

**IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS NIGERIA**

SUIT NO: FHC/L/CS/1007/2014

BETWEEN

**THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC
RIGHTS AND ACCOUNTABILITY PROJECT (SERAP)** } **PLAINTIFF**

AND

1. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA } **DEFENDANTS**
**2. THE ATTORNEY GENERAL OF THE FEDERATION & MINISTER
OF JUSTICE**

ORIGINATING SUMMONS

LET (1) THE PRESIDENT, FEDERAL REPUBLIC OF NIGERIA, of PRESIDENTIAL VILLA, ASO ROCK, ABUJA, and **(2) THE ATTORNEY GENERAL OF THE FEDERATION & MINISTER OF JUSTICE** of ATTORNEY GENERAL'S OFFICE, FEDERAL MINISTRY OF JUSTICE, SHEHU SHAGARI WAY, CENTRAL AREA, ABUJA within 30 days after the service of this summons on them inclusive of the day of such service cause an appearance to be entered for them to this summons on the application of the Plaintiff for the determination of the following questions:

- a. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 15(5) of the 1999 Constitution of Nigeria, which provides that the state shall abolish all corrupt practices and abuse of power.
- b. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 174(3) of the 1999 Constitution of Nigeria, which provides that the Second Defendant in the exercise of his power to undertake criminal proceedings shall have

regard to the public interest, interest of justice and the need to prevent abuse of legal process.

- c. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal having regard to Nigeria's international obligations under the UN Convention against Corruption, which requires Nigeria to apply in good faith its domestic law and in manner that does not frustrate or defeat the object and purpose of the Convention to end impunity for large-scale corruption

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AS FOLLOWS:

1. A DECLARATION that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal and unconstitutional having regard to Section 15(5) of the 1999 Constitution of Nigeria, which provides that the state shall abolish all corrupt practices and abuse of power.

2. A DECLARATION that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal and unconstitutional having regard to Section 174(3) of the 1999 Constitution of Nigeria, which provides that the Second Defendant in the exercise of his power to undertake criminal proceedings shall have regard to the public interest, interest of justice and the need to prevent abuse of legal process.

3. A DECLARATION that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal having regard to Nigeria's international obligations under the UN Convention against Corruption, which requires Nigeria to apply in good faith its domestic law and in manner that does not frustrate or defeat the object and purpose of the Convention to end impunity for large-scale corruption

4. AN ORDER directing the Defendants to reinstate the corruption charges/suit against Muhammed Abacha forthwith

THIS SUMMONS was taken out by **ADETOKUNBO MUMUNI ESQ**, 4 Akintoye Shogunle Street, Off John Olugbo Street, Off Obafemi Awolowo Way, Ikeja, Lagos, Legal Practitioner for the above – named Plaintiff.

The Defendants may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed, at the Federal High Court Registry, Lagos, or by sending them to that office by post.

Note:

If the Defendants do not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

Dated this.....day of2014.

**OYINDAMOLA MUSA ESQ
ADETOKUNBO MUMUNI ESQ
SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP)
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SOLICITOR TO THE PLAINTIFF**

FOR SERVICE ON:

THE 1st and 2nd DEFENDANTS
C/O ATTORNEY-GENERAL OF THE FEDERATION & MINISTER OF JUSTICE
FEDERAL MINISTRY OF JUSTICE ANNEX,
BROAD STREET, LAGOS

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BETWEEN

THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP)

} **PLAINTIFF**

AND

1. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA

} **DEFENDANTS**

2. THE ATTORNEY GENERAL OF THE FEDERATION & MINISTER OF JUSTICE

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

I, Adetola Adeleke, Male, Christian, and Litigation Clerk of 4 Akintoye Shogunle Street off John Olugbo Street, Ikeja Lagos hereby make Oath and state as follows:

