Neutral Citation Number: [2025] EWHC 1096 (Comm)

Case No: CL-2024-000452

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 08/05/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

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Between:

(1) FEDERAL GOVERNMENT OF NIGERIA	**Claimants**
ATTORNEY GENERAL OF THE FEDERAL GOVERNMENT OF NIGERIA	
- and -	
LOUIS EMOVBIRA WILLIAMS	**Defendant**

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Edward Levey KC (instructed by **Bryan Cave Leighton Paisner LLP**) for the **Claimants**
Oluwole Ogunbiyi (**Direct Access**) for the **Defendant**

Hearing date: 6 March 2025
Draft judgment circulated to parties: 30 April 2025

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Approved Judgment

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Mr Justice Henshaw:

(A) INTRODUCTION

1. In this case the Federal Government of Nigeria ("***the FGN***") and the Attorney General of Nigeria ("***the AG***") seek the setting aside of a default judgment granted by Moulder J on 9 November 2018 in proceedings brought against them by the Defendant ("***Dr Williams***") in claim CL-2016-000151 ("***the 2016 Proceedings***") for US$14,986,791 (plus costs) ("***the Default Judgment***") on the ground that the judgment was obtained fraudulently.

2. Dr Williams applies to have the claim struck out on the grounds that it is an abuse of process ("***the Strike Out Application***"). He submits that this action is a collateral attack on previous judgments of this court; that the allegations of fraud now made were well known by 2012 but the Claimants failed to plead them in the 2016 Proceedings; and that the action offends the principles established in *Henderson v Henderson* and subsequent cases, and is an abuse of process and vexatious.

3. For the reasons set out below, I have concluded that the present claim does not offend the principles referred to above, and should be allowed to proceed. The application to strike out will therefore be dismissed.

(B) BACKGROUND FACTS

(1) The undercover operation in 1986

4. In 1986, Dr Williams was a subject of an undercover operation carried out by the State Security Service ("***the SSS***") of Nigeria designed to discover breaches of the foreign exchange controls in force in Nigeria at the time. Dr Williams was convicted on two counts under the Exchange Control (Anti-Sabotage) Decree of 1984 and sentenced to 10 years' imprisonment and fined Naira (N) 60 million, but he was subsequently pardoned by the then President and Commander-in-Chief of the military government, General Babangida, on 23 August 1993.

5. The undercover operation involved a purported transaction for the importation of foodstuffs into Nigeria by Dr Williams' alleged client, Pearl Konsults Limited ("***PKL***"). As part of that purported transaction, Dr Williams claims to have given a personal guarantee ("***the Personal Guarantee***") in respect of a loan allegedly taken out by PKL from its bankers, Handelskrediet Kantoor AG ("***HKK***"). Dr Williams says that the Personal Guarantee was supported by banker's drafts ("***the Banker's Drafts***") procured by Dr Williams and drawn on his bank, Trade Development Bank ("***TDB***").

6. Dr Williams says that, as a result of the action taken by the SSS and the Central Bank of Nigeria ("***the CBN***"), monies in Nigeria belonging to PKL were frozen, which in turn resulted in the Personal Guarantee being enforced by HKK and Dr Williams losing US$6.5 million of his own monies ("***the USD Monies***"). He also claims that about N5 million (equivalent to about US$5.8 million) of his own monies held in local bank accounts in Nigeria ("***the Naira Monies***") were confiscated.

7. The Claimants accept that an undercover operation involving the freezing of monies in PKL's bank account in Nigeria did take place, but dispute most of the rest of Dr Williams' account. They deny that there ever was a Personal Guarantee or Banker's Drafts, and deny that Dr Williams lost any of his own money.

8. In June 2009, the then President of Nigeria, President, Umaru Yar'Adua, recommended that the CBN return US$6.5 million to Dr Williams. However, that recommendation was made based on the information that had been presented by Dr Williams, which the CBN said was forged, leading the President to withdraw his recommendation.

(2) The CBN Proceedings

9. In March 2010, Dr Williams commenced proceedings in England against the CBN in the King's Bench civil list (claim number HQ10X000931) ("***the CBN Proceedings***"). Dr Williams originally advanced three claims in those proceedings:

   i) He alleged that the undercover operation in 1986 gave rise to a claim against the CBN for dishonest assistance in an alleged breach of trust and for knowing receipt of trust monies ("***the 1986 Trust Claim***").

   ii) He alleged that the CBN had failed to comply with a purported Presidential directive dated 14 September 1993 directing the CBN to pay monies to Dr Williams ("***the Presidential Directive***"). In reliance upon the Presidential Directive (the authenticity of which the CBN did not accept), Dr Williams

alleged that the CBN held monies on trust for him and that, in breach of trust, the CBN had failed to pay those monies to him ("***the 1993 Trust Claim***").

iii) He also alleged that, pursuant to President Yar' Adua's recommendation in 2009, there was an agreement that the USD Monies would be returned to him ("***the 2009 Agreement***").

