**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE ABUJA JUDICIAL DIVISION HOLDING AT**

**ABUJA ON FRIDAY THE 9THDAY Of JANUARY,2009**

**BEFEORE THE HON.JUSTICE A.BELLO**

**JUDGE**

SUIT NO.:FHC/ABJ/C8/439/2005

BETWEEN:

PROF. (SENATOR) DAVID IORNEM…………………….PLAINTIFF

AND

NATIONAL UNIVERSITIESCOMMISSION……………DEFENDANT

Plaintiff is present. Defendant absent

M.T.Assah, Esq.for the plaintiff

WemimoOlorunfemi holding briefs of BabajideOladipoEsq. for the Defendant

**JUDGMENT**

This suit was commenced by Originating summons dated the 30th of August, 2005 but filed on the 31st day of August, 2005.

The Plaintiff is seeking the determination of the following questions:

1. Whether on proper and calm interpretation of section 4(1) of National Universities Commission act, LFN Cap 283 1990, the functions of the National Universities Commission extend to instruction of Consultancy agreement or relationships between the plaintiff(Educational Consultancy) and a student wanting to enrol or enrolled on a Distance Learning Programme of St Clements University, Commonwealth Open University, Herriot-Watt University,University of London External Degrees or any other university in the world?
2. Whether on interpretation of section 4 (1) of the National Universities Commission Act, cap 283 LFN, 1990, the functions of the National Universities Commission extend to the regulation of Consultancy agreement between the plaintiff, Consultant and foreign Universities for the purposes of recruiting Nigerian students who wish to study in St Clements University or any other foreign University.
3. Whether the consultancy extend to regulation of consultant and St Clements University or any other foreign University to recruit students for St Clements University or any foreign University to recruit trained by the St Clements University or any other foreign University and issued with Certificates of St. Clements University or any other foreign trained University amounts to establishing an illegal offshore degree programme contrary to the Education ( National Minimum Standards and Establishment of Institutions) (Amendment) degree 1993?
4. Whether on the clear interpretation of section 1(2) and paragraph 5(1) –(3), the schedule to the National University Commission Act Cap 283 the LFN 1990 the investigation of the activities of the Plaintiff by an NUC investigation of the activities of the plaintiff by an NUC investigative team of two, led by Prof I.I.Uva, a Director with National Universities Commission, neither of the investigative team member of the commission was proper and legal?
5. Whether or not the acts of NUC of making decisions on the findings of the investigative team as contained in the NUC Bulletin of Monday, August 29th, 2005 VOl. 4 No. 35 without providing opportunity to the plaintiff to make representatives to the defendant on those findings before making the said decisions is a violation of the fundamental Right of the plaintive as guaranteed under section 36(1)-(3) of the 1999 Constitution of the federal Republic of Nigeria.
6. Whether or not the decision of the plaintiff to recruit candidates for distance learning programmes run by foreign Universities or full-time programmes in their country amounts to running foreign universities’ distance learning or full-time programmes in Nigeria?
7. Whether or not NUC has power under the law to prevent Nigerians from distance learning programmes offered by foreign Universities?
8. Whether or not on a proper interpretation of section 39(1) of the 1999 constitution, the decision of the defendant to close down the office of the plaintiff and to prevent the plaintiff from rendering professional and consultancy services to his clients amounts to a violation of the rights to freedom of expression of the plaintiff?
9. Whether or not the defendant has powers under the provision of section 4(1) of the National Universities Commission Act LFN Cap 283, 1990, to stop a Nigerian from providing information, advice or consultancy to any individual, student or organisation seeking to learn through Open Distance Education provided by any foreign University as is done by the plaintiff in this case?

Upon the determination of these questions, the plaintiff claims the following reliefs:

1. A declaration that the Defendants’ functions under the law does not extend to regulation of consultancy agreement or relationship between the plaintiff (Educational Consultancy) and a student wanting to enrol or enrolled on a distance learning programme of St Clements University, Common Wealth Open University, Heriot-Watt University, Edinburgh, University of London External Degrees, or any other University as is done by the plaintiff in this case.
2. A declaration that the defendant has no power under section 4(1) of the NUC Act to regulate consultancy agreements between the plaintiff and a foreign University for the purpose of recruiting students who wish to study in St Clements University or any other foreign University.
3. A declaration that the consultancy arrangement between the plaintiff and the (Consultant) and St Clements University or any other foreign university to be trained by St Clements University does not amount to establishing an illegal University degree programme contrary to education (National Minimum Standards and Establishment of Institutions (Amendment degree of 1993)
4. A declaration that the investigative team set up by the Defendant to investigate the activities of the plaintiff is illegal and findings by the panel are null and void, the investigative panel, not being properly constituted.
5. A declaration that the act of the defendant of making decisions on the findings of the investigative team as contained in the NUC Monday memo of August 29th, 2005 without providing opportunity to the plaintiff to make representations to the Defendant on those findings is a flagrant violation of the right of fair hearing of the plaintiff as guaranteed under section 26(1)-(3) of the 1999 Constitution.
6. A declaration that all decisions of the defendant taken in violation of the fundamental rights to fair hearing of the plaintiff are null and void and of no effect.
7. A declaration that the process followed by NUC in this matter is vitiated by bias, bad faith and failure to observe due process.
8. An order of injunction restraining the defendant, their servant, agents or privies from taking any action or steps with respect to the findings as contained in Monday memo of NUC office of the Executive Secretary of August 29th, 2005 as it affects the plaintiff.
9. An order of injunction restraining the Defendant restraining the Defendant, their servants, agents or privies from placing in any newspapers as regards the subject of this suit or writing to anybody, describing the activities of the Plaintiff as illegal.
10. A declaration that the decision of the defendant has no powers under the office of the plaintiff and to prevent the Plaintiff from rendering professional and consultancy services to his clients amounts to a violation of the rights to freedom of expression of the Plaintiff.
11. A declaration that the Defendant has no powers under the provision of section 4(1) of the National University Commission Act, LFN Cap 283 1990, to stop a Nigerian from providing information, advice or consultancy to any individual, student or any foreign University as is done by the Plaintiff.
12. Any further order or orders as the Honourable Court may deem fit to make in the circumstance of this application.

The ground upon which the originating summons is predicted as spelled out in the body of the summons as follows:

1. That the Defendants functions under the law those not extend to regulation of consultancy agreement or relationships between the Plaintiff (educational consultant) and a student wanting to enrol or enrolled on a distance learning programme of St. Clements University, Common Wealth Open University, eriot-watt University, Edinburgh University of London External Degrees, London Training and Development Centre, Kings Institute London Training and Development Centre, Kings Institute London or any other University in the world.
2. That the Defendant has no powers to regulate a consultancy arrangement between the plaintiff and St. Clements University or any other foreign University to recruit Nigerian students who wish to study in St. Clements University or any other foreign University.
3. That the consultancy arrangement between the plaintiff and St. Clements University does not amount to an illegal University.
4. That the decision of the NUC as contained in Monday memo of August 29th, 2005 violates sections 36(1) – (3) of the 1999 Constitution and are null and void.
5. The processed followed by NUC in this matter is vitiated by bias, bad faith, and failure to observe due process.
6. That the Plaintiff had been denied the right to fair hearing.
7. The decision of the Defendant to close down the office of the Plaintiff and to prevent the Plaintiff from rendering professional and consultancy services to his clients amounts to violation of the rights of freedom of expression of the Plaintiff.
8. The Defendant has no powers under the provision of section 4(1) of the National Universities Commission Act Cap. 283, 1990, to stop a Nigerian from providing information, advice or consultancy to any individual, student or organization seeking to learn through the Open distance education provided by any foreign University as is done by the Plaintiff on this case.

The originating summons is supported by a 27 paragraphed affidavit to which the Plaintiff attached exhibit A,B and C.

The Defendant in opposing the summons filed a quarter – affidavit of 40 paragraphed and attached exhibit HPA1-HPA16 to it. This prompted the Plaintiff to file a further affidavit in support of their summon of 36 paragraph and attached to it exhibit H-H10.

Pursuant to the order of my predecessor Hon Justice B.M.F.Nyako, the parties were directed to file the exchange written addresses in respect of the originating summons this was done and the addresses were subsequently was adopted before me on the 22nd of September, 2008.

The extent of the parties are the Plaintiffs eight STREMLINED WRITTEN ADREESEE dated 15th Dec, 2007 and filed in the same date and Defendant address dated 15th Dec, 2007 and filed the same date and Defendant’s ADDRESS dated 7th December, 2007 and filed on the 10th of DECEMBER, 2007. This was followed by the Plaintiff’s reply Address dated 28th January, 2008 but filed on 31/1/08 trough a motion on notice for extension of time.

In the streamlined address of the Plaintiff, the learned counsel for the Plaintiff on pages 1-3 paragraphed 1.0 to paragraph 1.5 gave a brief statement of the facts of the case as well as the claims of the Plaintiff particularly the 12 reliefs as contained in the Summons. I have from the onset reproduced those reliefs, so I do not need to do so again.

The argument canvassed on the Plaintiff revolves around the one and only issue formulated by the learned Counsel for the Plaintiff which is:

1. Whether the Plaintiff is entitled to the relishes sought on the Originating Summons.

In arguing the Summons the learned Counsel for the Plaintiff relying on the affidavits in support of the Summons and the exhibit attached thereto highlighted the statutory provisions as well as the Constitutional provisions sought by the Plaintiff to be interpreted by the Court. they comprise section 4(1) of the National Universities Commission Act Cap 283 LFN, 1990, section 1(2) of the same Act, paragraph 5(1) – (3) and 39 (1) of the 1999 Universities Commission Act, sections 36(1) – (3) and 39 (1) of the 1999 Constitution of the Federal Republic of Nigeria as well as Education (National Minimum Standards and Establishment of Institutions (Amendment) Decree 1993.

Proceeding from the premise that Defendant is a statutory body established by the National Universities Commission Act Cap 283 LFN 19990, it was submitted by the learned Counsel that section 4(1) of the Act is clear and ambiguous in its wordings and it does not empower the Defendant to regulate the relationship between the Plaintiff, a Consultant engaged by St. Clements University and other foreign Universities for the purpose of recruiting students or regulating g the relationship between the plaintiff as educational Consultant and student wishing to enrol in foreign Universities.

Counsel referred to Exhibit ‘A’ attached to the affidavit in support of the Originating Summons which he said contains all the services the Plaintiff renders and submitted that all the services do not fall under the regulatory functions of the Defendant under section 4(1) of the Defendant’s enabling Act and do not amount to the establishing of a University. He contended that these services of the Plaintiff relate to acting as Consultant to St. Clements University and the other Universities mentioned therein, for the purpose of recruiting students and the other Universities mentioned therein, for the purpose of recruiting students and other business which do not fall under the regulatory powers of the Defendant.

The learned Counsel for the Plaintiff submitted further the services rendered or not rendered by the Plaintiff as stated by him have not been disputed or contradicted by the Defendant in its counter affidavit and as such are in law deemed to have been Defendant in its counter affidavits and as such are in law deemed to have been admitted by the Defendant. I was referred to the case of UNI BIZ NIGERIA LTD .V. BANK (CREDIT LYON) NIGERIA LIMITED 4 SCNJ 202 PER NIKI TOBI JSC. He drew the attention of the court to exhibits D1 and D2 mentioned in paragraph 6 of the Plaintiffs further affidavit which he said, are the agreements between the plaintiff and London Training and Development Centre and Ludwigshafen University of Applied Sciences and submitted that in these exhibits, all that the plaintiff is mandated to do and does on behalf of these Universities is to recruit students. So also exhibit ‘F’ attached to the further affidavit in support of the Summons which is a reaction of the Defendant’s exhibits HPA 5, expressly states what the plaintiff is mandated to do and does for St. Clements University as averred in paragraph 3. He referred to exhibits HPA 14, HPA 15 and HPA 16 attached to the counter affidavit of the Defendant which contains admission forms the plaintiff used in recruiting students on behalf of the Foreign Universities and which states the nature of studies operated by these Universities and where the Universities are established. The learned Counsel reproduced some of the Universities the Plaintiff had relationships with are Foreign Universities and that the Universities train the students he recruits on full time studies while the students travel to those countries to study there. He referred to exhibit ‘A’ attached to the affidavit in support of the summons and submitted that the Defendant being aware of this fact that plaintiff only recruits students for the full time programme of these Universities to be studied in the countries the universities are established, still went ahead and issued exhibits HPA 7, HPA 10 and HPA 11 and wrongly interpreted recruiting students to go and study in these countries as running and awarding offshore academic qualifications in Nigeria consequently closed the office of the plaintiff as per exhibit ‘B’ to the counter-affidavit. As regards St. Clements University, University of London External Degrees and Commonwealth Open University, he said, these are run open distance education and have no training centre or campus in Nigeria as averred in paragraphs 3 and exhibit ‘G’ to counter affidavit.

The learned Counsel for the plaintiff submitted further that section 4(1) of the National Universities Commission Act which states the functions and relationship between the plaintiff and the students wanting to enroll or enrolled on a distance learning programme of St. Clements University, Commonwealth not extend to regulation of consultancy agreement between plaintiff and any foreign University for the purpose of recruiting students.

It was the further contention of the plaintiff’s Counsel that throughout the length and breadth of section 4(1) of the enabling Act of the Defendant, there is no mention of foreign University. The powers of the Defendant are therefore restricted to only University established in Nigeria. Nor is the Defendant authorized to prevent private enterprises or consultants like the plaintiff to recruit students on behalf of the foreign Universities, in other words from the clear wordings of section 4(1) the intention of the legislation is that the Defendant should regulate only Universities established in Nigeria and the Defendant is not empowered to stop a consultant from entering into an agreement with the University for the purpose of recruiting students. That there is no law prohibiting Nigerians from enrolling in Open Distance Learning programmes of foreign Universities nor is there any law prohibiting the plaintiff from entering into consultancy agreement between a foreign University and serving as a consultant to students who want to enrol on the programmes of foreign Universities. That despite the plaintiff’s challenge on the Defendant in paragraphs 20 and 21 of the affidavit in support of the originating Summons to point out such law, the Defendant has not done so.

