

DEREGULATION OF PETROLEUM PRODUCTS IS ILLEGAL

Bamidele Aturu

President Goodluck Jonathan has continued in the controversial and detestable path of his predecessors by choosing to foul the festive mood of Nigerians in the New Year with the announcement of the commencement of so-called deregulation of the oil industry and the withdrawal of the phantom subsidies on the prices of petroleum products.

It bears repeating for the umpteenth time that deregulation of petroleum products is an illegality that is unknown to Nigerian law. It is indeed a contravention of an existing law of this country. The Price Control Act an existing legislation by virtue of section 315 of the Constitution clearly lists petroleum products as one of those products which prices must be regulated by the Government. This law to the best of my knowledge has not been repealed. It is therefore obligatory for the Government and its agencies, including in particular the contraption known as the PPPRA, to obey the law. For purporting to deregulate the downstream sector of the oil industry the government is violating the rule of law which it claims to respect.

I should also point out another respect in which the deregulation is a negation of the rule of law. On 14th of October 2009, I filed a suit at the Federal High Court in Abuja challenging the proposed deregulation policy. That suit is still pending before Honourable Justice Bello. The matter is coming up onThe Government and its relevant agencies have filed their response to the suit and so cannot claim not to be aware that it is pending. Yet the law is clear, as laid down by the Supreme Court in the case of Military Governor of Lagos State v Ojukwu that once a party is aware of the pendency of an action asking for injunctive reliefs it would amount to executive lawlessness to do anything to frustrate the act as the government seeks to do in this case. Thus no matter how one looks at the deregulation policy of this administration it is an act of irredeemable illegality. The way things stand I will be compelled to bring an interim application for the court to urgently restrain the government and prevent the crisis and anarchy that the policy portends. This would be done before close of work this week. I am posting below the processes we filed in that case for the guidance of our colleagues in the media.

The immorality and wickedness of the policy is writ large and there is no point to make on submission on that. It suffices to simply point out that by the policy has shown clearly that it is unwilling to deal with the cabal holding us to ransom in the industry or fight corruption; for at the end of the day the cabal are still going to be in the business of importing fuel and ripping off Nigerians.

Without doubt the policy will be resisted and fought to a logical conclusion. The fight will define and determine who as between the Government and the people own this country. May God bless Nigeria.

Bamidele Aturu

See the suit below:

IN THE FEDERAL HIGH COURT

HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF

AND

1. HONOURABLE MINISTER OF PETROLEUM RESOURCES DEFENDANTS
2. HONOURABLE MINISTER OF COMMERCE AND TOURISM
3. ATTORNEY GENERAL OF THE FEDERATION

ORIGINATING SUMMONS

LET the Defendants, Honourable Minister of Petroleum Resources, Honourable Minister of Commerce and Tourism and the Attorney General of the Federation, respectively of Ministry of Petroleum Resources Federal Secretariat Abuja, Ministry of Commerce and Tourism, Federal Secretariat Abuja, and Federal Ministry of Justice, Abuja within eight days after service of this summons on them inclusive of the day of such service, cause an appearance to be entered for them to this summons which is issued upon the application of the Plaintiff of Suite D12, Plot 92, Obafemi Awolowo Way, Besides Thisday Head Office, Abuja, within the jurisdiction of this Honourable Court who claim for the determination of the following legal questions.

Questions for Determination

1. Whether the Defendants can lawfully deregulate the downstream sector of the petroleum industry by not controlling the prices of petroleum products as required by law.
2. Whether by the combined provisions of section 6 of the Petroleum Act, cap P10, Laws of the Federation of Nigeria, 2004 and section 4 of the Price Control Act, cap P 28, Laws of the

Federation of Nigeria, 2004, the Defendants are not under statutory obligations to fix or regulate the prices of petroleum products.

3. Whether the proposed policy of deregulating prices of petroleum products by the Defendants is not in vicious and violent conflict with section 16(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that the Government shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

4. Whether the attendant prohibitive hike in the prices of petroleum products would not make the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians.

CLAIMS

AND the Plaintiff claims the following reliefs:

1. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in vicious violation of the mandatory provision of section 6 of the Petroleum Act, cap P.10, Laws of the Federation of Nigeria, 2004.
1. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in flagrant violation of the mandatory provision of section 4 of the Price Control Act, cap P28, Laws of the Federation of Nigeria, 2004.
1. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in conflict with Section 16(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that the Government shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

1. A DECLARATION that that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria has the effect of making the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians and is therefore illegal, unconscionable and unconstitutional and of no effect whatsoever.