10. The CBN applied to set aside the order of Master Yoxall granting Dr Williams permission to serve the claim out of the jurisdiction. A hearing took place before Supperstone J in March 2011. By a judgment dated 8 April 2011 ("***the Supperstone Judgment***"), the judge held (in summary) that:

i) there was a serious issue to be tried in relation to the 1986 Trust Claim, it being arguable that (contrary to the submissions made on behalf of the CBN) the claim was not time barred;

ii) there was no serious issue to be tried in relation to the 1993 Trust Claim because, even if the Presidential Directive was authentic, it was merely an instruction to the CBN to pay money to Dr Williams, and there was no evidence that a trust existed over a particular fund of monies; and

iii) there was no serious issue to be tried in respect of the 2009 Agreement, because there was no evidence that any alleged agreement had been entered into on behalf of the CBN.

(a) The Fidelity Guarantee

11. In May 2011, a month after the handing down of the Supperstone Judgment, Dr Williams claimed to have discovered an order issued on behalf of General Babangida on 29 September 1993 requiring the CBN to pay Dr Williams the USD Monies and the Naira Monies (plus compound interest at a rate of 17.5 per cent) ("***the Fidelity Guarantee***"). The Fidelity Guarantee was allegedly signed by a Mr Dan Jafaru, said to be the Principal Staff Officer, on behalf of General Babangida, and countersigned by the then Governor of the CBN, Mr Abdulkadir Ahmed.

12. Dr Williams claimed that the Fidelity Guarantee had been discovered amongst the State papers of the former Attorney General of Nigeria, Mr Clement Akpamgbo, which papers (although being official, State papers) had allegedly been stored in Lagos in the private offices of a Nigerian lawyer, Mr Ohi Pogoson, until their discovery in May 2011.

13. The CBN did not accept the authenticity of the Fidelity Guarantee, but accepted that there was a serious issue to be tried on that issue and so did not, at that stage, dispute its authenticity. Subsequently, the CBN did positively dispute the authenticity of the Fidelity Guarantee, including by reference to the circumstances in which it had supposedly been discovered, alleged historical and factual inaccuracies contained in it, an allegation that the Governor of the CBN's signature was a clear forgery (the signature having been copied from an official banknote in circulation at the relevant time), the fact that no-one with the name of Dan Jafaru appeared to have ever served in the Nigerian army, and the document's terms (which were said to be highly unusual and suspicious).

14. The discovery of the Fidelity Guarantee enabled Dr Williams to seek to amend to bring an alternative trust claim, which he argued avoided the problem that Supperstone J had identified regarding the absence of a specific fund of monies. Dr Williams also sought to bring a claim under Nigerian law to enforce the terms of the Fidelity Guarantee directly as against the CBN ("***the Nigerian Law Claim***").

15. Following a hearing on 12 January 2012, Beatson J handed down judgment on 24 January 2012 giving Dr Williams permission to bring the Nigerian Law Claim, as regards the USD Monies only, and to serve the amended claim outside the jurisdiction; but refused permission to bring an alternative trust claim ("***the Beatson Judgment***"). Beatson J refused permission to serve out of the jurisdiction the Nigerian Law Claim to the Naira Monies, because there was no evidence that they had ever been held within the jurisdiction, and so none of the jurisdictional gateways applied to that part of the claim. Accordingly, as a condition of being granted permission to serve out, Dr Williams was required to undertake not to pursue the Nigerian Law Claim in respect of the Naira Monies.

(b) The Progress Report

16. In a witness statement dated 17 April 2012, Dr Williams stated that in March 2012 (less than two months after the Beatson Judgment had been handed down) he had come into possession of another new document, this time a "*progress report*" sent by the Governor of the CBN to the President on 17 October 1993 ("***the Progress Report***"). This document appeared to show that the Naira Monies had, at least at one stage, been held within the jurisdiction. A witness statement was provided from a Mr Mgbemena, a qualified Nigerian and English lawyer, who said he had been instructed in 2005 to sell the former Attorney General's (Mr Akpamgo's) private home in London. Mr Mgbemena had apparently passed on the instruction to his wife, an English solicitor, who had conduct of the conveyancing. During the process of clearing the house, the Progress Report had been found amongst box of papers marked 'Re Dr L.E.Williams'. Mr Mgbemena had been Dr Williams' representative in Lagos when there had been discussions with the Attorney General in 2008/9 concerning the return of Dr Williams' money. The evidence did not explain why Mr Mgbemena did not tell Dr Williams about the box of papers at the time of those discussions, but only in 2012 after the Beatson Judgment.

17. However, as the authenticity of the Progress Report had to be a matter for trial, it enabled Dr Williams to be released from his undertaking and bring the Nigerian Law Claim in respect of both the USD Monies and the Naira Monies.

(c) Supreme Court judgment in relation to limitation

18. In the meantime, the CBN had appealed against Supperstone J's decision in relation to the limitation period applicable to the 1986 Trust claim. Eventually, in a judgment handed down in February 2014, the Supreme Court held that the claim against the CBN was time barred.

19. As a result, Dr Williams' only surviving claim against the CBN was the Nigerian Law Claim, which was founded upon the Fidelity Guarantee.

(d) The Proclamation

20. One of the reasons why the CBN said that the Fidelity Guarantee was a clear forgery was that General Babangida (on whose behalf it had allegedly been issued) was not the President of Nigeria at the relevant time. On 26 August 1993, about a month before the Fidelity Guarantee was allegedly issued, executive powers were transferred from the military government (i.e. the Armed Forces Ruling Council ("***AFRC***") headed by General Babangida) to a civilian government known as the Interim National Government ("***ING***").