The learned Counsel argued further that the Defendant lacks the authority to act and prevent the plaintiff, a consultant, from existing hid right and practice his business. The law he said, is clear and unambiguous that words used in a statute must be giving effects without responding to intrinsic or external aid where a statute which seeks to encroach on the right of a subject whether as regards personal or proprietary rights are to be construed as penal laws. He cited the case of OKOTIE EBO .V. EBI OWO MANAGER (2005) ALL FWLR (PT 2241) 277 at 310 paras B-E per EDOZIE JSC. He posited that the enabling Act of the Defendant and the Education) National Minimum Standards and Establishment of Institutions (Amendment) Decree of 1993 relied upon by the Defendant do not prohibit the activities of the plaintiff.

He referred to exhibit HPA 13, relied upon by the Defendant which it says empowers her to stop the plaintiff from running programmes leading to award of o interpret degrees of Foreign Universities as per averment in paragraphs 30 and 31 of the Counter-affidavit and submitted that the plaintiff having denied the fact that he runs programme of any foreign University, exhibit HPA 13 does not apply. That in any event, exhibit HPA 13 is not a law duly passed in Nigeria by the combined effects of sections4, 315 of the 1999 Constitution of the Federal Republic of Nigeria. The document is a mere policy, directive or recommendations which are not equivalent to legislation. Counsel cited the case of MRS EVENGELINE FOMBO V. RIVERS STAATE HOUSING AND PROPERTY DEVEKLOPMENT AUTHORITY & ANOR. (2005) 5 SCNJ 213 at 218. The learned Counsel submitted further that the only reason for the acts of the Defendants against the plaintiff is as shown in paragraphed 18 of the affidavit in support and exhibit ‘F’ to the further affidavit, which is political. The court was urge to interpret section 4(1) of the National Universities Commission Act strictly and answer questions 1 and 2, raised for determination in the originating summons, in the negative and hold that the Defendants functions under the law does not extend to regulation of consultancy agreement or relationship between plaintiff (Educational Consultant and a student wanting to enrol and enrolled on distance learning of St. Clements University , Commonwealth Open University, Herriot-Watt, University of London external degrees, London Training and Developing Centre or any other University in the world. The court was also urged based on the interpretation of section (1) of the National Universities Commission Act to answer questions 6 in the negative and to hold that the decision of the plaintiff to recruit candidate for distance learning programme in Nigeria .the court was similarly urged to answer questions 7 and 9 in the negative and to hold that, the Defendant has no powers under the law to prevent Nigerians from taking advantage of distance learning programmes offered by foreign universities and the Defendant has no powers under section 4(1) of the National Universities Commission Act to stop a Nigerian from providing information ,advice or consultancy to any individual student or organization seeking to learn through Open distance education provided by any foreign University as is done by the plaintiff. Even if it amounts to running foreign Universities degree programme in Nigeria .the law does not forbid it .That by the available evidence ,the plaintiff has not authorized by any other law to regulate or close down a consultancy firm that acts as agent of any foreign University for purpose of recruiting students and therefore the acts of the plaintiff are not covered neither were they intended to be covered by the Education (National Minimum Standard and Establishment of Institutions)Decree 1993. The learned Counsel for the plaintiff urged the court to hold that the consultancy agreement between the plaintiff and St.Clements University or any other foreign University does not amount to establishing an illegal offshore Degree programme, contrary to the Education (National Minimum standards and Establishment of Institutions) Amendment Decree 1993. The learned counsel submitted in the alternative but without conceding ,that the Defendant has powers to regulate the activities of the plaintiff, the exercise of the powers was irregular and not done in accordance with the law and ought to be set aside and the court was urged to so hold. Elucidating on the point the learned Counsel referred to the two man investigative team set up by the Defendant on the one hand and the provisions of section 1(2) of the National Universities Commission Act and the schedule to the Act especially paragraphs 5(1) – (2) as well as sections 2, 6 and 16 of the National Universities Commission Act and submitted that any standing or any Adhoc Committee set up by the Defendant to consider and report to the Defendant anything the Defendant is concerned with shall be presided over by a member of the Commission, as provided by paragraph 5 of the schedule to the Act. He submitted therefore that the investigative team that investigated and reported to the Secretary of the Defendant was not presided observer by a member of the Defendant and was therefore not a standing or adhoc Committee contemplated by paragraph 5(1) and (2) of the said schedule and as such the investigative Committee was not properly constituted. Therefore such Committee has no powers to consider and report on any matter with which the Commission is concerned. The learned Counsel contended that the Defendant as a body established by law must comply with the law in carting out its functions and that where the law provides for how a thing should be done, that thing cannot be done other than as provided by the law. I was referred to the case of HON SIRAJO MOHHAMED WUDIL V. ALH WAKILU ALIYU & 3 ORS (2004) ALL FWLR (PT. 236) 267 at paras C-F per OBADINA JCA.

Counsel submitted that the essence of constituting the investigative team by the Defendant was deprive the plaintiff of his right to practice as a consultant and the Defendant eventually closed down the office of the plaintiff. He submitted in effect that any law that tends to deprive the citizens their right must be strictly construed and he relied on the case of NWUDE V. CHAIRMAN EFCC 920050 ALL FWLR PT. 276 740 @ 760 paras E-G per ODILI JCA. Applying this principle to the present case, the learned Counsel submitted that in this case, the Defendant did not strictly follow the procedural requirement of the law.

He submitted further that the effect of the failure to follow prescribed procedure for depriving a person of his right as done in this case by the Defendant is for the Court to declare the act void. He cited the case of SAMUEL ADERINOLA ADEBIYE V. REV. E.S. SORINMADE AND ORS (2004) ALL FWLR (PT. 239) 933 at 948 paras A-B per AKINOLA, JCA.

The Court was urged to answer question 4 raised for determination in the Originating Summons in the negative and to hold that the investigation of the activities of the Plaintiff by the investigative team led by Prof. I.I. Uvahand Mrs.HansatuPyochiAbechi as member, both not being members of the Commission, was not proper and legal, in that it was not properly constituted, and that the acts of the Defendant are null and void.

The last issue dealt with by the learned Counsel to the Plaintiff in his address on pages

11 – 13 paragraph 3. 38-3.41 relates to fair hearing.

He submitted after the referring to the facts contained in the affidavit that the law regards implementation panel and the rule of fair hearing is very clear. That an implementation panel must not be in a haste to implement the recommendations of the investigative panel, it must ensure that the person to be affected is accorded fair hearing. Where implementation panels adopt and accepts the recommendation of an investigative panel without inviting the person affected to make presentation, the decision is held to be in contravention of the right to fair hearing. I was referred to case of ADENIYI V. GOVERNING COUNCIL, YABA COLLEGE OF TECHNOLOGY (1993) 6 NWLR (PT. 300) 467 & 464 – 465 per WALI J.S.C. And FEDERAL POLYTECHNIC MUBI V. YUSUF (1998) 1 SCNJ U. It was submitted further by the learned Council that the law is that even if the recommendations of investigate panel do not affect the civil rights and obligations of the person, acting on those recommendations by the implementation authority does, hence the need for the implementation authority to fully comply with the requirements of natural justice. He cited the case of AIYETAN V. N.I. FOR (1987) 3 NWLR (PT. 80) 25. That for the Defendant to have taken such damaging decisions as they affect the operation of the Plaintiff, it ought to have accorded him fair hearing and not having done so, the decisions of the Defendant through its Management committee as contained in exhibit HP13 are liable to be declared null and void and the Court was urged to do so for breach of the right of fair hearing guaranteed by section 36 of the 1999 Constitution. It was further contended on behalf of the Plaintiff that the Defendant is biased against the Plaintiff to continue to render such services as deposed to in paragraph 26 of the affidavit in support and exhibits H1 – H10 attached to further affidavit in support of the Original Summons

The Court was urged to answer question 5 in the Original summons in the affirmative and to hold the acts of the Defendant of making decisions on the findings of the investigation team without providing opportunity to the Plaintiff to make presentation to the Defendant on those findings is a gross violation of the fundamental rights of the Plaintiff as guaranteed by section 36 of the 1999 Constitution. The Court was also urged to grant relief’s 5, 6, 7, 8, 9 and 10 sought in the Original Summon.

The conclusion in the address is a summary of all the submissions canvassed which are highlighted above.

The Address filed on behalf of the Defendant spans 30 pages and it will be absolutely cumbersome for me to reproduce it in its details. I wish therefore endeavour to refer to the salient points made therein in reaction to the plaintiffs address.

As a preliminary issue, the learned Council for the Defendant raised objection to paragraph 4, 17, 18, 19, 20, 25, 29, 30 and exhibit ‘F’ of the Further Affidavit in support of the Original Summon on the ground that some are embarrassing, scandalous and an abuse of the judicial process. The Court was urged to strike out those paragraphs and expunge Exhibit ‘F’ or in the alternative not to attached any weight to them. He relied on section 92(L) of the Evidence Act as well as the case of TSALIBAWA V. HABIBA (19910 2 NWLR (Pt. 234) 461 at 486-481.

For the purpose of his arguments the learned Council from the Defendant formulated 6 issues for determination of the Court as follows.

1. What is the real business or services undertaken by the Plaintiff and has he proved by credible and/or admissible evidence any fact that may entitle him to a declaration of the right that he has an agreement with any foreign university to carry on the business or service undertaken by him?
2. Whether the services undertaken by the Plaintiff are those in respect of which the Defendant has the duty and/or may exercise to control or regulate?
3. Whether the two-man investigation team set up by the Defendant to investigate the activities of the Plaintiff is an illegal team?
4. Whether in shutting down the operation of the Plaintiff, the Defendant has breached his right to freedom of expression as guaranteed by section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999.
5. Whether in the exercise of its power to shut down the operation of the Plaintiff, the Defendant has breached the right of the Plaintiff to fear hearing as guaranteed by section 36(1) – (3) of the Constitution of the Federal Republic of Nigeria, 1999?
6. Whether on the totality of the facts placed before the Court the Plaintiff has established any legal right to warrant the exercise of the decision of the Court to make orders of injunction to restrain the Defendant from exercising its Statutory powers and/or performing its ministerial duty to shut down the operation of the Plaintiff

Now the arguments and submissions of the learned Council for the Defendant in respect of issues 1 raised by the Defendant above are contained on pages 7 – 16 of the Defendants address while pages 3 – 7 paragraphs 11.02 – 11.12 contain the learned Council to the Defendant referred to as the evidence of the Plaintiff, and the Evidence of the Defendant as well as more undisputed facts.

Taking the affidavit evidence adduced by the Plaintiff, the learned Council submitted inter-alia, that there are contradictions or inconsistencies in the Plaintiff’s evidence that he is a Student Recruitment Consulting for students for admission purpose only or for students wishing to enrol on distance learning programmes of foreign Universities and his evidence that he funds qualified and academic Counsellors for the students from the Nigeria Universities or wherever. He submitted on this that the letter evidence is not and can never be the business of a student recruitment consultant only.

He submitted further that the evidence of the Plaintiff that once he recruits the students for the University it is the University that train, teach and examine the students and that the students learn directly from the University either as a full time students or through distance learning method such as the internet, e-mail, etc is inconsistent with his evidence that he finds qualified and academic Councillors for the students from Nigeria Universities or wherever. By stating that the Universities that train and teach the students, the impression that the Plaintiff is trying to convey to the Court is that he is detached from the training, teaching and examination of the students. That if that is correct or true that the students learn by internet or through e-mail from the foreign Universities, when then is the need for them to have the instruction or training of academic Councillor/Mentors/advisers from Nigerian Universities or wherever through the untiring the effort of the Plaintiff?

The learned Council for the Defendant proceeded in paragraph 11.20 – 11.36 pages 7-9 of the address to highlight what he called, “more questions left unanswered” and remarked that it is impossible to highlight all the contradictions, inconsistencies or flaws in the Plaintiff’s process aforesaid but that it suffices to say at this stage that considering the inconsistencies, contradictions and the flaws, the affidavit evidence of the Plaintiff in its entirety is unreliable and lacks probative value, and the Court should not ascribe any evidence value to the same, except such of the evidence as may lend credence to the defence of the Defendant.

In respect of the trading name of Open Learning Network employed by the Plaintiff to provide his services, it was submitted on behalf of the Defendant that there is no evidence of registration or incorporation of the same as a Corporate entity before the Court, neither is there evidence of the objects of that organization to enable the Court decide whether the Plaintiff can legitimately do the business he claims to be doing. The learned Council referred to Section 656 (1) (b) of the Companies and Allied Matters Act 199o (“CAMA”) which has repealed the registration of Business Name Act, and submitted that every individual having a place of business in Nigeria and carrying on under a business name shall be registered in the names provided under Part ‘B’ of the Act if the name does not consist of his true surname without any addition other than his true forenames or the initials thereof. He also referred to Section 657 (1) and (2) of the same Act as well as Section 667 (1) (a) of the Act which provides punishment for non-compliance with Section 657 of the Act.

The Learned Council to the Defendant submitted further on this, that name “Open Learning Network” is not the true name and for the Plaintiff to carry on business in that name, the same ought to have been registered under part ‘B’ of the Act. It is therefore a contravention of the relevant section of the Act for the Plaintiff in the circumstances of this case to carry on the business of providing academic instruction in the name of Open Learning Network and the Court ought not to exercise its equitable jurisdiction to grant the declaratory relief sought by the Plaintiff as doing so will be tantamount to endorsing illegal academic operations of the Plaintiff.

On the other pseudo name of New Idea Management Consultants, the Learned Counsel, the Learned Council submitted that the evidence of registration thereof proffered by the Plaintiff as evidenced by exhibit “D” attached to the Plaintiff’s further affidavit is at variance with the name employed by the Plaintiff to operate his business in that NEW IDEA MANAGEMENT CONSULTANTS and DAVID NEW IDEA MANAGEMENT CONSULTANTS are two different entities and the Plaintiff has not offered any explanation for the variation or variance and as such exhibit “D” should be discountenanced by the Court.

