

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

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

TUESDAY, APRIL 25, 2017

CHARGE NO. FCT/HC/CR/75/2017

MOTION NO. M/2820/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

NZE CHIDI DURU DEFENDANT

R U L I N G

THE DEFENDANT/APPLICANT herein, *Nze Chidi Duru* was arraigned before this court on a four-count charge: two counts of criminal breach of trust, and one count apiece of fraudulently making a false document and fraudulently using as genuine a forged document contrary to *ss. 315, 364 and 366* of the *Penal Code Act, Cap. 532, Laws of the Federation of Nigeria (Abuja) 1990*. The specifics of the charge against him, which is dated 16/1/17, read as follows:

"CHARGE

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in July, 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, being entrusted with dominion over certain properties to wit: ₦15,000,000.00 (Fifteen Million Naira) being part payment of 30%

equity shares of First Guarantee Pension Ltd. sold to Novare Holdings Proprietary Ltd., committed criminal breach of trust in respect of the said sum by diverting same to pay for land allocations from Lagos State Government in favour of Grand Towers Plc and MVJDA Africa Ltd., companies of which you have interest and you thereby committed an offence punishable under Section 315 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria, 1990.

COUNT 2

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in July, 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being entrusted with dominion over certain properties to wit: ₦1,123,646.58 (One Million, One Hundred and Twenty Three Thousand, Six Hundred and Forty Six Naira, Fifty Eight Kobo) being part payment of 30% equity shares of First Guarantee Pension Ltd. sold to Novare Holdings Proprietary Ltd., committed criminal breach of trust in respect of the said sum by authorizing same to be paid into the First Bank Plc. Account of B. P. Outsourcing Ltd., a Company of which you have interest and you thereby committed an offence punishable under Section 315 of the Penal Code Act, Cap. 532, Laws of the Federation of Nigeria 1990.

COUNT 3

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in June 2008 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly and fraudulently make a false document to wit: an ordinary resolution of First Guarantee Pension Limited dated 2nd June 2008 purporting same to have been signed by all the subscribers/shareholders of the said First Guarantee Pension Limited which you knew to be false and thereby committed an offence

punishable under Section 364 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria 1990.

COUNT 4

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in June 2008 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly and fraudulently use as genuine a forged document to wit: an ordinary resolution of First Guarantee Pension Limited dated 2nd June, 2008 purporting same to have been signed by all the subscribers/shareholders of the said First Guarantee Pension Limited and forwarded same to Folashade Ogundare and Hon. Isegba Terngu with the intention of causing it to be believed that the said document was genuine which you knew to be false and thereby committed an offence contrary to Section 366 of the Penal Code, Cap. 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act."

The Defendant/Applicant entered a plea of 'Not Guilty' to all four counts of the charge against him, but could not see his way clear as to whether the due process of this court has been validly invoked or whether this court ought to exercise its jurisdiction to entertain and determine the charge preferred against him. By a notice of preliminary objection dated 1/2/17 but filed on 2/2/17, he prays for the following:

- "1. AN ORDER of this Honourable Court declining to exercise its adjudicatory power in this suit on ground that the entire proceeding is an abuse of the process of this Honourable Court.
2. AN ORDER prohibiting the Complainant from further prosecuting the instant charge or any other charge against the Defendant/Applicant, or seeking any form of indulgence before

this Honourable Court or any other court in Nigeria in respect of, pertaining to and or relating to in any manner whatsoever, the Target Examination Report of the National Pension Commission in respect of First Guarantee Pension Limited, owing to the Orders of the Federal High Court made in the Judgment of my Lord, Justice D. U. Okorowo in Suit No. FHC/ABJ/CS/709/2011 delivered on the 18th day of July 2012.

3. AN ORDER discharging the Defendant/Applicant of all the offences contained in the instant charge, the said charge which cannot be lawfully prosecuted by the Complainant in view of the valid Orders of injunction granted against the Complainant in Suit No. FHC/ABJ/CS/61/13 contesting their right to prosecute the Applicant.
4. AND for such further order(s) as this Honourable Court may deem fit to make in the circumstances."

The grounds upon which the preliminary objection is predicated are as follows:

- "1. The first set of reasons upon which the jurisdiction of this Honourable Court is being contested are that:
 - a. The counts contained in the present suit is predicated on a complaint made by some shareholders of First Guarantee Pension Limited on matters connected with or incidental to the "Target Examination Report of First Guarantee Pension" arising from the "Draft Target Examination Report of First Guarantee Pension Limited" prepared by the National Pension Commission which has been nullified by a court of law as contained in the

decision of the Federal High Court in Suit No. FHC/ABJ/CS/709/2011, delivered on the 18th July 2012.

- b. Proceeding with the prosecution of the Defendant based on the Charge No. FCT/HC/CR/75/2017 dated 12 January 2016 (*sic*), the entire content of which, relates to matters contained in the "First Guarantee Pension Limited Target Examination" arising from the "Draft First Guarantee Pension Limited Target Examination" prepared by the National Pension Commission amounts to an attempt to negate the purport of the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/709/2011, delivered on the 18th July 2012, Coram: Hon. D. U. Okorowo J., which nullified the "First Guarantee Pension Limited Target Examination" arising from the "Draft First Guarantee Pension Limited Target Examination".
2. The second set of grounds upon which the jurisdiction of this Honourable Court is being challenged are that this suit is an abuse of the process of this court in view of the pendency of the appeals at the Supreme Court and the Court of Appeal challenging the validity or otherwise of the Target Examination Report which formed the fulcrum upon which this charge is framed to wit:
 - a. SC/544/2013: Between Chief Orlando Ojo and Anor. v. National Pension Commission and 1 Or.
 - b. Appeal No. CA/A/428/2012: Between the National Pension Commission v. Derrick Ropper and Anor.
 - c. Appeal No. CA/A/31/2012: Between Derrick Roper & 1 Or. v. Kashim Imam & 14 Ors.