1. AN ORDER restraining the Defendants their agents, privies, collaborators and whosoever and howsoever from deregulating the downstream sector of the petroleum industry or from failing to fix the prices of petroleum products as mandatorily required by the Petroleum Act and the Price Control Act.

1. AN ORDER directing the Defendants to fix and publish regularly prices of petroleum products forthwith.

Dated this 14th day of October, 2009

JUDGE

This summons was taken out by Anthony Itedjere ESQ., of BAMIDELE ATURU & CO Legal Practitioner for the above named Plaintiff whose address for service is Suite D12, Plot 92, Obafemi Awolowo Way, Besides Thisday Head Office, Jabi, Abuja. The Defendants may appear hereto by entering appearance personally or by a legal practitioner either by handing in the appropriate forms duly completed, at the Federal High Court Registry or by sending them to that office by post.

Note

If the Defendants do not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

FOR SERVICE ON:

1ST Defendant

Ministry of Petroleum Resources

Federal Secretariat Abuja

2nd Defendant

Ministry of Commerce and Tourism,

Federal Secretariat Abuja.

3rd Defendant

Federal Ministry of Justice,

Abuja.

IN THE FEDERAL HIGH COURT
HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF

AND

1. HONOURABLE MINISTER OF PETROLEUM
RESOURCES DEFENDANTS
2. HONOURABLE MINISTER OF COMMERCE AND TOURISM
3. ATTORNEY GENERAL OF THE FEDERATION

AFFIDAVIT IN SUPPORT OF ORIGINATING
SUMMONS

I, Anthony Itedjere, male, adult, Nigerian, Legal Practitioner, Christian of Suite D12, Plot 92, Obafemi Awolowo Way, Besides Thisday Head Office, Jabi, Abuja do hereby make oath and as follows:

1. I am a legal practitioner in the law firm known by Bamidele Aturu & Co which is managed by the Plaintiff herein and solicitors to the Plaintiff by virtue of which I am conversant with the facts deposed to herein.

2. I have the consent of the Plaintiff and my employer to depose to this affidavit.

3. The Plaintiff is a citizen of Nigeria, a legal practitioner and tax payer who practices law in Nigeria within the jurisdiction of this Honourable Court.

4. I know as of fact that the Plaintiff and his family own cars and regularly travel by air within Nigeria. He has previously given me a ride in his car.

5. The Plaintiff is a regular purchaser of fuel from the various fuel stations across Nigeria.

6. The Defendants have taken a decision to deregulate the downstream sector of the petroleum industry. They have decided not to fix the prices of petroleum products anymore in Nigeria. Herewith attached and marked as Exhibit 1 is a certified true copy of... dated 12th of October, 2009 reporting the decision of the Defendants which they have not denied.

7. I am informed by the Plaintiff on 13th October 2009 at our office in Abuja at about 5pm and I verily believe him that if the Defendants are not restrained from deregulating the downstream sector and carrying out their decision not to fix the price of petroleum products, the Plaintiff other Nigerians will be adversely affected economically.

8. I know as a fact that the present price of N65 per litre for Premium Motor Spirit (PMS) is at the moment beyond the reach of common people.

9. I also know as a fact that all the Defendants and other members of the Federal Executive Council do not spend their personal resources to buy petroleum products as same are purchased for them from the coffers of the Federal Republic of Nigeria.

10. I am also informed by the Plaintiff at the same time, place and date aforesaid and I verily believe him that failure to regulate the downstream sector and fix the prices of petroleum products will affect his movement within Nigeria as the prices of petroleum product will soar, cause inflation and

become unaffordable as same will be left to the whims and caprices of independent petroleum marketers.

11. I know as a fact that the Defendants will carry out its decision to deregulate the downstream sector as same has been scheduled by the Defendants to take effect on 1stNovember, 2009.

12. I was further told by the Plaintiff and I verily believe him that the law mandatorily requires the Defendants to fix and regulate the prices of petroleum products.

13. I know as a fact that the Defendants will be failing in their statutory duty to the Plaintiff and Nigerians in general if they are allowed to deregulate the downstream sector and fail to fix the price of Petroleum products.

14. I the said Anthony Itedjere do hereby make this oath in good faith conscientiously believing the facts to be true to the best of my knowledge and in accordance with the Oaths Act, Laws of the Federation of Nigeria, 2004.

