

PUNUKA Attorneys & Solicitors  
Received By: Joseph freedom  
Signature: Seel  
Time: 12:18pm  
Date: 5/04/2018

IN THE FEDERAL HIGH COURT  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: FHC/L/CS/303/2018

BETWEEN:

1. AKOJI AGENI - YUSUF  
2. EAGLE EYE PRODUCTION LIMITED } PLAINTIFFS/RESPONDENTS

AND

1. SAMSUNG ELECTRONICS WEST } DEFENDANT/RESPONDENT  
AFRICA LIMITED  
2. RINGIER NIGERIA LIMITED } DEFENDANT/ APPLICANT

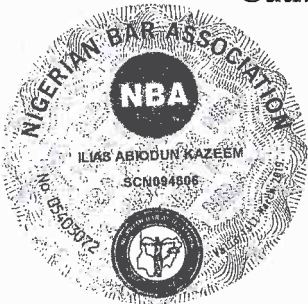
**COUNTER-AFFIDAVIT IN OPPOSITION TO PRELIMINARY  
OBJECTION DATED 20<sup>TH</sup> MARCH 2018**

I, *Ilias Kazeem*, Male, Adult and Nigerian citizen of 98, Awolowo Road, South-West Ikoyi, Lagos do hereby make oath and state as follows:

1. I am a Legal Practitioner in the law firm of Messrs. Banwo-Ighodalo, Counsel to the Plaintiffs/Respondents (the "Plaintiffs") by virtue of which I am conversant with the facts of this case.
2. I have the authority of my employer as well as that of the Plaintiffs to depose to this affidavit.
3. Unless otherwise stated, the facts to which I depose are facts within my personal knowledge, derived in the course of my employment in particular from reading the case file and relevant documents in this matter. Where I refer to information provided to me by third parties, I have identified the source of that information and believe such information to be true to the best of my knowledge and belief.
4. I have seen and read the affidavit in support of the 2<sup>nd</sup> Defendant/Applicant (the "2<sup>nd</sup> Defendant") Notice of Preliminary Objection deposed to by one Martins Nwankwo (*Martins's Affidavit*). I have also studied the exhibits attached to Martins Affidavit.
5. Unless expressly admitted, the Plaintiffs deny all the allegations contained in Martin's Affidavit, and if an allegation or contention is not specifically addressed by the Plaintiffs, it does not imply that it is admitted.

6. In response to paragraph 3(b) of Martin's Affidavit, the 2<sup>nd</sup> Defendant in the very first communication issued by its own Solicitors was described as "*Ringier Nigeria Limited*". **Attached and marked Exhibit OD1 is the 2<sup>nd</sup> Defendant's Solicitor's Letter dated November 2, 2017.**
7. I am also aware that in a subsequent letter issued by Punuka Attorneys & Solicitors to the Plaintiffs' Solicitors, the 2<sup>nd</sup> Defendant's Solicitor again described the 2<sup>nd</sup> Defendant as "*Ringier Nigeria Limited*".
8. I have also seen a letter written by Punuka Attorneys & Solicitors to the 1<sup>st</sup> Defendant herein in which the 2<sup>nd</sup> Defendant was again described as *Ringier Nigeria Limited*. **Attached and marked Exhibit OD2 is the 2<sup>nd</sup> Defendant's Solicitor's Letter dated November 14, 2017.**
9. I am also aware that 1<sup>st</sup> Defendant stated in its own correspondence that the infringing video "*was created and produced by one Ringier Nigeria Limited, (the 2<sup>nd</sup> Defendant herein).*" **Attached and marked Exhibit OD3 is the 1<sup>st</sup> Defendant's Letter dated October (sic) 7, 2017.**
10. I am aware that on the 8<sup>th</sup> of March 2018, Punuka Attorney & Solicitors filed a conditional memorandum of appearance in this suit for "*Ringier Nigeria Limited*".
11. Before this action was commenced, the Plaintiffs' solicitors conducted a search on both Defendants so as to ascertain their true status and discovered that the 2<sup>nd</sup> Defendant is simply described as "*Ringier Nigeria*". **Attached and marked Exhibit OD4 an excerpt from the 2<sup>nd</sup> Defendant's website.**
12. I have seen the Letter issued to the Company Secretary of the Lekki Concession Company Limited, attached as Exhibit A to the 2<sup>nd</sup> Defendant's Preliminary Objection. In the said correspondence, the 2<sup>nd</sup> Defendant is described by its Solicitors as "*Ringier Media Nigeria*".
13. Contrary to the averments contained in Paragraph 3(c) and (f) of Martin's affidavit, the Plaintiff's cause of action is not that the "*Applicant made a cinematograph film on the Lekki-Ikoyi Bridge*" or posted that video at a later date. Instead the Plaintiff's cause of action is that the 2<sup>nd</sup> Defendant (together with the 1<sup>st</sup> Defendant) utilized without authorization and for financial benefit, the cinematograph film of the Lekki-Ikoyi Bridge, created by the 1<sup>st</sup> Plaintiff.
14. The Plaintiffs' reiterate in response to Paragraph 3(g) that a careful examination of the Scenes in the Plaintiff's cinematograph film known as "*Lekki Ikoyi Link Bridge at Night*" and that contained in the 1<sup>st</sup> Defendant's "*Nightlife in Lagos with Galaxy Note8*" reveals that the Defendants simply copied the Plaintiffs' cinematograph film.