3. The attempt by the Complainant to initiate criminal proceedings against the Applicant is being contested in Suit No. FHC/ABJ/CS/61/2013 pending before the Federal High Court, Abuja Division wherein the Economic and Financial Crimes Commission is also a party.
4. The third set of grounds upon which the jurisdiction of this Honourable Court is being contested are:
 - a. This suit is one which clearly shows forum-shopping as the Defendant has been previously charged before the Magistrate Court of the Federal Capital Territory by the Police upon the directive of the Economic and Financial Crimes Commission in First Information Report (FIR) Number CR/103/2013 on allegations of crimes connected with the Target Examination Report.
 - b. The presiding Magistrate quashed the FIR on the grounds that to proceed with the proceedings will be in contempt of the extant orders of the Federal High court nullifying the Target Examination Report as contained in the Judgment of the Federal High Court in Suit No. FHC/ABJ/CS/709/2011.
 - c. Rather than Appeal the said ruling the Complainant turned the persecution of the Defendant into a four by four hundred meter race wherein batons will be changed from one entity to another and proceeded to file criminal information No. ID/20139C/2015 dated 5 October 2015 before the Honourable Justice O. A. Ipaye of the High Court of Lagos State.

- d. In that Information, the Complainant alleged that the offences contained in the Charge before this Honourable court were committed within the jurisdiction of the High Court of Lagos State.
- e. Upon receipt of a preliminary objection, similar to this objection that is currently filed, the Complainant filed a Notice of Withdrawal of Information wherein it deposed to the fact that it has reviewed the case file of the Defendant and found that there is [no] criminal offence for which the Defendant will be called to answer.
- f. This suit filed against the Defendant under Charge No. FCT/HC/CR/75/17 is similar and or the same with the Information filed in Criminal Information No. ID/20139C/2015 dated 5 October 2015.
- g. The Federal High Court, Coram: G. O. Kolawole J. has given a mandatory injunction preventing the Complainant from initiating any criminal proceedings against the Defendant until after the determination of Suit No. FHC/ABJ/CS/61/2013.
- h. To the extent that these proceedings as initiated in Charge No. FCT/HC/CR/75/2017 relate to the contents of, matters arising from the nullified "First Guarantee Pension Limited Target Examination", by the decision of the Federal High Court in Suit No. FHC/ABJ/CS/709/2011, delivered on the 18th July 2012, this suit amounts to abuse of the process of this court and should not be allowed at all."

The preliminary objection is supported by a 32-paragraphed affidavit deposed by the Defendant/Applicant, *Nze Chidi Duru* with Exhibits ND1 – ND13 annexed thereto. The Prosecution/Respondent is opposed to the preliminary objection and caused to be filed on its behalf a 23-paragraphed counter affidavit deposed on 27/2/17 by one *Allu Dauda* who is a detective officer with the Economic and Financial Crimes Commission (EFCC).

Arguing the preliminary objection on 27/2/17, *Abdul Mohammed, Esq.* of counsel for the Defendant/Applicant relied on the 32-paragraphed supporting affidavit as well as the exhibits annexed thereto. He adopted the written address filed in support of the objection and submitted that it is only through a civil suit that the Defendant can contest the exercise of powers by EFCC or any government department since he cannot initiate criminal proceedings; that to the extent that the present charge is predicated on the Target Examination Report, the criminal charge is a nullity as the said Target Examination Report has been nullified by a valid judgment of the Federal High Court; that Exhibit ND13 remains a valid court order restraining the EFCC from filing any criminal proceedings until it is either vacated or set aside on appeal and since EFCC is a party to Exh. ND13, their option is to appeal against the order, citing ***HART v HART [1990] NWLR (PT. 126) at 276.*** *Abdul Mohammed, Esq.* further submitted that the contention that the Defendant/Applicant is not a party to Exh. ND1 is misconceived as there can be no meaningful disputation that he is a director of First Guarantee Pension Limited, which was the 3rd Respondent in Exh. ND1; and that the contention that the EFCC conducted a separate investigation other than the Target Examination Report is equally misconceived as Exhibit ND1 covers all ancillary action or steps. The court was urged to uphold the preliminary objection and grant the prayers sought.

On his part, *Sylvanus Tahir, Esq.* of counsel for the Prosecution/Respondent relied on the 23-paragraphed counter affidavit and adopted the written address filed in opposition to the preliminary objection. *Tahir, Esq.* submitted that the Prosecution launched an investigation into the complaint against the Defendant which is independent of the Target Examination Report conducted by PENCOM; that the Defendant has placed reliance on decisions in civil actions whereas the matter before this court is a criminal case; that the Defendant's grouse is not that he has been convicted or acquitted previously such that the present criminal charge is caught by *antre fois acquit* or *antre fois convict*; and that since the rule in *SMITH v SELWYN* has been abolished, this criminal proceedings can conveniently be taken along with the civil suits pending before other courts. The court was urged to dismiss the preliminary objection and proceed with the criminal trial.

Let us preface our consideration of the preliminary objection with a reference to *ss. 221* and *396 (2)* of the ***Administration of Criminal Justice Act, 2015*** (hereinafter "**ACJA**") which provide as follows:

"221. Objections shall not be taken or entertained during proceedings or trial on the ground of an imperfect or erroneous charge."

"396(2) After the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgement."

The clear signal the ACJA is sending out by the above provisions is that it does not brook dilatory applications or objections aimed at torpedoing

or filibustering the expeditious disposal of criminal cases. However, even though the success of the present objection would invariably necessitate the quashing of the charges and/or the discharge of the Defendant/Applicant *in limine* without conducting any plenary trial, it seems to me that the preliminary objection is not directed at the validity *vel non* of the charge *per se* or any imperfection or error in the charges framed as envisaged by ss. 221 and 396 (2) of the ACJA. Rather the objection constitutes an attack on the *bona fides* of prosecuting the Defendant/Applicant before this court in the light of antecedent developments in other courts in relation to underlying facts and circumstances to which the prosecution is undoubtedly privy. In other words, the preliminary objection alleges the abuse or misuse of the judicial process against the Defendant/Applicant and the court is invited to refrain from exercising its undoubted jurisdiction at the instance of the Prosecution/Respondent.

