is bent on punishing the defendants **by his false accusation**."* (Underlining for emphasis)

The above findings are clear to the effect that the allegation of forgery of Citadel's board resolution was not proved and that the nominal complainant's petitions to the various offices alleging fraud was also false. Now, it this same allegation of forgery of Citadel's board resolution and using same as genuine to open bank account at Access Bank, as well as his claim of fraud in respect of the FIRS contract that is at the root of the charges still being organised against the present defendants, and which allegations Senchi J. had found in his judgment were not proved. It is my considered view that until the said findings are set aside by the Court of Appeal, the present charge as well as any other attempt to charge the defendants on the basis of the selfsame allegations, would constitute an abuse of the judicial process.

One intriguing aspect of this matter is that none of the law enforcement agencies involved in the investigation of the nominal complainant's numerous petitions has found merit in any of his allegations against the defendants. When called upon before Senchi J. to prove his said allegations to the Court, he failed to turn up in Court. One then wonders on what premise he wants to maintain this campaign of persecution against the defendants.

It is my conclusion based on the foregoing, that this charge (No. FCT/HC/CR/985/2024: FEDERAL REPUBLIC OF NIGERIA V. LEO STAN EKEH & 12 ORS) constitutes a gross abuse of court process and is liable to dismissal. I accordingly hereby dismiss it.

Reliefs (a) and (e) in the preliminary objection accordingly succeed.

Relief (d) on lack of territorial jurisdiction fails and is refused.

The case made for reliefs (f), (g) and (h) are unsatisfactory as no rule of practice has been cited in support of same to warrant the censure sought against Mr. Femi Falana SAN. I do not see anything in Mr. Falana's conduct which goes beyond his professional duty to his client in the matter. Those reliefs are therefore refused.

The objection of the 13th defendant equally succeeds on issues 1 and 2 thereof, and the two prayers contained in that objection are granted, but only on the ground of abuse of process.

HON. JUSTICE A. O. EBONG
(20/3/2025)

Legal Representation:

(1) BOB JAMES, ESQ, holding the brief of Femi Falana, SAN, for the Prosecution/Respondent; appearing with Femi Adedeji, Esq, Asmau Yunusa, Esq. (Miss) and Stella Solomon, Esq. (Miss).

(2) MATTHEW BURKAA, SAN, FCIArb.(UK), with Emmanuel Agwungwu, Esq. for the 12th Defendant/Objector.

(3) GBOYEGA OYEWOLE, SAN, with O. A. Olawuyi, Esq, and Dr. Dale Ogunbayo, Esq, for the 13th Defendant/Objector.