- 15. It will serve the interest of justice, if the 2<sup>nd</sup> Defendant's Preliminary Objection is dismissed with substantial costs against the 2<sup>nd</sup> Defendant.
- 16. That I make this oath believing same to be true and in accordance with the Oaths Act.



*[Handwritten Signature]*  
DEPONENT

SWORN at the Registry of the Federal High Court, Lagos

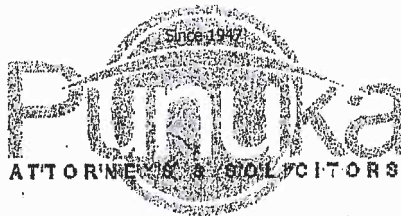
This 3<sup>rd</sup> Day of April 2018

BEFORE ME

*Original Signed*  
A.M. TOFOWOMO-ADEGBITE (MRS)

COMMISSIONER FOR OATHS





November 2, 2017

The Managing Partner  
**Banwo & Ighodalo**  
98 Awolowo Road  
South-West Ikoyi  
Lagos.



Dear Sir,

**RE: REQUEST FOR CEASE AND DESIST LETTER**

We are solicitors to Ringier Nigeria Limited (hereinafter referred to as our Client) and they have forwarded to us your letter dated October 31, 2017 addressed to Samsung Electronics West Africa Limited, with express instructions to respond to same accordingly.

Our Client spearheaded the production of the Samsung Advertisement "**Night Life in Lagos with Galaxy Note 8**" ("Advertisement"), thus your letter under reference was forwarded to our Client by virtue of the fact that our client produced the advertisement. Our Client shall be responsible for responding to any issues concerning the said Advertisement.

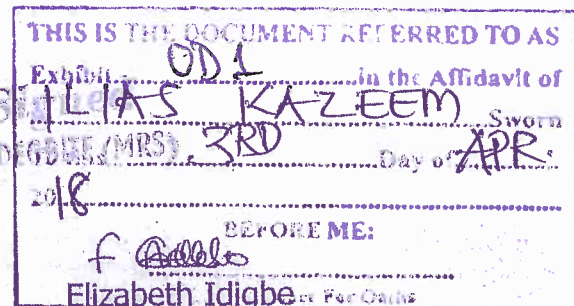
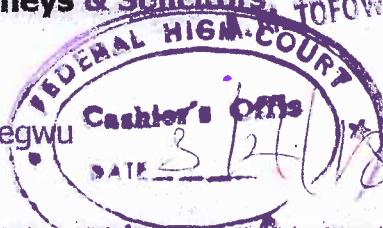
Please note that the claims made in your letter under reference are currently being investigated by our Client and we would get back to you as soon as the investigation is concluded on or before 30<sup>th</sup> November, 2017.

Kindly direct any further correspondence with respect to the Advertisement to us as we have been briefed to handle same. We count on your usual professionalism.

Accept the assurance of our professional regards.

Yours faithfully,  
**PUNUKA Attorneys & Solicitors**

Ifeyinwa Anyadiiegwu  
**Associate**



**Managing Partner**

**Partners:** Anthony Idigbe SAN, Elizabeth Idigbe, Nnamdi Oragwu, Okorie Kalu, Ebelechukwu Enedah  
**Senior Associates:** Obianuju Otudor, Iheanacho Dike-Udensi, Olapeju Anozie, Eric Otojahi  
**Associates:** Gloria Ogwu, Damola Adewale, Onyeka Ehiwuogwu, Aituagie Omokhodion, Emuobonuvie Majemite, Onyinye Odogwu, Oluwabunmi Apata, Peter Edokpayi, Tobenna Nnamani, Adekola Olawoye, Betty Blayeibo, Omotayo Ogunbadewa, Ebuka Ekeanyanwu, Boma Owunabo, Adetutu Olowu, Isloma Idigbe, Ifeyinwa Anyadiiegwu, Rukevwwe Ekpobedefe, Chimezie Onuzulike, Adeyinka Abdulsalam  
**General Manager, Practice:** Angela Ezenweani, **Consultants:** Richard Oblamiwe, Judith Makwe-Fanegan, Afamefuna Mmagu

November 14, 2017



The Managing Director  
Samsung Electronics West Africa Limited  
13/14 Ligali Ayorinde Street  
Victoria Island  
Lagos

Dear Sir,

**RE: UPDATE ON CEASE AND DESIST LETTER**

We refer to the letters from Banwo & Ighodalo dated October 31, 2017, November 6, 2017, and November 13, 2017, with respect to the copyright infringement claim on the advertisement titled "Night Life in Lagos with Galaxy Note 8" (the "Advertisement") referred to us by our client Ringier Nigeria Limited on whose behalf and instruction we write you this letter.