1. That I am a Litigation Clerk of the Socio-Economic Rights and Accountability Project (SERAP), the Plaintiff in this suit.
2. That I have the consent and authority of the Plaintiff herein to depose to this affidavit.
3. That by virtue of my position and the fact stated in paragraph 2 hereof, I am conversant with the facts of this case and with the facts deposed to herein.
4. That the Plaintiff is a human rights non-governmental organization established in Nigeria and incorporated under Part C of the Companies and Allied Matters Decree, 1990. A copy of the Certificate of Incorporation of SERAP is attached herewith as Exhibit 1.
5. That the Plaintiff seeks to promote transparency and accountability in government through human rights. A copy of the Constitution of the Plaintiff is hereby attached as Exhibit 2
6. That the Defendants brought nine counts of stealing against Mohammed Abacha in February 2014, accusing him of unlawfully receiving about N446.3bn allegedly stolen from the government of Nigeria's coffers between 1995 and 1998.
7. That the charge, marked CR.21-24/2008, indicated that the stolen money allegedly received by Mohammed Abacha included \$141,100,000 and \$384,353,000 made up of cash and travelers' cheques.
8. That on 18 June, 2014 the Defendants withdrew the charges/suit against Muhammed Abacha pending before the FCT High Court by way of a notice of withdrawal dated June 17, 2014, on the vague excuse that there were fresh facts and documents available to Defendants.

9. That I was informed by Counsel to the Plaintiff and I verily believed him that the Defendants acted in breach of the 1999 Constitution (as amended) and Nigeria's international anticorruption obligations and commitments
10. That I was informed by Counsel to the Plaintiff and I verily believed him that the above action by the Defendants, was done in bad faith and has resulted in defeating the object and purpose of the 1999 Constitution and the UN Convention against Corruption to combat impunity for corruption
11. That unless the reliefs sought herein are granted, the Defendants will continue to be breach of the 1999 Constitution, and Nigeria's international anticorruption obligations and commitment
12. I verily believe that a grant of the reliefs sought for by the Plaintiffs will serve the overriding interests of justice and the public as well as ensure the entrenchment of accountability in the management of public funds and public affairs.
13. I make this affidavit in good faith and in accordance with the oaths Act LFN 2004.

.....
DEPONENT

SWORN to at the Federal High Court Registry Lagos,
thisday of2014.

B E F O R E M E

C O M M I S S I O N E R F O R O A T H S

**IN THE FEDERAL HIGH COURT
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SUIT NO FHC/L/CS/1007/2014

BETWEEN

THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) } PLAINTIFF

AND

1. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA }
 2. THE ATTORNEY GENERAL OF THE FEDERATION & MINISTER OF JUSTICE }
- DEFENDANTS

**WRITTEN ADDRESS IN SUPPORT OF
ORIGINATING SUMMONS**

Prepared By:

OYINDAMOLA MUSA ESQ
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SOLICITOR TO THE PLAINTIFF

1.0. **INTRODUCTION**

- 1.1. This Written Address is filed on behalf of the Plaintiff and in support of this Originating Summons.
- 1.2. The main issues for consideration in this case relate to the lawfulness of the withdrawal of corruption charges/suit by the Defendants against Muhammed Abacha, as enumerated above.

2.0 **BACKGROUND FACTS**

- 2.1.1. The background facts in respect of this Originating Summons are well set out in the supporting affidavit of Adetola Adeleke. I humbly refer your Lordship to the said affidavit.
- 2.1.2. In the Originating Summons, the Plaintiff raised the following issues/questions for determination by this Honourable Court:
 - a. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 15(5) of the 1999 Constitution of Nigeria, which provides that the state shall abolish all corrupt practices and abuse of power.
 - b. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 174(3) of the 1999 Constitution of Nigeria, which provides that the Second Defendant in the exercise of his power to undertake criminal proceedings shall have regard to the public interest, interest of justice and the need to prevent abuse of legal process.
 - c. Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal having regard to Nigeria's international obligations under the UN Convention against Corruption, which requires Nigeria to apply in good faith its domestic law and in manner that does not frustrate or defeat the object and purpose of the Convention to end impunity for large-scale corruption.
- 2.3. In addition, the following reliefs were sought by the Plaintiff in the Originating Summons:

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AS FOLLOWS:

1. **A DECLARATION** that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal and unconstitutional having regard to Section 15(5) of the 1999 Constitution of Nigeria, which provides that the state shall abolish all corrupt practices and abuse of power.