21. Dr Williams therefore relied on a purported 'proclamation' dated 25 August 1993 ("***the Proclamation***"), which he said had been issued by the AFRC on 25 August 1993, the day before the ING came to power. It purported to record that, notwithstanding the transfer of power and the installation of a civilian government, General Babangida was to continue to have executive powers. The Claimants say the Proclamation, like the other documents relied on by Dr Williams, was not authentic. They note that the CBN could find no official archive or record of the Proclamation, and say no proper explanation was ever provided by Dr Williams about how he came across it. Further, it was written in a font which did not exist at the time the Proclamation was supposedly issued, and the CBN adduced expert evidence to that effect. The Proclamation also mis-spelt the words 'Nigeria' and 'Babangida'.

(e) Subsequent events and discontinuance

22. Following the Supreme Court's decision on limitation, Dr Williams continued to prosecute the Nigerian Law Claim. The claim depended on establishing that both the Fidelity Guarantee and the Proclamation were authentic and had legal effect under Nigerian Law.

23. Dr Williams filed witness statements, including one from himself and one, dated 25 March 2013, purportedly from a Mr Dan Mohammed Jafaru, said to be the Principal Staff Officer who had countersigned the Fidelity Guarantee on behalf of General Babangida. However, Dr Williams said that Mr Jafaru could not give evidence because he had died since making the statement. The CBN filed evidence that the government department responsible for maintaining army records had no record of anyone by that name ever serving in the Nigerian army.

24. Following the exchange of witness statements and expert evidence, Dr Williams obtained two adjournments of the trial, leading Foskett J to warn him in November 2015 that he was "*beginning to give the impression of not wanting this case to be heard*". Following a further unsuccessful attempt on 3 February 2016 to have it adjourned, the trial was due to commence on 29 February 2016. On 26 February 2016, the date for exchange of skeleton arguments for trial, the CBN served its skeleton argument on Dr Williams, but Dr Williams served a Notice of Discontinuance.

(3) The 2016 Proceedings

25. A few days later, on 8 March 2016, Dr Williams commenced proceedings in this court, against the present Claimants (case CL-2016-000151) ("***the 2016 Proceedings***").

26. The underlying factual allegations were substantially the same as Dr Williams had put forward in the CBN Proceedings. The claim was advanced on two alternative bases:-

    i) A claim for approximately US$6.5 million plus interest based on the events which were alleged to have taken place in 1986, alleging that as a result of the undercover operation Dr Williams had given a Personal Guarantee and lost US$6.5 million of his own money. This time, the claim was brought against the FGN as the alleged trustee (as opposed to the CBN Proceedings where he had sought to sue the CBN for knowing receipt/dishonest assistance). This claim was accordingly very similar to the 1986 Trust Claim.

    ii) A claim under Nigerian law, in respect of both the USD Monies and the Naira Monies, seeking to enforce the terms of the Fidelity Guarantee.

(a) The Default Judgment

27. On 24 January 2018, in default of an acknowledgment of service, Dr Williams applied for judgment in default. He filed two affidavits in support of the application, dated 22 January 2018 and 5 November 2018. Moulder J heard the application on 9 November 2018. Dr Williams was represented by counsel. The present Claimants, the FGN and the AG, were not represented and did not appear. I refer below to the evidence about how that occurred.

28. Moulder J refused judgment in default in respect of the claim based on the Fidelity Guarantee, on the ground that the claim was covered by state immunity under section 2 of the State Immunity Act 1978. She granted a default judgment in respect of the first aspect of the claim, i.e. the trust claim based on the events of 1986. Moulder J ordered the present Claimants to pay the principal sum of US$6,520,190, plus interest in the sum of US$8,466,600.69, and costs assessed in the sum of £13,950 ("***the Default Judgment***").

(b) The Set Aside Application

29. On 28 September 2020 the FGN and the AG applied in the 2016 Proceedings to set aside the Default Judgment ("***the Set Aside Application***"), supported by the witness statement of their then solicitor, Mr Gromyko Amedu . The application did not come on for a hearing until more than a year later, on 15 December 2023. As explained below, the application was made only on the grounds of service and state immunity. Bright J dismissed the application on 19 December 2023.

30. By an Appellant's Notice dated 9 January 2024, the FGN and the AG applied for permission to appeal. At around the same time, the FGN's/AG's current solicitors, Bryan Cave Leighton Paisner LLP ("***BCLP***"), were instructed. BCLP had previously acted for the CBN in the CBN Proceedings but had not acted for the FGN/AG in the 2016 Proceedings. Following the instruction of BCLP, the application for permission to appeal was withdrawn, by a letter to the Court of Appeal dated 29 February 2024.

(4) The 2019 Proceedings

31. On 9 May 2019, after obtaining the Default Judgment but before the Set Aside Application, Dr Williams commenced another set of proceedings against the FGN and

the AG, this time in the King's Bench civil list (claim HQ-2019-001682) ("***the 2019 Proceedings***").

32. Dr Williams's Particulars of Claim in the 2019 Proceedings are substantially the same as the 2016 Particulars of Claim, the main difference being that Dr Williams re-casts the claim based on the Fidelity Guarantee as a private law claim for breach of trust rather than a claim under Nigerian law to enforce the Fidelity Guarantee directly.