From paragraphs 11.46-11.78 on pages 11-16 of the Defendant’s address, the Defendant has tried to show that the Plaintiff renders his services in Nigeria particularly Lagos, Karu, Kubwa and Kaduna and to highlight the lack of evidence to prove the Plaintiff’s relationship with the foreign Universities as well as the actual business undertaken by the Plaintiff. I need not to reproduce all what has been said on those pages except to say that the points made therein have been noted.

On the 2nd question raised by the Defendant whether the services undertaken by the Plaintiff are those in respect of which the Defendant has the duty and/or may exercise powers to control or regulate, the learned Council for the Defendant referred to the evidence of the Plaintiff on the issue, on the one hand and the evidence of the Defendant on the same issue on the other hand and the policy of the Federal Government on Degree awarded by foreign Universities and submitted that policy, the Federal Government does not recognize degrees and other certificates awarded by foreign universities, irrespective of whether or not the foreign institutions which they are affiliated are accredited. Furthermore, he argued, the Defendant has the ministerial duty to take necessary measures to stop the proliferation of non-government institutions, which run degree programmes leading to the award of Degrees of foreign Universities. That the Plaintiff has contravened the aforementioned policy of the Federal Government and in the circumstances, the Defendant has the duty by virtue of section 22(1) of the Education Act, 1985 to shut down the operation of the Plaintiff and that the Defendant before shutting down of the Plaintiff’s operation had complied with the requirement of the said section by giving the Plaintiff notice and opportunity to make representations to the Defendant.

It was the further contention of the Defendant that the Plaintiff’s programmes were being run in disregard of Defendant’s standards. The learned Council to the Defendant enumerated five instances to illustrate the point that the Plaintiff and his foreign collaborators have trivialized the standard of University Education in Nigeria, which he said, no responsible Government should sit down pretty and etch the Plaintiff carries on his business in the manner he was doing. The details of the submissions are on pages 18-20 of the address paragraphs 12.10 – 12.16

Canvassing further arguments, the learned Counsel for the Defendant submitted that under the Education Act 1985, section 10(1) in particular empowers the Defendant to lay down minimum standards for all Universities and other institutions of higher learning in Nigeria and the accreditation of their degrees and other academic awards. See also section 11 of the same Act. He submitted further that the Education Act has been enacted in consequences of the lacuna pointed out by the Supreme Court in the case of BASIL UKAEGBU V. A. G. IMO STATE (1983) 1 SCNLR 212 at 228-230 WHERE HE SAID THE APEX Court endorsed the powers of the National Assembly to make laws for the regulation of University Education throughout the Federation by virtue of item L of the concurrent Legislative list in part II of the second schedule to the Constitution of the Federal Republic of Nigeria, 1979, but proceeded to hold that there was at then no law enacted to limit or restrict the right of private individuals to establish a University. Counsel submitted therefore that the Education, etc Act 1985 is an existing law by virtue of section 315(1) of the 1999 Constitution and is deemed to be an act of the National Assembly.

The learned Counsel posited further that the Plaintiff has a duty to comply with all the provisions of the aforementioned Act before carrying on his business of academic instructor/services and there is therefore no substance in the Plaintiff’s contention that the Defendant lacks regulatory powers over his services. Counsel referred to BASIL UKAEGBU’S case (Supra) at p. 229 para D-E.

HE contended further that by virtue of section 21 (1) of the Education, etc Act, the Defendant is empowered to receive an application for the establishment of a University and section 21(3) prohibits the grant of approval to establish such an institute unless the criteria set out in the schedule to the Act has been satisfied. The section 22 of the Act empowers the defendant to shut down any institution established otherwise than in accordance with section 19, 20, 21 of the Act. That the Defendant has a duty and not discretion under section 22(1) of the Act to shut down the operation of the Plaintiff notwithstanding the use of the word “may” in section 22(1) of the Act. Counsel relied on the case of

MOKELU V. FEDERAL COMMISSIONER FOR WORKS AND HOUSING (1976) 6 E.C.S.L.R. 335 at p. 338 – 339 PerMadarikan, JSC

It was further submitted on behalf of the Defendant that the Defendant has a duty under Section 4 of the NUC Act 1974, especially section 4(1), (b), (c), (h), (1) and 2 to monitor the programmes of Universities in order to ensure that they are fully adequate to meet national needs and objectives and for the balanced and co-ordinated development of all Universities in Nigeria. Furthermore by virtue of section 4(2) of the NUC Act, 1974, the Minister may give the defendant directives of a general character or relating to particular matter with regard to the exercise by the Defendant of its functions under the Act and it shall be the duty with regard to the exercise by the Defendant of its functions under the Act and it shall be the duty of the Defendant to comply with such directives just as in exhibit HPA 13 to stop the operation of the Plaintiff. The Learned Counsel submitted in this connection that it is in connection that it is in the latter sense that the assertion was made that the Defendant has a ministerial duty. He referred to the case of FAWEHINMI V. IGP & 2 OS. (2002) 7 NWLR (pt. 767) 606 for the definition of “ministerial duty”. And also de Smith’s Judicial Review of Administrative Action, 4th Edition (1980) p.70 for more of the definition of the tem.

He submitted further that the powers of the Defendant have been exercised in the interest of public safety, public order and for the purpose of protecting the right and freedom of other persons. Counsel cited in aid section 45(1) of the 1999 Constitution and BASIL UKAEGBU’S case (Supra) at PS. 234-235 and posited that every Nigerian has a right to qualitative education and not the dubious or half-baked or substandard education dispensed by the Plaintiff in collaboration with institutions that are not recognized by the Federal Government.

In respect of relief No. 7 in the Originating Summons, The learned Counsel for the Defendant submitted that the claim is not only academic but is too wide and being one for a discretionary remedy, the court ought not to exercise its discretion to grant the relief and that the action of the Defendant in the circumstances, is not in bad faith nor vitiated by bias. The court was urged to answer question two in the affirmative and dismiss reliefs 2, 3 and 7 in the Originating Summons.

On question 3 raised by the Defendant as to whether the two-man investigative team set up by the Defendant to investigate the activities of the Plaintiff is an illegal team, the learned Counsel referred to the evidence of the Plaintiff on the one hand and that of the Defendant on the other hand relating to the issue and submitted that by virtue of paragraph 15 of the Affidavit of the Plaintiff, there is clear admission that the said Professor Ignatius Uvah and Mrs. HansatuAbechi are staff members of the Defendant and by virtue of Section 6(1) of the NUC Act, 1974 the Defendant has the power to appoint them “to assist the Executive Secretary in the exercise of his functions.” The learned Counsel referred to exhibit HPA 1 which is the report headed “Report of the Investigative visit to the New Idea Management Consultants, Consultants to St Clements University, Kaduna, and pointed out to the fact that it is an internal memorandum from Professor Ignatius Uvah to the Executive Secretary of the Defendant, which did not by any means claim to be standing or an ad-hoc Committee of the Commission, neither was the report directed to the Chairman of the Commission, neither was the report directed to the Chairman of the Commission. The learned Counsel submitted on this, that it is the Plaintiff that has chosen to designate the investigative team as a “Committee of the Commission” so as to suit his importation of paragraph 5(1) and (2)of the schedule to the NUC Act and the interpretation therefore of his taste. Submitted further that by section 5(2) of the NUC Act, the Executive Secretary shall be responsible for the execution of the policy of the defendant and as such the activities of the Defendant through the investigative team was done in pursuance of the policy of Defendant through the day-to-day running of the Commission. Counsel referred to exhibit 17 PA 13 and paragraphs 1, 2, 3, 4 and 5 of the said exhibit and submitted that the investigative team is not an illegal body, same having been constituted of members of staff of the Defendant.

It was further contended by the learned Counsel to the Defendant that the argument of the Plaintiff that the investigative team has not been presided over by a member of the Defendant and therefore the team was not properly constituted and it lacked the power to consider and report on any matter with which the Commission is concerned, lacks writ, s section 1 (2) of the NUC Act relied upon by the Plaintiff to import the provisions of the of the schedule to the Act to support his argument relates only to proceedings of the Commission and other matters mentioned therein. For the proper understanding of the import and purport of the schedule, the learned counsel submitted that paragraphs 5(1) and 9(2) of the schedule and section 2(1) of the NUC Act must be read together because to do otherwise would do violence to the entire schedule. He posited further on the point that if the aforesaid paragraphs of the schedule and sub-section of the Act are read together, it will be seen that the schedule applies only to proceedings in which the Chairman of the Defendant and other members are concerned. Therefore, the standing and a-hoc committees that the chairman of the Defendant may appoint for the purpose of reporting on any matter with which the members of the Defendant listed in section 2(1) (a) to (e) of the NUC Act are concerned. Thus section 1(2) of the Act and the schedule thereof are not applicable and all the judicial authorities/decisions referred to by the Plaintiff in paragraphs 3.36 to 3.38 in his address are not relevant.

The court was urged to answer the question in the negative and to hold that the investigative team which investigated the activities of the Plaintiff, is not a standing or an ad-hoc committee within the contemplation of paragraph 5(1) and (2) of the schedule to NUC Act, and the term need not have been presided over by any of the members of the Commission listed in section 2(1) (a), (b), (c), (d) and (e) of the NUC Act and as such the team is not an illegal body and to dismiss claim No. 4 of the Plaintiff.

Question 4 raised by the Defendant is as to whether the Defendant has breached the Plaintiff’s right to freedom of expression guaranteed by section 39(1) of the constitution of the Federal republic of Nigeria, 1999. It was submitted on behalf of the Defendant that the Plaintiff has not led any evidence whatsoever in his affidavit and further affidavit to prove in what manner the shutting down of his operation as an academic instructor has breached his constitutional right to freedom of expression nor did he formulate an issue for the determination of the court and alleged breachof his right in his issues for determination at paragraph 2 on pages 5 – 6 of his written address and has not advanced any argument on the issue. The court was urged to hold that the Plaintiff is deemed to have abandoned the question.

As an alternative argument, the learned Counsel for the Defendant submitted inter alia, that the allegation of the Plaintiff that the Defendant has breached his right to freedom of expression lacks writ, in view of the position mentioned by the Plaintiff in his affidavit evidence that his business is that of a student recruitment Consultant and nothing else. The learned counsel to the Defendant referred to the provisions of section 39 (1) of the constitution which provides that:

Every person shall be entitled to freedom of expression, Including freedom to hold opinions and to receive and in part ideas and information without interference”.

He submitted on this, that the business of a student recruitment consultant which the Plaintiff claims he is carrying on is not one that requires the holding of opinions or impartation of ideas or information as envisaged by the provisions of section 39 (1) (Supra). The learned counsel submitted further that, more than anything else, this claim of the Plaintiff justifies the contention of the Defendant that the Plaintiff has been carrying on the business of providing academic instruction especially if regard is had to the Supreme Court decision in the case of BASIL UKAEGBU’S case (Supra) while interpreting the equivalent of section 39(1) of the 1999 constitution, to the effect that the right under the section includes the right to own and establish a University.

That the effect of paragraphs 6, 8, 9, 11, 12, 13, 24, 25 off the Plaintiff’s affidavit in support of the Summons, is that the case put forward by the Plaintiff is that he has not been engaged in the business of disseminating information to students or imparting any ideas or opinions as regards academic instruction neither does ne own any medium for the exercise of the right. The Court was urged to answer this question to the negative and dismiss relief No. 10 because it lacks merit

Question 5 formulated by the defendant is whether in the exercise of its power to shut down the operation of the plaintiff, the Defendant has breached the right of the Plaintiff to fair hearing guaranteed by section 36 (1) –(3) of the Constitution.

Taking on this issue, the learned Counsel referred to the affidavit evidenced adduced by both parties and submitted that from the facts prove before the Court, the plaintiff was indeed given fair hearing because he was made aware of the allegation against him and that before taking the decision on 25th August, 2005 to shut down the operation of the Plaintiff, the Defendant considered the report of the Investigative team exhibit HPA 1, which contains the Plaintiff’s oral representation as well as his written representation in the letter dated 16th August, 2005 and all the documents supplied to the investigative team by the Plaintiff. The Defendant has not suggested that his oral and written representations were ignored by the Defendant. The Court was urged to hold that by virtue of section 151 of the Evidence Act that the Defendant considered not only the report in Exhibit HPA1 but also the written representations of the Plaintiff made in his letter dated 16th August, 2005 s well as the documents supplied to the Defendant before coming t a decision on the matter. I was referred to the case of A. K. HART V. GOVERNOR OF RIVERS STATE & 2 ORS (1976) 6 E.C.S.L.R. 421 OF 431 Per FATAYI Williams, JSC.

Proceeding from the premise that there has not been any violation of the right of the Plaintiff to a fair hearing, the learned Counsel submitted that the decision to shut down the operation of the Plaintiffs was not null and void.

The learned Counsel dismissed the allegation of the bias raised by the Plaintiff and the arguments canvassed to buttress the allegation, as most preposterous and urge the court not to ascribe any relevance and/or admissibility to paragraph 26 of the Affidavit in Support of the Summons as well as paragraphs, 20, 30, 32 and 33 of the further affidavit of the Plaintiff. The court was also urged to answer the question in the negative and dismiss claims 5, 6, and 7 in the Originating Summons.

On the 6th and last issue formulated by the Defendant whether on the totality of the facts placed before the Court the Plaintiff has established any legal right to warrant the exercise of the Court’s discretion to grant injunctive relief, the learned Counsel for the Defendant submitted that reliefs 8 and 9 in the Originating Summons relating to Orders of Injuction are consequential to the main reliefs for declarations of right and the law is that where the Plaintiff fails in his claim for the principal relief, the claim for consequential relief ought also to fail. He cited the case of RTEAN V. NURTW (1992) 2 SCNJ (Pt. 2) 251 in support of the submission. The learned Counsel posited further that it is the law that injunctions will be granted only to protect a legal right and the position of the Defendant is that the Plaintiff has not proved any legal right, the violation of which requires the protective order of Court by way of an Order of injunction.

