

For Service

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDING AT LAGOS

SUIT NO FHC/L/CS/303/2018

BETWEEN

1. AKOJI AGENI-YUSUF
2. EAGLE EYE PRODUCTION LIMITED
AND

PLAINTIFFS/RESPONDENTS

1. SAMSUNG ELECTRONICS WEST AFRICA LIMITED
2. RINGIER NIGERIA LIMITED.....

DEFENDANTS/APPLICANT

NOTICE OF PRELIMINARY OBJECTION

BROUGHT PURSUANT TO 37 OF THE COMPANIES AND ALLIED MATTERS
ACT CAP C20 LFN 2004, ORDER 29 OF THE FEDERAL HIGH COURT (CIVIL
PROCEDURE) RULES 2009 AND UNDER THE INHERENT JURISDICTION OF
THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the day of
2018 in the hour of 9' O Clock in the forenoon or so soon thereafter as Counsel on
behalf of the 2nd Defendant ('Applicant) may be heard praying this Honourable Court
for the following reliefs:

1. **AN ORDER** striking out and/or dismissing this suit as this Honourable Court lacks jurisdiction to entertain this suit,

AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

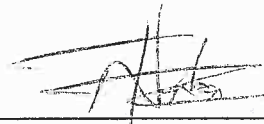
FURTHER TAKE NOTICE that the grounds upon which the Preliminary Objection is brought are:

1. The Applicant is a non-juristic entity as there is no legal entity known as '**RINGIER NIGERIA LIMITED**';
- 1) The Plaintiffs' (Respondents) have disclosed no reasonable cause of action against the Applicant.



Dated this 20th day of March 2018




Chief Anthony Idigbe, SAN
Nnamdi Oragwu
Obianuju Otudor (Mrs)
Tobenna Nnamani ✓
Isioma Idigbe
Ifeanyinwa Anyadiegwu

2nd DEFENDANTS' COUNSEL

PUNUKA ATTORNEYS & SOLICITORS

Plot 45, Oyibo Adjarho Street
Off Ayinde Akinmade Street
Off Admiralty Way, Lekki Phase 1,
Lagos.

info@punuka.com
08032785509

FOR SERVICE ON

THE PLAINTIFFS

C/o PLAINTIFFS SOLICITORS

Abimbola Akeredolu, SAN
Chinedum Umeche
Adeola Agunbiade
Oluwamayokun David

BANWO & IGHODALO

98 Awolowo Road
South-West Ikoyi
Lagos

THE 1st DEFENDANT

SAMSUNG ELECTRONICS WEST AFRICA LIMITED

Plot 13/14 Ligali Aayorinde Street
Victoria Island
Lagos



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BETWEEN

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2. EAGLE EYE PRODUCTION LIMITED** } **PLAINTIFFS/RESPONDENTS**

AND

**1. SAMSUNG ELECTRONICS WEST AFRICA LIMITED
2. RINGIER NIGERIA LIMITED.....** } **DEFENDANTS/APPLICANT**

AFFIDAVIT IN SUPPORT OF NOTICE OF PRELIMINARY OBJECTION

I, Martins Nwankwo, Male, Christian, Nigerian citizen, Litigation Officer of Plot 45, Oyibo Adjarho Street, Off Admiralty Way, Lekki Phase 1, Lagos, do hereby make Oath and state as follows:

1. I am a Litigation officer in the Applicants' counsel office by virtue of which I am conversant with the facts deposed to herein.
2. I have the authority and consent of the Applicants' and my employer to depose to this affidavit.
3. I was informed by Mr. Tunde Kara Sales and Digital Strategy Manager of the Applicant on the 19th of March 2018, at about 10:00am, in our office at Plot 45, Oyibo Adjarho Street, Lekki Phase 1, Lagos, and I verily believe him as follows:
 - a. That the Respondents' commenced this suit via a Writ of Summons dated 26th of February 2018;
 - b. That after a careful perusal of the Respondents' court processes against the Applicant, it was discovered that the Respondents' suit is against a non- legal entity;
 - c. That it was also discovered that the Respondents' alleged cause of action against the Applicant bothers on the fact that the Applicant made a cinematograph film on the Lekki-Ikoyi Bridge only;

