

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO: FHC/L/CS/1172/2024**

**BETWEEN**

**BARBICAN CAPITAL LIMITED ----- PLAINTIFF/APPLICANT**

**AND**

**FBN HOLDINGS PLC ----- DEFENDANT/RESPONDENT**

**COUNTER-AFFIDAVIT IN RESPONSE TO MOTION ON NOTICE DATED 3<sup>RD</sup>  
JULY, 2024**

I, Adewale Arogundade, Adult, Male, Christian, Nigerian Citizen of Samuel Asabia House, 35 Marina, Lagos State do hereby make oath and state as follows:

1. I am the Company Secretary in the Defendant/Respondent by virtue of which I am conversant with the facts of this case.
2. I have the authority of the Defendant/Respondent and that of my employers to depose to this Affidavit.
3. I have seen, read and I understand the Motion on Notice, Affidavit in Support and Written Address dated 3<sup>rd</sup> day of July 2024 filed by the Plaintiff/Applicant.
4. Except where expressly stated, all facts deposed to in this Affidavit are from my personal knowledge and documents which I have read in the cause of my employment.
5. All the allegations contained in paragraphs 8(i - xii), 9, 10(i) (a-ee), 11, 12, 13, 14, 15, 16, 17 and 20 of the Affidavit in support of the Applicant's Motion on Notice dated 3<sup>rd</sup> July 2024 are grossly misleading and a calculated attempt to mislead this Honourable Court.
6. The Defendant is a reputable Public Liability Company and a Financial Holding Company, holding First Bank of Nigeria Limited. The Defendant is regulated by the Central Bank of Nigeria (CBN) and its shares/stock/securities is regulated by the Securities and Exchange Commission (SEC) as well as CBN.
7. The shares of the Defendant are listed and traded publicly on the secondary market - Nigeria Exchange Group.

8. The Plaintiff (Barbican Capital Limited) is an affiliate company of Honeywell Group Limited and Dr. Oba Otudeko is a Director in Honeywell.

### **FACTS OF THE CASE**

9. On the 7<sup>th</sup> day of July 2023, Honeywell Group Limited sent a letter to the Defendant notifying the Defendant that the Plaintiff (Barbican Capital Limited) has “acquired an aggregate of 4,770,269,843 shares” in the Defendant. The Honeywell Group Limited letter captured “Disclosure of Shareholding” dated 7<sup>th</sup> July 2023 is attached and marked **Exhibit BKC 1**.
10. Further to **Exhibit BKC 1** above, the Defendant notified the public that the Plaintiff has acquired substantial shareholdings in the Defendant amounting to 13.3% of the 35,895,292,791 issued share capital of the Defendant. Attached and marked **Exhibit BKC 2** is the “Notification of Acquisition of Substantial Shareholdings in FBN Holdings PLC” dated 7<sup>th</sup> July 2023.
11. Also further to **Exhibit BKC 1**, the Defendant wrote to its regulator, Central Bank of Nigeria, informing it that an affiliate company of Honeywell Group Limited - Barbican Capital Limited (the Plaintiff) has “acquired an aggregate of 4,770,269,843 shares” or 13.3% of the issued share capital in the Defendant, requested a “No-Objection Letter” and sought further directives from the Central Bank of Nigeria. Attached and marked **Exhibit BKC 3** is the letter “Request for No-Objection Letter: 13.3% Shareholdings in FBN Holdings Plc” dated 10<sup>th</sup> July 2023 showing the Defendant’s notification and request for further direction from CBN.
12. On 25<sup>th</sup> July 2023, CBN responded to **Exhibit BKC 3** requesting for the following documents to enable the CBN process FBN Holding’s request:
- a. Certificate of Incorporation
  - b. Forms CO7 and CO2
  - c. Board resolution approving the share purchase
  - d. Financial statements for three years
  - e. Tax clearance certificates for three years
  - f. Memorandum and Articles of Association
  - g. List of directors and top management with BVNs
  - h. Statement of Accounts of Barbican Capital Limited for the past twelve months

Attached and marked **Exhibit BKC 4** is the CBN letter with the subject “RE: REQUEST FOR NO-OBJECT LETTER: 13.3% SHAREHOLDINGS IN FBN HOLDINGS PLC” dated 25<sup>th</sup> July 2023 showing the request made by CBN.

13. The Defendant immediately transmitted **Exhibit BKC 4** to Mr. Obafemi Otudeko, the Managing Director of Honeywell Group Limited. Attached and marked **Exhibit BKC 5** is the letter dated 25<sup>th</sup> July 2023 and captured "Request for Documents by the Central Bank of Nigeria on Substantial Shareholding in FBN Holdings PLC".
14. In responding to **Exhibit BKC 5** on 27<sup>th</sup> July 2023, the Plaintiff noted that they did not have financial statements for 3 years, Tax Clearance Certificates for 3 years and statements of accounts for the past 12 months because the Plaintiff was incorporated in March 2023 (4 months prior) but they provided the following documents:
- a. Board resolution approving the share purchase
  - b. Certificate of incorporation
  - c. Status report
  - d. Memorandum & Articles of Association
  - e. List of Directors & their BVN
- Attached and marked **Exhibits BKC 6** dated 27<sup>th</sup> July 2023 attaching thereto **Exhibits BKC 6a, 6b, 6c, 6d and 6e** being the forwarding letter sent by Honeywell Group Limited accompanied with the documents requested by CBN.
15. Per usual, I dutifully sent the documents as received from the Plaintiff to the Central Bank of Nigeria on 27<sup>th</sup> July 2023. Attached and marked **Exhibit BKC 7** is the letter dated 27<sup>th</sup> July 2023 by which the documents received from Honeywell Group Limited in **Exhibit BKC 6** was forwarded to the Central Bank of Nigeria (CBN).
16. The CBN called for a meeting with stakeholders on 23<sup>rd</sup> November 2023 and the resolution at that meeting was that the shares of the major shareholders in FBN Holdings Plc should be verified through the CBN Capital Verification process. Attached and marked **Exhibits BKC 8a & 8b respectively** are 2 letters dated 7<sup>th</sup> December 2023 showing the resolution at the said meeting.
17. Further to the meeting of 23<sup>rd</sup> November 2023, Barbican Capital Limited requested Board Representation in a letter dated 29<sup>th</sup> November 2023. Attached and marked **Exhibit BKC 9** is the Barbican Capital Limited letter dated 23<sup>rd</sup> November 2023 requesting Board Representation in FBN Holding Plc and First Bank Nigeria Limited.
18. In **Exhibit BKC 9**, Barbican Capital Limited acknowledged that the CBN's indication for equitable Board representation on FBN Holdings Plc was subject to verification of their shareholdings.
19. By **Exhibits BKC 8a & b**, the CBN also requested for the following documents from Dr. Oba Otudeko and the Managing Director of Bluenote Limited:

- a. Total number of shares held as at the date of this letter, clearly stating the dates the shares were purchased and the counterparty.
  - b. Sources(s) of funds for the purchase of the shares.
  - c. Instruments and statement of the account(s) the purchases were made from (6 months before the purchase of the shares and 3 months after the purchase of the shares).
20. Per **Exhibit BKC 8a & b**, the purpose of these documents was for the capital verification of Dr. Oba Otudeko CFR and Bluenote Limited's shareholding in FBN Holdings PLC. The requested documents therein were to be sent by the Plaintiff, through the Defendant, to the Acting Director of Banking Supervision of the CBN latest by 15<sup>th</sup> December 2023.
21. This request (**Exhibit BKC 8a & b**) was addressed to Dr. Oba Otudeko and the Managing Director of Bluenote Limited "care of" (c/o) FBN Holdings Plc and was never meant for the Defendant itself to submit to the CBN.
22. I, on behalf of the Defendant, sent the CBNs' request to Dr. Oba Otudeko at his email address [obafemi.otudeko@honeywellgroup.com](mailto:obafemi.otudeko@honeywellgroup.com) on 8<sup>th</sup> December 2023 but Dr. Oba Otudeko did not respond to the email which warranted the reminder email I sent on 21<sup>st</sup> December 2023. Attached and marked **Exhibit BKC 8c & 8d respectively** are the cover emails I used in sending and resending Exhibits 8a and 8b respectively to Dr. Oba Otudeko.
23. At all times during correspondence with Honeywell Group and Bluenote Limited, our communication protocol was always through [obafemi.otudeko@honeywellgroup.com](mailto:obafemi.otudeko@honeywellgroup.com)
24. I am not privy to the letter between the CBN and the Managing Director of Honeywell Group Limited dated 14<sup>th</sup> December 2023. However, the CBN wrote a letter dated 19 December 2023 requesting Honeywell Group Limited to provide the following documents:
- a. Instrument and statement of the account(s) the purchases were made from (6 months before the purchase of the shares and 3 months after the purchase of the shares).
  - b. Company Form CO7 as at date of purchase of the shares
  - c. Board Resolution approving the purchase of the shares
  - d. Three-year annual accounts
  - e. Board Resolution authorizing the investment
  - f. Tax clearance certificates for the past 3 years

Attached and marked **Exhibit BKC 8e** is the request for documents for capital verification of shareholders in FBN Holdings PLC sent by CBN, through FBN Holdings Limited, to Honeywell Group Limited.

25. By **Exhibit BKC 8e**, the CBN also noted that the bulk of shares purchased by the Plaintiff in FBN Holdings was purchased from Bluenote Limited which is a related company but that Bluenote Limited was not listed as part of the companies the Plaintiff bought shares from. Consequently, the CBN requested all necessary documents for capital verification under Bluenote Limited.
26. I sent **Exhibit BKC 8e** to Mr. Oba Otudeko via his email as earlier stated. Attached and marked as **Exhibit BKC 8f** is the cover email I sent to Dr. Oba Otudeko on 19<sup>th</sup> December 2023.
27. On 5<sup>th</sup> January 2024, the Central Bank of Nigeria sent a further (and final) request/Notice to the Group Managing Director of FBN Holdings Plc for its shareholders to send all outstanding documents required to conclude the capital verification. Attached and marked **Exhibit BKC 10b** is the CBN final letter dated 5<sup>th</sup> January 2024 demanding the outstanding documents
28. From **Exhibit BKC 10b**, the CBN noted that:
  - a. The following documents were still outstanding:
    - i. Contract note detailing the trade date, settlement date, volume purchased, unit price, consideration, and settlement amount for Springwater Limited, Metropolitan Trust Nig. Limited, Orbit International Limited, Landbond Limited, Network Securities Limited, Coral Product Nigeria Limited, Honeywell Staff CT&CS and Otudeko Ayoola Obafoluke
    - ii. Bank statements of account for Bluenote Limited, Springwater Limited, Metropolitan Trust Nig. Limited, Orbit International Limited, Landbond Limited, Network Securities Limited, Coral Product Nigeria Limited, Honeywell Staff CT&CS and Otudeko Ayoola Obafoluke for the period the shares were purchased such that every settlement amount can be traced to the bank statement.
  - b. Only 70.80% of the 1,113,201,130 shares with respect to Bluenote Limited were reconciled using the contract notes and statement of account submitted by the Plaintiff.
  - c. Bluenote Limited was incorporated in Isle of Man and, as such, the following documents were requested:

- i. Details of Promoters,
- ii. Certificate of incorporation
- iii. Certificate of Capital Incorporation of the foreign exchange in-flowed