(5) The present proceedings

33. After withdrawing their application for permission to appeal against the decision of Bright J, the Claimants have issued the present proceedings, in which they seek to have the Default Judgment set aside on the grounds that it was procured by fraud.

34. The Claimants allege, in summary, that in the 2016 Particulars of Claim and the two affidavits filed in support of the application for a default judgment, Dr Williams made knowingly false representations and relied on fabricated documents, including:

    i) representations that, as part of the events in 1986, he provided a Personal Guarantee, supported by the Banker's Drafts, and lost about US$6.5 million of his own money when the Personal Guarantee was called on; and

    ii) a representation that the Fidelity Guarantee was a true copy of a genuine Presidential decree issued by the then Commander-in-Chief of the Nigerian Armed Forces, General Babangida, on 29 September 1993.

35. The Claimants say the true position is that:

    i) Dr Williams did not give a Personal Guarantee as part of the alleged 1986 transaction, there were no Banker's Drafts, and he did not lose about US$6.5 million of his own money; and

    ii) the Fidelity Guarantee was one of a number of fraudulent and fabricated documents relied on by Dr Williams in support of a dishonest claim.

36. The Claimants' say that Dr Williams' conscious and deliberate dishonesty when applying for a default judgment was an operative cause of the Default Judgment being granted and that, in the circumstances, they have a right to have the judgment set aside on the grounds that it was obtained fraudulently.

37. After two extensions of time, Dr Williams' Defence was due to be served on 1 November 2024. However, he issued the present application the previous day.

38. On 24 October 2024 I ordered that the 2019 Proceedings, which have still not reached a CMC, be transferred from the King's Bench civil list to the Commercial Court so that they can be case managed alongside the present proceedings.

(C) APPLICABLE PRINCIPLES

39. The Claimants do not suggest that the allegations of fraud which they now make could not have been made prior to the Default Judgment being obtained. Dr Williams accordingly relies on the familiar principle set out in *Henderson* v. *Henderson* (1843)

3 Hare 100 that "*a litigant should bring forward his whole case*" and re-stated by the House of Lords in *Johnson* v. *Gore Wood & Co* [2002] UKHL 65, [2002] 2 AC 1. Dr Williams cites in particular this passage from *Henderson:-*

> "… where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time." (p.115)

and Lord Bingham's statement in *Johnson* that *"The underlying public interest is the same: that there should be finality in litigation and that a party should not be vexed twice in the same matter"* (p30H-31F). Dr Williams notes that the Court of Appeal in *Orji v Ngara* [2023] EWCA Civ 1289 stated that both of those cases are *"primarily concerned with a party seeking to raise in subsequent proceedings an issue which had either already been decided in earlier proceedings or which could and should have been raised in those earlier proceedings"* [46].

40. However, the Supreme Court in *Takhar v. Gracefield Developments Ltd* [2019] UKSC 13, [2020] AC 450 held (by a majority) that a party seeking to set aside the judgment on the ground of fraud is not required to show that the fraud could not with reasonable diligence have been uncovered in advance of the obtaining of the judgment, so that an absence of reasonable diligence is not a reason to stay the proceedings. The action is abusive only if either (a) fraud was actually alleged in the earlier proceedings and the party challenging the judgment seeks to rely on evidence of its existence that was not adduced in those proceedings, or (b) there was a deliberate decision in the earlier proceedings not to allege a known fraud or not to investigate a suspected fraud. These propositions can be found at §§ [31]-[32], [46] and [54]-[57] *per* Lord Kerr, with whom Lords Hodge, Lloyd-Jones and Kitchin agreed, and at §§ [63] and [65]-[67] *per* Lord Sumption, with whom Lords Hodge, Lloyd-Jones and Kitchin also agreed. In particular, Lord Kerr reached these conclusions:

> "54. … In my view, it ought now to be recognised that where it can be shown that a judgment has been obtained by fraud, and where no allegation of fraud had been raised at the trial which led to that judgment, a requirement of reasonable diligence should not be imposed on the party seeking to set aside the judgment.
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> 55. Two qualifications to that general conclusion should be made. Where fraud has been raised at the original trial and new

evidence as to the existence of the fraud is prayed in aid to advance a case for setting aside the judgment, it seems to me that it can be argued that the court having to deal with that application should have a discretion as to whether to entertain the application. Since that question does not arise in the present appeal, I do not express any final view on it. The second relates to the possibility that, in some circumstances, a deliberate decision may have been taken not to investigate the possibility of fraud in advance of the first trial, even if that had been suspected. If that could be established, again, I believe that a discretion whether to allow an application to set aside the judgment would be appropriate but, once more, I express no final view on the question. In Mrs Takhar's case, she did suspect that there may have been fraud but it is clear that she did not make a conscious decision not to investigate it. To the contrary, she sought permission to engage an expert but, as already explained, this application was refused.

56. At para 26 of his judgment, Newey J said that the principles which govern applications to set aside judgments for fraud had been summarised by Aikens LJ *in Royal Bank of Scotland plc v Highland Financial Partners lp* [2013] 1 CLC 596, para 106. There, Aikens LJ said:

> "The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."