DEPONENT

SWORN to at the Federal High Court Registry,

Abuja this 14th day of October, 2009

BEFORE ME

COMMISSIONER FOR OATHS

IN THE FEDERAL HIGH COURT

HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF/APP

AND

1. HONOURABLE MINISTER OF PETROLEUM RESOURCES
DEFENDANTS/RES
2. HONOURABLE MINISTER OF COMMERCE AND TOURISM
3. ATTORNEY GENERAL OF THE FEDERATION

MOTION ON NOTICE

Brought pursuant to

1. Order 28 Rule 1, Order 26 Rules 1, 2 and 3 of the Federal High Court (Civil Procedure) Rules 2009
2. The Inherent Jurisdiction of the Court.

TAKE NOTICE that this Honourable Court shall be moved on ----- the ----- day of ----- 2009 at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the Applicant praying this Court for the following:

1. AN ORDER of interlocutory injunction restraining the Defendants/Respondents their agents, privies, collaborators and whosoever and howsoever from deregulating the downstream sector of the petroleum industry or from failing to fix the prices of petroleum products as mandatorily required by the Petroleum Act and the Price Control Act pending the hearing and determination of the substantive suit.

AND such further or other Orders as the Court may deem fit to make in the circumstance.

FURTHER TAKE NOTICE that the grounds upon which this application is brought are as follows:

- a) The Defendants are mandatorily required by law to fix and regulate the prices of petroleum products.
- b) The Plaintiff will suffer economically and his right to move freely adversely affected if downstream sector is deregulated as there would be uncontrollable hike in the prices of petroleum products.

DATED THIS 14th DAY OF October 2009

Anthony Itedjere ESQ

BAMIDELE ATURU & CO

Suite D12, Plot 92,

Obafemi Awolowo Way,

Besides Thisday Head Office,

Jabi, Abuja. aturulaw@yahoo.com, 08055999888

FOR SERVICE ON

1ST Defendant

Ministry of Petroleum Resources

Federal Secretariat Abuja

2nd Defendant

Ministry of Commerce and Tourism,

Federal Secretariat Abuja.

3rd Defendant

Federal Ministry of Justice,

Abuja.

IN THE FEDERAL HIGH COURT

HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF

AND

1. HONOURABLE MINISTER OF PETROLEUM
RESOURCES DEFENDANTS
2. HONOURABLE MINISTER OF COMMERCE AND TOURISM
3. ATTORNEY GENERAL OF THE FEDERATION

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Anthony Itedjere, male, adult, Nigerian, Legal Practitioner, Christian of Suite D12, Plot 92, Obafemi Awolowo Way, Besides Thisday Head Office, Jabi, Abuja do hereby make oath and as follows:

1. I am a legal practitioner in the law firm known by Bamidele Aturu & Co which is managed by the Plaintiff herein and solicitors to the Plaintiff by virtue of which I am conversant with the facts deposed to herein.
2. The Plaintiff is a citizen of Nigeria, a legal practitioner and tax payer who practices law in Nigeria within the jurisdiction of this Honourable Court. I have his consent and that of my employer to make this oath.

3. I know as of fact that the Plaintiff and his family own cars and regularly travel by air within Nigeria. He has previously given me a ride in his car.
4. The Plaintiff is a regular purchaser of fuel from the various fuel stations across Nigeria.
5. The Defendants have taken a decision to deregulate the downstream sector of the petroleum industry. They have decided not to fix the prices of petroleum products anymore in Nigeria. Herewith attached and marked as Exhibit 1 is a certified true copy of...dated 12th October, 2009 reporting the decision of the Defendants which they have not denied.
6. I am informed by the Plaintiff on 13th October 2009 at our office in Abuja at about 5pm and I verily believe him that if the Defendants are not restrained from deregulating the downstream sector and carrying out their decision not to fix the price of petroleum products, the Plaintiff and other Nigerians will be adversely affected economically.
7. I am also informed by the Plaintiff at the afore said time, place and date and I verily believe him that failure to regulate the downstream sector and fix the prices of petroleum products will affect his movement within Nigeria as the prices of petroleum product will soar up and become unaffordable since same will be left at whims and caprices of independent petroleum marketers.
8. I was further told by the Plaintiff at the same time, place and date and I verily believe him that the law mandatorily require the Defendants to fix and regulate the prices of petroleum products.
9. I know as a fact that Defendants will be failing in their statutory duty to the Plaintiff and Nigerians in general if they are allowed to deregulate the downstream sector and fail to fix the price of Petroleum products
10. I know as a fact that unless this application is granted, the Defendants will carry out its decision to deregulate the downstream sector before the hearing and determination of the substantive suit as same has been scheduled by the Defendants to take effect on 1st November, 2009.
11. I know as a fact that the Plaintiff/Applicant and other Nigerians will suffer irreparable damage if this application is refused and the downstream sector is deregulated before the substantive suit is determined.
12. The Plaintiff/ Applicant undertake to pay damages if it turns out that this application ought not to have been granted.
13. The Respondents will not be prejudiced by the grant this application.
14. It is in the interest of justice to grant this application.