Since courts of law [which are equally courts of equity] are simultaneously vested with the power and saddled with the onerous duty under their inherent jurisdiction to ensure that the machinery of justice is duly lubricated and not abused, this court ought to be reasonably assured that its process has been invoked *bona fide* and not abused or misused before proceeding to enquire into the substance of the criminal charge preferred against the Defendant. To my mind, it would amount to a colossal misapplication or mismanagement of scarce judicial time and resource to hear a criminal charge to conclusion only to discover at the end of the day that the charge ought not to have been preferred in the first place for being an abuse of court process as has been alleged by

the Defendant/Applicant, and resisted by the Prosecution/Respondent. In this regard, it has been held that *"in a challenge to any action on the ground that it was an abuse of the process of the court, the objection must be raised before the court starts dealing with or trying the action..."* See **CHIEF GANI FAWEHINMI v A-G, LAGOS STATE & ORS (No.1) [1989] 3 NWLR (PT. 112) 707 at 721-722.**

It is forcefully contended on behalf of the Defendant/Applicant in the written address in support of preliminary objection [wherein a sole issue is formulated, namely *"Whether this suit is not an abuse of the process of this Honourable Court and liable to be struck off, having regards (sic) to all the facts and circumstances presented before this Honourable Court"*] that this criminal prosecution is in clear breach of the final judgment/orders of the Federal High Court (per *Okorowo, J.*) dated 18/7/12 [Exh. ND1] which enjoys the presumption of validity until set aside; that this action is equally an exercise in contempt of court as it seeks to impose a *fait accompli* on the Court of Appeal before which two appeals are currently pending; that all the counts of the charge are an offshoot of the complaint lodged by shareholders of First Guarantee Pensions Ltd which is predicated on the Target Examination Report whereas there is a specific subsisting judgment/court order restraining the National Pension Commission and its privies from taking any action on the basis of the said Target Examination Report; and that notwithstanding the subsistence of this judgment and appeals arising therefrom yet to be determined by the Court of Appeal, the EFCC proceeded to institute these criminal proceedings in blatant abuse of the judicial process. Citing **UNILORIN v OLUWADARE [2006] 14 NWLR**

(PT. 1000) 751 and *BELLO v A-G, LAGOS STATE* [2007] 2 NWLR (PT. 1017) 115 at 149 – 150 and *ABDULLAHI HARUNA, ESQ. & ORS v KOGI STATE HOUSE OF ASSEMBLY & ORS* [2002] 7 NWLR (PT. 1194) 604 at 658 on the proposition that once a matter is sub-judice in that it is being considered by a court of law, it becomes inappropriate to deliberate on it unless and until the matter is determined by the court, and it amounts to reprehensible conduct for any party to an action or appeal pending in court to proceed to take the law into his hands without any specific order of the court and to do any act which would pre-empt the result of the action, the Defendant maintained that the actions of the EFCC are also in clear contempt of the orders of the Federal High Court (per *Kolawole, J.*) in Suit No. FHC/ABJ/CS/61/2013: Nze Chidi Duru & 2 Ors v. The Nigeria Police Force & 3 Ors. and an abuse of the judicial process, placing reliance on *AMAEFULE v STATE* [1988] 2 NWLR (PT. 75) 156 at 177, *UMEH v IWU* [2008] 8 NWLR (PT. 1089) 225 at 230, *STABILINI VISIONI (NIG.) LTD v S. V. LTD* [2011] 8 NWLR (PT. 1249) 258 at 278 (per *Okoro, JCA* as he then was) and *CHIEF GANI FAWEHINMI v A-G, LAGOS STATE & ORS (NO.1) supra at 721-722*. The court's attention was drawn to affidavit evidence showing that; (i) there is a subsisting judgment of the Federal High Court (Exh. ND1) nullifying the Target Examination Report; there is also a Ruling staying proceedings in respect of matter pertaining to the Target Examination Report (Exh. ND2); (ii) there are pending appeals in Appeal No. CA/A/428/2012 filed by the National Pension Commission against the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/709/2011 and Appeal No. CA/A/31/2012: Derrick Roper & Anor. v Kashim Imam & 14 Ors. lodged against the suit initiated by those

listed as witnesses in this charge; (iii) Exh. ND8 reveals that the Defendant had previously been charged on offences relating to the Target Examination Report in FIR No. AB/CMCII/CR/103/2013 before the Chief Magistrate Court II, Zone 2, Wuse, Abuja, FCT wherein *His Worship Ogboi Anthony U. E.* quashed the charge in the light of the valid judgment of the Federal High Court; (iv) the EFCC was joined as a party in Suit No. FHC/ABJ/CS/61/2013 still pending at the Federal High Court, where there is a subsisting interlocutory order restraining the Defendants from prosecuting the Defendant in the instant charge on any matter arising from or connected with allegations in the Target Examination Report of First Guarantee Pension Limited, yet the EFCC proceeded to initiate this fresh action on the same subject matter as the pending suits. Drawing inspiration from the cases of ***ESHENAKE v GBINJE [2006] 1 NWLR (PT. 961) 228*** and ***OSHIOMHOLE v F.G.N. [2005] 1 NWLR (PT. 907) 414*** (*per I. T. Muhammed, JCA, as he then was*) on the well settled proposition in our jurisprudence that court orders [whether valid or invalid, regular or irregular or even perverse] must be obeyed until set aside, the Defendant/Applicant submitted that this is an obvious case of abuse of the process of this court, pointing out that *"the sacredness of the court which is earmarked by its independence and impartiality is a major reason why litigants and indeed the State submit to the court's powers and jurisdiction to adjudicate over disputes between parties, and that "it is indeed a high jurisprudential matter taking its root from [the] social contract between the State and its citizens"*.

The further contention of the Defendant/Applicant is that the peculiar circumstance of abuse of court process in the instant case is critical as

the EFCC is embarking on "forum shopping" and has come before this Court upon withdrawing a similar charge wherein it alleged that the offences "*were committed within the jurisdiction of the High Court of Lagos*" after the Defendant had previously been arrested by the EFCC and handed over to the Police for prosecution before a Magistrate on allegations of crime connected with and arising from the Target Examination Report of First Guarantee Pension Limited; that the "forum shopping" voyage embarked upon by the EFCC in a frantic bid to enforce a nullified report as disclosed in the charge and proofs of evidence in the instant suit constitute an abuse of court process, citing ***OKOROCHA v P.D.P. & ORS (2014) LPELR-22058 (SC)***; that the Prosecution cannot utilise the contents of a nullified document to frame charges against the Defendant because such a document which has ceased to have any effect whatsoever cannot constitute the basis for any action, placing reliance on the oft-cited dictum of Lord Denning in ***MACFOY v U. A. C. (1961) 3 W.L.R 1405 at 1409*** and ***EJIMOFOR v NITEL [2007] 1 NWLR (PT. 1014) 153 at 179C-D, 181C-D*** –per Nzeako, JCA; and that unless and until the EFCC concludes the pending suit at the Federal High Court which seek to restrain it from further prosecuting the Defendant/Applicant on the allegations contained in the Target Examination Report, the Prosecution ought not to be accorded a hearing in this court or in any other court in the Federal Republic of Nigeria, relying on ***HADKINSON v HADKINSON (1952) 2 ALL ER 567*** –per Denning L.J. and ***F.A.T.B. LTD v EZEGBU [1992] 9 NWLR (PT. 264) 132 at 150*** –per Karibi-Whyte, JSC; and that the charge before this court ought to be dismissed, citing ***ALI v ALBISHIR [2008] 3 NWLR (PT. 1073) 94 at 142 – 143*** (per Kekere-Ekun, JCA as she then was) and ***MINISTER***