Counsel reiterated that the Defendant has power under section 22(1) of the Education Act 1985 to shut down the operation of the Plaintiff just as it has the duty under section 4(1) (h) of the NUC Act 1974 to collate, analyse and establish information relating to University education in Nigeria and from other sources, where such information is relevant to the discharge of its functions under this Act. Furthermore, the learned Counsel reiterated the point that by virtue of section 4(2) of the NUC Act, the Defendant has the duty to comply with the directives of the Minister of Education of a general character or relating generally to particular matters, with regard to the exercise by the Defendant of its functions under the Act. The court was urged not to exercise its discretion and equitable jurisdiction to grant the remedy of injunction to restrain the performance of the Defendants’ ministerial and/or statutory duty. I was referred to the case of ADEGBENRO V. A.G. OF THE FEDERATION & 2 ORS NO.1 (1962) 2 SCNLR 38 at 45. On final note, the Court was urged to answer this question in the negative and dismiss reliefs No 8 and 9 in the originating summons.

Now the contention of the Plaintiff in his reply o points of law which is contained in paragraph 1.0 on 8.1 of the Reply Address, is that all the issues raised and argued by the Defendant in his lengthy address completely deviate from the real issues and questions which the plaintiff has submitted for the determination of the Court in Originating Summons. He proceeded to reproduce some of the questions and issues raised in the Originating Summons. I do not find it necessary to repeat the submissions made because I believe that the main address of the Plaintiff has touched on all those issues.

However, in respect of the preliminary objection raised to certain paragraphs of the Plaintiff’s affidavit, the Learned Counsel for the Plaintiff submitted that the entire argument of the Defendant in support of his preliminary objection are totally misconceived and should be discountenanced, on the ground that the defendant has failed to show that the said paragraphs i. e. paragraphs 4, 17, 18, 20, 23, 29, and 30 of the Plaintiff’s further affidavit offend any provision of the Evidence Act and as such same should be dismissed. As to exhibit HPA 13, it was the contention of the Plaintiff that the exhibit is only a ministerial directive and not a legislation in Nigeria. The court was once more urged to grant all the reliefs sought by the Plaintiff in his Originating Summons while the unreported case of MR IFENAYI CHUKWU OKONKWO V. PROF. PETER OKEBUKOLA & 3 ORS NO. FHC/EN/CS/76/2006 was cited by the plaintiff as a persuasive authority in support of Plaintiff’s case.

The above represent the summary of the arguments and submissions made on behalf of the parties as contained in their written addresses.

Let me quickly dispose of the preliminary objection raised by the learned Counsel for the Defendant to the depositions of the Plaintiff contained in paragraphs 4, 17, 18, 19, 20,23, 29, 31 and exhibit F of the further affidavit in support of the Summons which he submitted are scandalous and constitute a cheap blackmail of Professor Uvah by the Plaintiff as the said averments are not necessary for the determination of the questions raised in the Originating Summons. In these paragraphs, the Plaintiff averred as follows:

4. That as regards paragraph 3, the facts deposed to in paragraph 3 of the Counter Affidavit are manufactured by the deponent and were not obtained from either the deponent during her meeting with me on 5/8/2005 or from documents supplied from me as will be explained in the proceeding paragraphs.

17. That I know as a fact that both the Investigative Panel and the Management Committee being referred to by the Deponent in the Counter Affidavit are the instruments which Professor I. Uva Director Academic Planning and Research of the Defendant ha been using to illegally close down my office in the name of the Defendant when no proper meeting of the Defendant has been held to discuss my operations as a student Consultant for the said Universities.

18. That I know as a fact that both the Investigative Committee of Professor I. Uvah and the Deponent and the Management Committee were illegally constituted to close down my office as neither of their members is a member of the Defendant and that no meeting of the Defendant was held appointing Investigative Committee of Professor I. Uvah.

19. That exhibit HPA 5, HPA 6, HPA 7, HPA 10 and HPA 11, were not written in the interest of the public but were written by Professor I. Uvah to destroy my consulting business since I do not run or operate these institutions in Nigeria but only served as Student Recruitment Consultant for intending students of these institutions, that by actions of the Defendant through Professor I. Uvah by writing and addressing Exhibits HPA 5, HPA 6, HPA 7, HPA 8, HPA 9, HPA 10, and HPA 11 attached to the Counter Affidavit, I had to give detailed explanations to my Clients to clear my name. A copy f one of such explanations demanded from Ludwighsafen University of Applied Sciences is annexed hereto as Exhibit “F”.

20. That the reasons for closing my office by professor I. Uvah is as contained in Exhibit “F” since Nigerians have been studying by external degrees run by Foreign Universities many people such as Chief ObafemiAwolowo (Late), Prof.Chike Obi and Chief M. T. Mbu are few beneficiaries.

23. That I have not at any time awarded the degrees of any University to any person and I have challenged the Defendant, Professor I. Uvah and the Deponent of the Counter Affidavit to name just one person I have awarded degree of any University to, but the Defendant, Professor I. Uvah and the Deponent have not found any such person, as none exists.

29. That the Investigative Team and the Management Committee are illegal and have no powers to act on behalf of the Defendant, Professor I. Uvah is only using his office to destroy my consulting business because of our political differences.

31. That the defendant decided to close down my office, which is a consulting office, in bad faith, spearheaded by Professor I. Uvah who is from the same Local Government with me, and is using his office to run down my business illegally due to political differences.

Now in relief 7 contained in the Originating Summons, the Plaintiff sought for declaration that the process followed by NUC on this matter is vitiated by bias, bad faith and failure to observe due process while paragraph 18 of the Affidavit in support of the Originating Summons, he deposed to the fact that the 2-man team of the Defendant was allegedly constituted to pursue vengeance against him, So I consider the averments in paragraphs 4, 17, 18, 20, 23, 29 and 30 reproduced above as not only reaction to the Defendant’s averments contained in its Counter-Affidavit but as an attempt by the Plaintiff to provide evidence of the alleged bias and bad faith motives for the Closure of his business office. The averments of facts that do not offend any provision of the Evidence Act even if I concede that some of the expressions used by the Plaintiff such as using the word “manufactured” could have been couched in a better and refined language. The preliminary objection is therefore overruled and the Court is free to make use of any averment contained in those paragraphs reproduced above if the need to do so arises.

I now come to the determination of the Summons on the merit. Under Order 2 rule 2 of the Rules of this Court, 2000, which is one of the Rules upon which the Originating Summons is predicted, proceedings may begun by Originating Summons where:-

1. The sole or principal question at issue is , or is likely to be, one of the Construction of written law or of any instrument made under any written law, or of any deed, will, contract or other document or some, other question of law; or
2. There is unlikely to be any substantial dispute of fact.

Then Order 40 Rules 2 and 5 of the same Rules provide further:

2. A person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment may apply by Originating Summons for the determination of the question of construction for a declaration as to the right claimed”.

5. “the Court or Judge in Chambers shall not be bound to determine any such question of construction if in its or his opinion it ought not be determined on Originating Summons.

It is based on the above provisions, that the Plaintiff submitted the 9 questions for determination by the Court and sought for 11 reliefs as produced earlier form the Originating Summons. These 9 questions can only be determined based on the affidavit evidence in support thereof and where such affidavit evidence is substantially disputed, it becomes impossible for the Court to reach a fair determination of the questions so submitted. Having had the opportunity of perusing the averments of the Plaintiff as contained in the affidavit in support of the Originating Summons and the averments of the Defendant as contained in its counter affidavit as well as the Plaintiff’s averments in his further affidavit and having the benefit of previewing the submissions made in the addresses filed by the parties some of which have been highlighted in my review of the submissions, I have no doubt in my mind that there are substantial disputes of fact relating questions 1, 2, 3, 6, 8, and 9. I will illustrate this point by referring to some of the relevant averments of the parties that are in dispute. In paragraphs 1, 2, 3, 4, 5 the Plaintiff tried to establish the fact of the type of services he rendered to students as a Student Consultants. He averred as follows:-

1. That I am a Management Consultant and a Management Trainer duly accredited by the Nigerian Council for Management Development, the Federal Government Agency responsible for the accreditation trainers.
2. That my trading names are New Idea Management Consultants and Open Learning Network.
3. That can the Plaintiff in this case and I am conversant with the facts of this case
4. That I know as a fact that I operate a Consultancy service offering services to individual students wishing to enrol on Distance Learning Programmes of institutions include St Clements University, University of London or any other foreign University.
5. That I also know as a fact that I also operate a Consultancy for students who intend to enrol or are enrolled on a distance learning programme of St Clements University, University of London, or any other foreign University.

In its counter-affidavit, the Defendant countered the above averments in paragraphs 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15. I reproduce them as follows:

3. That all the facts deposed to in this counter-affidavit are from information received in the course of my meeting with the Plaintiff on 5th August, 2005, as well as from documents supplied to me by the Plaintiff on that day, unless otherwise stated.

4. That I have read the affidavit of the Plaintiff in support of the Originating Summons herein, paragraphs 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26 and 27 of which are not correct.

6. That it is correct that on 5th August, 2005, an Investigative team of the Defendant met with one David Iornem at NNDC Building, Kaduna during which the interview centred on the following:

(i) The authority under which New Idea Management Consultants (“New Idea”) operated and the approval for such operation as an educational institutions.

(ii) The relationship between New Idea and St Clements University

(iii) Mode of operation of the affiliation.

(iv) The degree programmes of the University included in the relationship.

(vi) The academic staff that service the programmes.

1. That the investigative team comprised of 2 members of staff of the Defendant led by one Professor Ignatius Uvah, Director, Department of Academic Planning and Research Department of the Defendant, the other members being myself.
2. That in carrying out the investigative exercise, the team leader and I collected information from pamphlets advertising the programmes and Universities the Plaintiff claimed to be affiliated with as well as had discussions and interview with the Plaintiff.
3. That to the best of my knowledge during the investigative visit, the plaintiff did not produce any evidence of incorporation of New Idea Management Consultants. Furthermore, and to the best of my knowledge, the Plaintiff sometimes holds himself out as operating his business in Nigeria under the name “St Clements University Consultancy Services”.

11. That furthermore, the plaintiff claimed to serve as recruitment agent for candidates wishing to pursue courses of study leading to the awards of degrees or certificates by the above named educational institutions. The Plaintiff claimed that the candidates are “recruited”, “guided” and their admission facilitated for a fee.

1. That as regards Ludwishafen University, Germany, the Plaintiff claimed that he recruit students only for the University’s Master’s Degree in Business Administration, and that the programme attracts a job position in Germany and fees are paid from the money earned during the training.
2. That an arrangement similar to that of the last mentioned University applies to Herriot-Watt University, but there is no job offer involved.

14. That the Plaintiff claimed that with respect to the London Training and Development Centre and the Kings Institute, London, the students deal directly with such institutions.

15. that with respect to St. Clements University, the Plaintiff claimed that he sources for candidates, process their admission, facilitates their learning by identifying and appointing "academic mentors/Counsellors/advisers" from students in their studies. The Plaintiff also claimed that he administers examination to students, marks them locally and forwards the final scores to St. Clements University which then awards the degree.

The Plaintiff in his further affidavit in support of the Originating Summons also responded to the averments of the Defendant with view to controverting them. I will refer to a few of the paragraphs just for illustration purposes. These are paragraphs 3 -9 of the further affidavit.

3. That paragraphs 4, 8, 9,10,11,13,15,16,19,21,22, 24,25,27,31,32,33,34,35 and 36 of the counter affidavit to the Summons are not true.

4. That as regards paragraphs 3, the facts deposed to in paragraph 3 of the counter affidavit are manufactured by the Deponents and were not obtained from either the Deponent during your meetings with me on 5/8/2005 or form documents supplied from me as be explained in the proceedings paragraphs.

5. That paragraph 4 of the counter affidavit is incorrect as the paragraph denied the true position of what transpired between me, the Deponent and the Defendant.

6. That paragraph 8 of the counter affidavit is not correct, in that I do not claim that I have an affiliation with any Universities. I only informed the Deponent of the counter-affidavit and Professor I. Uvah that I am a student Consultant for those seeking information on and admission into those Universities and also a learning methodologies. A copy of the agreement between me, London Training and Development Centre and Ludevigshafen University of Applied Science is herein exhibited as exhibit "D1" and 'D2"

7. That paragraph 9 of the counter affidavit is not correct, in that the Deponent and Professor I. Uvah did not request evidence of incorporation of New Idea Management Consultant registered with the Corporate Affairs Commission. A copy of the Certificate of Registration is herein annexed as evidence of registration and marked as exhibit “D”.

8. That paragraph 15 of the counter affidavit is no true as I do not administer examinations to students, marked them locally and forward the scores to St. Clements University who then awards Degree, or laid any such claim, but the university administrators and works all its examinations, though their own appointed Examiners and awards their degree.

9 That further to paragraph 15, I do not facilitate the learning of students, I can only find qualified and academic Counsellors for the students from Nigeria Universities or wherever, and is done as part of my consultancy with St. Clements University, the University examines and approves all course work and dissertations.

The above paragraphs of the affidavits of the parties are enough illustration that the facts upon which the Court will base a determination of question 1,2,3,6, 8 and 9 as contained in the Originating Summons and issues 1 and 2 formulated by the Defendant in its address are indeed substantially in dispute which dispute can only be resolved by oral evidence. Almost all the documents exhibited by both parties which would have assisted the Court to resolve the conflicts in the affidavit evidence are photocopies of the original which are amendable to manipulation. Many of the documents are public documents that ought to have been but have not been certified as true copies of the originals which in a normal trial will not ordinarily be admissible in evidence. I cannot therefore in the absence of oral evidence, rely solely on the comments to resolve the conflict in the affidavit evidence. Consequently, pursuant to Oder 40 rule 5 of the rules of the Court, I decline to determine questions 1,2,3,6,8 and 9 contained in the original summons.

Now question 7 is whether or not NUC has power under the law to prevent Nigerians from taking advantage of distance learning programmes offered by foreign Universities?

