**FELIMON ENTERPRISES LIMITED**

**V**

**THE CHAIRMAN, ECONOMIC AND FINANCIAL CRIME COMMISSION AND ANOTHER**

SUPREME COURT OF NIGERIA

15TH DAY OF DECEMBER 2017

SC. 149/2013

**LEX (2017) - SC.149/2013**

OTHER CITATIONS

2PLR/2017/129 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

MARY UKAEGO PETER-ODILI, JSC (Read the Lead Judgment)

CLARA BATA OGUNBIYI, JSC

AMIRU SANUSI, JSC

SIDI DAUDA BAGE, JSC

**BETWEEN**

FELIMO ENTERPRISES LIMITED – Appellant

AND

THE CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, LAGOS JUDICIAL DIVISION

2. FEDERAL HIGH COURT, LAGOS (A. O Ajakaiye J., Presiding)

**REPRESENTATION/LAWYERS**

C. V. C IHEKWEAZU with VICTOR ABASIAKAN EKIM, T. A. MICHAH, DIOKA ENEH - for the Appellant

OLUKAYODE ENITAN with C. O. C. EMEKA IZIMA – for the 1st Respondent

NNAMDI ORAGWU with GLORIA OGWU and AFAMEFUNA MMAGU - for the 2nd Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE – ALLEGED PROCEEDS OF CRIME:- Application for interim order freezing and attaching them – Legal effect of – When would be deemed justifiable

CRIMINAL LAW AND PROCEDURE - ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) ACT, SECTIONS 27 – 29:- Interim order of attachment obtained thereunder - Whether irrevocable – Revocation of - Appellant who seeks - Onus on.

CRIMINAL LAW AND PROCEDURE - FACTS PRESUMED TO BE TRUE:- How may be displaced.

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDERS - INJUNCTION - INTERIM ORDER OF ATTACHMENT OBTAINED UNDER SECTIONS 27-29, EFCC ACT:- Whether irrevocable - Revocation of - Appellant who seeks - Onus on.

JUDGMENT AND ORDERS - INTERIM ORDER OF ATTACHMENT OBTAINED UNDER SECTIONS 27-29, EFCC ACT:– Whether irrevocable - Revocation of - Appellant who seeks – Onus on.

WORDS AND PHRASES – “PRIMA FACIE” - Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The 2nd respondent was arraigned in the Federal High Court, Lagos State, on a 44-count charge for several offences under the Economic and Financial Crimes Commission (EFCC) Act; Banks and Other Financial Institutions Act, etc.

The 1st respondent by an application obtained an interim order of attachment of assets, including bank accounts believed to have been used as the conduit to siphon the illegal proceeds of crimes allegedly linked to the 2nd respondent. Appellant’s account being one of such accounts, upon service of the court order on the appellant, it filed an application seeking to discharge the interim order of attachment.

The trial court dismissed the application on grounds that the alleged link between the appellant and the 2nd respondent can only be ascertained at trial. Dissatisfied, the appellant appealed to the Court of Appeal, which appeal was dismissed. The company further appealed to the Supreme Court contending that the lower court erred in affirming the trial court’s decision dismissing its application.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that dismissed the Appellant’s application to discharge an interim attachment order attaching the Appellant’s assets. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether the legal principles for the discharge of an interim order of injunction applies to orders made under section 28 of the Economic and Financial Crimes Commission Act and whether the court has discretion to apply such principles in setting aside an interim order made under the Economic and Financial Crime Commission (EFCC) Act. (Grounds 1 and 2).

2. Whether the court below was right when it held that sections 10 and 11 of the Federal High Court Act taken together do not apply to criminal matters as per the appellant’s case and whether same occasioned a miscarriage of justice against the appellant in the appeal (Ground 3).

3. Whether considering the position of the law and the materials before it, the court below was justified when it affirmed the decision of the learned trial judge in refusing to set aside and discharge the interim order on the grounds that the provision of the Economic and Financial Crime Commission (EFCC) Act does not provide for the setting aside or discharging of the order and that the refusal was in order to protect the res. (Ground 4 and 5).