FOR WORKS & HOUSING v TOMAS (NIG.) LTD [2002] 2 NWLR (PT. 752) 740 at pp. 780 & 785. In closing, the Defendant/Applicant cited *F.A.T.B. LTD v EZEGBU supra at 125*, *BAMIDELE v COMMISSIONER FOR LOCAL GOVT. [1994] 2 NWLR (PT. 328) 534 at 586* (per *Uwaifo, JCA* as he then was), *UDE v NWARA [1992] 2 NWLR (PT. 278) 638 at 664* and *OSHO v FOREIGN FINANCE CORPORATION [1991] 4 NWLR (PT. 184) 157 at 202* on the executive lawlessness of public officers on their non-compliance with relevant laws and court orders and the imperative for courts of law to protect their processes from being abused, disparaged or ridiculed by litigants, or other persons or authorities. The court was urged to invoke its coercive powers under s. 6 (6) of the 1999 Constitution (as amended) to decline the exercise of its jurisdiction and penalise the Prosecution/Respondent by dismissing the charge preferred against the Defendant/Applicant in an obvious attempt to make a mockery of the judicial process, citing *OWONIKOKO v AROWOSAIYE [1997] 10 NWLR (PT. 523) 61 at 77-78*

On behalf of the Prosecution/Respondent, it is equally forcefully contended in the written address in opposition to preliminary objection [wherein a sole issue is distilled, namely: *"Whether on the facts and circumstances of this case the Defendant/Applicant has placed any material before this Honourable Court that legally debars/prohibits the Complainant/Respondent from prosecuting him or that ousts the jurisdiction of the court from trying him on the alleged offences as charged"*] that the offences alleged against the Defendant are cognisable by this Court; that the Defendant/Applicant's objection is predicated on very extraneous considerations unknown to Criminal Law; and that he has placed reliance on pending civil suits and appeals to which the

Complainant is not a party in urging this court to decline the exercise of its adjudicatory powers on the ground of abuse of court process. The Prosecution/Respondent returned a negative answer to the two rhetoric questions posed by it, namely: *"how are the two different classes of cases relevant to the other"* and *"whether the subsistence of a purely civil case could constitute a bar to a criminal prosecution"*; and contended that following the abolition of the rule in SMITH v SELWYN in England, both civil and criminal cases can proceed simultaneously and that cannot be a legal basis for urging the court to decline adjudication in the instant criminal charge. The further submission of the Prosecution/Respondent is that Defendant/Applicant's contention that the instant charge is predicted on a complaint made by some shareholders of First Guarantee Pension Limited on matters connected with or incidental to the so-called Target Examination Report of First Guarantee Pension which has been allegedly nullified by the decision of *D. U. Okorowo J.* in Suit No. FHC/ABJ/CS/709/2011 delivered on 18/7/12 is misconceived as the Defendant/Applicant was not a party to the said suit, which was a fundamental right enforcement action and cannot rely on the outcome of that suit; that as deposed in paragraphs 14(c), 20 and 22 (a) of the counter affidavit, the EFCC conducted a criminal investigation into the petition, took statements from the persons lined up as prosecution witnesses and the outcome of its investigation is not predicated upon any so-called Target Examination Report which was not a criminal investigation; that there is no legal basis for urging this Court to prohibit the Complainant from prosecuting the Defendant on the charges preferred against him. The Prosecution/Respondent maintained that a calm and dispassionate perusal of the Ruling delivered by *G. O. Kolawole, J.* on 10/11/16 [Exh. ND12] would reveal that his Lordship merely ordered accelerated hearing of the Amended Originating Summons and did not grant any order of injunction restraining the Complainant or the EFCC

from prosecuting the Defendant/Applicant; and that at any rate, it is trite that the court will not issue an injunction to restrain a law enforcement agency from discharging its statutory duties, and the Defendant/Applicant who is not conferred with any immunity under extant laws cannot seek sanctuary from the court to shield himself from either investigation or prosecution, citing **ATTORNEY-GENERAL OF ANAMBRA STATE v UBA [2005] 15 NWLR (PT. 947) 44 at 67** –per *Bulkachuwa JCA (now PCA)* and **FAWEHINMI v I. G. P. [2002] 7 NWLR (PT. 767) 606 at 671-672** –per *Uwaifo, JSC*; that there is no basis whatsoever for the court to discharge the Defendant/Applicant of the offences with which he has just been arraigned and to which he pleaded ‘not guilty’ as no evidence has been led in proof of the allegations, let alone a no-case submission being made and upheld, placing reliance on **CHIEF OF AIR STAFF v IYEN [2005] 6 NWLR (PT. 922) SC 496 at 542** on the meaning of ‘discharge’ in the context of criminal proceedings. The Prosecution/Respondent argued that the Complainant was not a party to the First Information Report in **FIR No. CR/103/2013: Commissioner of Police v. Nze Chidi Duru & 6 Ors** [Exh. ND9] quashed by the Chief Magistrate for having been predicated on the nullified Target Examination Report, which has no bearing whatsoever on the instant charge because the investigation that led to the filing of the instant charge against the Defendant is not based on the said Target Examination Report; that Exhs. ND5 and ND6 [being letters from the Office of the Honourable Attorney-General of the Federation/Federal Ministry of Justice dated 10/1/13 and 29/1/13 respectively, addressed to the Executive Chairman of the EFCC] are not judgments of a court of law absolving the Defendant/Applicant of any criminal liability on the allegations levelled against the Defendant so as to debar the Complainant from initiating the instant criminal prosecution against him; that **Charge No: ID/2039C/2015: F.R.N. v. Nze Chidi Duru** which was