2. A DECLARATION that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal and unconstitutional having regard to Section 174(3) of the 1999 Constitution of Nigeria, which provides that the Second Defendant in the exercise of his power to undertake criminal proceedings shall have regard to the public interest, interest of justice and the need to prevent abuse of legal process.

3. A DECLARATION that the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is illegal having regard to Nigeria's international obligations under the UN Convention against Corruption, which requires Nigeria to apply in good faith its domestic law and in manner that does not frustrate or defeat the object and purpose of the Convention to end impunity for large-scale corruption

4. AN ORDER directing the Defendants to reinstate the corruption charges/suit against Muhammed Abacha forthwith

3.0 ARGUMENTS

ISSUE ONE: Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 15(5) of the 1999 Constitution of Nigeria, which provides that the state shall abolish all corrupt practices and abuse of power.

Section 15 (5) of the 1999 Constitution provides that, "***The State shall abolish all corrupt practices and abuse of power.***" This means that the Defendants are to ensure that the material resources of the nation are harnessed and distributed in a manner that serves the common good of all Nigerians; and to prevent the exploitation of Nigeria's human and natural resources for any reasons other than for the good of the community. It also means that in cases of corruption the Defendants will ensure diligent and effective prosecution of suspended perpetrators. The philosophical foundation for the inclusion of the Fundamental objectives in the Constitution is that governments of developing countries are observed with power

and its attendant affluence such that they daily disregard the very institution they ought to protect.

While Section 15 (5) is contained in Chapter 2 covering fundamental objectives and directive principles of state policy, it is submitted that these principles impose duties and responsibilities on all organs of government, as well as on all authorities and persons exercising legislative, executive and judicial powers to ensure that: the Nigerian state is based on democracy and social justice; and that all corrupt practices are abolished.

In particular, the Indian courts have redefined the relationship between fundamental rights and directive principles. Although the courts recognize that directive principles of state policy are non-justiciable, they regard the principles as the soul of the Constitution, which provide the framework to which governments of the future should conform. Accordingly, while the courts acknowledged that fundamental rights are essential to democratic processes, they also have stated that these would not be enough for a poverty-stricken society. The Supreme Court of India has adopted a more balanced and integrated approach that ensures that fundamental rights are understood within the framework of directive principles. Accordingly, directive principles have gone from being clearly non-justiciable, to providing the basis of a right of action at first instance before the Indian Supreme Court. As the practice of the Indian courts have demonstrated, it is entirely within the judicial province for the courts to interpret and apply the provisions of the Constitution in the light of the fundamental objectives and directive principles of state policy. (See e.g., B. De Villiers, *The Socio-Economic Consequences of Directive Principles of State Policy: Limitations on Fundamental Rights*, 8 S. AF. J. HUM. RTS. 188 (1992).)

The goal of the Fundamental Objectives and Directive Principles enshrined in chapter II of the Constitution is better appreciated when viewed against the background of Justice Bhagwati's notable pronouncement in *Minerva Mills v. Union of India*, to the effect that:

...to a large majority of people who are living in almost subhuman existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual

freedom and liberty, though representing some of the cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and well-to-do, and the only solution for making these rights meaningful to them [is] to remake the material conditions and usher in a new social order where socio-economic justice [will] inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured. ((1980) AIR SC, 1789)

The case of Attorney-General of Ondo State v. Attorney-General of the Federation & 35 ors., is also instructive and illuminating in this regard. In that case the Supreme Court held that section 13 of the 1999 Constitution does not only impose a solemn duty to observe the mandate contained in Chapter II on all organs of government and all authorities and persons exercising legislative, executive or judicial powers, but also on private individuals as well. The court rejected the argument that the section applies only to government officials and held that the argument “does not take account of the undeniable fact that those organs do not operate entirely within their official cocoons.” ((2002) 9 NWLR (Pt. 772) 222 S.C., See especially the judgment of Uwaifo, J.S.C. at 381.)