*BY RESPONDENT:*

Whether in view of the facts and materials, the court below was right in refusing to discharge or set aside the order of interim attachment granted against the appellant by the Federal High Court on 1 March 2010. The sole issue of the respondent is apt and all embracing and I shall utilise it in the determination of this appeal.

**MAIN JUDGMENT**

PETER-ODILI JSC (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the judgment of the Court of Appeal, Lagos division or court below or lower court, coram: Adamu Jauro, Rita Nosakhare Pemu and Fatima Omoro Akinbami JJCA, which lead judgment was delivered by Rita Pemu JCA on 18 January 2013, affirming the decision of the Federal High Court, Lagos dated 6 July 2010 per A. O Ajakaiye J.

Facts briefly stated:

The 2nd respondent, Francis Atuche in standing trial under a 44-court charge for several offences under the Economic and Financial Crimes Commission (EFCC) Act, the Banks and Other Financial Institutions Act amongst others.

The 1st respondent by an application brought under section 27 of the Economic and Financial Crime Commission (EFCC) Act, obtained an interim order of attachment of assets on the 1 March 2010 including bank accounts believed to have been used as the conduit to siphon the illegal proceeds of crimes allegedly linked to the 2nd respondent, one of such accounts was that of the appellant herein.

The appellant upon being served with the order of the court, filed an application seeking to discharge the interim order of attachment made against its assets. The High Court per Ajakaiye J. on 6 July refused to discharge the order of interim attachment on the grounds that the appellant’s name is referred to in several counts of the charge preferred against the 2nd respondent and that the links between the appellant and the 2nd respondent can only be ascertained at the trial stage.

The trial High Court found that appellant featured prominently in count 38 of the criminal charge brought against Francis Atuche, the 2nd respondent herein and that the question of whether Felimon Enterprises and Felimon Enterprises Nigeria Limited are one and-the same person can only be determined at the trial stage and that it is also at that stage that it will be determined whether the company is in anyway involved in the alleged criminal charge levelled against the 2nd respondent.

The appellant’s application was refused and appeal to the court below was dismissed, hence, the appeal to the Supreme Court. On 11 October 2017 date of hearing, learned counsel for the appellant, Chimezie Victor C. Ihekweazu Esq., adopted the brief of argument of the appellant filed on 30 October 2013 in which he raised three issues for the determination of the appeal which are thus:

1. Whether the legal principles for the discharge of an interim order of injunction applies to orders made under section 28 of the Economic and Financial Crimes Commission Act and whether the court has discretion to apply such principles in setting aside an interim order made under the Economic and Financial Crime Commission (EFCC) Act. (Grounds 1 and 2).

2. Whether the court below was right when it held that sections 10 and 11 of the Federal High Court Act taken together do not apply to criminal matters as per the appellant’s case and whether same occasioned a miscarriage of justice against the appellant in the appeal (Ground 3).

3. Whether considering the position of the law and the materials before it, the court below was justified when it affirmed the decision of the learned trial judge in refusing to set aside and discharge the interim order on the grounds that the provision of the Economic and Financial Crime Commission (EFCC) Act does not provide for the setting aside or discharging of the order and that the refusal was in order to protect the res. (Ground 4 and 5).

Learned counsel for the appellant also adopted the reply brief filed on 22 September 2015. Olukayode Enitan Esq. of counsel for the respondent adopted the brief of argument of the respondent, settled by Kemi Pinheiro SAN and filed on 1 February 2014. He distilled a sole issue which is as follows:

Whether in view of the facts and materials, the court below was right in refusing to discharge or set aside the order of interim attachment granted against the appellant by the Federal High Court on 1 March 2010. The sole issue of the respondent is apt and all embracing and I shall utilise it in the determination of this appeal.

Sole issue:

Whether in view of the facts and materials, the court below was right in refusing to discharge or a set aside the order of interim attachment granted against the appellant by the Federal High Court on 1 March 2010. Mr. Ihekweazu of counsel for the appellant contended that the use of words “prima facie” under section 29 of the Economic and Financial Crime Commission (EFCC) Act presupposes that the court has the inherent power to discharge and or set aside the interim order of attachment where it is satisfied, that the property concerned is not liable be the forfeited that in doing this the court has to exercise the discretion both judicially and judiciously considering the well settled legal principles in that regard.