1. I the said Anthony Itedjere do hereby make this oath in good faith conscientiously believing the facts to be true to the best of my knowledge and in accordance with the Oaths Act, Laws of the Federation of Nigeria, 2004.

DEPONENT

SWORN to at the Federal High Court Registry,

Abuja this 14th day of October, 2009.

BEFORE ME

COMMISSIONER FOR OATHS

IN THE FEDERAL HIGH COURT

HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF

AND

1. HONOURABLE MINISTER OF PETROLEUM RESOURCES

DEFENDANTS

1. HONOURABLE MINISTER OF COMMERCE AND TOURISM

1. ATTORNEY GENERAL OF THE FEDERATION

WRITTEN ADDRESS IN SUPPORT OF MOTION FOR INTERLOCUTORY INJUNCTION.

1.0.INTRODUCTION:

1. This application is brought pursuant Order 28 Rule 1, Order 26 Rules 1, 2 and 3 of the Federal High Court (Civil Procedure) Rules 2009 and the Inherent Jurisdiction of the Court. praying this Honourable Court for:

AN ORDER of interlocutory injunction restraining the Defendants/Respondents their agents, privies, collaborators and whosoever and howsoever from deregulating the downstream sector of the

petroleum industry or from failing to fix the prices of petroleum products as mandatorily required by the Petroleum Act and the Price Control Act pending the hearing and determination of the substantive suit

The application is supported by 15 paragraphs affidavit and an Exhibit attached thereto.

FACTS

2.0. The Defendants decided to deregulate the downstream sector and to stop fixing the prices of petroleum products as required by law.

The said decision of the Defendants is scheduled to take effect on 1st November, 2009 and has been widely published in several newspapers circulating across the country.

The Plaintiff/ Applicant is a citizen of Nigeria, a legal practitioner and a tax payer who practices law in Nigeria.

The Plaintiff and his family own cars and regularly travel by air within Nigeria and are regular purchasers of fuel from the various fuel stations across Nigeria.

3.0. ISSUES FOR DETERMINATION

Whether the Plaintiff/applicant is entitled to the reliefs sought

4.0. ARGUMENT

The court has a discretionary power to grant or refuse an application for interlocutory injunction which discretion must be exercised judicially and judiciously see the case of I.G.P V. Fayose (2007) 9 NWLR(Part 1039) at 263 page 276-277

4.1. In exercising this discretion Court has to take into consideration the following factors:

a) The existence of a legal right in the applicant entitling him to the order sought.

- b) The balance of convenience of the parties before the court
- c) The need to maintain status quo
- d) The applicants real prospect of success
- e) The conduct of the parties
- f) The inadequacy of payment of damages in place of granting the order.

See the case of Tidend (Nig.) Ltd v. NUPENG (1998) 11NWLR Part 573 at 263 page 281 C-D.

4.2. On whether the Applicant has a legal right protect in this suit.

The Applicant has deposed in his affidavit in support of this motion that he a citizen of Nigeria, a tax payer who own cars which use petroleum products and is a regular purchaser of the products. He also deposed that failure to fix the prices of petroleum products by the Defendants will lead to prohibitive hike in prices of those products which will adversely affect him financially and restrict his movements in breach of his fundamental right to move freely within the country. See paragraphs 2-4 of the affidavit in support of the originating summons. We submit that the Applicant has clearly shown that he has a legal right to protect. The affidavit evidence has disclosed the existence of triable issues which this Honourable Court has to determine.

4.3. The Applicant has further shown in his affidavit in support of this application that that there is need to maintain status quo and has deposed to the fact that unless this application is granted the Defendants will carry out their decision to deregulate the downstream sector which is scheduled to take effect on 1/11/2009. We refer the Court to paragraph 10 of the affidavit in support of this application and Exhibit 1 attached thereto.