This question to my mind is too wide in that the present suit is not instituted by the Plaintiff on behalf of the Plaintiff as representing all Nigerians, so he could not put a claim for all Nigerians or in protection of the rights of Nigerians to take advantage of distance learning programmes offered by foreign Universities. I therefore decline to answer the questions as well. That leaves out questions 4 and 5 which to my mind are determinable by the Court. This is because they involved the interpretation of section 1(2) and paragraphs 5 (17-(3) of the schedule to the National Universities Commission Act Cap. 283 LFN, 1990, also can be found in Cap. N81 Laws of the Federation of Nigeria 2004, as well as section 36(1) – (3) of the 1999 Constitution of the Federal Republic of Nigeria and the facts in support thereof are not in dispute. At the risk of repetition I will reproduce question 4 and 5 as follows:

4. Whether on a clear interpretation of section 1(2) and paragraph 5(1) –(3) of the schedule to the National Universities Commission Act Cap 283 LFN 1990 the investigation of the activities of the Plaintiff by an NUC investigative team of two, led by Professor I. Uvah, a Director with the National Universities Commission, neither of the investigative team member being a member of the Commission was proper and legal?

5. whether or not the acts of making decisions on the findings of the investigative team as contained in the NUC Bulleting of Monday, August 29, 2005 Vol. 4 No. 35 without providing opportunity to the Plaintiff to make representation to the Defendant on those findings before making the said decisions is a violation of the fundamental Rights of the Plaintiff as guaranteed under section 36(1) – (3) of the 1999 Constitution of the Federal Republic of Nigeria?

Now there is no dispute between the parties that on 5th of August, 2005 and NUC team of two made of Professor I. Uvah as leader and one Mrs Abedu visited Plaintiff’s Kaduna office for the purpose of investigating his activities about the educational services he renders. There is also no dispute about the fact that the two man team did conduct the investigation and reported their findings and recommendations to the Executive Secretary of the NUC who in turn submitted the report to the Defendant’s Management Committee. It was also not in dispute that it was through the Management Committee that the Defendant took the decision to close down the operations of the Plaintiff.

The argument of the Plaintiff on the issue is principally to the effect that the investigative team and the Management Committee are illegal and have no powers to act on behalf of the Defendant while the Defendant contends otherwise. As a matter of fact, the learned Counsel to the Defendant in his address tried to distance the two man investigative team from the application of section 1(2) and paragraphs 5(1) – (3) of the schedule to NUC Act. His detailed submissions are contained on pages 22 – 24 of the Defendant’s address particularly in paragraphs 13.02 – 13.13. In paragraph 13.04 the learned Counsel submitted on behalf of the Defendant that by virtue of section 6(1) of the NUC Act the Defendant has power to appoint the aforesaid members of staff “to assist the Executive Secretary in the exercise of his functions”

The functions of the Executive Secretary of the Commission are clearly stated in section 5 (2) of the NUC Act as follows:

(2) the Executive Secretary shall be the Chief Executive Officer of the Commission and shall be responsible for the execution of the policy of the Commission and the day-to-day running of the affairs of the Commission.

It seems to me that all the arguments canvassed by the learned Counsel to the Defendant have avoided the real question as to who under the NUC Act has the power to appoint any team of investigation whether ad hoc or not, on matters with which the Commission is concerned particularly with respect to its functions under section 4 of the Act and the procedure for making the appointment.

Clearly section 4(1) (c) gives the Commission powers to “make such other investigation” relating to higher education as the Commission may consider necessary in the National interest”. By virtue of section 1(2) of the NUC Act, “the supplementary provisions contained in the schedule to the Act shall have effect with respect to the proceedings of the Commission and other matters mentioned therein” (underline nine).

I underlined the words “and other matters mentioned therein” to show that the submission of the Learned Counsel to the Defendant that the provisions of the schedule as a whole read together with section 1(2) of NUC Act applied only to the proceedings of the Commission cannot be correct. This is because the provision apply to other matters mentioned therein. While paragraphs 1, 2, 3 and 4 of the schedule can be rightly said to apply to the proceedings of the Commission, paragraphs 5(1) and (2) D of the schedule relied upon by the Plaintiff are concerned with the Committees the Commission may appoint and in particular by paragraphs 5(1) and (2) the Commission is empowered to appoint such number of standing and ad-hoc Committee as it thinks fit to consider and report on my matter with which the Commission is concerned and every such Committee must be presided over by a member of the Commission and not by a member of staff of the Commission. I agree with the stand point of the Plaintiff that the provision of paragraphs 5(1) and (2) apply to the situation of this case. The legal implication of the provision of paragraph 5(1) and (2) to the schedule of the NUC Act is that the Defendant can only carry out investigation concerning its function under section 4 of the act by appointing ad hoc or standing Committees of the Commission as provided under the said provisions of the schedule, which must be presided over by a member of the Commission as defined under the interpretation section of the Act to with Section 15 of NUC Act Cap N81 LFN 2004.

It is therefore my considered view and that tallies with the view of the Plaintiff that the 2 man investigative team led by or presided over by Prof. I.I. Uvah with a Mrs Hanstu P. Abechi as members having not been constituted by the Commission in accordance with paragraph 5(1) and (2) of the schedule to the NUC Act was not properly and legally constituted and therefore illegal. I answered question 4 in the originating summons in the negative in favour of the Plaintiff.

There remains question No. 5 which has already been reproduced. As I pointed out earlier, it is not in dispute that the Defendant took decision on the findings of the investigative team which led to the closure of the Plaintiff’s office in Kaduna. Having answered question 4 in the negative in favour of the Plaintiff and having held that the 2 man team is an illegal team by the provisions of NUC Act especially the schedule thereto, it follows that the findings and recommendations are also illegal. This also renders the decisions of the so called Management Committee which adopted the findings and recommendations of the investigative team, illegal, null and void.

Having come to the above conclusion, the consideration of 5th questions relating to the right of the Plaintiff to fair hearing become unnecessary. Consequent upon the determination of the 4th question in favour of the plaintiff, I grant reliefs 4 and 8 as contained in the Originating Summons. Relief 1,2,3,7, 10-11A are not granted on the ground that the Court has declined to determine the question relating to those reliefs for the reason stated in the judgments. Relief 5 is not granted in view of what I said in relating to question 5. Relief 9 has been overtaken because the Defendant had already written and sent letters out to some organizations. That Court cannot restrain a completed act.

On the whole, the Plaintiff’s case succeeds in part to the extent of the reliefs granted.

1. BELLO

JUDGE

9/1/2009

Ct: I award N10,000,00 cost to the Plaintiff against the Defendant.

Mr Assor: We are grateful for the erudite judgment. At least it has settled one of the hanging questions.

1. BELLO

JUDGE

9/1/2009

**IN THE COURT OF APPEAL**

**HOLDING AT ABUJA**

**SUIT NO. FHC/ABJ/CS/439/05**

**APPEAL NO: CA/ABJ/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/09**

**BETWEEN:**

**NATIONAL UNVERISITIES COMMISSION…………….. DEFENDANT/APPELLANT**

**AND**

**PROF. (SENATOR) DAVID IORNEM**

**(Doing business under the name and style**

**Of New Idea Management Consultants)……………………..PLAINTIFF/RESPONDED**

**NOTICE OF APPEAL**

**TAKE NOTICE** that the Defendant/Appellant being dissatisfied with the decision more particular stated in paragraph 2 of the Federal High Court sitting in Abuja contained in the judgment of Hon. Justice A. Bello dated 9th day of January 2009 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

**AND THE DEFENDANT/APPELLANT** further states that the names and addresses of the persons directly affected by the appeal are those out in paragraph 5.

2. **PART OF THE DECISION OF THE OWER COURT COMPLAINED OF**:

The aspects of the decision against which the grounds of appeal have been directed’

3. **GROUNDS OF APPEAL**

**GROUND 1**

The learned trial Judge erred in law in holding that the 2-man investigative team of the Defendant/Appellant led by Professor I.I. Uvah with Mrs Hansatu P. Abechi as member appointed to conduct investigation into the activities of the Plaintiff/Responded having not been constituted in accordance with paragraph 5(1) and (2) of the Schedule to the National University Acts 1974 was not properly constituted and was illegal.

**PARTICULARS OF ERROR OF LAW**

1. The act of investigating the activities of the Plaintiff/Respondent conducted on his behalf by the investigating team was within responsibility of the Executive Secretary in the execution of the policy of the Defendant/Respondent and/or the day to day running of the affairs of the Defendant/Respondent.
2. Under section 9(1) of the National Universities Commission Act 1974, members of the investigative team as constituted are authorized to assist of the Executive Secretary in the exercise of his functions.
3. The investigative team is not such committee as is contemplated in paragraphs 5(1) and (2) of the schedule to the National Universities Commission Act 1974 or any other provision of the said schedule.
4. The supplementary provisions contained in the schedule to the National Universities Commission Act 1974 shall have effect only with respect to proceedings of the Commission and other matters mentioned therein in which the chairman and members appointed pursuant to section 2(1) of Act are concerned, and to no other.
5. Members of the investigative team are presumed in law to have been dully appointed and entitled so to act, and the Plaintiff/Respondent has not discharge the burden on him to show otherwise.

**GROUNDS 2**

The learned trial Judge erred in law when in granting declaratory and injunctive reliefs to the Plaintiff/Respondent he failed to observed that no court of equity could properly enter judgment for the Plaintiff/Respondent for the equitable remedies of declaration and injunction.

**PARTICULARS OF ERROR OF LAW**

1. The Plaintiff/Respondent has not produced any document whatsoever to establish his trading or business names in respect of which declaration of right and injunctions were made.
2. The Plaintiff/Respondent failed to establish in the lower Court that its trading or business names in respect of which the equitable remedies were made have been incorporated under or pursuant to the Companies and Allied Matters Act 1990.
3. The Plaintiff/Respondent can only succeed on the strength of his case properly proved before the lower Court.
4. The orders of declaration and/or injunction can only be rightly made where the Plaintiff/Respondent’s claim discloses a recognizable legal right which the Plaintiff/Respondent has failed to establish in this case, in the absence of which the Court has no power to grant the claims for declaration and injunction.

**GROUND 3**

The learned trial Judge erred in law when he held as follows;

“I agree with the stand point of the plaintiff that the provisions of paragraphs 5(1) and (2) [of the schedule to the National Universities Commission Act 1974] apply to the situation of this case. The legal implication of the provision of paragraph 5(1) and (2) to the schedule of NUC Act is that the Defendant can carry out investigation concerning its functions under section 4 of the Act by appointing ad hoc or standing committees of the Commission as provided under the said provisions of the schedule, which must be presided over by a member of the commission as defined under the interpretation section of the Act, to wit, Section 15 of NUC Act Cap N81 LFN 2004”

**PARTICULARS OF ERROR**

1. The supplementary provisions relating to the Commission, etc in the schedule to the National Universities Commission Act 1974 applies only to proceedings of the Commission and the other matters mentioned therein.
2. The words “and the other matters mentioned therein” used in section 1(2) of the National Universities Commission Act 1974 mean and could only mean other matters mentioned in the said schedule to the Act.
3. The proceedings, committees and miscellaneous matters of the commission to which the schedule shall apply are limited to proceedings, committees and such matters in which the chairman and other members of the Commission are directly concerned.
4. The provisions of the schedule to the National Universities Commission Act 1974 has no application to the situation where the Executive Secretary of the commission constitutes an investigative team to report to him on a matter concerning the execution of the policy of the Commission and/or the day-to-day running of the affairs of the Commission.
5. There is nothing before the lower court to show that the investigative team constituted by the Executive Secretary was so constituted at a meeting of the commission held in accordance with paragraph 2 of the schedule to the National Universities Commission Act 1974.
6. Having declined to consider or resolve all other questions for determination formulated in the originating summons in this case, there was nothing else before the lower court to which the schedule to the NUC Act can properly be made applicable.

**GROUND 4**

The learned trial Judge erred in law holding that question no. 7 formulated by the Plaintiff/Respondent in his originating summons was “too wide in that the present suit is not instituted by Plaintiff on behalf of the plaintiff (sic) as representing all Nigerians, so he could not put a claim for all Nigerians or in protection of the rights of Nigerians to take advantage of distance learning programmes offered by foreign universities,” he failed to strike out the Plaintiff/Respondent’s relief no. 11.

**PARTICULARS OF ERRORS OF LAW**

1. The above-quoted decision being one indicating lack of *locus standi*by the Plaintiff/Respondent, the decision goes to the jurisdiction of the lower Court and denies it of jurisdiction to determine the question.
2. The proper order to be made in such a situation, therefore, was to strike out the claim based on the question for determination.

**GROUND 5**

The learned trial Judge erred in law when, after having referred in *extensor* to the substantial disputes of fact in the various affidavits filed by the parties in their relation to questions 1, 2, 3, 6, 8 and 9 of the questions for determination formulated in the Plaintiff/Respondent’s originating summons, His Lordship merely declined to determine the questions rather than strike out the corresponding reliefs altogether, that is to say reliefs 1, 2, 3, 5. 6. 10 and 11 or the originating summons itself.

**PARTICULARS OF ERROR OF LAW**

1. The learned trial Judge had inherent power and indeed the duty to make a definite pronouncement setting aside and/or striking out the aforesaid reliefs or the originating summons for not being the proper procedure for initiating the proceedings or for being incompetent.
2. All the facts for and against the originating summons decided by the learned trial Judge to be in substantial dispute are so interwoven that they are not purpose of permitting the lower Court to consider all other questions for determination formulated by the Plaintiff/Respondent in the originating summons.
3. Order 40 Rule 5 of the Federal High Court (Civil Procedure) Rules 2000 relied upon by the lower Court in declining to consider questions 1, 2, 3, 6, 8 and 9 formulated in the originating summons did not in any way inhibit the powers of the Court from setting aside and/or striking out the corresponding reliefs or the originating summons.
4. Once the lower Court has decided that there are substantial disputes of fact and the suit should not have been commenced by originating summons in respect of the aforesaid questions, then the suit has been initiated by due process of law and the lower Court lacks competence to adjudicate in the suit.

**GROUND 6**

The learned trial Judge misdirected himself in law when he held that the facts in support of questions 4 and 5 in the questions for determination formulated by the Plaintiff/Respondent are not in dispute and where therefore competent to be determined by the Court.