Please be informed that we have written two letters (November 2, 2017 and November 8, 2017) in response (enclosed herein) emphasising that our Client produced the Advertisement as an independent contractor, and thus is authorised to handle any issues with respect to the said Advertisement. We also attended a settlement meeting on the 13<sup>th</sup> of November 2017 wherein we proposed a settlement in order to avoid the inconvenience of litigation.

Unfortunately, despite our several efforts, the firm of Banwo & Ighodalo have continued to direct letters to you, presumably to influence the settlement discussions. We were also surprised when we read some of the issues mentioned in these letters, particularly their letter of 13<sup>th</sup> November 2017.

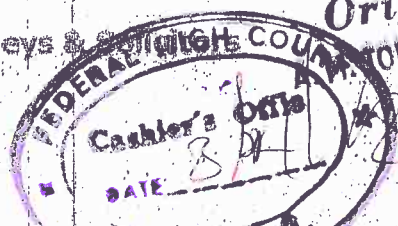
Please be assured that we are handling the issue and we are available to address any concerns you may have. In this regard, please confirm a date and time that would be convenient for us to meet with you with a representative of our client.

Please accept the assurance of our professional regards.

Yours faithfully,

PUNUKA Attorneys & Solicitors

Onyinye Odogwu  
Associate



TRUSTS DEPARTMENT REFERRED TO AS  
Expert Affidavit of  
**ELIAS KAZEEM** Sworn  
18 APR Day of  
Elizabeth Igbé ME  
Managing Partner

Partners: Anthony Idigbe, SA, Orabari Igbé, Naomi Orogwu, Gloria Kari, Cherechukwu Enejele  
Senior Associates: Chimezie Okudor, Ineanchio Dike-Udeme, Olajide Osoye, Eric Oloye  
Associates: Gloria Ogiwu, Damola Adewale, Onyeka Ehiwuogwu, Altonale Ompicallon, Emughonwile Majamile, Onyinye Odogwu, Oluyemisi Apebi, Peter Idowu, Jolanna Anamadi, Agelola Olawoye, Bisi Blayso, Omolayo Ogunbadewa, Chuka Ikenyansu, Henry Ovwala, Ifeoluwa Adetutu Olowu, Isidra Igbé, Ifeoluwa Anyadiagwu, Rukeyya Ekpoedefe, Chimezie Onuzulike, Ayojika Abusalamu  
General Manager, Practice: Angela Exemweani, Consultants: Richard Oblamiwe, Judith Malwa, Inegodo, Afamefena Onigbin

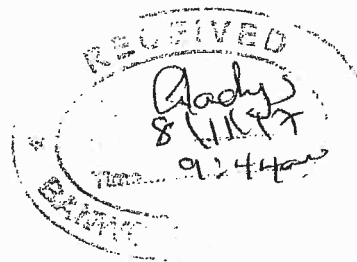
SAMSUNG



WORLDWIDE PARTNER

7<sup>th</sup> October 2017

The Managing Partner  
Banwo & Ighodalo  
98 Awolowo Road  
South-West Ikoyi  
Lagos



Dear Sir,

RE: CEASE AND DESIST LETTER

The above subject matter refers, particularly, your letters dated October 31, 2017 and November 8, 2017 respectively.

After a careful consideration of your claims, our company considers it expedient to intimate you that the content of the advertisement in issue was created and produced by one Ringier Nigeria limited, who was an independent contractor engaged by Cheil communications limited for the creation and production of the advertisement content for valuable consideration.

It is noteworthy to state that our company has not infringed on the copyright of your client and does not take responsible for the advertisement content created and produced by Ringier Nigeria limited. Therefore, company denies all your claims, and would advise that such claims and any issues thereof concerning the said advertisement be directed to Ringier Nigeria Limited.

However, our company is currently investigating your claims and would communicate to you of its findings.

Thank you for your co-operation.

Yours faithfully,

Ruby Omokaro Okpor, LL.M (UK), ACIS, (UK)  
Head of Legal and Compliance

Original Signatures  
A.M. TOFOWOMO-ADENIYI (MRS)

THIS IS THE DOCUMENT REFERRED TO AS Exhibit OD 3 in the Affidavit of ILIAS KAZEEM Sworn to this 3RD Day of APR.

BEFORE ME:

\_\_\_\_\_  
Officer For Oaths

SAMSUNG ELECTRONICS WEST AFRICA LTD.  
6<sup>th</sup> FLOOR, FF TOWERS,  
PLOT 13/14, LIGALI AYORINDE STREET, VICTORIA ISLAND, LAGOS, NIGERIA  
TEL: +234 (1) 234 1770. FAX: +234 (1) 2347613  
WEBSITE: WWW.SAMSUNG.COM



THIS IS THE DOCUMENT REFERRED TO AS  
 Exhibit 1 In the Affidavit of  
ILIAS HAZ EEM  
 To this 18 Day of APR  
 2018  
 ME: \_\_\_\_\_  
 For Oaths