- d. That the Applicant's Counsel directed its lawyers, PUNUKA Attorneys & Solicitors to write to Lekki Concession Company Limited requesting if the Plaintiffs' had the exclusive right to take scenes of the Lekki-Ikoyi Lekki Bridge. The letter dated December 6, 2017 is hereby attached as **Exhibit A**;
- e. That Lekki Concession Company Limited responsible for the management and operation of the Lekki-Ikoyi Link Bridge informed the Applicant's Counsel that the Plaintiffs' does not have the exclusive right to the use of videos of the Lekki-Ikoyi Link Bridge. The letter dated January 9, 2018 is hereby attached as **Exhibit B**;
- f. That the Respondents' cause of action against the Applicant is that it took scenes of the Lekki-Ikoyi Link Bridge and posted same in 2017 while the Respondents' took scenes of the Lekki Ikoyi Link bridge and posted same in 2015 and 2016 respectively;
- g. That aside from the Lekki-Ikoyi Bridge scenes that appear on both works, there is no other scene similar between the works' in dispute;
- h. That the Plaintiffs' do not have the exclusive right to take scenes of the Lekki-Ikoyi Link Bridge;
- 4. That it is in the interest of justice for this Honourable Court to grant this application.
- 5. That I depose to this Affidavit in good faith and in accordance with the Oaths Act in force.

[Handwritten Signature]

DEPONENT

SWORN to at the Registry of the Federal High Court, Ikoyi, Lagos,

This *20* Day of March 2018.

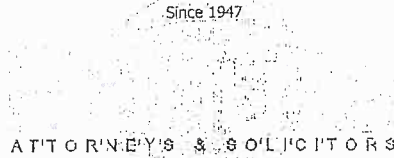
BEFORE ME

[Handwritten Signature]

COMMISSIONER FOR OATHS



[Handwritten Signature]
Commissioner for Oaths
Federal High Court
Ikoyi Lagos



December 6, 2017

The Company Secretary
Lekki Concession Company Limited
Conservation Plaza
Lekki-Expressway
Lagos State.

Attention: Gbolahun Agboluaje

Dear Sir,

RE: REQUEST FOR CONFIRMATION FOR USE OF LEKKI – IKOYI LINK BRIDGE IN VIDEO RECORDING

We are solicitors to Ringier Media Nigeria herein referred to as our "Client" on whose behalf we write.

A dispute has recently arisen over the use of video recordings of the Lekki – Ikoyi Link Bridge. Our client received a letter dated October 31, 2017 from solicitors acting on behalf of Akoji Ayeni-Yusuf trading under the name and style of "Eagle Eye Productions". In the said letter it was stated that Eagle Eye Productions reproduced the Lekki– Ikoyi Link Bridge in his original work titled 'Lekki– Ikoyi Link Bridge at Night' and thus our client's recording of the Lekki – Ikoyi Link Bridge in a similar manner allegedly constituted a copyright infringement.

Consequently, we write to your company to confirm if Eagle Eye Productions secured the exclusive right to the use of videos of the Lekki– IkoyiLink Bridge.

We look forward to your response..

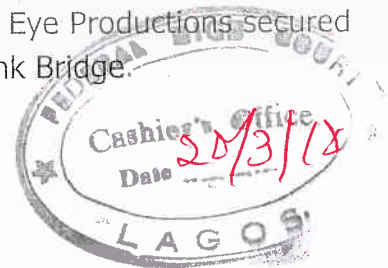
Accept the assurance of our professional regards.

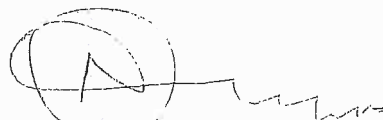
Yours faithfully,
PUNUKA Attorneys & Solicitors


Ifeyinwa Anyadiegwu
Associate

Ex-A
This is the document referred to as Exhibit..... in the Affidavit of..... Sworn to at the..... Court Registry dated this..... day..... 20..18
Before me