**PARTICULARS OF MISDIRECTION OF LAW**

1. It is manifest from paragraphs 7, 8, 12, 14, 15, and 16 of the affidavit in support of the originating summons, paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the counter affidavit and paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24 and 25 of the further affidavit that the facts deposed to by the parties as to the investigation of the activities of the Plaintiff/Respondent by the investigative team of the Defendant/Respondent were substantially dispute.
2. The method of procedure employed by the Plaintiff/Respondent in approaching the lower Court for the determination of the said questions 4 and 5 formulated by him is not permissible under Order 2 Rule 2(2) of the Federal High Court (Civil Procedure) Rules 2000 or any other statute.
3. The only course open to the trial Judge in the judgment was to have struck out claims nos 4 and 5 tied to questions 4 and 5.

More grounds of appeal shall be filed upon receipt of the record of appeal.

4. **RELEFS SOUGHT FROM THE COURT OF APPEAL**

**AN ORDER** dismissing the suit of the Plaintiff/Respondent in its entirety, or alternatively an **ORDER** striking out the suit.

5 **PERSONS DIRECTLY AFFECTED BY THE APPEAL**

NAME ADDRESS

1. National Universities Commission c/o Its Counsel BabaajideOladipo

BabajideOladipo& Co.

37 Igbosere Road (2nd Floor)

Lagos.

1. Prof. (Senator) David Iornem c/o His Counsel

Mike T. Assoh, Esq.

Ben J. Ihyom& Co.

30, Old Otukpo Road

High Level

Makurdi

Dated the 6h of April 2009

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

T.A.B. OLADIPO

BABAJIDE OLADIPO & CO.

(Defendant/Appeal’s Solicitor)

37 Igbosere Road (2nd Floor)

Lagos.

**FOR SERVICE ON:**

The Plaintiff/Respondent

c/o His Counsel

Mike T. Assoh, Esq.

Ben J. Ihyom& Co.

30, Old Otukpo Road

High Level

Makurdi

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIARY DIVISION

HOLDEN AT ABUJA

WARRANT NO. FHC/ABJ/W/ICPC/6

**IN THE MATTER OF AN APPLICATION FOR A WARRANT AND ORDERS PURSUANT TO SECTIONS 36(1) & (2), 37, 38, 45(1) AND 48(1) & (2) OF THE CORRUPT PRACTICES AN OTHER RELATED OFFENCES ACT, 2000.**

**The Chairman of the Independent Corrupt Practices and Other Related Offences Commission, (ICPC),**  has applied for a Warrant from a Judge of this Honourable Court, to exercise the powers vested under Section 36(1) & (2), 37, 38, 45(1) & 48(1) & (2) of the Corrupt Practices and Other Related offences Act, 2000 in relation to the assets, bank accounts, premises and properties of the 67 illegal Universities and Degree Awarding Institutions operating at different locations in Nigeria; listing in the Schedule hereto;

**AFTER PERUSING** the verifying affidavit of Ephraim Otti, Esq;

**AND FURTHER** understanding that the Chairman is expected to exercise his best judgment and reasonable discretion in carrying out the said powers, functions and duties with sole aim of attaining the Commission’s objectives and goals pursuant to the aforementioned sections of the ICPC Act, 2000.

**BY THIS WARRANT, THE CHAIRMAN** and any officers of the ICPC, and officers of any other security and law enforcement agencies that the Chairman may assign, request or instruct in that behalf, are hereby authorized to;

1. Enter into, search, seize and take possession of the assets, properties and premises of the 67 illegal Universities and Degree Awarding Institutions listed in the Schedule hereto, wherever they may be found in Nigeria.;
2. Inspect, make copies of any book, record, documents including computers and other information recording and retrieval systems the premises;
3. Arrest and detain any person that may be found in or on the premises;
4. Direct any bank or other financial institution having custody of any funds or money or other assets of the 67 Illegal Universities and Degree Awarding Institutions listed in the Schedule hereto, to provide information concerning any bank account, safe deposit box or records in its custody and not to part with, deal in or otherwise dispose of such assets or funds until this order is revoked;
5. An order of interim forfeiture of all the properties, assets, funds and premises;
6. An order authorizing and directing the Chairman of the ICPC to publish notice3 in at least two national newspapers calling upon any person who claims to have any interest in the properties, premises, funds and assets to show cause why the seized properties and premises should not be forfeited to the Federal Government of Nigeria;
7. An order directing service of a copy of the notice on the officer in charge of Lands in the Federal Capital Territory or any state where the property is located.

**GIVEN UNDER THE HAND OF THE JUDGE OF THIS HONOURABLE COURT THIS 2ND DAY OF MAY, 2013.**

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**IN THE MATTER OF AN APPLICATION FOR A WARRANT AND ORDERS**

**PURSUANT TO SECTIONS 36(1) & (2), 37, 38 45(1) AND 48(1) & (2) OF THE**

**CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT, 2000**

**AFFIDAVIT IN SUPPORT**

I, Ephraim Otti, Esq, adult, male, Nigerian citizen of ICPC Hqrts, Plot No 802

Constitution Avenue, Central Area, Garki, Abuja do affirm and state as follows;

1. That I am an officer with the Independent Corrupt Practices and Other Related Offences (ICPC) by virtue of which position I am conversant with the facts deposed herein.
2. That I have the consent of the Chairman of the ICPC to depose to this affidavit.
3. That the ICPC is a statutory body established under the Corrupt Practicesand other Related Offences Act, 2000 with mandate to prohibit and prescribepunishment for corrupt practices by any person or authority in Nigeria.
4. That pursuant to the said mandate and consequent upon information received by the Chairman, ICPC an Inter-Agency Task Team wasestablished to investigate various allegations of sharp and corrupt practices by several persons operating as universities and degree awarding institutions in Nigeria;
5. That investigation carried out by our Task Team reveals that there are currentlya total of 128 institutions accredited to operate as universities in Nigeria. A list of the approved Federal, State and private universities authenticated by Moses Awe, Esq a Deputy Director of the National Universities Commission is attached and marked herein as Exhibits A1, A2 and A3 respectively.
6. That many individuals and organisations claim to be operating other universities and degree awarding institutions without meeting the requisite standards for accreditation set by the National Universities Commission. The names of 67 such unregistered and unaccredited universities and degree awarding institutions and centres used by these illegal universities and degree awarding institutions and centres used by these illegal operators are listed in the schedule hereto and marked as Exhibits B1 and B2 respectively.
7. That the universities operated by these unscrupulous individuals are neither licensed nor registered to operate as degree awarding institutions in Nigeria.
8. That the activities of these individuals and illegal operators of these unregistered universities have brought untold hardship, anguish and economic loss to many Nigerians.
9. That the activities of these individuals and operators of these unregistered universities has lowered the standard and estimation of tertiary education in Nigeriawithin the international community and further dented the image of Nigeria.
10. That the degrees, honours and certificates purpotedly awarded by these illegal universities are neither recognized for purposes of participating in the National Youth Service Corps Scheme or securing gainful employment in Nigeria or other parts of the world.
11. That the activities of these illegal universities have led to the proliferation of illegal National Youth Service Corps (NYSC) orientation camps where unsuspecting Nigerian youths are being falsely and illegally mobilised for fake national service. A fake NYSC Camp was recently discovered in Nasarawa state in March, 2013.
12. That the operators of these unaccredited universities extort huge sums of money from Nigerians under the false pretence that they are accredited to offer the various academic degrees, fellowships and certificates listed in their respective curricula.
13. That the activities of the operators of these illegal universities have led to the proliferation of quacks in many professions like law, engineering and medicine etc.
14. That the activities of the operators of these illegal universities and their alleged collaborators within the public services of the states and federal government are the subject of several petitions being investigated by the ICPC for possible violation of the provisions of **Sections 8-19 of the ICPC Act, 2000;**
15. That the activities of the operators of these illegal universities are not in the national interest
16. That it has been difficult to trace or identify the individuals involved because they are highly mobile and have devised various means of using different names at different locations;
17. That it is necessary to obtain the Warrant and orders now sought in order to recover evidence that may assist investigators unmask the operators of these illegal universities and their collaborators;
18. That unless the orders now sought are granted, the operators of these illegal universities will continue to jeopardise investigation and hinder the work of the ICPC to unmask and prosecute them and their alleged collaborators.
19. That these criminal minded individuals will continue to exploit and debase the standards set by the National Universities Commission for qualitative education in Nigeria.
20. That the grant of these orders will not prejudice the legitimate rights and interests of anybody or person.
21. That I depose to these facts verily believing the contents to be true and in accordance with the Oaths Acts.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DEPODENT**

**SWORN TO AT THE REGISTRY OF THE FEDERAL HIGH COURT ABUJA THIS .................... DAY OF MAY, 2013**

**BEFORE ME:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**COMMISSIONER FOR OATHS**

**List of Approved Universities in Nigeria**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| UNIVERSITIES | | | | | | | | |
| S/N | Federal | Year | S/N | State | Year | S/N | Private | Year |
| 1 | University of  Ibadan, Ibadan | 1948 | 1 | Rivers State  University of Science & Technology, Port Harcourt | 1979 | 1 | Babcock University, Ilishan Remo | 1999 |
| 2 | University of Nigeria, Nsukka | 1960 | 2 | Ambrose Alli University, Ekpoma | 1980 | 2 | Madonna University, Okija | 1999 |
| 3 | ObafemiAwolowo University, Ile-Ife | 1962 | 3 | Abia State University Uturu | 1981 | 3 | Igbinedion University, Okada | 1999 |
| 4 | Ahmadu Bello University, Zaria | 1962 | 4 | Enugu State University of Science & Tech, Enugu | 1982 | 4 | Bowen University, Iwo | 2001 |
| 5 | University of Lagos, Lagos | 1962 | 5 | OlabisiOnabanjo University, Ago Iwoye | 1982 | 5 | Covenant University, Ota | 2002 |
| 6 | University of Benin, Benin City | 1970 | 6 | Ekiti State University, Ado Ekiti (Formerly University of Ado Ekiti) | 1982 | 6 | Pan-African University, Lagos | 2002 |
| 7 | Bayero University Kano | 1975 | 7 | Lagos State University, Ojo, Lagos | 1983 | 7 | Benson Idahosa University, Benin City | 2002 |
| 8 | University of Calabar, Calabar | 1975 | 8 | LadokeAkintola University of Technology, Ogbomoso | 1990 | 8 | American University of Nigeria, Yola | 2003 |
| 9 | University of Ilorin, Ilorin | 1975 | 9 | Imo State University, Owerri | 1992 | 9 | Redeemers University, Mowe, Ogun State | 2005 |
| 10 | University of Jos, Jos | 1975 | 10 | Benue State University | 1992 | 10 | AjayiCrowther University, Oyo | 2005 |
| 11 | University of Maiduguri, Maiduguri | 1975 | 11 | Delta State University, Abraka | 1992 | 11 | Al-Hikmah University, Ilorin | 2005 |
| 12 | UsmanuDanfodiyo University, Sokoto | 1975 | 12 | AdekunleAjasin University, Akungba-Akoko | 1999 | 12 | Caritas University, Amorji-Nke, Enugu | 2005 |
| 13 | University of Port-Harcourt Port-Harcourt | 1975 | 13 | Kogi State University, Anyigba | 1999 | 13 | CETEP City University, Lagos | 2005 |
| 14 | Federal University of Technology, Owerri | 1980 | 14 | Niger-Delta University, Yenagoa | 2000 | 14 | Bingham University, Auta-Balefi, Karu, NasarawaStrate | 2005 |
| 15 | Federal Universit of Technology, Akure | 1981 | 15 | Anambra State University, Uli | 2000 | 15 | Katsina University, Katsina | 2005 |
| 16 | ModiboAdama University of Technology, Yola | 1981 | 16 | Kano University of Science & technology, Wudil | 2000 | 16 | Renaissance University, Enugu | 2005 |
| 17 | Federal University of Technology, Minna | 1982 | 17 | Ebonyi State University, Abakaliki | 2000 | 17 | Bells University of Technology, Ota, Ogun State | 2005 |
| 18 | Nigerian Defence Academy, Kaduna | 1985 | 18 | Nasarawa State University, Keffi | 2002 | 18 | Lead City University, Ibadan , Oyo State | 2005 |
| 19 | University of Abuja | 1988 | 19 | Adamawa State University, Mubi | 2002 | 19 | Crawford University, Igbesa, Ogun State | 2005 |
| 20 | AbubakarTafawaBalewa University, Bauchi | 1988 | 20 | Gombe State University, Gombe | 2004 | 20 | Wukari Jubilee University, Wukari | 2005 |
| 21 | University of Agriculture, Makurdi | 1988 | 21 | Kaduna State University | 2004 | 21 | Crescent University, Abeokuta | 2005 |
| 22 | Federal University of Agriculture, Abeokuta | 1988 | 22 | Cross River University of Technology, Calabar | 2004 | 22 | Novena University, Ogume, Delta State | 2005 |
| 23 | NnamdiAzikiwe University, Awka | 1992 | 23 | Plateau State University, Bokkos | 2005 | 23 | University of Mkar, Mkar | 2005 |
| 24 | University of Uyo, Uyo | 1991 | 24 | Ondo State University of Technology, Okiti-Pupa | 2008 | 24 | Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State | 2006 |
| 25 | Michael Okpara University of Agriculture, Umudike | 1992 | 25 | Ibrahim babangida University, Lapai, Niger State | 2005 | 25 | Caleb University, Lagos | 2007 |
| 26 | National Open University of Nigeria, Lagos | 2002 | 26 | Tai Solarin University of Education, Ijagun | 2005 | 26 | Fountain University, Osogbo | 2007 |
| 27 | Federal University of Petroleum Resources, Effurun | 2007 | 27 | Umaru Musa Yar’Adua University, Katsina | 2006 | 27 | Obong University, ObongNtak | 2007 |
| 28 | Federal University, Lokoja, Kogi State | 2011 | 28 | BukarAbba Ibrahim University, DamaturuYobe State | 2006 | 28 | Salem University, Lokoja | 2007 |
| 29 | Federal University, Lafia, Nasarawa State | 2011 | 29 | Kebbi State University of Science and Technology, Aliero | 2006 | 29 | Tansian University Umunya, Anambra State | 2007 |
| 30 | Federal University Kashere, Gombe State | 2011 | 30 | Osun State University, Osogbo | 2006 | 30 | Veritas University, Abuja | 2007 |
| 31 | Federal University Wukari, Taraba State | 2011 | 31 | Taraba State University, Jalingo | 2008 | 31 | Wesley University of Science Technology, Ondo | 2007 |
| 32 | Federal University, Dutsinma, Katsina State | 2011 | 32 | Kwara State University, Ilorin | 2009 | 32 | Western Delta University, Oghara, Delta State | 2007 |
| 33 | Federal University, Dutse, Jigawa State | 2011 | 33 | Sokoto State University, Sokoto | 2009 | 33 | The Achievers’ University, Owo | 2007 |
| 34 | Federal University, Ndufu-Alike, Ebonyi State | 2011 | 34 | Akwa-Ibom State University, IkotIkpaden | 2010 | 34 | African University of Science & Technology, Abuja | 2007 |
| 35 | Federal University, Oye-Ekiti, Ekiti State | 2011 | 35 | Ignatius Ajuru University of Education, Rumuolumeni | 2010 | 35 | AfeBabalola University, Ado-Ekiti, Ekiti State | 2009 |
| 36 | Federal University, Utuoke, Bayelsa | 2011 | 36 | Bauchi State University, Gadau | 2011 | 36 | Godfrey Okoye University, Ugwuomu-Nike, Enugu State | 2009 |
| 37 | The Nigeria Police Academy, Wudil, Kano State | 2012 | 37 | Northwest University, Kano | 2012 | 37 | Nigerian Turkish Nile University, Abuja | 2009 |
| 38 | Federal University, BirninKebbi, Kebbi | 2013 | 38 | The Technical University, Ibadan | 2012 | 38 | Oduduwa University, Ipetumodu, Osun State | 2009 |
| 39 | Federal University, Gusau, Zamfara | 2013 |  |  |  | 39 | Paul university, Awka, Anambra State | 2009 |
| 40 | Federal University, Gashua, Yobe | 2013 |  |  |  | 40 | Rhema University, Obeama-Asa, Rivers State | 2009 |
|  |  |  |  |  |  | 41 | Wellspring University, Evbuobanosa, Edo State | 2009 |
|  |  |  |  |  |  | 42 | Adeleke University, Ede Osun State | 2011 |
|  |  |  |  |  |  | 43 | Baze University, Abuja | 2011 |
|  |  |  |  |  |  | 44 | Landmark University, Omu-Aran, Kwara State | 2011 |
|  |  |  |  |  |  | 45 | Samuel Adegboyega University, Ogwa, Edo State | 2011 |
|  |  |  |  |  |  | 46 | Elizade University, Ilara-Mokin, Ondo State | 2012 |
|  |  |  |  |  |  | 47 | Evangel University, Akaeze, Ebonyi State | 2012 |
|  |  |  |  |  |  | 48 | Gregory University, Uturu, Abia State | 2012 |
|  |  |  |  |  |  | 49 | McPherson University, SerikiSotayo, Ajebo, Ogun State | 2012 |
|  |  |  |  |  |  | 50 | Southwestern University, OkunOwa, Ogun State | 2012 |