withdrawn by the Complainant and struck out "without prejudice" by A. O. Ipaye, J. of the High Court of Lagos State does not amount to an acquittal, nor is there any specific complaint of double jeopardy in breach of either s. 36 (9) & (10) of the 1999 Constitution (as amended), or facts showing that the Defendant/Applicant will suffer double jeopardy as a consequence of the instant criminal prosecution; that none of Exhs. ND1 - ND13 is a judgment of a court of law in a criminal trial either discharging and acquitting the Defendant/Applicant or granting him pardon on any of the counts in the instant charge to warrant divesting this court of jurisdiction, or prohibiting the Prosecution/Respondent from prosecuting him, citing ***F.R.N. v NWOSU [2016] 17 NWLR (PT.1541) SC 226 at 305 - 306*** and ***NIGERIAN ARMY v AMINU-KANO [2010] 5 NWLR (PT. 1188) 429 at 461 and 467 (SC)*** on the essence of the concept of double jeopardy which can found a plea of *autrefois convict* or *autrefois acquit*. The Prosecution/Respondent finally contended that the allegation of abuse of court process is untenable because aside from the current Charge No: FCT/HC/CR/75/2017 pending before this court, there is no record of any other past or on-going criminal or civil case initiated by the Complainant against the Defendant, citing ***F.R.N. v NWOSU supra at pp. 293 - 294***. The court was urged to discountenance the "*elaborate and copious arguments*" put forward on behalf of the Defendant/Applicant, and dismiss the preliminary objection for lacking in merit.

Now, the grounds upon which the preliminary objection is predicated, as well as the submissions and legal arguments canvassed by the parties in support of and in opposition thereto, are set out hereinbefore. The central question crying for resolution, which falls within a narrow compass and is by no means complex or convoluted, is whether or not the present charge initiated by the Prosecution/Respondent against the

Defendant/Applicant is lacking in *bona fides* such that this court ought to refrain from exercising its unimpeded jurisdiction to entertain and determine the same on the merits. Put differently, whether the 4-count criminal charge preferred by the Prosecution/Respondent against the Defendant/Applicant constitutes an abuse of court process which impacts negatively on the jurisdiction of this court to adjudicate. It is gratifying that this central issue is captured in the respective formulation of issues by the parties, and it is on the basis of the said issue that I shall proceed presently to dispose of the objection raised by the Defendant/Applicant.

As is the case with most legal concepts, abuse of court process is a term which is not capable of any precise definition, and may be more easily recognised than defined. It is however a term generally applied to a proceeding which is wanting in *bona fides* and is frivolous, vexatious or oppressive; the abuse of legal procedure or the improper use or misuse of the legal process to vex or oppress the adverse party. See ***AMAEFULE v THE STATE [1988] 2 NWLR (PT. 75) 156 at 177*** –per Oputa JSC and ***ARUBO v AIYELERU [1993] 3 NWLR (PT. 280) 126 at 142***. The categories of abuse are not closed and there is an infinite miscellany of circumstances that could give rise to abuse of process. See ***NV. SCHEEP v MV. S. ARAZ [2000] 15 NWLR (PT. 691) 622***. The list is in-exhaustive as each incident of abuse of court process has to be established from the circumstances of each particular case. See ***UMEH v IWU [2008] 8 NWLR (PT. 1089) 225 at 230***. In ***SARAKI v KOTOYE [1992] 9 NWLR (PT. 264) 156 at 188 E - G***, the Supreme Court (per Karibi-Whyte, JSC) opined that:

“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of

justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation.

But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See OKORODUDU v. OKOROMADU (1977) 3 SC 21; OYAGBOLA v. ESSO WEST AFRICA INC. (1966) 1 All NLR 170. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se.” [Emphasis supplied]

See also **OKAFOR v A-G, ANAMBRA [1991] 6 NWLR (PT. 200) 659 at 681; CENTRAL BANK OF NIGERIA v AHMED [2001] 28 WRN 38 at 60-61; MOGAJI v NEPA [2003] 8 WRN 42 at 53, UMEH v IWU supra at 243** and **F.R.N. v NWOSU [2016] 17 NWLR (PT.1541) 226 at pp. 293 – 294 (SC)** wherein the Supreme Court reiterated that the occurrence of abuse of process is not restricted to instances of improper use of the judicial process in litigation as abuse could occur even where there is proper use of the process of court; and that abuse of court process generally entails the employment of the judicial process by a party not only to the annoyance and irritation of his adversary but also against the efficient and effective administration of justice.

Whereas it is forcefully contended on behalf of the Defendant/Applicant that the 4-count charge of criminal breach of trust and forgery preferred against him is based on the Target Examination Report of First Guarantee Pensions Limited which has since been nullified by the judgment of the Federal High Court (per *D. U. Okorowo, J.*) dated 18/7/12 in Suit No.

FHC/ABJ/CS/709/2011 and in defiance of other pending suits and appeals, and in particular the order of injunction granted by his Lordship, *G. O. Kolawole, J.* in Suit No. FHC/ABJ/CS/61/2013 on 10/11/16 [Exh. ND12] restraining the Executive Chairman of EFCC and the EFCC *in personam* from initiating criminal proceedings against the Defendant/Applicant insofar as it relates to matters arising from or connected with or incidental to the said Target Examination Report, such that the instant charge constitutes a gross abuse of court process and this court ought not to exercise its jurisdiction to entertain and determine the same; it is equally forcefully contended on behalf of the Prosecution/Respondent that the above arguments are grossly misconceived as the Defendant/Applicant was not a party to Suit No. FHC/ABJ/CS/709/2011 which was a fundamental right enforcement action and cannot rely on the outcome of that suit as a shield from criminal prosecution, especially in the light of the depositions in paragraphs 14(c), 20 and 22 (a) of the counter affidavit to the effect that the EFCC conducted a criminal investigation independent of the so-called Target Examination Report and took statements from persons who have been lined up as prosecution witnesses, and that there is no legal basis for urging this Court to prohibit the prosecution of the Defendant/Applicant on the charges preferred against him.