COMMISSIONER FOR OATHS

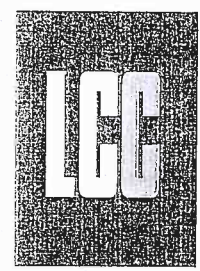



Nnamdi Oragwu
Partner

Partners: Anthony Idigbe, SAN, Elizabeth Idigbe, Nnamdi Oragwu, Okorie Kalu, Ebelechukwu Enechah
Senior Associates: Obianuju Otudor, Iheanacho Dike-Udensi, Olapeju Anozie, Eric Otojahi
Associates: Gloria Ogwu, Damola Adewale, Onyeka Ehiwogwu, Aituaigie Omokhodion, Emuobonuvie Majemite, Onyinye Odogwu, Oluwabunmi Apata, Peter Edokpayi, Tobenna Nnamani, Adekola Olawoye, Betty Biayeibo, Omotayo Ogunbadewa, Ebuka Ekeanyanwu, Boma Owunabo, Adetutu Olowu, Isioma Idigbe, Ifeyinwa Anyadiegwu, Rukevwe Ekpedede, Chimezie Onuzulike, Adeyinka Abdulsalam
General Manager, Practice: Angela Ezenweani, Consultants: Richard Obiamiwe, Judith Makwe-Fanegan, Afamefuna Mmaga

Ex-B

PUNUKA Attorneys & Solicitors
Received By: JOSEPH FIZALDIN
Signature: [Signature]
Time: 11:40am
Date: 10/01/2018



LEKKI CONCESSION COMPANY LIMITED

Corporate Office:
Conservation Plaza,
Km 13.6, Eti-Osa/
Lekki-Epe Expressway
Lagos.
P.M.B. 80034
Victoria Island.
Tel: +234 1 271 9700
Fax: +234 1 271 9729
Website: www.lcc.com.ng

LCC/006/LGL/1801/008

9th January 2018

PUNUKA Attorneys & Solicitors
Plot 45, Oyibo Adjarho Street, Off Ayinde Akinmade Street
(Opposite Global International College), Off Admiralty Way
Lekki Phase 1, Lagos

Attention: Ifeyinwa Anyadiegwu/Nuamdi Oragwu

Dear Sir,

RC 644314

RE: REQUEST FOR CONFIRMATION FOR USE OF LEKKI-IKOYI LINK BRIDGE IN VIDEO RECORDING

Registered Office:
1, Mekunwen Road,
Off Oyinkan Abayomi Drive,
Ikoyi, Lagos.

We acknowledge receipt of your letter dated 6th December 2017 (which we received on 22nd December 2017) wherein you requested Lekki Concession Company Limited ("LCC") to confirm if one Eagle Eye Productions secured exclusive right to the use of videos of the Lekki- Ikoyi Link Bridge (the "Bridge").

Kindly note that LCC took over the operations and running of the Bridge in June 2016 and did not give such rights to the said Eagle Eye Productions or any other party, since taking over.

However, Lagos Tolling Company ("LTC") whose offices is located at 6, Shafi Sule Street, Lekki Phase 1, Lagos was in charge of the Bridge before LCC took over in June, 2016. We advise that you contact LTC or the Lagos State Ministry of Works and Infrastructure for the requested information/confirmation.

We thank you for your understanding.

Yours faithfully,
For: **Lekki Concession Company Limited**

[Signature]
Gbolahan Agboluaje
Head of Legal/Company Secretary

This is the document referred to as Exhibit B in the Affidavit of Melrose Nwankwo sworn to at the _____ Court Registry dated this _____ day of March 2018.
Before me

[Signature]
COMMISSIONER FOR OATHS



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} **PLAINTIFFS/RESPONDENTS**

AND

- 1. SAMSUNG ELECTRONICS WEST AFRICA LIMITED**
- 2. RINGIER NIGERIA LIMITED.....}..... DEFENDANTS/APPLICANT**

WRITTEN ADDRESS IN SUPPORT OF NOTICE OF PRELIMINARY OBJECTION

1. INTRODUCTION

1.1 The Plaintiffs' ('Respondents') commenced this suit by a Writ Summons dated 26th of February, 2018, alleging a copyright infringement against the Applicant on the ground that it took scenes of the Lekki-Ikoyi Bridge and posted same in 2017 whilst the Respondents' had already taken scenes of the same Lekki-Ikoyi Bridge and posted same in 2015 and 2016 respectively; and are therefore seeking a perpetual injunction to restrain the Applicant from using the scenes of the Lekki-Ikoyi Link Bridge and damages in the sum of ₦65, 000, 000 (Sixty Five Million Naira).