57. I agree that these are the relevant principles to be applied. I also agree with Newey J's view (expressed at para 47 of his judgment) that Mrs Takhar's application to set aside the judgment of Judge Purle has the potential to meet the

> requirements which Aikens LJ outlined. She should not be fixed with a further obligation to show that the fraud which she now alleges could not have been discovered before the original trial by reasonable diligence on her part."

Lord Sumption said:-

> "… the basis on which the law unmakes transactions, including judgments, which have been procured by fraud is that a reasonable person is entitled to assume honesty in those with whom he deals. He is not expected to conduct himself or his affairs on the footing that other persons are dishonest unless he knows that they are. That is why it is not a defence to an action in deceit to say that the victim of the deceit was foolish or negligent to allow himself to be taken in…. It follows that unless on the earlier occasion the claimant deliberately decided not to investigate a suspected fraud or rely on a known one, it cannot be said that he 'should' have raised it." (§ [63])

41. The minority (Lord Briggs and Lady Arden) agreed with the outcome of the appeal, but did not agree that there was a bright-line rule that proceedings could not be struck out as an abuse unless either fraud had been alleged or there had been a deliberate decision not to rely on a known fraud or investigate a suspected fraud. The minority favoured an approach involving the evaluation of a range of factors. Lord Briggs said:

> "86. I would not describe the court's exercise of this duty to guard against abuse as a discretion. There should be no judicial interference with the exercise of the right to set aside a judgment for fraud unless the court is satisfied that it involves an abuse of process. If it does, then the proceedings should be stayed. That will not be discretionary, but it will involve the evaluation of a potentially wide range of factors. I have already mentioned the gravity of the fraud and the extent of the shortfall from the exercise of reasonable diligence. Those would almost always be relevant. But the categories of potentially relevant factors are in principle unlimited. They might include, in particular cases, the centrality (or otherwise) of the fraudulent conduct to the outcome of the case, the extent to which (as here) the alleged fraud was specifically aimed at taking advantage of a lack of care in the preparation of the case by the alleged victim, the resources of the alleged victim during the first proceedings, the amount of toil, treasure and court time which would be thrown away by the setting aside of the judgment, the amount of the same which would be likely to be consumed by the trial of the fraud allegation and, if successful, the retrial of the original claim, and even the apparent strength (or otherwise) of the allegation of fraud. But from start to finish, the question is whether the application really is an abuse of process.
>
> 87. Nor would I expect this evaluative approach frequently to come down in favour of a stay. The principle that fraud unravels

> all is deeply rooted in the common law, and its continued application is an important contributor to honesty within society, to the rule of law and to the ability of the courts to adjudicate disputes justly. Fraud of this kind is all the more serious because it is aimed at deceiving the court itself. But the court must arm itself against always having to allow relitigation, and potentially two further trials between the same parties, wherever the unsuccessful party wants to allege, for the first time, that the case was lost because an opposing party was lying about, rather than just mis-recalling, the facts in issue, and can demonstrate an arguable case that this is what happened at trial."

42. It should be noted that fraud had not yet been established in *Takhar:* it remained an untested allegation (as it was put by Lord Briggs at [71]). This is relevant to a suggested ground of distinction which I address later.

43. An action can be brought to have a judgment set aside on the ground of fraud even if it was a default judgment: see *Park* v. *CNH Industrial Capital Europe Ltd* [2021] EWCA Civ 1766, [2022] 1 WLR 866, where the court said "*a request to enter judgment in default necessarily carries with it an implicit representation of entitlement to judgment on the case set out in the particulars of claim*" ([41]). At §§ 43 to 44 the court said:

> "43. In any civil proceedings the claimant must prove his claim on the balance of probabilities. Even if no defence is offered, the court must be satisfied that there is at least a viable cause of action and a case for the defendant to answer on the facts alleged in the claimant's statement of case. That is so irrespective of whether the case goes to trial.
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> 44. The rules of civil procedure permit a party to enter a judgment in default of defence in certain circumstances. As this is effected administratively in response to an application made by the claimant, the process necessarily involves the court trusting in the truth of representations made in his Particulars of Claim which are material to his cause(s) of action, which will not have been examined by a judge and tested at trial. Those representations are fortified by the statement of truth indorsed on the Particulars of Claim."

Even if the fraudulent representations are not *the* operative cause of the default judgment, an action to set aside the judgment on the grounds of fraud can still be made where the representations were *an* operative cause of the judgment: see *Park* at [49]-[52]. As the Court of Appeal explained (applying the reasoning of Lord Kerr in *Takhar*): "*… once a judgment is tainted by deceit it is fatally flawed*" ([52]). Moreover, the court made clear that '*[a] person cannot take a deliberate decision not to rely on evidence of fraud, unless he is not only aware of that evidence, but know that he can rely on it to plead fraud in answer to the case brought by his opponent"* ([60]).

(D) APPLICATION TO THE FACTS

44. The Claimants' evidence about why they did not allege fraud earlier is set out in a witness statement dated 22 January 2025 from Mrs Maimuna Shiru, the Director of Civil Litigation & Public Law Department ("***CLPLD***") of the Federal Ministry of Justice of Nigeria. Mrs Shiru has the conduct of these proceedings, subject to the direction of the Permanent Secretary/Solicitor General and, ultimately, the Attorney General/Minister of Justice.