Now, there seems to be no disagreement between the parties that the Target Examination Report of First Guarantee Pensions Limited has since been nullified by the judgment of *Okorowo J.* as shown in Exh. ND1. The Prosecution/Respondent has however contended that since the Defendant/Applicant was not a party to the suit which was for the enforcement of fundamental right, he cannot rely on the outcome of that suit as a shield from criminal prosecution; and the reaction of the

Defendant/Applicant is that *First Guarantee Pensions Limited* in which the Defendant/Applicant is a director and vice-chairman at all material times was the 3rd defendant in the said suit and he is bound by the outcome as well as entitled to take the benefit. It occurs to me however, that even if *arguendo* the Defendant/Applicant was not a party to the suit wherein the Target Examination Report was nullified as contended by the Prosecution/Respondent, that fact alone will not resurrect the nullified report such that if the present charge is predicated on the said Target Examination Report as contended by the Defendant/Applicant, the essential validity and *bona fides* of the charge will certainly be called to question. This is so because no valid legal action (whether civil or criminal) can be founded on a report that has been annulled by a court of competent jurisdiction; and the fact that the Defendant/Applicant was not a named-party to the suit is neither here nor there and makes no difference whatsoever. As Lord Denning put it in ***MACFOY v UNITED AFRICAN CO. LTD supra at p. 1409***, “...every proceeding which is founded on it, is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.” See also ***EJIMOFOR v NITEL supra***

Placing reliance on paragraphs 14(c), 20 and 22 (a) of the counter affidavit to the effect that the EFCC conducted independent investigation, interviewed witnesses and generally collated evidence which enabled the filing of the charges against the Defendant, the Prosecution/Respondent has maintained that the present charge is not predicated on the Target Examination Report conducted by the National Pension Commission. But it cannot escape notice that the ‘First Guarantee Pension Limited Target Examination’ Report by one *P. O. Aghaowa* dated 22/3/11, as well as the

complaint made to the Chairman of EFCC by shareholders of First Guarantee Pension Limited dated 16/8/11 and titled "*Report of the Unlawful Infractions in First Guarantee Pension Limited by Nze Chidi Duru, Mr. Derrick Roper and Mr. Orlando Olaiya Ojo*" [Exhibit ND3] on the basis of the Target Examination Report which "*among other things, indicted Nze Chidi Duru the erstwhile Vice Chairman of the PFA, Mr Derrick Roper, a South African and erstwhile director of the PFA and Mr Orlando Olaiya Ojo the erstwhile chairman of the company for violation of the Code of Ethics and Business Practices, the Code of Governance for Licensed Operators issued by the Commission, the provisions of the PRA 2004 and indeed other laws of the Federal Republic of Nigeria*" are contained in the bundle of documents constituting the proof of evidence filed by the Prosecution/Respondent in support of the present criminal indictment. Indeed, a peep into the Target Examination Report and the four-count charge before me reveals that the allegations against the Defendant/Applicant in both documents are essentially the same. Fundamentally, no evidence of a different "report of investigation" which can be said to constitute the basis of the present criminal charge against the Defendant/Applicant has been produced before this court. Evidence is the basis of justice and it is well settled that courts of law can only act on the basis of evidence. It would be invidious if the courts were at liberty to decide issues in controversy between parties otherwise than on the basis of evidence placed before them. See ***IBRAHIM v SHAGARI (1983) ALL NLR 507.***

In the above circumstances, it is difficult in the extreme to agree with the Prosecution/Respondent that the present charge has nothing to do with the Target Examination Report already nullified by *Okorowo, J.* in **Suit No. FHC/ABJ/CS/709/2011: Derrick Roper & Anor v National Pension Commission & Anor** as shown in Exh. ND1. The prominence of the

Target Examination Report in the bundle of documents constituting the proof of evidence necessarily lends credence to the Defendant/Applicant's assertion that the present criminal charge is predicated at least in part, if not entirely, on the Target Examination Report, and I am constrained to agree.

One major point of divergence between the parties relates to the nature of the order made by *G. O. Kolawole, J.* on 10/11/16 in **Suit No. FHC/ABJ/CS/61/2013: Nze Chidi Duru & 2 Ors v The Nigerian Police Force & 3 Ors** as shown in Exh. ND12. Whereas the Defendant/Applicant maintains on the one hand that his Lordship, *Kolawole, J.* granted an order of interlocutory injunction restraining all the defendants, and in particular the Executive Chairman of the EFCC and the EFCC who were joined as 3rd and 4th defendants, *in personam* from 'continuing with the prosecution of the Plaintiff in Case No. ID/2039C/2015 or any other criminal charge insofar as it relates to the Target Examination Report of First Guarantee Pension Ltd that has been nullified by the decision of *Okorowo, J.*,' the Prosecution/Respondent insists on the other hand that a calm and dispassionate perusal of the Ruling of *Kolawole, J.* would reveal that his Lordship merely ordered accelerated hearing of the 'Amended Originating Summons' and did not make any order of injunction restraining the Complainant or the EFCC from prosecuting the Defendant/Applicant. I have had the privilege of reading the 34-page ruling of my Learned Brother, *G. O. Kolawole, J.* of the Federal High Court, which is written in free flowing prose and easy to comprehend. But in order to resolve the needless controversy as to what was decided or not decided, let us invite his Lordship to recreate and/or restate the relevant portions of the Ruling as contained in **pp. 32 -34** of Exh. ND12:

"In the final analysis, I have taken a decision to act on the side of caution by casting my 'lot', if it were so, on the balance of doing *substantial justice*, by exercising *my judicial discretion* to protect a *greater* and more *fundamental right* to prevent any of the parties, the 3rd and 4th Defendants in particular from doing what may ultimately, not only be an exercise of a so called statutory powers in *defiance* of this pending suit by proceeding with the information attached as Exhibit "MDA-2" in the Lagos High Court, but in so far as they had not obliged this court with any categorical statement that the criminal indictment instituted in the Lagos State High Court as Exhibit "MDA-2" on 6/10/15 was not based on the "Target Examination Report" which had been nullified by the Judgment of the Hon. Justice D. U. Okorowo delivered on 18/7/12 and produced as Exhibit "ND4" attached to the Plaintiffs' "Originating Summons" [n]or have they produced a different "*Report of Investigation*" which formed the basis of the said "*Information*" attached as Exhibit "MDA-2" to the Plaintiff's "Motion on Notice", so that they are not *judicially* permitted to act in disobedience of extant orders contained in the said judgement I will exercise my *discretion* to grant the plaintiffs "Motion on Notice" dated 13/4/16. The orders granted are strictly *in personam* against the defendants and the 3rd and 4th defendants in particular as I am not under any illusion that I have neither *statutory* nor *constitutional powers* to *stay proceedings* pending before a court of coordinate jurisdiction [before] which the High Court of Lagos State before Exhibit "MDA-2" is pending.