He stated on that jurisdiction inherent in any court of justice that has power to grant an order of interim injunction and to also discharge same in appropriate circumstances where reasonable grounds have been furnished in that regard. He cited Universal Trust Bank Ltd and Anor v. Dolmetsch Pharmacy (Nig) Ltd (2007) All FWLR (Pt. 385) 434, (2007) 6 SC (Pt. 1) 1 at 385. It was submitted for the appellant that the suppression or misrepresentation of facts is enough ground for a court to set aside its own order which is the situation in this case. He referred to Okechukwu v. Okechukwu (1989) 3 NWLR (Pt. 108) 234 at 238; R. Benkay (Nig ) Ltd v. Cadbury (Nig.) Ltd (2006) 6 NWLR (Pt. 976) 338 at pages 367-368.

That the 1st respondent must satisfy the court with cogent evidence to justify the attachment of the property of the appellant and so the appellant’s application should have been considered on the merit instead of dismissing it on the ground that the provisions of the Economic and Financial Crime Commission (EFCC) Act do not provide for the discharge and or setting aside of interim attachment of properties of culprits, a situation which occasioned a miscarriage of justice against the appellant. That since the court has the jurisdiction to make the order of injunction, it must as a matter of necessity possess the power to discharge same. He referred to Bello v. Attorney General, Oyo State (1986) 5 NWLR (Pt. 45) 828, (1986) 12 SC 1. Learned counsel for the appellant submitted further that the 1st respondent did not either in his affidavit in support of the motion or in the exhibit attached show any nexus whether real or imagined between the 2nd respondent and the appellant that led to the illegal or criminal acts alleged and no material presented to show the connection to the 2nd respondent or the alleged offence against the 2nd respondent.

He cited Universal Trust Bank Ltd and Anor v. Dolmetsch Pharmacy (Nig) Ltd (2007) All FWLR (Pt. 385) 434, (2007) 6 SC (Pt. 1) 1 at 9; Adenuga v. Odumeru (2003) FWLR (Pt. 158) 1288, (2003) 8 NWLR (Pt. 821) 163, (2003) 4 SC (Pt. 1) 1 at 11- 12 etc.

That this is a good occasion where the court can call in aid section 22 of the Supreme Court Act and determine the appellant’s application on the merit in the interest of balanced justice. It was relied on the cases of Yusuf v. Obasanjo (2003) FWLR (Pt. 185) 507, (2003) 16 NWLR (Pt. 847) 554, (2003) 9-10 SC 53 at pages106-107; FAAN v. Wamal Express Services (Nig) Ltd (2011) 8 NWLR (Pt. 1249) 219, (2011) 1-2 SC (Pt. 11) 93 at 113.

Learned counsel for the respondent contended that this is one of those instances where an appellate court is loathe to interfering with the exercise of discretion by the lower court or trial court unless it is based on misapplication of principles of law. See Atiku and Ors. v. State (2002) 4 NWLR (Pt. 757) 265 at 283, (2003) FWLR (Pt. 139) 1466; Globe Fishing Ind. Ltd and Ors. v. Coker (1990) 7 NWLR (Pt.162) 265 at 297.

That the powers of the Economic and Financial Crime Commission to attach properties of an accused person reasonably believed to be proceeds of crime are statutorily provided for. He referred to sections 13(6) and (d); 26, 27, 28 and 29 of the Economic and Financial Crime Commission (EFCC) Act. That counts 38-44 of the charge at first sight disclose the alleged complicity of the appellant in the commission of assorted Economic/Financial Crimes associated with the 45 counts amended charge in respect of which the Federal High Court made an interim order of attachment of the asset of the appellant on 1 March 2010. That the court having made the order on a conviction of the existence of a prima facie evidence that the property is liable to interim attachment, the order can only be liable to being set aside by the applicant showing that there is no prima facie evidence making the property liable to interim attachment in the first place and that situation has not occurred here. He cited Trade Bank Plc v. Chami (2003) 13 NWLR (Pt. 836) 158, (2004) All FWLR (Pt. 235) 118; Shata v. FRN (2009) 10 NWLR (Pt. 1149) 411; Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49, etc.