**List of Illegal Universities in Nigeria with known Addresses**

1. University of Accountancy and Management Studies

41, Ikorodu Road, Jibowu

Yaba, Lagos

1. Concept College London

Abuja Campus

100, CITEC Villa Junction

Gwarimpa, Abuja

1. Imo State University

Illegal Study & Degree Awarding Centre

Garki Primary School

Behind UTC, Area 10, Garki

1. Logos Institute

(Illegally affiliated to OlabisiOnabanjo University for degree awarding)

9, African Church Road

IfakoIjaiye

Agege Local Government

Director: Pastor Femi Majekodunmi

1, Ikorodu Road

Opposite Lord’s Club, Maryland

Lagos

1. Open University of Nigeria

℅Notitia Tutorial Centre

No. 5, Dar-es Salem Crescent

Off Aminu Kano Street

Wuse, Abuja

Coordinator: Larry James

1. Mr. David Lornem

New Idea Management

Consultants and Open Learning Network

18/19, Ahmadu Bello Way

NNDC Building, Kaduna

(in Court of Appeal)

1. Imo State University

(Illegal Satellite Campus)

Lucia Group of Schools

OkweAsaba

The Campus Administrative

Office is at Ibusa Road

(Near Winners Church)

1. Temple University Nazarene Children Academy

Orozo, Abuja

(Raided in October 2010 and the proprietors are being tried at Karu Magistrate court)

1. Volta University College

No. 13, Okehie Street

Off Omenazzu, by Emmanuel Anglican Church

Through Faulks Road, Aba

1. Abia State University

(Illegal Study Centre)

International Secondary School

Abia

1. Triumphal University

Omugbo Town

Orumba North LGA, Anambra

07037923973 – 08066899631

Part – Time Centre

Ukpor – Uni&Obosi

08035509089

2nd Campus: IboloOrafite

Km 18, Osha/Owerri

Road, Ekwusigo LGA

1. Rockville University

Uburu, Ohaozara LGA

Ebonyi State

1. Royal University, Izhia

AbakalikiEbonyi

1. University of Carribean

22, Agbarho Street, Idi Iroko

Opposite Government College

Ikorodu, Lagos

1. Irish University Business School London

(Anchor: Lobi Business School

Ndupet Shopping Plaza (last floor)

20, Old Otukpo Road

KatsinaAla Street Junction

High Level, Makurdi

Benue State

08062950366

08036461281

1. University of Education

Winneba Ghana

Nigerian Agency: Faculty Development Centre

Study Centres

1. 39A, Ayilara Street, Ojuelegba, Lagos
2. Federal College of Education (Tech), Akwa
3. Royal Star College, Lawanson, Surulere, Lagos
4. Irish University Business School

Doseg International College

AkinMateola Street

Off Okota Road, Apple Junction

AmuwoOdofin, Lagos

Promoter: Envoy Consulting Limited

10, Calcutta Crescent, Apapa, Lagos

1. Christ Message International University

174/178, Okota Road, Isolo, Lagos

1. University of Nigeria

(illegal Degree Awarding Study Centre, campus)

1. AnsarUdeen Grammar School, Randle Avenue, Surulere, Lagos
2. Hanaco Plaza, 113 Ikorodu Road, Fadeyi, Lagos
3. University of Ibadan

(Illegal Campus)

Agent: Quality Merchandise Associate

5, Emmanuel Kolawole Street, off Bajulaiye Street

Somolu

Lagos

Lecture Centres

1. Bright Future College Somolu, Lagos
2. St. Margaret, Comprehensive College, Agboju, Lagos
3. LadokeAkintola University of technology, Ogbomosho

(Illegal Campuses)

Agent: Quality Merchandise Associates

Lecture Centres:

1. Bright Future College, Somolu, Lagos
2. St. Margaret Comprehensive College, Agboju, Lagos
3. Victory College, AbuleOnigbagbo, Ikeja
4. Topmost College, 3 Ikorodu Road, Maryland, Lagos
5. North Central University

KM4, Otukpo – Adoka Road, Otukpo, Benue State

1. University of Applied Management, Germany

Agent: Dr. Martins Gyambrah

Cambridge College of Arts and Science

6 Ikole Street

Off Gimbiya Street, Area 11, Abuja

1. Luminar International Centre for Health and alternative Medicine

Campuses:

1. 16 Nkwubor Road, Enugu
2. EkpuintoMgbowo Autonomous Community, Awgu, Enugu State
3. Houdegbe North America University

Pioneer School of Management

Airport Road, Kano

Agent: Mr.Jibril – 07040044859

1. The International Universities(TIU)

Missouri

Pioneer School of Management

Airport Road, Kano

Agent: Mr.Jibril – 07040044859

1. Pilgrims University

5/7 Okpuumuobo Road

(Opposite Union Bank)

P.M.B 8004, Umungasi, Aba

0803318966, 07082801611

1. EC-Council University

No. 5, Babatola Drive

Off ObafemiAwolowo Way, Ikeja

CEO: Tim Akano – 017901013

1. Atlas Universit

Agent: Southland College of Technology

50, Zik Avenue

Uwani, Enugu

08086673378

1. Halifax Gateway University

20 Aranle Street

(Ojuelegba Roundabout)

Surulere, Lagos

Website: www.halifaxgatewayuniversity.com

07059295217

1. Urban University College of Nigeria

88, Afikpo road

P.M.B 1001, Abakaliki

1. Christ Alive Christian

Seminary and University

No. 48, Keneth Street

Agbani Road, Enugu

1. Atlanta International University

℅ Best Choice Consult Ltd

21 Aguta Road, opp, CKC, Okija

1. Christians of Charity

American University of Science and Technology

No. 2, Oshimili Street

3rd Floor, off Old Enugu Road, Nkpor

1. Atlanta University

CMML Secondary School

Ayagba, Kogi State

1. Samuel Ahmadu University

℅ Government Secondary School, Makurdi

1. Atlas University

UkoEshet Street

IkotUsoso, Oku

Uyo, Akwa-Ibom

1. Concept College (London)

No. 15 Abdul Azeez Atta Road

Opposite B Division, Surulere, Ilorin

1. Royal Institute of Continuing Education

(Illegaly running degree of AAU, AkungbaAkoko)

70, Station Road

(oppositeIdowu Berber), Oshogbo

Lecture Centres:

1. Old Children Boarding School, Oshogbo
2. Fakunle Grammar School, Oshogbo

Contacts: Sanni – 08033950009

Gbenga – 08034896255

Bayo – 08067441426

1. Federal College of Complementary and Alternative Medicine of Nigeria

No. 4, Bujumbura Street

Off Libreville Crescent

Off Aminu Kano Crescent, Wuse 2

Abuja

09-4820969

1. Richmond Open University

Arochukwu

Abia State (Under Litigation at Court of Appeal)

**List of Illegal Universities in Nigeria without Known Fix Addresses**

1. Blacksmith University Awka
2. Sunday Adokpela University, OtadaAdoka, Otukpo, Benue State
3. United Christian University, Macotis Campus, Imo State
4. United Nigeria University College, Okija, Anambra State
5. Saint Augustine’s University of Technology, Jos, Plateau State
6. Columbus University, UK operating anywhere in Nigeria
7. Tiu International University, UK operating anywhere in Nigeria
8. Pebbles University, UK operating anywhere in Nigeria
9. London External Studies UK operating anywhere in Nigeria
10. Bolta University College Aba
11. JBC Seminary Inc. (Wukari Jubilee University) Kaduna Illegal Campus
12. Westlan University, Esie, Kwara State
13. St Andrews University College, Abuja
14. Kingdom of Christ University, Abuja
15. Acada University, Akinlalu, Oyo State
16. Fifom University, Mbaise Imo State
17. Open International University, Akure
18. Middle Belt University (North Central University), Otukpo
19. Leadway University, Ughelli, Delta State
20. Metro university, Dutse/Bwari, Abuja
21. Southend University, NgwuroEgeru (Afam) Ndoki, Rivers State
22. Olympic University, Nsukka, Enugu State
23. National University of Technology, Lafia, Nasarawa State
24. Cape Coast University, Ghana, operating anywhere in Nigeria
25. African University Cooperative Development (AUCD), Cotonou, Benin Republic, operating anywhere in Nigeria
26. National University of Nigeria, Keffi

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**FHC/ABJ/CS/…………………………**

**IN THE MATTER OF AN APPLICATION FOR A WARRANT AND ORDERS PURSUANT TO SECTIONS 36(1) & (2), 37, 38, 45(1) AND 48(1) & (2) OF THE CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT, 2000 IN WARRANT NO: FHC/ABJ/W/ICPC/6/’13**

**AND**

**BETWEEN**

**PROF. (SENATOR) DAVID IORNEM ……………………APPLICANT**

**AND**

**INDEPENDENT CORRUPT PRACTICES AND**

**OTHER RELATED OFFENCES COMMISSION ……… RESPONDENT**

**APPLICANT’S WRITTEN ADDRESS**

1. **INTRODUCTION**

My Lord, this application is anchored on the overall interest of justice, ex debitojustitiae, it is brought pursuant to SECTION 6 (6) OF THE 1999 CONSTITUTION AS AMENDED, ORDER 56 ULES 1 & 8 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2009 AND UNDER THE INHERENT POWERS OF THE HONOURABLE COURT and it seeks the following reliefs:

1. **AN ORDER** of the Honourable Court setting aside the Warrant/Orders contained in the **Warrant** granted/issued to the Respondent on the 2nd day of May, 2013, against the applicant or as it relates to the Applicant with respect to his business activities.
2. **AN ORDER** directing the Respondent to release to the Applicant forthwith, all the items/properties seized from the Applicant’s office by the Respondent.
3. **AN ORDER** directing the Respondent to release unconditionally all the staff of the Applicant/persons arrested from the Applicants premises on the 24th of May, 2013.
4. **AN ORDER** setting aside the bail conditions imposed on the Applicant and his staff that were arrested by the Respondent on the 24th of May, 2013.
5. **AN ORDER** lifting the embargo imposed/placed on the Applicant’s bank accounts
6. **AND SUCH FURTHER ORDER** or other orders as this Honourable Court may deem fit to make in the circumstance.