4.4. It is our further submission that the balance of convenience is in favour of the Applicant who will be made to suffer economic hardship and restriction in his movement which is a flagrant violation of his fundamental right to freedom to move freely if the Defendants are not restrained from neglecting their statutory duty. If the court stops the policy pending the determination of the substantive suit, the Defendants would not suffer any loss. They can always revert to the policy if the court finds that it is not illegal. The Applicant would have been made to buy fuel and other products at exorbitant prices which are not refundable.

4.5. On whether there are triable issues, it is our humble submission that there are serious triable issues for the determination of this Honourable pertaining to the statutory obligations of the Defendants to regulate the downstream sector and fix price for petroleum products.

4.6. Furthermore, it is our submission that the law in Nigeria today unequivocally places an obligation on the Defendants to regulate and fix the prices of petroleum products. We refer to section 4 of the Price Control Act, cap P28, Laws of the Federation of Nigeria, 2004 which states categorically that:

'Price Control shall continue to be imposed in accordance with this Act on any goods which are of the kind specified in the First Schedule to this Act'

Petroleum Products is listed as item 7 in the First Schedule to the Act.

Section 6 of the Petroleum Act, cap P10, Laws of the Federation of Nigeria, 2004 also clearly confers an obligation on the Defendants to fix the prices of Petroleum Products.

4.7. It is consequently our submission that deregulation would amount to a fundamental breach of the law which this court should not permit.

4.8. The conduct of the Applicant is deserving of a favourable consideration of this application and payment of damages will not be adequate to compensate the Applicant who in addition to being adversely affected financially, would have suffered a restriction of his fundamental right to move freely within the country on account of the attendant hike in the prices of petroleum products.

4.7. On the issue of undertaking as to damages, we submit that the Applicant has given undertaking to pay damages if it turns out that the application ought not to have been granted. We refer the Court to paragraph 12 of the affidavit in support of this application and urge your lordship to exercise your discretion in favour of the Applicant.

5. CONCLUSION

It is finally, submitted as follows:

(i) There are serious and substantial issues to be resolved at the trial of this suit.

- (ii) The Plaintiff cannot adequately be compensated in damages, if he succeeds at the end of the trial.
- (iii) The balance of convenience is on the side of the Plaintiff/applicant.
- (iv) The Plaintiff has shown in his affidavit that he is prepared to give an undertaking in damages.

We urge this honourable court to grant the application.

Dated this 14th day of October 2009

Anthony Itedjere Esq
Plaintiff's Counsel
BAMIDELE ATURU & CO.
Suite D12, Plot 92
Obafemi Awolowo Way
Beside Thisday Head Office, Jabi, Abuja
E-mail: aturulaw@yahoo.com
Tel: 01-8043418, 0805599988

FOR SERVICE ON

1ST Defendant

Ministry of Petroleum Resources

Federal Secretariat Abuja

2nd Defendant

Ministry of Commerce and Tourism,

Federal Secretariat Abuja.

3rd Defendant

Federal Ministry of Justice,

Abuja.

IN THE FEDERAL HIGH COURT

HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/ /2009

BETWEEN

BAMIDELE ATURU ESQ

PLAINTIFF

AND

1. HONOURABLE MINISTER OF PETROLEUM RESOURCES

DEFENDANTS

2. HONOURABLE MINISTER OF COMMERCE AND TOURISM

3. ATTORNEY GENERAL OF THE FEDERATION

WRITTEN ADDRESS IN SUPPORT OF THE ORIGINATING SUMMONS

1.0 Introduction

1.2.1 The Plaintiff commenced this action by originating summons filed on 14th October, 2009 praying for following reliefs.

a. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in vicious violation of the mandatory provision of section 6 of the Petroleum Act, cap P.10, Laws of the Federation of Nigeria, 2004.

b. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in flagrant violation of the mandatory provision of section 4 of the Price Control Act, cap P28, Laws of the Federation of Nigeria, 2004.

c. A DECLARATION that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in conflict with Section 16(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that the Government shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

d. A DECLARATION that that the policy decision of the Defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria has the effect of making the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians and is therefore illegal, unconscionable and unconstitutional and of no effect whatsoever.

e. AN ORDER restraining the Defendants their agents, privies, collaborators and whosoever and howsoever from deregulating the downstream sector of the petroleum industry or from failing to fix the prices of petroleum products as mandatorily required by the Petroleum Act and the Price Control Act.

f. AN ORDER directing the Defendants to fix and publish regularly prices of petroleum products forthwith.