1.2 The Applicant is by this Preliminary Objection seeking an order striking out or dismissing the claim of the Respondents' on the following grounds:

- 1. The Applicant is a non-juristic entity as there is no legal entity known as **'RINGIER NIGERIA LIMITED'**;
- 2) The Plaintiffs' (Respondents) have disclosed no reasonable cause of action against the Applicant.

2. ISSUES FOR DETERMINATION

2.1 The Applicant humbly submits a sole issue for determination:

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

3. LEGAL ARGUMENT

3.1 Ground 1: Suit against non-juristic entity

3.1.1 My lord, it is a well settled law that for an action to be properly constituted before a court of law, several conditions must be met to imbue the Honourable Court with the requisite jurisdictional plinth on which a valid adjudication of the matter could be founded. One of such requirements is that there must be before the court, valid and competent parties on whom the order of the court could validly be binding and enforceable against. A simple corollary of this is that the court would not waste its precious time adjudicating on a matter which involves either non-existent or legally incapable and patently defective parties. Thus, once the parties brought before the court fail to meet this hallowed requirement of capability, the suit would easily be deemed to have failed one of the litmus test for its validity. In resonance of this axiomatic principle of law, the Supreme Court in ***Ataguba & Co. v. Gura Nig. Ltd*** (2005) ALL FWLR Pt 263 page 05) SCNJ page 139 stated firmly that;

"For an action to be properly constituted so as to vest jurisdiction on the court to adjudicate on it, there must be a competent plaintiff and a competent defendant."

3.1.2 This principle of law was cited with approval and followed by the Court of Appeal in the case of ***Western Union Money Transfer Service v. Lt Col. Roy M.D. Alli & Ors*** (2012) LPELR-19730.

3.1.3 Without much ado my Lord, the Applicant humbly submits and urges this Honourable Court to hold that the Applicant as stated in the Originating process "RINGIER NIGERIA LIMITED" is not a juristic entity and therefore cannot be sued. There is no legal entity known as "RINGIER NIGERIA LIMITED" as the Respondents' have purportedly sued and this is fatal to the instant suit. Thus, despite the fact that the Applicant is in court on protest, the name of the Applicant on the originating process is fatal and defective. **In *The Federal Government of Nigeria & Ors v. Shobu Nigeria Ltd & Anor*** (2013) LPELR-21457(CA), the Court of Appeal succinctly held that;

"It is the law that generally, a non-juristic person cannot sue or be sued."

3.1.4 Consequently, in ***Uwazuruonye v. Gov. Imo State*** (2013) 8 NWLR (Pt. 1355) p.28 at p. 57, the court held that an action can only be maintained against a juristic person; we therefore respectfully submit that this Honourable Court lacks the jurisdiction to entertain a suit against a non-legal entity. (Please see ***Nwokedi v. R.T.A. Ltd.*** (2002) 6 NWLR Pt. 762, p. 181 at 201.)

3.1.5 In the case of ***Idanre L. Govt. v. Ondo State*** (2010) 14 NWLR Pt. 1214, p. 509 at 525, the Court of Appeal per Augie J.C.A. held that:

*"A misnomer will arise where a party is sued in the wrong name, and the courts will usually grant amendments to correct the mistake, even on appeal. **However, naming a non-juristic person as a party is out of it. This is because there cannot be a valid amendment of the title of the suit since there was never a legal person who was brought before the court by the action** – see *Okechukwu & Sons v. Ndah* (1967) NMLR 368.*

(Emphasis ours)

3.1.6 The legal effect and consequence of suing a non- juristic party or personality is not farfetched. The Court faced with such a suit is left with only one option, which is to strike out the name of the non- juristic entity or strike out the entire suit where it affects the entire suit as in the instant case. In ***The Exec. of the Estate of Gen. S. Abacha v. Eke-Spiff & Or.*** (2009) 2-3SC (Pt. 1139) 97, the Apex Court per Oguntade, JSC stated that;

"The consequence is that the person sued as the 3rd defendant before the trial court was not a juristic person. The said 3rd defendant ought to have been struck out as a party to the suit".

3.1.7 On the strength of the above authorities, we humbly submit that going by the incontrovertible fact that the Applicant is a non-juristic entity, this Honourable Court in line with the position of the law should decline jurisdiction and strike out the suit as the action cannot be maintained against a non-juristic entity.