In a nutshell, the appellant contends that the principle for the discharge or setting aside of an interim order applies even under the Economic and Financial Crime Commission (EFCC) Act and that the court has the discretion to discharge and set aside the interim order of attachment made under the Act aforesaid. That the appellant satisfied all the conditions necessary for the trial court to set aside its order of 1 March 2010 and with the Court of Appeal failing to intervene and do that, this court is empowered by the virtue of section 22 of the Supreme Court Act to do the needful.

The respondent’s stance is that the Economic and Financial Crime Commission (EFCC) Act has no provision for the discharge or setting aside of the interim order of attachment once made.

The relevant provisions of the Economic and Financial Crimes Commission Act also briefly labelled EFCC Act, sections 26, 27, 28 and 29 provide thus:

“26 (1) Any property subject to forfeiture under this Act may be seized by the commission in the following circumstances.

(a) The seizure incidental to an arrest or search:

(b) In the case of property liable to forfeiture upon process issued by the court following an application made by the commission in accordance with the prescribed rules.

(2) Whenever property is seized under any of the provisions of this Act, the commission may:

(a) place the property under seal; or,

(b) remove the property to a place designed by the commission.

(3) properties taken or detained under this section shall be deemed to be in the custody of the commission, subject only to an order of a court.

27 (1) Where a person is arrested for an offence under this Act, the commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such illegal act and shall thereafter cause to be obtained an interim attachment order by the court.

28 (1) Where a person is arrested for committing an offence under this Act, it shall be obligatory for such person to make a full disclosure of all his assets and properties by completing the declaration of assets form as specified in Form A of the Schedule to this Act.

(2) The declaration of assets form shall be forwarded to the commission for full investigation by the General and Assets Investigations unit of the Commission.

(3) Any person who:

(a) Knowingly fails to make full disclosure of his assets and liabilities; or,

(b) Knowingly makes a declaration that is false; or

(c) Fails to answer any question;

(d) Fails, neglects or refuse to make a declaration or furnishes any information required, in declaration of Assets Form, commits an offence under this Act and is liable on conviction to imprisonment for a term of ten years.

(4) Subject to the provisions of section 4 of this Act, whenever the assets and properties of any person arrested under this Act are attached, the General and Assets Investigation unit shall apply to the court for an interim forfeiture order under the provisions of this Act.

29. Where:

(a) the assets or properties of any person arrested for an offence under this Act has been seized; or,

(b) any assets or property has been seized by the Commission under this Act, the Commission shall cause an application to be made to the court for an interim order forfeiting the property concerned to the Federal Government and the court shall if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture. Make an interim order forfeiting the property to the Federal Government.

It is not in dispute that there is no provision in the Economic and Financial Crime Commission (EFCC) Act for the setting aside of interim orders of attachment that however cannot be taken as a blanket principle, that once the attachment or seizure has been made, it became irrevocable. I say so because, firstly the attachment under the relevant sections, 27, 28 and 29 of the Economic and Financial Crime Commission (EFCC) Act is done upon an ex-parte interim order. That is outside the knowledge of the contending party and so when circumstances are thrown up which would impel the court for a re-visit of that order, it behoves the court of trial that made the interim order in the first place to take a second judicial and judicious look at the matter, to see whether or not a need for setting aside or refusing to set aside exist. These are within the discretionary powers of the court subject of course to the availability of sufficient facts and materials to do so. It follows therefore that where that discretionary power to set aside was wrongly applied, the appellate court should remedy the anomaly. I am encouraged in this position by what this court per Uwaifo JSC stated in Attorney-General, Ondo State v. Attorney-General, Federation and Ors. (2002) 9 NWLR (Pt. 772) 22 at 420, wherein he stated thus:

“Section 37 (identical to section 25 of the EFCC Act) empowers the ICPC (kindred or sister anticorruption agency of the EFCC) to take custody of any movable or immovable property if it has reasonable ground to suspect that it is the subject matter or evidence of an offence committed under the Act. There is nothing unconstitutional in this. As always, if there is an improper seizure or taking of custody of any such property, that may be a matter for contention, as appropriate, to be decided by judicial process”.