1.3 The Plaintiff further formulated the following questions for the determination of this Honourable Court:

i) Whether the Defendants can lawfully deregulate the downstream sector of the petroleum industry by not controlling the prices of petroleum products as required by law.

ii) Whether by the combined provisions of section 6 of the Petroleum Act, cap P10, Laws of the Federation of Nigeria, 2004 and section 4 of the Price Control Act, cap P 28, Laws of the Federation of Nigeria, 2004, the Defendants are not under statutory obligations to fix or regulate the prices of petroleum products.

iii) Whether the proposed policy of deregulating prices of petroleum products by the Defendants is not in vicious and violent conflict with section 16(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that the Government shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

iv) Whether the attendant prohibitive hike in the prices of petroleum products would not make the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians.

1.4 The Plaintiff's originating is supported by an affidavit of 14 paragraphs affidavit which discloses the cause of action and sets out the facts relied upon by the Plaintiff in bringing this suit.

2.0. Relevant Background Facts

2.1. The Federal Government of Nigeria in which the Defendants are Ministers charged with certain regulatory functions in respect of the petroleum industry decided to deregulate the downstream sector of the petroleum industry in Nigeria by not controlling or fixing the prices of petroleum products as required by Section 4 of the Price Control Act, (cap P28), Laws of the Federation of Nigeria, 2004, Section 6 of the Petroleum Act, (cap P10), Laws of the Federation of Nigeria, 2004 and Section 7 of the Petroleum Products Regulatory Authority Act.

2.2. The said decision of the Defendants is scheduled to take effect on 1st November, 2009 and has been widely published in several newspapers circulating across the country.

2.3. The Plaintiff is a citizen of Nigeria, A tax payer and a legal practitioner who practices law in Nigeria. The Plaintiff commenced this action on 14th October 2009, praying the court for the reliefs contained in the originating summons. The Plaintiff's reasons for filing this action are that the Defendants are in law under obligation to regulate the downstream sector of the petroleum industry by fixing the price of petroleum products and that the decision of the Defendants to deregulate the downstream by not fixing the price of petroleum products will have the attendant consequence of uncontrollable increase in the prices of these products which will affect the Plaintiff who regularly purchases these products to run his cars, powers his generators at home and in the office and frequently travels by air around the country and the generality of Nigerians and as such restrict the Plaintiff's movement or at best make the enjoyment of the constitutional right to move freely illusory in addition to the economic hardship it would cause him and other Nigerians.

3.0. Issues for Determination

3.1. It is respectfully submitted that the issues for determination in this suit are as follows:

1. Whether the Defendants can lawfully deregulate the downstream sector of the petroleum industry by not controlling the prices of petroleum products as required by law.
2. Whether the attendant prohibitive hike in the prices of petroleum products would not make the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians.

4.0. Argument of Issues

Issue 1

4.1 Whether the Defendants can lawfully deregulate the downstream sector of the petroleum industry by not controlling the prices of petroleum products as required by law.

4.2 . Nigeria is a nation governed by laws and the Constitution of the Federal Republic of Nigeria vests the executive powers of the Federation in the President of the Federal Republic of Nigeria which powers may be exercised by him either directly or through the vice President and the ministers of the Federal Government or public officers.

4.3 In the exercise of these executive powers, the president and the persons through whom the powers are being exercised are under a duty to execute and maintain the constitution of the Federal Republic of Nigeria and other laws made by the National Assembly.

See Section 5 (1) of the Constitution of the Federal Republic of Nigeria 1999 which clearly provides as follows:

“subject to the provisions of this constitution, the executive powers of the federation-

a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice- President and Ministers of the Government of the Federation or officers in the public service of the Federation; and

b) shall extend to the execution and maintenance of this constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time, power to make laws." (emphasis supplied)

4.4 The Defendants are Ministers of the Federal Government through whom the President exercises his executive powers. The 1st and 2nd Defendants are specifically obligated by law to fix or regulate the prices of petroleum products. The 1st Defendant is under a statutory duty to fix prices of petroleum products in section 6 of the Petroleum Act, supra. The 2nd Defendant is similarly under an obligation to ensure that prices of petroleum products are fixed in sections 17 and 18 of the Price Control Act, supra. Rather than perform their statutory functions with fidelity the Defendants are part of the decision to deregulate the downstream sector of the oil industry in Nigeria by not fixing the price of petroleum products scheduled to take effect from the 1st November 2009.