3.2 **Ground 2: No reasonable cause of action against the Applicant**

3.2.1 My Lord, it is trite that for a Plaintiff to bring an action seeking an order against a Defendant, he must first show that he has a right under an extant law against the Defendant, after which he must establish that such right has been breached

by the Defendant in question. In the case of **Peacegate Oil & Gas Ltd. V. Hydrive (Nig.) Ltd (2012) 17 NWLR Pt.1329 p. 391 at 402-403**, the Court of Appeal per Okoro J.C.A held that:

'A cause of action has also been defined as the factual situation which a plaintiff relies on to support his claim, recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. The factual situation must, however, constitute the essential ingredients of an enforceable right as claimed.'

3.2.2 Further to the above, for an action to lie against a Defendant, the Plaintiff's Statement of Claim must disclose a reasonable cause of action against the Defendant. The Statement of Claim must not only set out the legal rights of the Plaintiff but must also state the obligations of the Defendant which has been breached. The case of **Rinco Construction Co. Ltd v. Veepee Industries Ltd and anor. (2006) WRN Vol.17 pp 123-127** is instructive in this regard.

3.2.3 Now, in determining whether there is reasonable cause of action against a Defendant in a suit, it is trite that recourse must be made to the statement of claim and the accompanying documents. This was noted by the Supreme Court decision of **Seven Up Bottling Company v. Abiola and Sons (2001)13 NWLR (Pt. 730) 469 paras.**

3.2.4 The issue therefore is that upon a review of the Plaintiffs' Statement of Claim against the Applicant, what is their alleged cause of action against same? My Lord must note that the issue in dispute is not whether the work of the Plaintiffs (which is about 2 minutes 21 seconds) and the Applicant (which is about 1 minute) are similar, as the answer is in the negative. The alleged cause of action is whether the scenes of the Lekki-Ikoyi Bridge which allegedly appears on the two works are similar? In other-words, since the Plaintiffs' have taken scenes at the Lekki-Ikoyi Bridge, the Applicant does not have the right to take its own scenes at the Lekki-Ikoyi Link Bridge. We refer this Honourable Court to paragraphs 8, 9, 12, 17, 19, 23 and 24 of the Plaintiffs' Statement of claim which provides as follows:

8 *The Plaintiffs are the owners of the copyright in the cinematograph film known as "Lekki Ikoyi Link Bridge at Night" which they published on the Youtube platform, on April 11, 2015 and April 16, 2016, under the names- Akoni Ageni-Yusuf and Eagle Eye respectively;*

9 *The Plaintiffs aver that "Lekki Ikoyi Link Bridge at Night" is a cinematograph film of the cable-stayed Lekki Ikoyi Link Bridge*

(the Bridge). The film captures the Bridge's immediate environs (including skyline and cars on the Bridge) and the manner in which the said environs interact with light at night;

12 *On October 16, 2017, the 1st Defendant published the "Nightlife in Lagos with Galaxy Note 8" video to the public on its Youtube channel. However, in publishing the said video, the 1st Defendant utilized the scenes of the Plaintiffs' "Lekki Ikoyi Link Bridge at Night" as part of a marketing strategy to promote the sale of its high-end device – the Samsung Galaxy Note 8, in order to increase its appeal to potential customers;*

17 *The Plaintiffs aver that upon becoming aware of the 1st Defendant's publication of the scenes in the Nightlife in Lagos with Galaxy Note 8 video, the Plaintiffs caused their Solicitor to write a "cease and desist letter" to the 1st Defendant;*

19 *By the said letter, the 1st Defendant was urged to cease and desist from using and continuing to use the scenes without the Plaintiff's authorization. The Plaintiffs plead and shall at the trial of this suit, rely on a copy of the said Plaintiff Solicitors letter dated October 31, 2017. The 1st Defendant is hereby given notice to produce the original copy of the said letter;*

23 *The Plaintiffs aver that the Defendants have unjustly benefitted from the Plaintiffs' effort, creativity and substantial financial and human resources invested in the production of the "Lekki Ikoyi Link Bridge at Night" video;*

24 *In conclusion, the Plaintiffs shall contend at the trial of this suit, that the person who authorizes the production of a work which infringes the copyrights of another, and the person who actually produces the infringing work, are both culpable for copyright infringement.*

3.2.5 Flowing from all the above, the question is whether the Plaintiffs' have the exclusive right to take scenes at the Lekki-Ikoyi Bridge? Two, whether since the Applicant created its own independent work which includes going to Lekki-Ikoyi Link Bridge to take scenes, the Plaintiffs' have any cause of action against same. We refer this Honourable Court to **Exhibit B** and urge same to hold that the Plaintiffs' do not have the exclusive right to take scenes at the Lekki-Ikoyi Link Bridge and therefore do not have any cause of action against the Defendants.