What I am labouring to put across is that while the EFCC Act has made provisions for the forfeiture or attachment of the properties albeit by an interim order obtained ex-parte, the fact that there are no black and white provisions for a reversal does not foreclose the appellant’s constitutional right to cry out that the earlier order was wrongly made and a reversal should be put in place. For this latter situation to apply, however, the appellant must provide the material supporting the court’s change of heart to discharge that interim order or setting aside. See Kasunmu v. Shitta-Bey (2006) 17 NWLR (Pt. 1008) 422, (2007) All FWLR (Pt. 356) 741; Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437; Ituama v. Akpe-Ime (2000) 12 NWLR (Pt. 680) 168 at 180.

In this case at hand, the 1st respondent had in counter-affidavit averred inter alia thus:

“Para 8: our investigation further revealed that the said Mr. Francis Atuche in a bid to conceal the true ownership of the assets and properties in question, employed different individuals and entities, including the applicant, as fronts to disguise the true ownership of the said assets and properties. As revealed by the amended charge in Charge No. FHC/ L/369c/09. Para 9: Felimon Enterprises Nig. Limited (the applicant) and Felimon Nigeria Enterprises are one and the same entity and or owned and controlled by the same individual(s) acting as their alter ego, as revealed by the exhibit attached to the further affidavit filed on behalf of the applicant on 23 March 2010”.

Those relevant paragraphs of 1st respondent stated that the assets in question are owned indirectly by 2nd respondent, Francis Atuche, using different entities including the appellant.

The appellant did not effectively debunk those assertions and present to the court a contrary persuasive position on which the court could reverse itself and so since the trial court, the court below and even the Supreme Court cannot make a consideration or pronouncement in vacuo without reference to peculiar facts with which the particular court has been confronted, the court has no option than to leave the situation as it was when this new application was brought before it. I rely on Clement v. Iwuanyanwu (1989) 3 NWLR (Pt. 107) 39 at 54.

A recourse to the Court of Appeal findings and conclusion, per Rita Pemu JCA is instructive. She stated thus: “Regarding the issue of Felimon Enterprises Nigerian Limited and Felimon Enterprises, I agree with the learned trial judge, as observed at page 34 of the judgment (page 324 of the record of appeal), where he rightly in my view observed inter alia ... as a matter of fact, the name Felimon Enterprises features prominently in count 38 of the criminal charge.

I will only say that it is at the stage of the trial that it will be ascertained whether Felimon Enterprises and Felimon Enterprises Nigeria Limited are one and the same. It is also at that stage that it will be determined whether the company is in any way involved in the alleged criminal charge levelled against Mr. Francis Atuche”.

That decision of the Court of Appeal is sound as it is and affirming what the trial court did make it difficult for me to interfere with it. The reason is that the 1st respondent, EFCC, having satisfactorily shown prima facie evidence that the property is a likely proceed of the commission of crime and may ultimately be liable to forfeiture, the appellant then had the burden or onus to show that the assets were rightly acquired by him and not within the purview of the criminal allegations and as I had earlier said, the appellant failed in that bid. The expression ‘prima facie’ has been held to mean “at first sight”, “on the first appearance”; “on the face of it”; “so far as it can be judged from the first disclosure”, clearly there is the presumption that the fact presumed to be true can only be debunked or disproved by some evidence to the contrary. See Trade Bank Plc v. Chami (2003) 13 NWLR (Pt. 836) 158, (2004) All FWLR (Pt. 235) 118; Shata v. FRN (2009) 10 NWLR (Pt. 1149) 411; Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49.

For a fact, the appellant has not produced a superior argument or material upon which this court can assume the powers pursuant to section 22 of the Supreme Court Act to do that which the two courts below should have done. There is no basis to interfere with the concurrent findings of the two courts below, as they stemmed from what was presented before them and were in no way from a perverse angle or from a miscarriage of justice.