45. Mrs Shiru says she has held her current role since November 2023. Before that, she was Acting Director of the CLPLD from February 2020. She is a law graduate, also holding an LLM from Queen Mary University, London, and was called to the Nigerian Bar in 1998. After other legal roles in government, Mrs Shiru was posted back to the CLPLD in 2010 and has largely remained there ever since. She was responsible for the 2016 Proceedings in various capacities from February to December 2016, February to September 2017, January to November 2018 and from February 2020 to November 2023. During the periods when she was not responsible for the proceedings, she assisted those who were.

46. Mrs Shiru explains that the CLPLD is the specialist department of the Ministry of Justice that oversees litigation by and against the FGN, of which the Attorney General as the Minister of Justice has ultimate responsibility. She says the CLPLD is responsible for overseeing all civil litigation matters involving the Claimants, both domestically and internationally. The caseload managed by the CLPLD is vast and varied, involving at any one time multiple tribunals and jurisdictions. Therefore they lean heavily on external counsel, particularly with regard to proceedings outside of Nigeria. The CLPLD, and by extension the Ministry of Justice and the Claimants, rely on and trust the law firms instructed to take the lead on managing cases, including advising on strategy and ensuring compliance with all procedural requirements.

47. Mrs Shiru also explains that the Claimants and the CBN are, as a matter of Nigerian law and function, separate legal personalities who have their own separate legal departments and officers. The CBN is a body corporate created by the Central Bank Act 1958, although the principal statute governing its existence is now the Central Bank Act 2007. The CBN is legally separate from any other organs of the Nigerian state and may sue and be sued in its own name. The CBN has its own internal legal department (the Department of Legal Services) which is entirely separate from and independent of the Ministry of Justice and is under the supervision of a Director of Legal Services. Mrs Shiru continues:-

> "So far as the CBN Proceedings are concerned, those were dealt with by the CBN's internal legal department, which - in turn - instructed BCLP to represent it. Mr Osuntokun was the partner at BCLP who had conduct of those proceedings. As Mr Osuntokun explains in his witness statement, it was not until January 2024 that he and his firm were approached by the Claimants for advice in relation to the Default Judgment. I understand from Mr Osuntokun that, during the course of the CBN Proceedings, there were occasions where the Ministry of Justice and the Attorney General's office were consulted, e.g. to assist with a search for disclosable documents and I also note

> from my review of the file that we had copies of all the pleadings in that case. However, neither I, nor to the best of my knowledge, the CLPD were actively involved, and did not have an active interest, in the CBN Proceedings." (§ 19)

(1) Before the Default Judgment

48. Mrs Shiru states that after the 2016 Proceedings were commenced, the papers were sent to the Claimants in March 2016. However, she recollects that settlement discussions began immediately and the CLPLD did not undertake a detailed review of the claim or appoint any external counsel to advise on a Defence. The case did not settle, and in January 2018 lawyers Falana & Falana gave formal notice of Dr Williams' intention to proceed with the case.

49. The evidence indicates that following service of the 2016 Proceedings, the Claimants instructed Aidan Partners, a law firm based in Lagos. The partner with responsibility for the proceedings was a Mr Akin Omisade who was at the time also an English-qualified solicitor. By a letter of 26 February 2018, Aidan Partners were instructed to liaise with Mrs Shiru and with the CBN's Director of Legal Services to discuss strategies for handling the case. Mr Omisade set out the fees that would be required, and said he would conduct the matter with the support of English counsel with whom he had a good relationship.

50. Given its importance, I think it appropriate to set out the next part of Mrs Shiru's evidence in full:

> "29 The next update from Aidan Partners came the following month, on 24 April 2018 …. Aidan Partners explained to the AG that they had reviewed a bundle of documents (being, I believe, the trial bundle from the CBN Proceedings). They explained that, whilst the English barrister would in due course be providing advice on the merits, it was anticipated that an application would be made to have the proceedings struck out on the grounds of abuse of process. In summary, Aidan Partners explained that, having brought proceedings against the CBN, it was an abuse of process for Dr Williams to discontinue those proceedings on the eve of trial and then to commence fresh proceedings against the FGN and AG. It was further explained that consideration was being given as to whether state immunity under the State Immunity Act 1978 might apply in respect of the claim. Aidan Partners said that they had applied for copies of all the processes filed in the 2016 Proceedings and thereafter would ensure the settlement of the Statement of Defence. They requested a part payment of £70,000 in respect of its fees *"to enable us to continue with the work and confirm instructions to the barrister"*. The letter concluded by stating that Aidan Partners would "do our best at ensuring that a strong defence is swiftly filed and served on the Claimant".
>
> 30 I note that there was nothing in Aidan Partners' letter to suggest that the time for filing an Acknowledgment of Service or

a Defence had already passed or that Dr Williams had already applied (by an Application Notice dated 24 January 2018) for a judgment in default. Nor did the letter consider the underlying merits of the claim or suggest that the claim was founded upon fraud. Despite the fact that Aidan Partners had been provided with a copy of the trial bundle from the CBN Proceedings, and despite the fact that the CBN had defended the claim against it on the basis that the Fidelity Guarantee (and various other documents relied on by Dr Williams) were fabricated/dishonest documents, this is not a matter that was mentioned in Aidan Partners' advice. Rather, the thrust of the advice was that the claim was liable to be struck out as an abuse of process and/or that the Claimants were entitled to rely on state immunity.