FEDERAL HIGH COURT  
 Cashiers Office  
 ...  
 14  
 2018

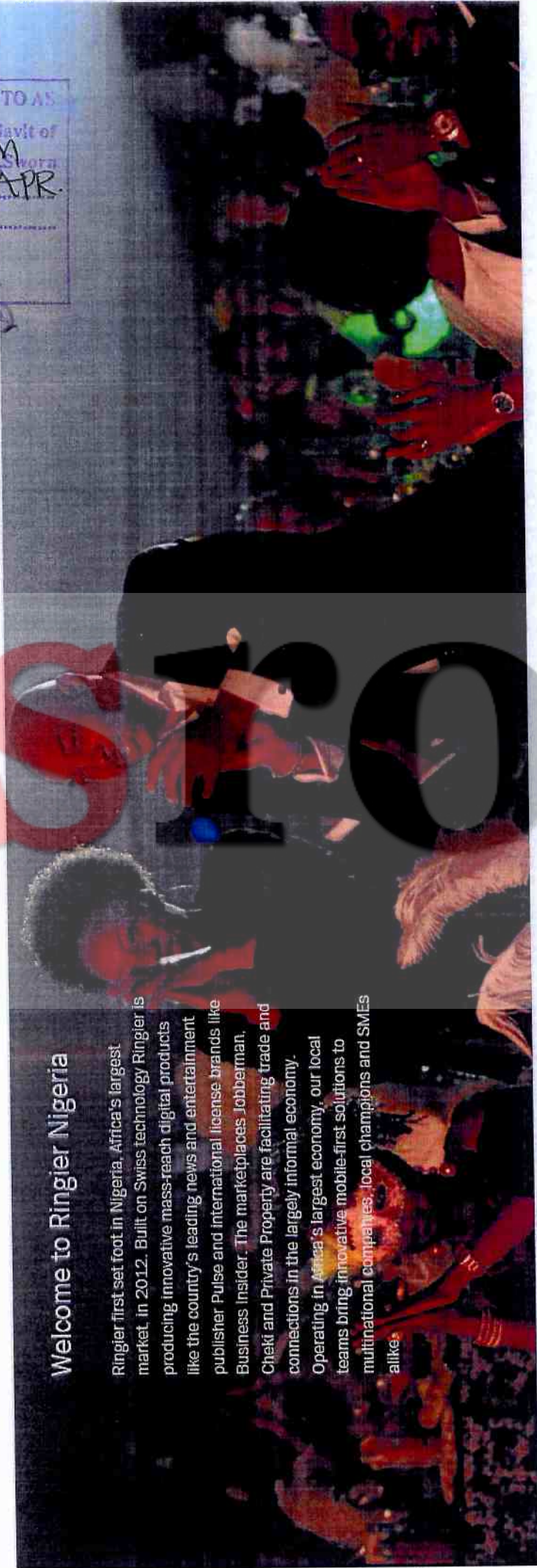
We inform.  
 We entertain.  
 We connect.



## Welcome to Ringier Nigeria

Ringier first set foot in Nigeria, Africa's largest market, in 2012. Built on Swiss technology Ringier is producing innovative mass-reach digital products like the country's leading news and entertainment publisher Pulse and international license brands like Business Insider. The marketplaces Jobberman, Cheki and Private Property are facilitating trade and connections in the largely informal economy.

Operating in Africa's largest economy, our local teams bring innovative mobile-first solutions to multinational companies, local champions and SMEs alike.



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2. EAGLE EYE PRODUCTION LIMITED } PLAINTIFFS/RESPONDENTS

**AND**

1. SAMSUNG ELECTRONICS WEST AFRICA LIMITED } DEFENDANT/RESPONDENT  
2. RINGIER NIGERIA LIMITED } DEFENDANT/ APPLICANT

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**WRITTEN ADDRESS**

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**1. INTRODUCTION**

1.1 This is the Plaintiffs/Respondents' ("Plaintiffs") Written Address in opposition to the 2nd Defendant/Applicant's ("2<sup>nd</sup> Defendant") Notice of Preliminary Objection dated March 20, 2018. The Written Address is supported by a 16-paragraph counter-affidavit deposed to by Ilias Kazeem ("*Kazeem's Affidavit*"), a Legal Practitioner in the law office of the Plaintiffs' counsel. The Plaintiffs shall rely on all the averments contained in the said counter-affidavit as well as the exhibits annexed thereto.

1.2 The 2<sup>nd</sup> Defendant's Notice of Preliminary objection is premised on the grounds that (i) the Applicant is a non-juristic entity and (ii) that the Plaintiffs have disclosed no reasonable cause of action against the 2<sup>nd</sup> Defendant.

1.3 In filing the said Notice of Preliminary Objection, the 2<sup>nd</sup> Defendant's counsel deliberately misquoted the state of the law on what constitutes a misnomer and options available to a plaintiff when a plaintiff mistakenly sues a Defendant in the wrong name and there is no ambiguity or confusion as to the entity sued.

1.4 Furthermore, the 2<sup>nd</sup> Defendant's counsel also deliberately misrepresented the Plaintiff's cause of action despite it being set out in clear printed form, in the Plaintiffs' Writ of Summons and Statement of Claim.