This appeal lacks merit and I dismiss it as I affirm the judgment of the Court of Appeal, Lagos Division in its affirmation of the decision and orders of the trial High Court.

Appeal is dismissed.

**RHODES-VIVOUR JSC:**

I read in advance, the leading judgment of my learned brother, Peter-Odili JSC and I agree fully with it, that the appeal should be dismissed. I, too dismiss the appeal.

**OGUNBIYI JSC:**

This is an appeal from the judgment of the Court of Appeal delivered on 18 January 2013 which dismissed the appeal from the ruling of the High Court, wherein the application of the applicant was dismissed. The applicant/appellant, sought inter alia, to discharge the interim order of attachment granted the respondent on 1 March 2010 on the ground that the appellant featured prominently in the criminal charge currently pending before the Federal High Court. The 2nd respondent herein is standing a 44-count charge for several offences under the Economic and Financial Crime Commission (EFCC) Act, the Banks and Other Financial Institution Act. The 1st respondent by an application brought under section 27 of the Economic and Financial Crime Commission (EFCC) Act obtained an interim order of attachment of assets including bank accounts believed to have been used as the conduit to siphon the illegal proceeds of crimes alleged linked to the 2nd respondent; one of such accounts belong to the appellant herein.

Appellant when served with order of attachment filed an application seeking to discharge the interim order thereof made against its assets. The High Court refused to discharge the order and so did the Court of Appeal, predicated on the ground that there was need to determine whether Felimon Enterprises and Felimon Enterprises Nigeria Ltd are one and the same person and this can be determined only at the trial stage. It is only the trial court that could figure out whether the company is in any way involved in the alleged criminal charge leveled against Mr. Francis Atuche.

Issue:

Whether in view of the facts and materials placed before the trial court, the court below was right in refusing to discharge or set aside the order of interim attachment made against the appellant by Federal High Court. It is pertinent to state that this appeal is against an exercise of discretion in granting an order of interim attachment of properties believed to be proceeds of crime for which 2nd respondent is standing trial and which refusal to set aside was on concurrent decisions by the two lower courts.

This court generally is to exercise caution against interference by setting aside unless it is based on wrong principles of law. The onus is on the appellant to show the good reason for such interference therefore. It is apt to state that the basis upon which the order was made, was that the subject matter was owned directly/indirectly by Mr. Atuche (2nd respondent) who is standing criminal trial in charge No.FHC/L/3696/09 and using different entities and persons, the appellant inclusive, as fronts. The case of the 1st respondent is that the source of money and indeed ownership of those assets and properties were disguised by the 2nd respondent in using the appellant amongst other entities as fronts. Sections 26, 27, 28, and 29 of the Economic and Financial Crime Commission (EFCC) Act are all relevant, specifically sections 26 and 27.

My learned brother, Peter-Odili JSC has dealt with the appeal adequately and I endorse his judgment as mine. This appeal has no merit and is dismissed. The lower court’s decision is affirmed by me also.

Appeal is hereby dismissed in terms of the lead judgment of my learned brother herein.

**SANUSI JSC:**

The judgment just delivered by my learned brother, Mary Odili JSC was supplied to me before now. I agree with her reasoning and conclusion that this appeal is devoid of merit and deserves to be dismissed. My lord, Odili JSC had in her judgment, before arriving at her conclusion, ably dealt with all the salient issues raised by the learned counsel for the parties.

I have nothing useful to add, except to adopt them as mine. I accordingly dismiss the appeal for being meritless and hereby affirm the decision of the Court of Appeal, Lagos division (the lower court). Appeal dismissed.

**BAGE JSC:**

I have had the benefit of reading in draft, the lead judgment of my learned brother, Mary Ukaego Peter-Odili JSC, just delivered. I agree entirely with the reasoning and conclusion reached. I do not have anything to add. The appeal lacks merit, and it is accordingly dismissed by me. Judgment of the Court of Appeal, Lagos division is hereby affirmed.

Appeal dismissed