29. I forwarded **Exhibit BKC 10b** to Dr. Oba Otudeko at his email address on 5<sup>th</sup> January 2024. Attached and marked **Exhibit BKC 10a** is the covering email I used in sending **Exhibit BKC 10b** to Dr. Oba Otudeko.
30. On 29<sup>th</sup> January 2024, the CBN wrote to inform FBN Holdings Plc that some portion of the Honeywell Group's shares had been verified. Attached and marked **Exhibit BKC 11b** is the CBN letter dated 29<sup>th</sup> January 2024 showing the portion of shareholdings of Barbican Capital Limited verified and the unverified portion.
31. In **Exhibit BKC 11b**, CBN noted that:
- a. Only 3,110,400,619 units or 8.67% (out of the 15.19%) of shares purportedly owned by Barbican Capital Limited and Honeywell Group's shareholdings in FBN Holdings was verified by CBN
  - b. 2,340,599,305 units or 6.52% of Barbican Capital Limited and Honeywell Group's shareholdings in FBN Holdings could not be verified by CBN
  - c. The reason for the shares that had not been verified was that Honeywell and its affiliates had not submitted contract notes and bank statements to the CBN.
32. I am aware that the reason 2,340,599,305 units or 6.52% of Barbican's holdings in FBN Holdings could not be verified was because neither Honeywell Group Limited, Barbican Capital Limited nor any of their affiliates submitted supporting contract notes and bank statements, as requested by CBN.
33. **Exhibit BKC 11b** was not immediately brought to my attention due to my busy schedule while preparing for the Board of Directors' meeting on 31<sup>st</sup> January 2024.
34. At the Board of Directors' meeting on 31<sup>st</sup> January 2024, the Unaudited Consolidated Financial Statements for the period ended December 31 2023 was approved by the Board of Directors. See Plaintiff's **Exhibit Barbican 5**
35. The approved Unaudited Consolidated Financial Statement reflected the shareholdings of Barbican Capital Limited in FBN Holding Plc as 4,886,062,743 or 13.6% of the issued share capital.
36. After the Board of Directors meeting, the CBN letter (**Exhibit BKC 11b**) was brought to my attention and I immediately forwarded it to Dr. Oba Otudeko on 6<sup>th</sup> February 2024 by email. Attached and marked **Exhibit BKC 11a** is the covering email for Exhibit BKC 11b.

37. **Exhibit BKC 11b** detailed the verified and unverified portion of Honeywell Group's shareholdings in FBN Holding Limited.
38. I am not aware that Barbican Capital limited either directly, through its proxy, Agent or any of its Director (including but not limited to Dr. Oba Otudeko) took any steps to rectify the issue by providing the outstanding documents requested by the Central Bank of Nigeria to complete the capital verification.
39. As at 25<sup>th</sup> April 2024 when the Board of Directors of FBN Holdings Plc executed the Separate and Consolidated Financial Statements for the year ended 31 December 2023, and until this day of deposing to this Counter-Affidavit, I am not aware that Barbican Capital Limited has taken steps to complete the CBN capital verification.
40. Further to **Exhibit BKC 11b**, FBN Holdings published in its audited statement the 3,110,400,619 units of shares stating that the stated shares was "as verified by CBN" – that is, FBN Holding's regulators. See Plaintiff's **Exhibit Barbican 6**
41. We, at FBN Holdings, received a letter from the Plaintiff's solicitors, Bode Olanipekun SAN of Wole Olanipekun & Co, and the letter demanded that the audited statement (**Exhibit Barbican 6**) is revised to reflect 5,387,397,202 units of shares (as stated in Central Securities and Clearing Systems - CSCS). Attached and marked **Exhibit BKC 12** is the letter dated 24<sup>th</sup> May 2024 whereby the demand was made.
42. The request of the Plaintiff's solicitor is contrary to the shares verified from the CBN capital verification exercise.
43. In my response to **Exhibit BKC 12**, I informed Barbican's solicitors that FBN Holdings is regulated by the CBN. Attached and marked **Exhibit BKC 13** is my response letter dated 28<sup>th</sup> May 2024 detailing my explanation for FBN Holdings representation in its Audited Statement.
44. I further stated in **Exhibit BKC 13** that the **CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria** requires that where a shareholder acquires more than 5% of the issued share capital of a Financial Holding Companies bought on the secondary market (Nigeria Exchange Group), the financial holding company "shall apply for approval from the CBN within seven (7) days of the acquisition". Attached and marked **Exhibit BKC 14** is the Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria which is applicable to the Defendant as a Financial Holding Company.
45. By the letter dated 31<sup>st</sup> May 2024, Barbican's solicitors stated that the purport of the CBN letter dated 29<sup>th</sup> January 2024 (**Exhibit BKC 11b**) was for FBN Holdings

to communicate to CBN (from its internal record) the quantum of shares held by Barbican Capital Limited in FBN Holdings. Attached and marked **Exhibit BKC 15** is the letter from Wole Olanipekun & Co titled "Re: Separate and Consolidated Financial Statements for the Year Ended 31 December, 2023" and dated 31<sup>st</sup> May 2024.

#### **WHY THE MOTION OUGHT NOT TO BE GRANTED**

46. I am aware that the reason the Plaintiff/Applicant's shareholding is reflected as 3,110,400,619 units in the audited account statement is because the Plaintiff/Applicant has failed/refused/neglected to provide the requested documents by CBN to CBN.
47. I am also aware that the 2,340,599,305 units or 6.52% of unverified portion of the Plaintiff/Applicant's shareholdings is not being dissipated.
48. I am aware that the 2,340,599,305 units or 6.52% of shareholdings of the Plaintiff/Applicant is awaiting verification which can only be completed when the Plaintiff/Applicant provides the documents requested by the CBN in **Exhibit BKC 10b** and **Exhibit BKC 11b**
49. I have been reliably informed by Buchi Ofulue Esq., one of the Counsel seized of this matter on 10<sup>th</sup> July 2024, via telephone call on or about 2pm that-
  - a. Where there is a right, there is a corresponding duty.
  - b. The duty of the Plaintiff in this case is to provide documents requested by CBN to CBN for the CBN capital verification.
  - c. There is no fear or apprehension that the *res* of the suit will be dissipated.
  - d. The Plaintiff had ample time (given to it by CBN) to provide documents for capital verification.
  - e. It has been 6 months since the time given by CBN lapsed.
  - f. The Plaintiff/Applicant has still not taken steps to provide the requested documents.
  - g. There is no urgency in this case.
  - h. Equity aids the vigilant
  - i. The Plaintiff having failed/refused/neglected and continue to fail/refuse/neglect to provide the documents requested by CBN for verification is what appears to create the seeming urgency in this case.
  - j. The balance of convenience is not in favour of the Plaintiff as the Plaintiff is the sole cause of the non-verification of a portion of their shareholdings.
  - k. Damages will be adequate remedy for any loss suffered by the Plaintiff/Applicant, if any.
  - l. It is least likely that there will be any irreparable damage, loss, injury or serious mischief to the Plaintiff/Applicant
  - m. The Defendant/Respondent, being a Financial Holding Company, is bound by the CBN Guidelines, Regulations, and other related sector specific laws

made pursuant to **Central Bank Act of 2004** and **Banking and Other Financial Institutions Act (as amended in 2020)**.