- 1.5 In addition to setting these misconceptions straight, the Plaintiffs shall also contend that the Defendants have no valid defence to this action and rather than owning up to their infringing actions, the 2<sup>nd</sup> Defendant has filed this spurious objection for no other purpose than to waste the judicious time of this Honourable Court.
- 1.6 Based on the foregoing, the Plaintiffs respectfully urge this Honourable Court to not only dismiss the 2<sup>nd</sup> Defendant's Preliminary Objection but do so with substantial costs in favor of the Plaintiffs.
- 1.7 This will compensate the Plaintiffs for the time and efforts expended in responding to the 2<sup>nd</sup> Defendant's Preliminary Objection and also serve as a deterrent to counsel from filing spurious and frivolous objections as in the instant case.

## 2. PRELIMINARY ARGUMENT

- 2.1 Before canvassing arguments in opposition to the Plaintiffs' Preliminary Objection, it is pertinent to draw your Lordship's attention to some preliminary points.
- a. Propriety of the Preliminary Objection.*
- 2.2 Order 7, Rule 1(1) of the Rules of the Federal High Court (Civil Procedure) Rules 2009 (the "**Rules**") requires that a defendant served with an originating process, must file a memorandum of appearance within 30 days.
- 2.3 As stated in the counter-affidavit, the Memorandum of appearance filed by the 2<sup>nd</sup> Defendant in this suit was filed on behalf of "*Ringier Nigeria Limited*", the entity now described by the same law firm as a "*non-juristic person*".
- 2.4 The question which begs for answer is if Messrs Punuka Attorney & Solicitors entered an appearance for "*Ringier Nigeria Limited*", can it be said that a valid conditional memorandum of appearance has been filed in this suit, upon which a Preliminary Objection can be filed. Respectfully, this must be answered in the negative.
- 2.5 In the words of Lord Denning in *Macfoy v. U.A.C Ltd (1961) 3 All ER 1169 at 1172*, "**one cannot place something on nothing and expect it to stand**". This dictum has been affirmed in a plethora of Nigerian Judicial authorities and now forms part of our laws. See for instance, **Hon. Emmanuel Apari v. Mr Adeniji Hose & Ors. (1999) LPELR-CCN/I/13/99**.
- 2.6 Order 29 Rule 2 requires that a Defendant making an application that the court has no jurisdiction must file along with such application a memorandum of appearance stating that he is appearing conditionally.

2.7 In the instant case where the memorandum of appearance has been filed on behalf of a non-juristic person as the 2<sup>nd</sup> Defendant's counsel contends, it means that no appearance has been entered for the 2<sup>nd</sup> Defendant. Thus, the instant Preliminary Objection, filed without a valid Memorandum of Appearance has been improperly filed and as such liable to be struck out. We respectfully urge this Honourable Court to so hold.

*(b) Propriety of the 2<sup>nd</sup> Defendant's Counsel Conduct in Misrepresenting/Concealing the name of the Party which it represents.*

2.8 It must also be pointed out from the onset that the 2<sup>nd</sup> Defendant's counsel has deliberately failed to state the name of the party which it represents. As is common with cases of misnomer, the Counsel usually states the name of the party which it represents when filing its memorandum of appearance and/or any application on behalf of such party.

2.9 As demonstrated in Kazeem's affidavit, the 2<sup>nd</sup> Defendant's counsel had issued several correspondences both to the Plaintiffs' solicitors and the 1<sup>st</sup> Defendant wherein it described its client as "Ringier Nigeria Limited". The 2<sup>nd</sup> Defendant's counsel however makes a volte face in its correspondence to Lekki Concession Company Limited, wherein it described the same client as "Ringier Media Nigeria". There appears to be a mischievous intention in these apparent contradictory positions.

2.10 This mischievous intention is soon revealed in the fact that the 2<sup>nd</sup> Defendant's counsel has deliberately concealed the proper name of the 2<sup>nd</sup> Defendant in the Preliminary Objection despite having represented prior to the filing of the Preliminary Objection that the name of its client is "Ringier Nigeria Limited" ..

2.11 With respect, this is against conduct required of Counsel. Rule 30 of the Rules of Professional Conduct for Legal Practitioners 2007 ("RPC") provides that:

*"A lawyer is an officer of the court and, accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely; affect the administration of justice"*

2.12 In addition, Rule 32(1) and 32(2) K of the RPC also provides that a lawyer must at all times act with candor and must not do any act to impede the administration of justice:

*"32. (1) In appearing in his professional capacity before a Court or Tribunal, a lawyer shall not deal with the Court otherwise than candidly and fairly".*

*32(2) K In any other way do or perform any act which may obviously amount to an abuse of the process of the court, or which is dishonourable*

*and unworthy of an officer of the law charged, as the lawyer, with the duty of aiding in the administration of justice"*

- 2.13 More importantly, Rule 32(2) b of the RPC **mandates** a lawyer to disclose the name of the client he represents and of the persons who employed him.