In other that the defendants are not kept waiting (to use the exact words of the 1st and 2nd Defendant's learned counsel, DSP Oloye Torugbene) for indeterminate length of time, it is my order pursuant to the provision of Order 56 Rule 1 of the **Federal High Court (Civil Procedure) Rules 2009**, that the Plaintiffs' suit constituted by the "Amended Originating Summons" to which the defendant have filed their respective "Counter-Affidavit", shall be head *expeditiously* so that within a *reasonable period of time*, in the context of the letters

and spirit of the provision of section 36 (1) of the **CFRN, 1999 as amended**, both parties shall know their respective fate, and in the event that the plaintiff's suit fails, the 3rd and 4th defendants can legitimately proceed in the exercise of their *statutory powers* to resume the prosecution of the first plaintiff who is named as the only "Defendant" in the "*Information*" dated 5/10/15 and attached as Exhibit "MDA-2 to the Plaintiff's "Motion on Notice" dated 13/4/10. The said "Motion on Notice" *succeeds as prayed*. The Plaintiffs' "Amended Originating Summons" shall be accorded accelerated hearing."

The orders made by *Kolawole, J.* are as clear as crystal and admit of no ambiguity; even as it is instructive that the motion on notice dated 13/4/16 which succeeded "as prayed" sought for "*an order of mandatory injunction restraining the Defendant's herein particularly the 3rd and 4th Defendants from continuing with the prosecution of the Plaintiff in case number ID/2039C/2015 or any other criminal charge insofar as it relates to the Target Examination Report of First Guarantee Pension Ltd that has been nullified by the judgment of this Honourable Court in Suit FHC/ABJ/CS/709/2011 pending the hearing and determination of this suit*". **See pp. 1-2 of Exh. ND12.** As stated hereinbefore, the 3rd and 4th defendants in that suit are the Executive Chairman of the EFCC and the EFCC, and there is no indication whatsoever that the 'Amended Originating Summons" pending which they were so restrained *in personam* from continuing with the prosecution of the information preferred against the Plaintiff at the Lagos High Court or any other criminal charge relating to the said Target Examination Report' has been determined in their favour to enable them "*legitimately proceed in the exercise of their statutory powers, to resume the prosecution of the 1st Plaintiff*" [i.e. the Defendant/Applicant herein] as ordered by the Federal High Court in the Ruling of *Kolawole, J.* as aforesaid.

This is therefore not a case in which it can be said that the courts have unduly interfered [or are interfering] with the exercise of the statutory powers of the EFCC or shielding the Defendant/Applicant from criminal prosecution, which was frowned upon in the case of **ATTORNEY-GENERAL OF ANAMBRA STATE v UBA** *supra* upon which the Prosecution/Respondent has heavily relied. Quite the contrary, it is a case in which the courts seek to safeguard the administration of justice and the sustenance of a value system founded on the Rule of Law by preventing law enforcing agencies from initiating criminal prosecutions in defiance of valid and subsisting court orders under the thin guise of discharging statutory duties. The incalculable damage the administration of justice will suffer if law enforcing agencies and litigants alike were at liberty to deliberately disregard and trample upon valid and subsisting court orders can only be imagined. To allow court orders to be wantonly disobeyed or disregarded would be to thread the road towards anarchy. See **CANADIAN METAL CO. LTD v CANADIAN BROADCASTING CORP.** (No. 2) [1975] 48 D.L.R. (3d) 641 at 669 –per O’Leary, J. It is an ill wind that blows no good!

Law enforcement is no doubt a very onerous responsibility, and law enforcing agencies deserve all the cooperation they can get from individuals and other organs or agencies of government [including the courts] within the ambit of the law. That is why the courts do not ordinarily make orders restraining the exercise of their statutory powers or shield suspected offenders from criminal prosecution. See **ATTORNEY-GENERAL OF ANAMBRA STATE v UBA** *supra*. That also explains why a substantial margin of discretion is always conceded to law enforcement agencies as to the appropriate methodology of enforcement, the freedom to formulate and implement general policies and to decide what actions to take in particular cases without incurring the risk of

judicial intervention. See *FAWEHINMI v I.G.P. supra*. However, in discharging their statutory mandates, law enforcement agencies [including the EFCC which is saddled with the onerous responsibility of investigating all financial crimes as well as the coordination of economic and financial crime laws] must necessarily conduct their operations within the confines of the law, including but not limited to obeying or complying with valid and subsisting orders handed down by the courts of the realm, in order to make law enforcement more effective and effectual. Law enforcers must observe and ensure the observance of “*the law behind the law*” by demonstrating a moral commitment to the very laws they are required to enforce, for without such moral commitment to the law, ‘*who will guard the guard, and who will police the police*’. See *P. O. Affen, The Principles of Fair Hearing and Powers of Arrest and Sanctions by Law Enforcing Agencies in Nigeria, (2009) 2 NJPL 258*.

It is equally contended on behalf of the Prosecution/Respondent that whereas this is a criminal case, the pending cases and judgments/orders relied upon by the Defendant/Applicant are purely civil cases. The learned counsel for the Prosecution wondered “how the two different classes of cases are relevant to each other” and “whether the subsistence of a purely civil case could constitute a bar to a criminal prosecution; and argued that both civil and criminal cases can subsist or proceed simultaneously since the rule in *SMITH v SELWYN* has been abolished in England, and that the pendency of civil cases and appeals is not a legal basis for urging the court to decline adjudication in respect of the instant criminal charge. But whilst it is correct that rule in *SMITH v SELWYN* has been abolished not only in England but also in Nigeria [see *VERITAS INSURANCE CO. LTD v CITY TRUST INVESTMENTS LTD [1993] 3 NWLR (PT. 281) 239*], the crux of the Defendant/Applicant’s objection, as it seems to me, is not whether both civil and criminal suits cannot