- n. Equity follows the law.
- o. The **CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria** made by the CBN pursuant to the **Central Bank of Nigeria Act** and **Banking and Other Financial Institutions Act** is applicable to the Defendant/Respondent
- p. Sector Specific laws are to be read in conjunction with general laws.
- q. The CBN Act (and the CBN Guideline) is to be read in conjunction with the provisions of CAMA particularly in relation to the purchase of more than 5% shares of the issued share capital of a Financial Holding Company from the secondary market.
- r. The proviso in Section 4.1 (a) of the **CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria** mandates the Financial Holding Company to apply for approval from CBN.
- s. The duty of the Financial Holding Company does not include the provision of documents for capital verification.
- t. The Defendant is bound to recognise only the portion of shares verified and recognised by its regulator - CBN.
- u. A grant of the Plaintiff/Applicant's prayers will set the Defendants on a collision course with its Regulator - CBN.
- v. A grant of the Plaintiff/Applicant's prayers will amount to a circumvention of the CBN Act.
- w. Central Bank of Nigeria is a necessary party in this suit.
- x. The questions for determination before this Court cannot be effectively determined by reason of the Non-Joinder of CBN to this action.
- y. Damages will be adequate compensation if the questions before this Court is determined in favour of the Applicant.
- z. The relief in the injunction are similar to the reliefs in the Originating Summons and a grant of the Motion on Notice will overreach the reliefs in the substantive suit.
- aa. In the circumstance and given the facts of the case, the Court is likely to order accelerated hearing rather than interlocutory injunction

50. Save and until there is a third party interest superior to that of the Plaintiff with respect to the unverified portion of the Plaintiff's shareholdings, the Defendant's interest in those shares is not under any threat of dissipation.

51. I am aware that on the 31<sup>st</sup> day of January 2024, the Central Bank of Nigeria gave a Directive to the Defendant/Respondent for the Plaintiff/Applicant to be allowed only one representative on the Defendant/Respondent's Board subject to withdrawal of all court cases. Attached and marked **Exhibit BKC 16** is the CBN letter dated 31<sup>st</sup> January 2024 directing the Defendant/Respondent to allow the Plaintiff/Applicant only one Board representation.

52. I am aware that the Plaintiff/Applicant's right in paragraph 51 above is preserved.

53. Further to Paragraph 44 above and Exhibit BKC 14, other shareholders with more than 5% of the issued share capital of the Defendant/Respondent underwent the same Capital Verification. Attached and marked **Exhibit BKC 17a and 17b** are the respective letters from CBN to other majority shareholders dated 23<sup>rd</sup> January 2024 and 9<sup>th</sup> July showing the approval of Mr. Tunde Hassan-Odukale and Mr. Femi Otedola's shareholdings in the Defendant/Respondent after the verification process.

54. Further to paragraph 53 above, I know that the Plaintiff/Applicant is not being unfairly treated.

55. Exhibits **BKC 8, BKC 8c, BKC 8d, BKC 8f, BKC 10a and BKC 11a**, herein were printed from our office computer, particulars of which are stated as follows:

**Manufacturer: HP**

**System Type: Desktop**

**Memory: 500 GB AMD Quad-Core A4- 5000 1.5GHZ Processor**

**Version: Windows 10 Pro**

And printed from the office printer:

**Manufacturer: HP**

**System Type: LaserJet pro M428f-m429f Printer**

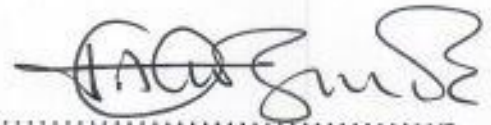
56. Further to paragraph 55 above, I know as a fact that:

- a. The said **Exhibits BKC 8, BKC 8c, BKC 8d, BKC 8f, BKC 10a and BKC 11a** were produced by the computer and printed by the printer during a period over which the computer was used regularly to store or process information for the purpose of and activities regularly carried on over that period;
- b. Over the period, information of the kind contained in the **Exhibits** were regularly supplied to the computer and printer in the ordinary course of activities;
- c. Throughout that material part of that period, the computer and printer was operating properly and in good working condition, and
- d. The information contained on the document reproduces or is derived from the information supplied to the computer and printer in the ordinary course of those activities.

57. Accordingly, it will be in the interest of justice to dismiss the Plaintiff/Applicant's Motion on Notice dated 3<sup>rd</sup> July, 2024.

58. The Plaintiff/Applicant will not be prejudiced by the refusal of the Motion on Notice dated 3<sup>rd</sup> July, 2024.

59. I depose to the foregoing in good faith and conscientiously believe same to be true in accordance with the Oaths Act.