*32 (2) In presenting a matter to the court, a lawyer shall disclose*

*(b) the identities of the clients he represents and of the persons who employed him unless such disclosure is privileged or irrelevant.*

- 2.14 The implication of the use of the word "**shall**" has been dealt with in a plethora of decisions of the appellate Courts. In the case of *Nigeria Liquefied Natural Gas Limited v. ADIC Limited (1995) 8 NWLR (Pt. 416) 677 at 697* held thus:

*"It can no longer be disputed that the word "shall" when used in statutory provisions or rules made thereunder imports that a thing must be done and that when the negative phrase "shall not" is used, it implies that something must not be done. It is in the form of a command or mandate"*

- 2.15 The case of *Njemanze v. Shell BP Portharcourt (1966) 1 ANLR 8 at 10-11* is also apt on the requirement of a counsel to disclose the name of the party he represents.

- 2.16 In that case *Bairaman JSC* observed that there is need for a defendant's counsel to state the name of the Company he is appearing for and where he fails to do so, he must be asked by the Court to give it and this will be noted by the Judge.

- 2.17 Without prejudice to the arguments set out above, the Plaintiffs addresses the arguments contained in the 2<sup>nd</sup> Defendant's Preliminary Objection below.

### **3. ISSUES FOR DETERMINATION**

- 3.1 The sole issue raised by the 2<sup>nd</sup> defendant/ Applicant ("2<sup>nd</sup> Defendant") is:

*"Whether from the facts and circumstances of this case, this Honourable Court has jurisdiction to entertain the suit?"*

- 3.2 The Plaintiffs adopts the said issue and shall proffer its arguments thereon in opposition to the 2<sup>nd</sup> Defendant's Notice of Preliminary Objection.

### **4. ARGUMENTS ON ISSUES**

#### **A Non-Juristic entity/ Cases of Misnomer**

- 4.1 Though the 2<sup>nd</sup> Defendant's counsel has surreptitiously argued that the 2<sup>nd</sup> Defendant is a non-juristic entity, the 2<sup>nd</sup> Defendant's counsel has failed to establish that the 2<sup>nd</sup> Defendant is indeed a non-juristic entity i.e. a party that is not in existence/ or incapable of suing or being sued- See *Akas v Manager and Receiver of the Estate of Anwadike, the Assistant Chief Registrar, Onitsha Judicial Division (2001) FWLR (pt 71) at 1717 and Agbonmagbe v General Manager, G.B Ollivant Ltd (1961) 1 ALL NLR 116*
- 4.2 In other words, it is not enough for the 2<sup>nd</sup> Defendant to merely assert that "Ringier Nigeria Limited" is a non-juristic entity without substantiating why this is the case.
- 4.3 In any event, the 2<sup>nd</sup> Defendant is a not a non-juristic entity, i.e. a party incapable of being sued or non-existent. Rather 2<sup>nd</sup> Defendant's name had merely been incompletely stated by omitting the word "media" from its name. Ironically, this mistake was caused by the 2<sup>nd</sup> Defendant's counsel representation in several correspondences, that the 2<sup>nd</sup> Defendant's name is "Ringier Nigeria Limited".
- 4.4 How then are such situations treated under Nigerian law? The law as laid down by the Supreme Court is that such wrong naming is to be treated as a misnomer with an opportunity for amendment in so far as the requisite application is filed by the Plaintiff.
- 4.5 Thus, in *Registered Trustee of Airline Operators of Nigeria v Nigerian Airspace Management Agency (2014) 8 NWLR (Pt. 1408) 1SC*, the Supreme Court described a misnomer as follows:
- "A misnomer can be said to be a mistake in name that is, giving incorrect name to a person in the writ of summons. It occurs when a mistake is made as to the name of the person who sued or was sued when an action is brought by or against the wrong name of a person. Therefore a misnomer occurs when the correct person is brought to court in a wrong name.*
- 4.6 On the option open to a Plaintiff where the misdescription of the party it intends to sue occurs, the Supreme Court was very emphatic that the Plaintiff should be allowed to seek an amendment/or substitution of the wrong name to the correct name, provided the requisite application is made. See in this wise *Maersk Line & Anor v Addide Investments Limited & Anor (2002) LPELR-1811(SC)*; *Registered Trustee of Airline Operators of Nigeria v Nigeria Airspace Management Agency (2014) 8 NWLR (Supra)* and *Pfizer Incorporated Anor v Professor Idris Mohammed (2013) LPELR-CA/K/1888 2008*.
- 4.7 In *Maersk Line & Anor v Addide Investments Limited & Anor (2002) LPELR-1811(SC)*, the Supreme Court laid down the position as follows:

*“When the Objection was raised about a misnomer, he had the opportunity of asking the court for leave to amend, especially where the judge ruled that there was a misnomer. The cases Establishment Baudelot v. R.S Graham and Co Ltd (1953) 1 All ER. 149 and Alexander Mountain and Co. v. Rumere Ltd (1948) 2 All E.R 483 cited by counsel are authorities to show that in a case of misnomer, if application is made to amend the writ by substituting the proper names, it should be granted. In the often-quoted Agbonmagbe Bank Ltd v. General Manager, G.B Ollivant Ltd. (supra) Dixon 1 who decided the case, recognized that if an application has been made for an amendment (as it was a case of misnomer) it would have been granted. But in that case, as in the case on hand, the plaintiff maintained that the 1<sup>st</sup> Defendant, as sued, was a legal entity. And so he struck out the case against the defendant having held that he was not a legal entity.*