subsist side by side following the abrogation of the rule in SMITH v SELWYN. No. Rather, it is whether a criminal prosecution [such as the present] can validly be maintained when there is a subsisting court order prohibiting or restraining the institution of criminal proceedings on the basis of a report already nullified by a court of competent jurisdiction. The point that must be vigorously underscored here is that a subsisting order handed down by a court of competent jurisdiction in a civil proceeding, which has a direct bearing on a subsequent criminal prosecution, is no less efficacious and binding on the parties and their privies. It is settled beyond peradventure that an order of a court even if perceived to be a nullity is effective and remains in force until set aside. See *ALADEGBEMI v FASANMADE [1988] 3 NWLR (PT 81) 129*, *OSHIOMHOLE v F.G.N supra*, *EZEKIEL-HART v EZEKIEL HART (1990) LPELR-1354 (SC)*, *HADKINSON v HADKINSON supra* and *SIRROS v MOORE (1974) All ER 776*. The nature of the proceedings [whether civil or criminal] in which the order was made is of no moment. The authority of the court and all that the judicial system represents would be compromised and brought into eternal disrepute, scorn or disrespect if it were otherwise. This being so, I take the considered view that the interlocutory order of injunction granted by *Kolawole J.* on 10/11/16 in **Suit No. FHC/ABJ/CS/61/2013** instituted by the Defendant/Applicant and two others (as plaintiffs) remains effective and binding on the EFCC which is a party thereto; and the options available to the Prosecution/Respondent are either to await the determination of that suit [which was to be heard on accelerated basis] or to lodge an appeal with a view to having the injunctive order vacated or set aside; but certainly not to institute the present criminal charge in obvious defiance of the said order merely because it was made in a civil suit. It ought not to be so!

What is more, since the Defendant/Applicant's preliminary objection is not predicated on previous acquittal or conviction for the same offences with which he is now charged, it seems to me that the rather laborious arguments put forward by the learned counsel for the Prosecution/Respondent, *Sylvanus Tahir, Esq.* on the doctrine of double jeopardy and *autre fois acquit* or *autre fois convict*, as well as the references to s. 36 (9) & (10) of the 1999 Constitution (as amended) and the cases of *F.R.N. v NWOSU supra* and *NIGERIAN ARMY v AMINU-KANO supra* are, with great respect, misplaced and uncalled for in the context of the objection. As a notable English judge, *Lord Steyn* once said: "*In law context is everything*". See *REGINA v SECRETARY OF STATE FOR THE HOME DEPARTMENT, EX PARTE DALY [2001] 3 All ER 433, [2001] 1 AC 532.*

The Prosecution/Respondent has urged the court to discountenance the allegation of abuse of court process because there is no record of any other past or on-going criminal or civil proceedings initiated by the Complainant against the Defendant/Applicant aside from *Charge No: FCT/HC/CR/75C/2017* pending before this court, citing *F.R.N. v NWOSU supra at pp. 293 - 294.* What I understand the Prosecution/Respondent to be saying by the above contention is that a charge of abuse of court process does not lie because there is no multiplicity of actions by it against the Defendant/Applicant. I reckon however that even though multiplicity of actions is an instance of abuse of court process, it is certainly not the only instance of abuse. The point has already been made that the categories of abuse of court process are not closed and there is an infinite miscellany of circumstances that could give rise to abuse depending on the peculiar facts and circumstances of each case. See *NV. SCHEEP v MV. S. ARAZ supra* and *UMEH v IWU supra.* The common feature in all instances of abuse is the improper use of the

judicial process to interfere with the due and efficient administration of justice [see *SARAKI v KOTOYE supra* and *F.R.N. v NWOSU supra*], and it is obvious that the institution of the present criminal charge against the Defendant/Applicant in defiance of valid and subsisting judgment/orders of the Federal High Court as well as the pendency of various suits and appeals revolving around the Target Examination Report of First Guarantee Pensions Ltd, cannot but constitute an improper use of the judicial process to unduly interfere with, if not undermine, the efficient and effective administration of justice. The competence of the instant criminal charge is therefore impaired as it is plagued by a feature that prevents this court from exercising its undoubted jurisdiction. See *MADUKOLU v NKEMDILIM (1962) 2 SCNLR 341*.

As stated hereinbefore, the courts are simultaneously vested with the power and saddled with the onerous duty under their inherent jurisdiction to ensure that the machinery of justice is duly lubricated and not abused. That power I hereby exercise, and that duty I hereby discharge. It has been held that where the court comes to the conclusion that its process has been [or is being] abused, the proper order to make is that of dismissal of the erring process. See *ARUBO v AIYELERU supra*; *KODE v ALHAJI YUSUF [2001] 4 NWLR (PT. 703) 392* and *AFRICAN REINSSURANCE CORPORATION v JDP CONSTRUCTION NIGERIA LIMITED [2003] 5 MJSC 104 at 122*.

Accordingly, I will and do hereby record an order quashing Charge No. FCT/HC/CR/75/2017: Federal Republic of Nigeria v. Nze Chidi Duru for being an abuse of court process and/or for having been instituted in defiance of the subsisting orders of the Federal High Court. I equally record an order discharging [but not acquitting] the Defendant/Applicant

of the charges preferred against him on that score without further assurance.

And in order to give effect to, and not defeat the essence of, the subsisting judgment and/or order of the Federal High Court in relation to the Target Examination Report of First Guarantee Pensions Limited, and in particular the order of interlocutory injunction granted on 10/11/16 by *G. O. Kolawole, J.* in **Suit No. FHC/ABJ/CS/61/2013: Nze Chidi Duru & 2 Ors v The Nigerian Police Force & 3 Ors** restraining the defendants therein [particularly the Executive Chairman of EFCC and the EFCC] *in personam*, the Prosecution/Respondent shall not initiate or prefer any further criminal charge(s) against the Defendant/Applicant herein, *Nze Chidi Duru* on the self-same allegations contained in the said Target Examination Report underlying the present criminal charge UNTIL AND UNLESS the said **Suit No. FHC/ABJ/CS/61/2013** is conclusively determined or the order of interlocutory injunction aforesaid is otherwise vacated or set aside. IT IS SO ORDERED.



PETER O. AFFEN

Honourable Judge

Counsel:

Sylvanus Tahir, Esq. (with him: *Y. Y. Tarfa, Esq.*) for the Prosecution/Respondent

Abdul Mohammed, Esq. (with him: *Smart Iheazor, Esq., Innocent Ezeugu, Esq., Sanusi Musa, Esq.* and *F. O. Amedu, Esq.*) for the Defendant/Applicant