DEPONENT

Sworn to at the Federal High Court registry, Lagos

This ... 15<sup>th</sup> day of July 2024

BEFORE ME

COMMISSIONER FOR OATHS



**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO: FHC/L/CS/1172/2024**

**BETWEEN**

**BARBICAN CAPITAL LIMITED ----- PLAINTIFF/APPLICANT**

**AND**

**FBN HOLDINGS PLC ----- DEFENDANT/RESPONDENT**

**WRITTEN ADDRESS IN SUPPORT OF THE DEFENDANT/RESPONDENT'S  
COUNTER-AFFIDAVIT IN RESPONSE TO THE MOTION ON NOTICE  
DATED 3<sup>RD</sup> JULY, 2024**

**1. INTRODUCTION**

- 1.1 The Plaintiff/Applicant has brought an application seeking among other things, an order of interlocutory injunction restraining the Respondent, whether by itself, officers, agents, servants, assigns, contracting parties, privies or anyone acting on its behalf, from interfering with the *res* of this suit in any way or manner whatsoever, including:
- a. Taking steps or further steps to deny the Plaintiff/Applicant all the benefits accruing from its membership of the Defendant/Respondent as per the 5,386,397,202 shares held by the Plaintiff/Applicant in the Defendant/Respondent or any person acting under his instruction, direction, control, or command, howsoever, from further interfering in the management by the Applicant of Arik Air Limited (in Receivership), in any way whatsoever pending the hearing and determination of this Suit.
  - b. Taking any further steps or doing any further act to reduce or diminish the shareholding of the Plaintiff/Applicant in the Defendant/Respondent.
  - c. Making any further representation that the Plaintiff/Applicant's shares in the Defendant are less than what the records of Nigeria's Central Securities Depository (Central Securities Clearing System PLC – CSCS) show.
- 1.2 In opposing the application, the Respondent filed a 59-paragraph Counter-Affidavit deposed to by Mr. Adewale Arogundade (the Company Secretary of the Defendant) with Exhibits attached.

1.3 We humbly place reliance on all the depositions contained in the Counter Affidavit, the Exhibits attached, this written address and urge your Lordship to dismiss the application of the Plaintiff/Applicant.

## **2.0 SUMMARY OF FACTS**

- 2.1. On the 7th of July 2023, the Plaintiff in accordance with the regulatory laws and policies notified the Defendant that it had acquired units of shares and therefore held a shareholding amounting to about 4,770,269,843 units of shares. This shareholding was about 13.3% of the Defendant's shareholding.
- 2.2. By the Central Bank of Nigeria (CBN) Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria (issued pursuant to the Central Bank Act of 2007 and Banking and Other Financial Institutions Act 2004), Financial Holding Companies (including the Defendant) require prior approval to be sought from CBN before the purchase of a FHC's shareholding of 5% and above. Or, in the event that the share units are purchased on the secondary market, to notify the CBN within 7 days from the date of the purchase to obtain a 'No Objection' or approval from the CBN.
- 2.3. Pursuant to the referenced CBN Guidelines, the Defendant vide a letter dated 10th of July 2023 notified the CBN of the purported new shareholding of the Plaintiff which exceeded the minimum threshold of 5% shareholding and therein sought the CBN's approval.
- 2.4. The CBN responded to the Defendant's letter and requested the Plaintiff to produce documents for the verification process of the shareholding. Sequel to the receipt of the CBN's letter, the Defendant forwarded the same to the Plaintiff and recommended that the Plaintiff should provide the requested documents relevant to the verification process.
- 2.5. The Plaintiff failed, refused and neglected to provide all the requested documents. Consequently, the CBN vide a letter dated 29th of Jan 2024 informed the Defendant that it was only able to verify only 3,110,400,619 units of shares out of the Plaintiff's then 4,770,269,843 billion shareholding due to insufficient documents. The Defendant communicated the verification status to the Plaintiff. The Plaintiff has however failed, refused and or neglected to provide the relevant documents to the CBN till date.
- 2.6. Meanwhile, prior to the CBN letter of 29th of January 2024, the Defendant published its Unaudited Financial Statement for the year ended 2023 in December 2023. Therein, it captured the Plaintiff's shareholding to be 4,886,062,743 in accordance with data gathered from its Members' Register.
- 2.7. Further to the verification by the CBN – the Defendant's Regulator – the Defendant has published its Audited Financial Statements for the year end 2023 and its Unaudited Financial Statements for Q1 2024. As a regulated entity, the Defendant revised the stated Plaintiff's shareholding to be in accordance with the verified shareholding by CBN.
- 2.8. Rather than regularise its status with the CBN by providing relevant documents to the CBN necessary for the verification of its unverified shareholding, the Plaintiff has instituted this suit in a bid to activate machinery of justice to compel the Defendant to defy its regulator, due process, regulatory laws and policies by

mandating it to recognise all of the Plaintiff's purported shareholding obtained without CBN's approval which as at the time of filing the suit stood to the tune of about 5,397,409,262 billion units.

### 3.0 ISSUES FOR DETERMINATION

3.1 My Lord, the sole issue for determination is:

*Whether having regards to the facts and circumstances of this case, it will be in the interest of justice to grant the Applicant's application for interlocutory injunction dated the 3<sup>rd</sup> day of July, 2024.*

### 4.0 LEGAL ARGUMENT IN RESPECT OF THE ISSUE

4.1 It is well established by statute and case law that this Court has the discretionary powers to grant an interlocutory injunction to preserve the *res* in a dispute before the Court pending the determination of the substantive suit. **Section 13(1) of the Federal High Court Act** provides that "the Court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do" [Emphasis ours].

4.2 In line with this section, the Supreme Court has held that an interlocutory injunction is an equitable relief which is not granted as a matter of course but at the discretion of the Court. This discretion must be exercised judiciously and judicially. See **ABOSELDEHYDE LABORATORIES PLC v. UNION MERCHANT BANK LTD & ANOR (2013) LPELR-20180(SC)**. Like all other judicial discretions, the Court must take into consideration all the facts and circumstances of each and every case. see **FALOMO v. BANIGBE & ORS (1998) LPELR-1237(SC)**

### NON-JOINDER OF A NECESSARY PARTY

4.3 My Lord, it is trite law that a necessary party is someone whose presence is essential for the effectual and complete determination of the issues before the Court. It is a party, in the absence of whom the claim cannot be effectually and completely determined. See: **NNN Ltd. v. Ademola (1992) 6 NWLR (Pt. 507) 70 at 83.**

4.4 My Lord, the facts of this case is straightforward. As seen in paragraph 6 of the Counter-Affidavit, the Defendant/Respondent is regulated by the Central Bank of Nigeria and the sale of the Defendant/Respondent's shares is regulated by **Companies and Allied Matters Act 2020** as well as the **Central Bank of Nigeria Act 2007** and the **Banking and Other Financial Institutions Act 2004** under which the **Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria** in 2014 - Exhibit BKC 14, was made.