*The case of Njemanze v. Shell BP, Portharcourt (1996) 1 ANLR at 10-11 lays down the circumstances under which a court may grant an application for an amendment in a case of misnomer. In that case, the plaintiff had sued “the Shell BP, Portharcourt”, counsel for Plaintiff asked for leave to amend, but the judge refused leave and struck out the claim. On appeal, this court held that the Plaintiff had a duty to show that there were reasonable grounds of excuse in his naming the defendant wrongly and that the misnomer could not have not given rise to any reasonable doubt as to which company was being sued, but he did not do so”.*

- 4.8 In the instant case, the Plaintiffs have clearly demonstrated in the counter-affidavit the events which led to the 2<sup>nd</sup> Defendant being sued as “Ringier Nigeria Limited”. In the very first communication by the 2<sup>nd</sup> Defendant to the Plaintiffs, the 2<sup>nd</sup> Defendant via its solicitors described itself as “Ringier Nigeria Limited”- the name in which it is currently sued. This was repeated in subsequent correspondence issued by the 2<sup>nd</sup> Defendant’s solicitors to the Plaintiffs’ solicitors. Also the 1<sup>st</sup> Defendant in its communication to the Plaintiffs Solicitors described the 2<sup>nd</sup> Defendant as “Ringier Nigeria Limited”. See Exhibit OD1 and OD2.
- 4.9 In addition before filing this suit the Plaintiffs conducted a search on the 2<sup>nd</sup> Defendant and discovered that it is simply known as “Ringier Nigeria”. Based on the foregoing it is evident that the 2<sup>nd</sup> Defendant had merely been wrongly named without more.
- 4.10 There is no mistake concerning the party being sued or whether it exists. The 2<sup>nd</sup> Defendant on its own reacted to the Plaintiffs Solicitors letter dated October 31 2018 and stated that its name is “Ringier Nigeria Limited”. Several correspondences also ensued where the 2<sup>nd</sup> Defendant maintained the said name as its name.

- 4.11 In addition, the 2<sup>nd</sup> Defendant upon being served at its own office was not in doubt that the processes were meant for it despite the omission of the word “media” from its name. Rather, it immediately forwarded the process to its Solicitors who again entered appearance for “*Ringier Nigeria Limited*”!!.
- 4.12 Thus, there is evidently no mistake or confusion as to the entity sued thereby bringing the situation under a clear case of misnomer.
- 4.13 Based on the foregoing, we respectfully urge this Honourable court to treat the wrong naming of the 2<sup>nd</sup> Defendant as a misnomer and grant the Plaintiffs leave to amend the 2<sup>nd</sup> Defendant’s name to its proper name.
- 4.14 The 2<sup>nd</sup> Defendant’s counsel also incorrectly states the law in paragraph 3.1.6 of its written address that in situation such as the instant case, the court is required to decline jurisdiction because as it submits, the misnomer in the instant case “*affects the entire suit*”.
- 4.15 The law is settled that where there are two defendants or more in a suit and one of the defendants has been wrongly named, the jurisdiction of the court to determine the suit is not automatically ousted. Rather the name of the wrongly named defendant can be substituted for the proper name or the name can be struck out and the defendant joined again in its proper name in so far as the requisite application is made by the Plaintiff. See *Maersk Line & Anor v Addide Investments Limited & Anor (Supra)*, where the Supreme Court held as follows:

*“The trial judge had obviously been swayed by the fact that the mistake made by the plaintiff was innocuous and could be corrected without causing any injustice to the appellants. The argument that the lower court had no jurisdiction on the ground that the 1<sup>st</sup> appellant was not a juristic person overlooks the fact that even if the name of the 1<sup>st</sup> appellant was struck out of the suit, the suit would still remain properly constituted since the surviving 2<sup>nd</sup> defendant/appellant and the plaintiffs are juristic persons. This matter did not therefore raise the issue of jurisdiction at all”*  
[“Emphasis Added”]

- 4.16 Based on the foregoing, we respectfully urge this Honourable Court to discountenance the 2<sup>nd</sup> Defendant’s submission that a court is bound to decline jurisdiction simply because there has been a mistake in naming one of the parties to the suit- a situation which was in fact caused by the very defendant.

#### **No reasonable cause of action against the Applicant**

- 4.17 It is trite that to determine the existence of a cause of action, the court is only to consider the pleadings filed by the Plaintiff i.e. the Writ of Summons and the Statement of Claim. See *P&C.H.S Co Ltd v Migfo (Nig) Ltd (2012) 18 NWLR (part 1333) 555*.

4.18 In Afolayan .v. Ogunrinde (1990) 1 NWLR, 369 at 382-383, a cause of action was defined by the Supreme Court per Obaseki JSC as:

- (1) a cause of complaint;
- (2) a civil right or obligation fit for determination by a Court of Law
- (3) a dispute in respect of which a court of law is entitled to invoke its judicial power to determine and every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. See also the case of Thomas .v. Olufosoye (1968) 17 N.S.C.C. (Pt.1) 323 at 331 and Savage .v. Uwaechia (1972) A.N.L.R 255 at 261.