3.2.6 In the case of *Uwazuruonye v. Gov. Imo State (2013) 8 NWLR (Pt.1355) p.28* at p. 56, the Supreme court per Rhodes-Vivour, JSC held that;

'A plaintiff has a cause of action when his pleadings reveal that there has been an infraction or trespass to his rights and obligations. That is to say there must be:

- a) *A cause of complaint,*
- b) *A civil right or obligation fit for determination by the court, and;*
- c) *The issue must be justiciable.*

It must be clearly seen in the plaintiff's pleadings the wrongful act of the defendant, his cause of complaint and the resultant damage from the defendant's wrongful act.

3.2.7 The latin maxim is also clear on this when it states thus 'ubi jus ibi remedium-Where there is a right, there is a remedy'. This means that for every wrong, the law provides a remedy'. It also means that where there is no wrong then there is no remedy. In this instant case, the Plaintiffs have failed to show that there is a wrong committed against them by the Applicant which the law has provided a remedy for.

3.2.8 The legal principle established by the maxim was discussed in the case of **Ashby v. White (1703) 92 ER 126** in the following words:

'When the law clothes a man with a right he must have means to vindicate and maintain it and remedy if he is injured in the exercise and enjoyment of it, and it is a vain thing to imagine a right without a remedy for want of right and want of remedy are reciprocal'

3.2.9 From the definition stated above by the court it is clear that the elements of the maxim can only be invoked where a right exists recognizable by the courts and a wrong must have been done against the right in such a manner that this right is considered to have been violated clearly without ambiguity. In this case, there is no relationship between the Plaintiffs and the Applicant and more so the Plaintiffs do not have an exclusive right to taking scenes at the Ikoyi Bridge to warrant a right existing or any obligation owed to same by the Applicant which has been breached and there is clearly a want of right and consequent want of remedy.

3.2.10 Again, we must avert the mind of this Honourable Court to the fact that though the Plaintiffs' do not have a reasonable cause of action against the Applicant, they have by this suit made the Applicant to incur huge expenses in terms of briefing its lawyers to defend its interest in this suit. Therefore, in the circumstance that this Honourable Court finds in favour of the Applicant that

there is no reasonable cause of action against same, we urge this Court to strike out the action with the cost of ₦10, 000, 000 (Ten Million Naira).

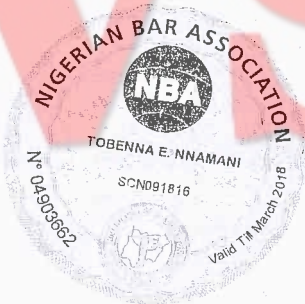
3.2.11 We therefore urge this Honourable Court to resolve this issue in favour of the Applicant.

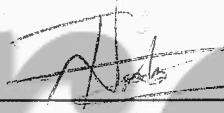
4. CONCLUSION

4.1 In summary, we beseech this Honourable Court to strike out this suit:

- a. BECAUSE the Applicant is a non-juristic entity as there is no legal entity known as '**RINGIER NIGERIA LIMITED**';
- b. BECAUSE the Plaintiffs' (Respondents) have disclosed no reasonable cause of action against the Applicant.

Dated this ^{25th}.....day of March 2018




Chief Anthony Idigbe, SAN
Nnamdi Oragwu
Obianuju Otudor (Mrs)
Tobenna Nnamani ✓
Isioma Idigbe
Ifeanyinwa Anyadiegwu

2nd DEFENDANTS' COUNSEL
PUNUKA ATTORNEYS & SOLICITORS

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Off Ayinde Akinmade Street
Off Admiralty Way, Lekki Phase 1,
Lagos.

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08032785509

FOR SERVICE ON

THE PLAINTIFFS
C/o PLAINTIFFS SOLICITORS
Abimbola Akeredolu, SAN
Chinedum Umeche
Adeola Agunbiade



Oluwamayokun David
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THE 1st DEFENDANT
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ewsroom