The application is anchored on the following grounds:

1. The Applicant is a Management Consultant/a management trainer as well as an educational/student recruitment consultant, who offers services to individual students wishing to enroll on distance learning programmes of institutions within the country and outside the country and does not operate any university nor award any degree; *ex facie***EXHIBIT B1** which is tagged “**List of Illegal Universities in Nigeria With known Addresses”** which emanated from the National Universities Commission **(NUC)**  attached to the affidavit of Ephraim Otti, Esq. deposed to in support of the Respondent’s application for the aforestated warrant and orders, listed the Applicant’s name instead of the alleged University the Applicant purportedly operates.
2. Serial **No.6**which contains the name of the Applicant and his address, immediately following the Applicant’s address are the following words in bracket: **“in Court of Appeal”** which shows that the subject matter of the dispute between the Applicant and the National Universities Commission is before the Court of Appeal.
3. The National Universities Commission, the complainant to the Respondent in this matter sometime in the year 2005 attempted to close down the Applicant’s office on the basis of ***Exhibit B1***, that the Applicant is operating an illegal University or a degree awarding institution; the Applicant challenged the National Universities Commission in **SUIT NO: FHC/ABJ/CS/439/’05 – PROF. (SENATOR) DAVID IORNEM Vs NATIONAL UNIVERSITIES COMMISSION**, before this Honourable Court, **Coram A. Bello, J.**, gave judgment in favour of the Applicant.
4. The National Universities Commission appealed to the Court of Appeal, Abuja Division, due to want to diligent prosecution of the appeal by the National Universities Commission, the appeal was on the 16th April 2012 struck out; the National Universities Commission now wants to illegally achieve its aim through the respondent via ***Exhibit B1****.*
   1. The application is supported by an affidavit of seventeen paragraphs deposed to by the Applicant himself. We are relying on all the paragraphs of the Affidavit and we most humbly urge the Honourable Court to deem the said paragraphs of the affidavit as read
   2. Attached to the affidavit are:
5. **EXHIBIT “1”**, which is a copy of the judgment of this Honourable Court in **SUIT NO: FHC/ABJ/CS/439/2005 - PROF. (SENATOR) DAVID IORNEM Vs NATIONAL UNIVERSITIES COMMISSION.**
6. **EXHIBIT “2”**, is a copy of the Notice of Appeal the National Universities Commission filed against the Applicant.
7. **EXHIBIT “3”** and **“EXHIBIT 3A”**, are a copy of the Warrant issued/granted to the Respondent by this Honourable Court and the affidavit of Ephraim Otti, Esq., respectively.
   1. My Lord, the gist of this application is that the National Universities Commission had sometime in the year 2005 attempted unjustifiably to close down the office of the Applicant under the pretext that the Applicant was operating an illegal university. The Applicant challenged the action of the National Universities commission before this Honourable Court in **SUIT NO: FHC/ABJ/CS/439/’05 – PROF. (SENATOR) DAVID IORNEM Vs NATIONAL UNIVERSITIES COMMISSION** and the Applicant obtained judgment against the National Universities Commission. The National universities Commission appealed against the decision of this court, but due to want of diligent prosecution, the appeal was struck out on the 16th of April 2012. Most unfortunately, the National Universities Commission mischievously authored Exhibit B1 and made a complaint to the Respondent and instigated the Respondent against the Applicant. Most unfortunately the Respondent being aware of the pending appeal between the National Universities Commission and the Applicant with respect to the very subject matter that is before the Court of Appeal for determination, swung into action and carried out the acts stated in the Applicant’s affidavit in support of this application. This is the reason why the Applicant has brought this application praying this Honourable Court to set aside the Warrant and Orders issued/granted to the Respondent against the Applicant on the 2nd day of May 2013.
8. **ISSUES FOR DETERMINATION**
   1. The Applicant has formulated three issues for determination in this application by the Honourable Court. The issues are as follows:
9. Whether the Applicant is entitled in law to bring this application
10. Whether the conduct of the Respondent in conjunction with the National Universities Commission is proper in law.
11. Whether this Honourable Court can set aside the Warrant/Orders issued/granted to the Respondent against the Applicant or as it affects the Applicant.
12. **ARGUMENT:**

The argument herein shall be undertaken in the manner set out in paragraph 2.0 above.

* 1. **ISSUE (I): Whether the Applicant is entitled in law to bring this application.**

My Lord, it is quite clear that a perusal of the grounds upon which this application is brought as well as paragraphs **6, 7, 8, 9, 10, 11, 12, 13, 14 and 15** of the Applicant’s affidavit in support clearly shows that the Applicant’s rights have been violated by the Respondent. It is based on the aforestated paragraphs of the Applicant’s affidavit that this application is brought to let this Honourable Court know or draw the court’s attention to the fact that the issue or subject matter that made the Respondent to invade the Applicant’s office, based on the National Universities Commission’s complaint to the Respondent against the Applicant is before the Court of Appeal in **APPEAL NO: CA/A/204/2009-NATIONAL UNIVERSITIES COMMISSION Vs PROF (SENATOR) DAVID IORNEM** for determination.

* 1. My Lord, we contend that by the doctrine of lispendens once a dispute is pending before a court of law the matter remains subjudice, a party therefore has no right to directly or indirectly do anything or carry out any acts that will flout the judgment of the court and adversely affects his opponent. The Respondent based on ***Exhibit B1*** attached to its affidavit (affidavit of Ephraim Otti, Esq.) in an application for Warrant and Orders was and remains aware that the dispute involving the subject matter is before the Court of Appeal, where the Applicant got judgment in his favour against the National Universities Commission and the National Universities Commission appealed; that appeal is still pending.
  2. My Lord, in the case of **Attorney-General of Anambra State Vs Attorney-General of the Federation &Ors. [2005] 9 NWLR (Pt.931) p.574 @ p.606, paras. E-G,** the Supreme Cour, per Katsina-Alu, JSC, (as he then was) affirmed the binding force of a court’s decision or order as the authoritative statement of what the law is that governs the lives and affairs of people in society. The apex court held thus:

**“The law in this regard is clear. It is now settled that the plain and unqualified obligation of every person against whom, or in respect of whom an order is made by a court of competent jurisdiction is to obey it unless until that order is discharged. It is so even in cases where the person affected by the order believes it to be irregular or even void. So long as the order exists, it must be obeyed to the letter. See Mobil Oil (Nig.) Ltd VsAssan [1995] 8 NWLR (Pt.412) 129; Military Governor of Lagos State VsOjukwu&Anor. [1986] 1 NWLR (Pt18) 621; [1986] 1 NSCCvol.17 (Pt.1) 304.”**

* 1. It is our submission that on the strength of the above Supreme Court decision, the Respondent in conjunction with the National Universities Commission has a duty to obey the judgment of this Honourable Court, Coram: A. Bello, J, in **SUIT NO: FHC/ABJ/CS/439/’05 – PROF. (SENATOR) DAVID IORNEM Vs NATIONAL UNIVERSITIES COMMISSION**
  2. The Respondent as a body that has the powers and responsibility to investigate complaints made to it acted in a reckless way, having invaded the Applicant’s office, made arrests and confiscated the Applicant’s office equipment and documents the way it did. Given that the Respondent was not aware, a simple investigation without the brutal invasion of the Applicant’s office would have simply fixed the Respondent with the notice of the pending appeal with respect to the subject matter of the dispute. Besides, ***Exhibit 1*** attached to the affidavit of Ephraim Otti, Esq. in support of the application for Warrant and Orders clearly shows that the dispute is before a court of law. My Lord, based on the authority of **OjukwuVs Governor of Lagos State [1985] 2 NWLR (Pt.10) p.806 @ 830, para.c**, we submit that the action of the Respondent, a government body in conjunction with the National Universities Commission, another government body remains unlawful.
  3. My Lord, it is our firm submission that this Honourable Court has the jurisdiction and the inherent powers to protect its own judgment from being ridiculed or disparaged. On this we refer your Lordship to the case of **OkoyaVsSantili [1991] 7 NWLR (Pt.206) p.753.**

On the basis of the above facts and argument, the applicant is in law permitted to bring this application ex debitojustitiae and we urge Your Lordship to so hold.

* 1. **ISSUE (ii): Whether the conduct of the Respondent in Conjunction with the National Universities Commission is proper in law.**
  2. My Lord, Exhibit B1 attached to the affidavit of Ephraim Otti, Esq. is clear and self explanatory. The National Universities Commission authored Exhibit B1 where it listed the names of institutions but when it came to the Applicant, it listed the name of the Applicant instead of the University the Applicant purportedly operates. Again, the following words “**in Court of Appeal”** were written in bracket under the Applicant’s name, it then therefore behoved on the Respondent to have carried out a preliminary investigation with respect to the Applicant’s issue. We submit that the Respondent was clearly aware that the Applicant’s issue or dispute with the National Universities Commission is before a court of law, in fact the Court of Appeal. But most unfortunately the National Universities Commission surreptitiously instigated the Respondent against the Applicant and the Respondent willingly but unlawfully obliged by closing down the Applicant’s office and blocked the Applicant’s bank accounts via the warrant it obtained from this Honourable Court.
  3. My Lord, we respectfully submit that the quest for justice does not entail hide and seek intrigues, but rather, it is a genuine, transparent and open search to attain true and real justice. Can’t the National Universities Commission pursue and prosecute its appeal pending at the Court of Appeal diligently? My Lord, Oputa, JSC, had this to say in the case of **AjideVsKelani [1985] 3 NWLR (Pt.12) p.248 @ p.269, paras C-D;** where the Supreme Court held per Oputa J.S.C:

**“Just is much more than a game of hide and seek. It is an attempt, our human imperfections notwithstanding, to find the truth”.**

On the strength of the above argument, we most humbly urge Your Lordship to answer the above issue (ii) in the negative.

* 1. **ISSUE (iii): Whether this Honourable Court can set aside the Warrant/Orders issued/granted to theRespondent against the Applicant or as it affects the Applicant.**
  2. MY Lord, clearly as at the time the Respondent applied for the aforestated warrant and orders, most unfortunately the Respondent deliberately did not draw the attention of this Honourable Court to the fact that **APPEAL NO:. CA/A/204/2009-NATIONAL UNIVERSITIES COMMISSION Vs PROF. (SENATOR) DAVID IORNEM** is pending before the Court of Appeal, Abuja Division with respect to the same subject matter based on the National Universities Commission’s complaint which led to the Respondent’s invasion of the Applicant’s office and the concomitant effects that ensured thereafter; such as the seizure of the Applicant’s office equipment, documents, arrest of the Applicant and his staff, and blockage of the Applicant’s bank accounts.
  3. We submit that the National Universities Commission working in concert with the Respondent inappropriately and fraudulently instigated the Respondent against the Applicant. The collaboration and collusion of the National Universities Commission and the Respondent which led to the art and act of deceit that was practiced on this Honourable Court remains unlawful and at best fraudulent. We therefore, submit that in view of the fact that **APPEAL NO:. CA/A/204/2004-NATIONAL UNIVERISITIES COMMISSION Vs PROF. (SENATOR) DAVID IORNEM** is pending before the Court of Appeal, also considering the fact that the Respondent working in concert with National Universities Commission deceitfully misled this Honourable Court to issue/grant the warrant and orders it issued against the Applicant renders the warrant null and void. The principle of law in this context is that this court has the inherent powers to set the warrant aside as it relates to the Applicant. On this we refer Your Lordship to the Supreme Court decision in Bello Vs INEC & 2 Ords. (2010) 2-3 S.C. (Pt.II) p. 128 @ P.193 Para.5; Per Onnoghen, J.S.C,

**“Though the Trail Court has the inherent power to set side its judgment or orders where it becomes obvious ex facie that it was rendered without jurisdiction or is otherwise fundamentally defective thereby rendering same null and void and ineffective…”(Underling ours)**

**3.13.**  it therefore submitted that on the strength of the above cited Supreme Court authority we most humbly urge this Honourable Court to answer our issue (iii) in the affirmative.

4.0 **CONCLUSION AND PRAYERS**:

4.1 Finally, we most fervently urge your Lordship to grant the prayers sought in our applicant in their entirely.

May it please Your Lordship.

Dated this 14th day of June, 2013

Christ Alashi

(07030057569)

Pp: **Fair-Fields**, Solicitors & Advocates

Suite 309, 3rd Floor, NCWS House,

Area 11, Garki-Abuja

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**SUIT NO FHC/ABJ/CS/439/2005**

**BETWEEN:**

**NATIONAL UNIVERSITIES COMMISSION……………….DEFENDANT/APPELLANT**

**AND**

**PROF. (SENATOR) DAVID IORNEM…………………………PLAINTIFF/RESPONDENT**

**SETTLEMENT OF RECORD OF APPEAL**

1. ATTENDANCE: Parties resent
2. DOCUMENT TO BE INCLUDED IN APPEAL: All relevant document
3. CONDITION TO BE FULFILLED BY THE APPELLANT:
4. The Appellant to deposit the sum of 500.00 (Five Hundred Naira) or enter into bon in alternative with in the surely in the like sum
5. The Appellant to supply all the material needed for the compilation of the record.
6. Appellant is given 30 days from today within which to perfect the above conditions.
7. Records are hereby settled.

Dated at Abuja this 21st day of May 2009

EGBO JANE

Senior Registrar

**CIVIL FORMS 8**

**IN THE COURT OF APPEAL**

**CERTIFICATE OF SERVICE OF NOTICE OF APPEAL**

**ORDER 3 RULE 13**

**SUIT NO FHC/ABJ/CS/439/2005**

**BETWEEN:**

**NATIONAL UNIVERSITIES COMMISSION……………….DEFENDANT/APPELLANT**

**AND**

**PROF. (SENATOR) DAVID IORNEM…………………………PLAINTIFF/RESPONDENT**

I, the undersigned Registrar of the Federal High Court Abuja, do hereby certified that Notice of Appeal in the above named suit was dully served upon the Respondent.

EGBO JANE

Senior Registrar

**CIVIL FORM 9**

**IN THE COURT OF APPEAL**

**CERTIFICATE OF COMPLIANCE WITH THE CONDITIONS OF APPEAL**

**SUIT NO FHC/ABJ/CS/439/2005**

**BETWEEN:**

**NATIONAL UNIVERSITIES COMMISSION……………….DEFENDANT/APPELLANT**

**AND**

**PROF. (SENATOR) DAVID IORNEM…………………………PLAINTIFF/RESPONDENT**

I do hereby certify that the above named Appellant had duly complied with the conditions of Appeal in posed on him in the above named suit.

Dated this 21st day of May 2009

The Registrar,

Court of Appeal

Abuja

EGBO JANE

Senior Registrar