4.19 In order to sustain the puerile argument that the Plaintiffs' claim discloses no reasonable cause of action, the 2<sup>nd</sup> Defendant has deliberately misrepresented the Plaintiffs' cause of action. Thankfully, the Plaintiffs' cause of action is stated in printed form. It is incorrect as erroneously stated by the 2<sup>nd</sup> Defendant's counsel that the Plaintiffs cause of action is that the Plaintiffs "*has the exclusive right to take scenes at the Lekki Ikoyi Bridge*" or that the Defendants are prevented from capturing and making their own video of the Lekki Ikoyi Bridge.

4.20 **The Plaintiffs cause of action is that it created a truly captivating and beautiful video of the Lekki Ikoyi Bridge capturing it from an aerial vantage and subsequently carefully edited the original work to create a truly captivating piece. Rather than create their own video, the Defendants simply utilized the Plaintiffs video for financial benefit, without any authorization.**

4.21 Blacks Law Dictionary defines copyright as follows: *The right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and other architectural works; motion pictures and other **audiovisual works**; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work.*

4.22 The law is also clear that an author of a cinematograph film shall have the exclusive right to control the use and publication of his cinematograph film. As such, Section 5(1)(c) (i) and (ii) of the Copyright Act, Cap C28 LFN 2004 ("Copyright Act") provides as follows:

5. (1) *Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be exclusive right to control the doing in Nigeria of any of the following acts, that is-*
  - (c) *in the case of cinematograph film, to do or authorise the doing of any of the following acts, that is-*

- (i) *make a copy of the film,*
- (ii) *cause the film, in so far as it consists of visual images to be seen in public and, in so far as it consists of sounds, to be heard in public*
- (iii) *make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track,*
- (iv) *distribute to the public, for commercial purposes copies of the work, by way of rental, lease, hire, loan or similar arrangement.*

(2) *The doing of any of the acts referred in subsection (1) of this section shall be in respect of the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original. [Emphasis Added]*

4.23 In addition, the 1st defendant is not absolved from liability simply because as it contends, it did not produce or *publish* the infringing video, but the 2nd defendant did. Section 14(1) of the Copy right Act provides that a person shall be liable for copyright infringement where without the licence or authorization of copyright owner it **“does or causes any other person to do an act, the doing of which is controlled by copyright or uses for its trade or business a copyrighted work”**. It is not in dispute that the 1st Defendant not only caused the 2nd Defendant to produce the video, it in fact **published the infringing video** on its YouTube platform (to promote its business) thereby itself doing an act which is controlled by copyright.

4.24 The relevant sections are reproduced below for ease of reference:

*“14. (1) Copyright is infringed by any person who without the licence or authorisation of the owner of the copyright-*

(a) **does, or cause any other person to do an act, the doing of which is controlled by copyright;**

(g) **performs or cause to be performed for the purposes of trade**

**or**

**business or as supporting facility to a trade or business or as supporting facility to a trade or business, any work in which copyright subsists.”** [Emphasis Added]



- 4.25 It is also rather preposterous that the 2<sup>nd</sup> Defendant who would have been paid for the “*services*” purportedly provided to the 1<sup>st</sup> Defendant is emboldened to state that the Plaintiffs have not disclosed a reasonable cause of action in a clear case of infringement. This is even more disturbing in a case where the 2<sup>nd</sup> Defendant is represented by counsel!!.
- 4.26 Furthermore, the 2<sup>nd</sup> Defendant is not entitled to merely assert that the Scenes copied from the Plaintiffs video are not the same with the scene in its “Nightlife in Lagos with Galaxy Note8” video. This Honourable Court will observe that in setting out the Plaintiffs “*cause of action*”, the 2<sup>nd</sup> Defendant’s counsel cleverly omitted paragraph 13- 16 the Plaintiffs Statement of Claim. In paragraph 15, the Plaintiffs set out the particulars of sameness.
- 4.27 **The primary reason why the Plaintiffs had exhibited the flash drive containing the “Lekki Ikoyi Link Bridge at Night” is so that the Defendants (and its legal advisers) can view the video and make a clear finding in their mind as to the true state of things, which is that the Defendants simply copied the Plaintiffs works without more.**
- 4.28 It is thus clear from the foregoing that the Plaintiffs have disclosed not only a cause of action against the Defendants but a reasonable cause of action. This is because all that the court is required to satisfy itself of at this stage is that the Plaintiffs have disclosed (in their writ and statement of claim) some aggregate of facts or combination of facts that could give rise to a claim that can be enforced in law.
- 4.29 Based on the foregoing and relying on **Order 25 Rule 2(1) of the Rules**, the Plaintiffs respectfully applies that the Plaintiffs should be compensated for the time and expense incurred in having to defend the instant Preliminary Objection in the sum of ₦500,000 (Five Hundred Thousand Naira).

## 5. CONCLUSION

- 5.1. On the premise of the foregoing, the Honourable Court is respectfully urged to refuse the prayers of the 2<sup>nd</sup> Defendant as contained in its Notice of Preliminary Objection dated the 20<sup>th</sup> Day of March 2018 with substantial cost in favour of the Plaintiffs.

Dated April 3, 2018



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