31 On or about 26 April 2018, the Attorney General's office received from the Nigeria High Commission in London, a letter dated 5 March 2018 from Westbrook Law, Dr Williams' English solicitors, enclosing the Application Notice dated 24 January 2018 for judgment in default …. I cannot say with certainty whether the Notice of Application for default judgment was sent to Aidan Partners, as there is no record on the Ministry of Justice file that it was sent. However, I would have expected that Aidan Partners would take all necessary steps to protect the interests of the Attorney General and the FGN and since they had said that they would be applying for copies of all the processes filed in the 2016 Proceedings, I can only assume that I thought that they would have obtained copies in any event and would have then alerted the AG of any impending threat to those interests and take necessary steps to protect them. I also note that Aidan Partners never wrote to the Claimants to confirm that they had ceased to act on their behalf.

32 In the event, I now understand that no further action was taken by Aidan Partners in relation to the application for default judgment.

33 The hearing of Dr Williams' application for a default judgment took place before the Honourable Mrs Justice Moulder on 9 November 2018. I was not aware that that hearing was taking place on that date and I have not seen any evidence to suggest that the CLPLD or anyone within the Ministry of Justice was aware of it. While it is the case that the Attorney General's office received a letter from Westbrook Law which I refer to at paragraph 31, the Application Notice enclosed did not provide details of any hearing date and the letter stated that a date was yet to be fixed. I have not seen copies of any further letters from the High Commission or Westbrook Law notifying the Claimants of the date of the hearing.

34 It is regrettable that the hearing proceeded in the way that it did and that the Claimants did not take steps to ensure their

> position was protected. Given the passage of time, I cannot be sure as to why it was that the application was not engaged with and defended. However, I have reviewed all the papers in the Ministry of Justice file for the period up until the hearing of the Default Judgment and I can confirm that there is no evidence in that period of the Claimants having been advised by Aidan Partners that they might wish to resist the application for default judgment by reference to the underlying merits of the claim."

(2) Application to set aside the Default Judgment

51. Mrs Shiru states that she believes she first became aware of the Default Judgment in July 2020, because Dr Williams had applied on 10 July 2020 for third party debt orders against two banks where the CBN held funds. An Interim Third Party Debt Order was granted without notice on 17 July 2020. In August 2020 the Attorney General instructed Gromyko Amedu Solicitors (a sole practitioner firm based in Brixton) to take steps to have the Default Judgment and Interim Third Party Debt Order set aside; and also instructed a firm of solicitors based in Nigeria, Olowolafe & Co, to liaise with and assist Gromyko Amedu. Mrs Shiru was responsible for instructing and overseeing the two firms' work.

52. Gromyko Amedu provided a long letter of 11 September 2020 setting out the background, analysing the relevant principles and procedural rules, and making recommendations in relation to next steps. They recommended applying to set the Default Judgment aside on the ground that the proceedings had not been properly served in accordance with the State Immunity Act 1978; and opposing the making of a Final Third Party Debt Order on the ground that the CBN's assets were immune from execution under the same Act.

53. Olowolafe & Co reported a "*Status Report"* on 17 September 2020, in which they noted that the "*main fulcrum of what constitutes our defence in the TPDO proceedings is jurisdictional, based on service that does not conform with the provisions of the applicable laws in the UK*" and "*the right to bring an application for a default judgment had been stayed at the time the Plaintiff applied for the default judgment which they seek to use the TPDO to enforce*".

54. The CBN instructed BCLP to represent it in the third party debt order proceedings. It applied to intervene and opposed the making of a final order, on the basis that its assets were immune from execution. Dr Williams then withdrew his application for a final order.

55. Mrs Shiru states that the Claimants, following Gromyko Amedu's advice, applied to have the Default Judgment set aside on the basis that the proceedings had not been validly served in accordance with the State Immunity Act 1978 and/or that the Claimants were entitled to rely on state immunity. The court was not invited to set it aside in the exercise of discretion on the ground that there was a real prospect of the Claimants successfully defending the claim: the application to set aside the Default Judgment did not seek to engage with the underlying merits of the claim at all (as Bright J noted at § 35 of his judgment). Mrs Shiru continues in this way:-