4.5 Section 4.1 (a) of Exhibit BKC 14 is reproduced hereunder for ease of reference:

*Prior approval of the CBN shall be obtained for any shareholding of 5.0 per cent and above or any change in ownership which results in change in control of a financial holding company. Provided that where such shares are acquired through the secondary market, the financial holding company shall apply for approval from the CBN within seven (7) days of the acquisition [emphasis ours]*

- 4.6 It is in compliance with Section 4.1 (a) above that the Defendant/Respondent wrote to CBN to seek approval which formed the factual basis of the Defendant/Respondent's Depositions.
- 4.7 To this extent, the recognition or verification of shares by the Defendant/Respondent is predicated on the recognition and verification of shares by the Central Bank of Nigeria.
- 4.8 This, my Lord, undoubtedly makes the Central Bank of Nigeria a necessary party without which this Application for injunction and the issues for determination (and questions to be resolved) in the substantive suit cannot be effectively determined.
- 4.9 Indeed, any determination in this case either in this application or the substantive suit without the Central Bank of Nigeria as a party would be setting the Defendant/Respondent on a collision course with its regulator – CBN.

#### **THE NEED FOR HOLISTIC VIEW OF APPLICABLE LAWS**

- 4.10 It is trite law that sector specific laws are to be read in conjunction with the general law.
- 4.11 My Lord, the Plaintiff/Applicant's heavily relied on **Companies and Allied Matters Act 2020** in their submissions. However, their position does not take into cognisance the sector specific laws such as the **Central Bank of Nigeria Act of 2007** and **Banking and Other Financial Institutions Act 2004** pursuant to which the Central Bank of Nigeria issued the **Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria in 2014**.
- 4.12 Specifically Section 4.1 (a) of the **Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria in 2014** provides that:

*Prior approval of the CBN shall be obtained for any shareholding of 5.0 per cent and above or any change in ownership which results in change in control of a financial holding company. Provided that where such shares are acquired through the secondary market, the financial holding company shall apply for approval from the CBN within seven (7) days of the acquisition [emphasis ours]*

- 4.13 Pursuant to the sector specific law above, the Defendant/Respondent was mandated by law to seek approval from the CBN. Indeed, the requirement to seek approval from CBN in such instance suggests that merely purchasing shares on the floor of the secondary market does not complete the share acquisition process as provided in the **Companies and Allied Matters Act 2020**.
- 4.14 This Honourable Court can see that there were engagements between the Plaintiff/Applicant, through the Defendant/Respondent, to the Central Bank of Nigeria. See **Exhibits BKC 1 to Exhibit BKC 11**.
- 4.15 The purpose of this engagement was for the CBN to conduct its Capital Verification to validate the shareholdings and source of capital used by the Plaintiff/Applicant, its affiliate companies to purchase the shares in the Defendant/Respondent.
- 4.16 Specifically, it can be seen from **Exhibits BKC 11b** that the reason the CBN only verified 3,110,400,619 units of shares or 8.67% (out of the 15.19%) is because the Plaintiff/Applicant's failed, refused and or neglected submit the documents requested by CBN for the verification process.

#### **ON THE CONDITIONS PRECEDENTS FOR THE GRANT OF AN INTERLOCUTORY APPLICATION**

- 4.17 Contrary to the submission of the Plaintiff/Applicant as regards satisfying the conditions precedent to the grant of an injunction in an interlocutory application, as succinctly stated in plethora of Judicial authorities including the Supreme Court in **Obeya Memorial Hospital v. A.G. Federation (1987) 3 NWLR (Pt.60) 325 at 337**, we submit that the Plaintiff/Applicant has failed to meet any of the conditions precedent in the circumstances of this case.
- 4.18 My Lord, in **Obeya Memorial Hospital v. A.G. Federation (Supra)**, the apex Court has highlighted the conditions an Applicant must fulfill before an application for interlocutory injunction could be granted, to wit:
- i. the applicant must have a legal right which has been infringed or threatened;
  - ii. there must be a serious or substantial issue to be tried;
  - iii. damages will not adequately compensate for injuries;
  - iv. the balance of convenience weighs in favour of the Applicant;
  - v. the Applicant's conduct must not be reprehensible and;
  - vi. the Applicant must give a satisfactory undertaking as to damages.

**THE APPLICANT MUST HAVE A LEGAL RIGHT WHICH HAS BEEN INFRACED OR THREATENED**

- 4.19 My Lord, the Plaintiff/Applicant has no legal right which has been infringed or threatened and, in any event, if the Plaintiff has a right being threatened, it is the Plaintiff/Applicant itself that threatens its own right.
- 4.20 In **AYORINDE v. AG AND COMMISSIONER FOR JUSTICE, OYO STATE & ORS (1996) LPELR-685(SC)**, the Supreme Court held that before the Court considers other conditions for the grant of an interlocutory injunction, the court must consider whether the Applicant has a legal right which has been infringed or threatened.
- 4.21 It is trite law that where there is a right, there is a corresponding duty. In **Sam Fam Financiers Ltd. v. Aina [2004] 2 NWLR (Pt 857) 297 @ 304**, the Court held on the Relationship between right and duty that –  
**Where there is a right, there is a correlative duty. In the instant case, the appellant had a right to fair hearing, but he also had the duty to comply with the procedure that will give that right and this he failed to do. (P. 321, paras. A-B)**
- 4.22 The duty of the Plaintiff/Applicant in this case is to provide documents to the CBN for the purpose of capital verification.
- 4.23 This capital verification is a requirement or condition subsequent to purchase of shares from the secondary market by the Central Bank of Nigeria under the **Central Bank of Nigeria Act** and **Banking and Other Financial Institutions Act** pursuant to which the Central Bank issued the **Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria**.
- 4.24 From the factual matrix of the case as Deposed to in the Counter-Affidavit, my Lord will see that the 2,340,599,305 units of shares which the Plaintiff/Applicant seeks to derive benefits from have not been verified by the Central Bank of Nigeria. Therefore, to claim rights and benefits arising from such unverified shareholding would defeat the purpose of the very law from which the Plaintiff/Applicant itself is vested with the capacity to own shares.
- 4.25 Paragraph 31(c) of the Counter-Affidavit specifically noted that the CBN's reason (as stated in **Exhibit BKC 11b**) for not recognising this "right" which the Plaintiff/Applicant seeks to enforce by this Application is because "Honeywell Group Limited and its affiliates (including the Plaintiff/Applicant) had not submitted contract notes and bank statements to the CBN". Till date the Plaintiff/Applicant has not taken any steps to provide the requested documents.