Honorable Justice Oputa (of blessed memory) stated in his write-up on “Towards Justiciability of the Fundamental Objectives and Directive Principles of State Policy” that,

Now duty is the correlative of rights and it is applied to those acts which a person is bound to do by virtue of the office he holds. It then follows that by Section 13 of the 1999 Constitution “persons exercising legislative, executive and judicial powers in Nigeria are bound to observe and apply the provisions of Chapter 2 of our constitution. This is a mandatory provision of the constitution. Because those persons are so duty-bound, it follows that they have a responsibility to do those acts or else be accountable for their

failure to act. Section 13 in addition to the word “duty” uses other expression “responsibility” which also imports liability to be called to account....Thus, from the wordings of Section 13 of the 1999 Constitution, it is obvious that its provisions are meant to be complied with. (See FEMI FALANA VS ATTORNEY GENERAL OF THE FEDERATION, SUIT NUMBER FHC/L/CS/1122/11)

WE therefore urge the Honourable Court to so hold.

ISSUE TWO: Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal and unconstitutional having regard to Section 174(3) of the 1999 Constitution of Nigeria, which provides that the Second Defendant in the exercise of his power to undertake criminal proceedings shall have regard to the public interest, interest of justice and the need to prevent abuse of legal process.

Section 174(3) of the 1999 Constitution provides that, ***“In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.”***

The constitution provides that public interest, the interest of justice and abuse of the legal process be protected. This provision should be interpreted within the other broader principles and values in the administration of justice. Justice is open, transparent and should be responsive and accountable. These are not fashionable terms any more, but a reality under the 1999 Constitution. If the Defendants want to exercise the power of withdrawing corruption charges/suit, it is mandatory that they meet the threshold of public interest, interest of justice and ensure non abuse of the court process. Thus, justice is required to be done in any case regardless of the status of anyone involved. It is submitted that the Defendants in this case over overstep on the powers contained in Section 174(3) of the 1999 Constitution.

The overarching objective in the administration of justice that is to do justice to all, irrespective of status, is a cardinal value of any civilized nation. The exercise of the power to withdraw in this case is therefore not in consonant with the provisions of the constitution. The Defendants have a constitutional responsibility to adhere to the principles set out in the constitution. In other words, the exercise of this power is not absolute. And this cannot be especially in corruption cases, and given the debilitating effects of corruption on the rule of law, good governance and the entire fabric of the Nigerian society.

ISSUE THREE: Whether the withdrawal by the Defendants of N446.3bn corruption charges/suit against Muhammed Abacha is not illegal having regard to Nigeria's international obligations under the UN Convention against Corruption, which requires Nigeria to apply in good faith its domestic law and in manner that does not frustrate or defeat the object and purpose of the Convention to end impunity for large-scale corruption

Nigeria has ratified the UN Convention against Corruption, which in several of its provisions obligate the country to effectively prosecute allegations of corruption, recover stolen assets, and end the impunity of perpetrators. Several articles of the convention emphasise the importance of promoting, facilitating, and supporting international cooperation to effectively combat corruption. This good faith obligation requires the Defendants to submit cases of corruption to a State's competent authorities for the purpose of prosecution. The good faith nature of the obligations assumed by Nigeria under the convention does not grant discretion to the Defendants to refuse to prosecute, recover stolen assets and end the impunity of perpetrators. It is submitted that there are no exceptional circumstances warranting the withdrawal of the corruption charges/suit against Muhammed Abacha by the Defendants. It is further submitted that by withdrawing the charges/suit, the Defendants have denied the "appropriate authorities" in this case the FCT High Court the opportunity to hear evidence and decide whether or not a case of corruption is established against Muhammed Abacha.

The exercise of such power is not compatible with the need to avoid impunity for corruption prohibited under the UN Convention against Corruption.

4.0 **CONCLUSION**

4.1 In conclusion I most respectfully urge this court to grant the reliefs claimed by the Plaintiff on the arguments and grounds hereinbefore stated

Dated this day of 2014

**OYINDAMOLA MUSA ESQ
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