> "45 I have been asked to explain whether the Claimants took a deliberate decision not to rely on the underlying merits / fraud as part of their application to set aside the Default Judgment. The answer to that question is, unequivocally, 'no'.
>
> 46 The Claimants were heavily reliant on the advice they received from Gromyko Amedu and the additional support of Olowolafe & Co.. As already noted, in their letter of advice dated 11 September 2020, Gromyko Amedu did not suggest that an alternative basis for challenging the Default Judgment was by reference to the underlying merits of the claim and it is also not mentioned in the letter from Olowolafe & Co. dated 17 September 2020. On the contrary, the advice was to apply to set the judgment aside as of right because it had not been properly served.
>
> 47 I note that at paragraph 57 of their letter dated 11 September 2020, Gromyko Amedu sought instructions in respect of the authenticity of various documents, including the Fidelity Guarantee, which Dr Williams had relied on in his claim. At paragraph 29 of his witness statement dated 28 September 2020 made in support of the application, Mr Amedu then made a passing reference to the fact that the Claimants denied the authenticity of various documents, including the Fidelity Guarantee. I confirm that he did not advise the FGN on the significance of that denial and I also note that Mr Amedu did not contend in his witness statement that the authenticity of those documents had any relevance to the issues which the Court needed to decide in relation to the Set Aside Application. He did not, for example, say that the Claimants believed that those documents had been fabricated by (or on the instructions of) of Dr Williams and that, if that were the case, it would provide the Claimants with a substantive defence to the claim. Neither did he advise me that the Claimants could in fact or should have sought to set aside the Default Judgment on the grounds of fraud.
>
> 48 For completeness, I have reviewed all the papers in the Ministry of Justice file for the period after the date when the Set Aside Application was issued until the hearing before Bright J in December 2023. I can confirm that there is no evidence in that period of the Claimants having been advised by Gromyko Amedu or Olowolafe & Co. that they might wish to challenge the Default Judgment by reference to the underlying merits of the claim."

(3) Discussion

56. On the face of Mrs Shiru's evidence, it is clear that the Claimants did not actually allege fraud in the 2016 Proceedings (or any other proceedings), and did not take a deliberate decision in those (or any other earlier) proceedings not to allege a known fraud or not to investigate a suspected fraud. Rather, the evidence indicates that the Claimants were

not actually aware of the possibility of defending the proceedings on the ground of fraud, no consideration was given to doing so, and *a fortiori* no decision was taken not to do so.

57. Dr Williams submits that Mrs Shiru's evidence should not be accepted. He submits, first, that she does not disclose that she gave any instructions to the lawyers advising in relation to the 2016 Proceedings. However, Mrs Shiru exhibits the letters of instruction to Aidan Partners, Gromyko Amedu and Olowolafe & Co, and there is no particular reason to believe any more detailed instructions exist. Moreover, had Mrs Shiru given instructions in relation to the possibility of a defence on the merits based on fraud, it would be very surprising that none of the lawyers' advices mentions that possibility. The natural inference is that no such potential defence was mentioned or considered.

58. Secondly, Dr Williams submits that there is no evidence of the Claimants making any complaint to the external lawyers for failing to give adequate or complete advice. However, it is difficult to see how the apparent absence of any such complaint could assist Dr Williams. Presumably he would invite the inference that no complaint was made because the Claimants had asked the lawyers not to consider any possible defence on the merits based on fraud. (Any other inference, such as that the lawyers were negligent in failing to spot or advise on an apparent fraud defence, would not show a deliberate decision by the Claimants not to pursue such a defence.) However, (a) it is difficult to see why the Claimants would have instructed their external lawyers not to advise on any such potential defence, (b) there is no evidence of any such instruction having been given, and (c) it would involve Mrs Shiru – a practising lawyer – having provided a materially incorrect (if not actually mendacious) witness statement. There is no proper basis on which to draw any such inference.

59. Dr Williams also submits that as Moulder J declined to grant a default judgment on the Fidelity Guarantee claim, the Claimants' allegations that Dr Williams forged documents cannot support their claim. However:

    i) the Claimants' case clearly includes allegations independent of the Fidelity Guarantee forgery, including that Dr Williams made false representations that, as part of the events in 1986, he provided a Personal Guarantee, supported by the Banker's Drafts, and lost about US$6.5 million of his own money when the Personal Guarantee was called on; and

    ii) Dr Williams' alleged forgery of the Fidelity Guarantee and other documents is in any event relevant to Dr Williams's alleged propensity to fabricate matters, and the Claimants expressly rely on it for that purpose, as § 43.7 of their Particulars of Claim makes clear:

> "Further, the Claimants will rely on the falsity of the Fidelity Guarantee Representations and the Progress Report Representations, which representations were made fraudulently, as evidence of Dr Williams' propensity to make fraudulent representations in support of dishonest claims and in support of their case that the Personal Guarantee Representations were false and made fraudulently."

60. Dr Williams submits that *Takhar* is distinguishable, because the fraud there had been established, or at least there was compelling evidence of it. However, as noted earlier, the fraud allegation in *Takhar* remained an *"untested allegation"*. In any event, the strength of the allegation there formed no part of the reasoning for the majority judgment, and is not a logical ground of distinction from the present case.

61. If it were necessary to consider the position under the multi-factorial test put forward in Lord Briggs' minority judgment, I would still conclude that this action should be allowed to proceed. The alleged fraud was very serious and was central to Dr Williams' case. It led to a substantial judgment in his favour against the Claimants. Whether the Claimants failed to exercise reasonable diligence is debatable, given their reasonable reliance on external advice. The Claimants had the resources to advance a fraud case, but (again) relied on external advice. The amount of time and cost wasted by the parties and the court would be relatively limited were the Claimants to succeed: the decisions of Moulder J and Bright J did not follow full trials, and there will have to be a trial anyway because of Dr Williams' claim in the 2019 Proceedings based on the Fidelity Guarantee. The Claimants' case is, on the face of it, a strong one. All in all, the Claimants' pursuit of the present claim is, on any approach, not an abuse of process.

(E) CONCLUSION

62. The Claimants' claim is not abusive and should be allowed to continue. Dr Williams' application will therefore be dismissed.