4.26 We therefore argue vehemently that the Plaintiff/Applicant has no right that is being threatened.

**THERE MUST BE A SERIOUS OR SUBSTANTIAL ISSUE TO BE TRIED;**

4.27 My Lord, it flows from the absence of the legal right being threatened above that there is no substantial issue to be tried.

**BALANCE OF CONVENIENCE**

4.28 My Lord, the basis of the dispute is contractual in nature and the alleged non-performance of the Defendant/Respondent is a direct consequence of the Plaintiff/Applicant's failure to present the documents requested by CBN. See Paragraph 31(c) of the Counter-Affidavit in response to the Motion on Notice.

4.29 Whilst it is noted that the Plaintiff/Applicant argues that there is no adverse claim to the unverified 2,340,599,305 units of shares of its shareholdings in the Defendant/Respondent, it does not *ipso facto* tilt the balance of convenience in favour of the Plaintiff/Applicant.

4.30 The legal requirement of balance of convenience has been held to be based on facts and not law. see **FLORENCE OWOLABI ENTERPRISES LTD v. WEMA BANK PLC (2011) LPELR-4168(CA)**. We therefore crave this Honourable Court's indulgence to run through some facts as deposed to in the Counter-Affidavit in response to the Motion on Notice.

4.31 Paragraph 31(c) of the Counter-Affidavit specifically noted that the CBN's reason, as stated in Exhibit BKC 11b, for this is because "Honeywell Group Limited and its affiliates (including the Plaintiff/Applicant) had not submitted contract notes and bank statements to the CBN". Till date the Plaintiff/Applicant has not taken any steps to provide the requested documents.

4.32 My Lord, in **Exhibit BKC 12**, the Plaintiff/Applicant's solicitor demanded that the Defendant/Respondent communicate (from its own records) the quantum of shares owned by the Plaintiff/Respondent to CBN.

4.33 This is unusual and obliging the Plaintiff/Applicant's demand would not *ipso facto* warrant the verification of the unverified shares. More so, merely providing counter records to the CBN in fulfilment of the requirements for CBN's Capital Verification automatically defeats the entire purpose of the CBN's exercise.

4.34 Furthermore, in **Exhibit BKC 12**, the Plaintiff/Applicant suggested that the documents required by the CBN were to be provided by the Defendant/Respondent. This cannot be farther from the truth as **Exhibits BKC 10b and BKC 11b** expressly stated (and I reproduce hereunder for ease of reference):

*Please recall that at the last meeting on December 21 2023, it was resolved amongst other **that the shareholders of FBN Holdings submit bank statement of accounts, contract notes and CSCS statements to enable the CBN conclude the Capital Verification of their shares.** See **Exhibit BKC 10b***

*However, we were unable to verify 2,340,599,305 units or 6.52% of its holdings in FBN Holdco, as supporting contract notes and bank statements were not submitted. See **Exhibit BKC 11b***

4.35 Till date, the Plaintiff/Applicant have not provided the outstanding documents required for the CBN's Capital Verification.

4.36 My Lord, considering the above, it becomes obvious that the Plaintiff/Applicant's application for interlocutory injunction is frivolous and vexatious as the Plaintiff/Applicant's non-disclosure or failure to meet the Central Bank's request is the reason for the non-verification or recognition of the rights it claims to want to assert and preserve by the orders of this Honourable Court of Justice.

4.37 My Lord, the effect of granting the Plaintiff/Applicant's Application would be to tilt the balance of convenience against the Defendant/Respondent who have no fault.

#### **DAMAGE IS ADEQUATE REMEDY**

4.38 My noble Lord, it is the law that where damages will be adequate remedy, the court will not grant an Application for injunction.

4.39 In **AYORINDE v. AG AND COMMISSIONER FOR JUSTICE, OYO STATE & ORS (1996) LPELR-685(SC)**, the Supreme Court held that

*"Where damages will be adequate remedy and the defendant would be in a financial position to pay the damages, interlocutory injunction will not be granted even if the plaintiff's claim is shown to be strong at the stage of making the application for the grant of the interlocutory injunction. On the other hand, where damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether should the defendant succeed at the trial he would be sufficiently compensated under an undertaking to be given by the plaintiff as to damages for the loss the defendant would have sustained by reason of the granting of the application for interlocutory injunction." Per MUHAMMADU LAWAL UWAIS, JSC (Pp 16 - 17 Paras F - C)*

4.40 In this instant case, it can be gleaned from **Exhibit BKC 16** that the Central Bank of Nigeria granted equitable Board representation to persons with significant control (including the Plaintiff/Applicant) in the Defendant/Respondent. For avoidance of doubt, a person with significant control is a person with up to 5% and more unit of share out of the issued share capital of the Financial Holding Company.

- 4.41 This goes to mean that the verified 8.67% of shares qualifies the Plaintiff/Applicant for a seat on the Board of Directors in the Defendant/Respondent.
- 4.42 The effect of the above is that the Plaintiff/Applicant's rights is preserved and any other incidental right with regards to the unverified portion of shares can be remedied by damages.

#### **INTERLOCUTORY ISSUES OVERLAPPING WITH SUBSTANTIVE ISSUES**

- 4.43 We submit that the primary issue to be determined in this motion for interlocutory injunction is the same as the primary issue in the substantive suit before this court. The question in dispute and therefore the question to be determined is whether or not Defendant/Respondent has the capacity to recognise portion of shares that remains unverified by its regulator –Central Bank of Nigeria.
- 4.44 We submit that the issues for determination cannot be resolved without determining what the Defendant actually has the capacity to recognise portion of shares that remains unverified by its regulators. We refer the Court to the decision in **Haladu v. Access Bank (2021) 13 NWLR [Pt 1794] 434 at 467** where it was held:

**“The fact that the issue for determination in a substantive matter overlaps into the interlocutory application is not a license for a trial court to pronounce on such an issue at the interlocutory stage. It should not. The option open to the trial court is to refuse the application for interlocutory injunction and order for hearing of the substantive matter.”**

- 4.45 We urge this Honourable Court to refrain from deciding substantive issues at the interlocutory stage and refuse the present application.

#### **ACCELERATED HEARING RATHER THAN GRANT INTERLOCUTORY**

- 4.46. In the circumstance of the above, we urge this Honourable Court to refuse the interlocutory injunction and make an order for accelerated hearing.
- 4.47. In **Okomo v. Umoetuk [2004] 10 NWLR (Pt. 882) 526 @531**, the court considered when an order to accelerate hearing should be made instead of considering application for interlocutory injunction. The Court held that -

The proper order a trial court should make in a suit where pleadings have been filed, and where the facts deposed in respect of an application for interlocutory injunction filed in the suit relate and touch on the substantive issue in the suit, is

an order for accelerated hearing of the suit so that the suit can be determined once and for all. In the instant case, the trial court ought to have ordered an accelerated hearing of the case and disposed of the suit instead of prejudging the issue in the substantive suit in the course of determining the respondents' interlocutory injunction. (P. 91, paras. E-H)

- 4.48. Considering the facts of this case, we urge your lordship to dismiss the Plaintiff/Applicant's application for Injunction and rather order accelerated hearing in the substantive suit.

#### **THE GRANT OF INJUNCTION RUN CONTRARY TO THE PRINCIPLES OF EQUITY**

- 4.49. In any event, my Lord, an Injunctive relief is an equitable relief which must align with the principles of equity.
- 4.50. My Lord, it was held in **PDP & ORS v. EZEONWUKA & ANOR (2017) LPELR-42563(SC)** that "equity, acting *in personam*, would not allow a party to benefit from his own iniquity. It insists that whoever comes to it or justice must do justice, and must not come to the temple of justice with dirty hands." Per EJEMBI EKO, JSC (Pp 105 - 105 Paras B - C)
- 4.51. My Noble Lord, the Plaintiff/Applicant has not done justice, yet seeks justice by way of an injunctive relief from the custodian of Justice. Equity forbids it.
- 4.52. In the case of **DUROJAIYE v. FBN PLC (2022) LPELR-58600(CA)**, the Court of Appeal held, while quoting with permission, the Supreme Court as follows:
- "Like I said earlier or in this judgment, equity helps the vigilant not the indolent. In **A.G. RIVERS STATE VS. UDE (2006) LPELR 626 MUSTAPHER JUSTICE SUPREME COURT** (as he then was) held: "It is elementary law that the rules or principles of equity do not assist an indolent party who fails to pursue his right diligently and within a reasonable time. Where this happens, the Courts regard such delay or indolence of the party either as fatal to his case or as amounting to a waiver of his right under the maxim that equity helps only the vigilant."
- 4.53. In applying this principle to this case, I refer your Lordship to paragraphs 28, 29, 31, 32, 38 and 39 of the Counter-Affidavit from which my Lord will see that it is the failure of the Applicant to provide the documents requested by Central Bank of Nigeria (CBN) that warranted the non-recognition of the portion of shares which is the basis for the Applicant's application for interlocutory injunction.
- 4.54. The Plaintiff/Applicant has also craftily avoided the sector specific law (Central Bank of Nigeria Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria) which requires verification of Shares bought in the

Secondary market (Nigeria Exchange) in seeking the equitable relief from this Court.

4.55. It is without doubt, we submit, that it will be oppressive, unjust and overreaching to grant the reliefs sought by the Plaintiff/Applicant's application as it will amount to the Plaintiff/Applicant using the law as a tool of injustice, specifically because 100% fault is on the Plaintiff/Applicant.

4.56. More so, the contents of the Affidavit in support of the Applicant's application are misleading and, in any event, the making of the Plaintiff/Applicant. We commend your Lordship to the case of **N.I.W.A. v. S.P.D.C.N. Ltd. (2008) 13 NWLR (Pt. 1103) 48, S.C** where the Supreme Court held as follows:

**“An overreaching conduct is an inequitable conduct because it is not fair and just.”**

4.57. We submit that the grant of the Application for Injunction will set the Defendant/Respondent on a collision course with its regulators who are themselves Necessary Parties for the determination of the questions in the substantive suit, but for reasons best known to the Plaintiff/Applicant have not been joined as Parties.

4.58. Finally, Equity is Equality and as can be seen in **Exhibit BKC 17a & b**, other shareholders with more than 5% of the issued share capital of the Defendant/Respondent also had their shares verified and approved by the CBN. Consequently, we urge this Honourable Court to dismiss the Plaintiff/Applicant application for injunction as it seeks for the Plaintiff/Applicant to be treated above the law.

4.59. Accordingly, we urge this Honourable Court to grant an Order of Accelerated hearing rather than the Interlocutory Injunction for the reasons contained in the arguments above.

#### 4.0 CONCLUSION

4.1 In view of the above argument and the authorities cited, we submit that the facts of this case are such that the Court will grant accelerated hearing rather than interlocutory injunction and we urge this Honourable Court to so-hold.

4.2 We are most obliged.

Dated this 15<sup>TH</sup> day of JULY 2024



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