4.5 The Price Control Act (cap P28), Laws of the Federation of Nigeria, 2004 and the Petroleum Act, (cap P10), Laws of the Federation of Nigeria, 2004 are laws made by the National Assembly which persons exercising executive powers are under the Constitution bound to comply with.

4.6 Section 4 of the Price Control Act (cap P28) LFN 2004 provides as follows,

" Price control shall continue to be imposed in accordance with this Act on any goods which are of the kind specified in the First Schedule to this Act"

Petroleum Products is listed as item 7 in the First Schedule to the Act.

For the avoidance of any doubt section 17 of the Price Control Act provides:

" the minister may with the approval of the President make such regulations as may, in the opinion of the minister, be required for carrying into effect the objectives of this Act and generally to facilitate the implementation of this Act ----- "

The word 'minister' in section 17 is defined in Section 18 of the Act to mean the minister responsible for commerce (who is the 2nd Defendant).

4.7 Also, the Blacks Law Dictionary 7th Edition at page 330, defines the word "control" to mean the following: " ¹. To exercise power or influence over. ². To regulate or govern. ³. To have a controlling interest in." (emphasis added)

4.8 We submit that by the provision of Section 4 of the Price Control Act, the Defendants are under obligation to regulate or control the price of petroleum products which is listed as item 7 in the First Schedule to the Act. It has been severally held that the word "shall" when used in an enactment, imposes an obligation and gives no room to discretion. See the case of Tanko v. Caleb (1999) 8 NWLR Part 616 at 606 page 611 para. E. Where the Court of Appeal in construing the effect of the word 'shall' used in Section 87 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998 clearly held as follows;

' generally, the word 'shall' is a word of command and denotes an obligation and gives no room for discretion. It imposes a duty"

4.9 Failure to control the prices of Petroleum products as planned by the Defendants will amount to a dereliction of the duty imposed on them by law to control the prices of the products and will constitute a flagrant breach of Section 4 of the Price Control Act (cap P28) Laws of the Federation of Nigeria 2004.

4.10 In the same vein, Section 6 of the Petroleum Act,(cap P10), LFN, 2004 also clearly confers an obligation on the 1st Defendant to fix the prices of Petroleum Products. the said section provides as follows " The minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in particular part or parts thereof."

It is important to note here that the marginal note to this section refers to it as "price control" and the word "minister" is defined in Section 15 of the Act as the minister of Petroleum Resources.

4.11 In addition to the Acts mentioned above, the Nigerian National Petroleum Corporation Act (cap N123) Laws of the Federation of Nigeria 2004 (NNPC Act) and Petroleum Products Pricing Regulatory Agency (establishment) Act No 8 of 2003 (hereinafter referred to as 'PPRA Act') provides for the regulation of petroleum products.

4.12 The NNPC Act in its preamble provides the following;

"An Act ----- to establish the Nigerian National Petroleum Corporation empowered – and to enforce all regulatory measures relating to the general control of the petroleum sector--"

Also the PPRA Act in Section 7(b) and (g) empowered the Agency to regulate the supply and distribution of petroleum products and moderate volatility in their prices by maintaining constant surveillance over all the key indices relevant to pricing policy and periodically approve benchmark prices for all petroleum products.

We humbly submit that a community reading of the Price Control Act, Petroleum Act and the PPRA Act will reveal that these laws imposes an obligation on the 1st Defendant, 2nd Defendant and the Petroleum Products Regulatory Authority to fix the prices of Petroleum products.

4.13 Consequently, it is our submission that going by the provisions of these statutes, it would amount to gross illegality if the Defendants fail or neglect to regulate the downstream sector of the oil industry and fix the prices of petroleum products and consequently a fundamental breach of the constitution and the law which this Honourable court should not permit.

4.14 Further, Section 16(1) (c) of the constitution of the Federal Republic of Nigeria 1999 makes provision for the State to manage and operate the major sectors of the economy. And Subsection (1) (d) forbids private individuals from engaging in economic activities within the major sectors of the economy. By virtue of Section 16(4) (a), the major sectors of the economy are construed to include economic activities being operated exclusively by the government of the Federation on the date immediately preceding the day when the section came into force.

4.15 The Oxford English dictionary at page 712 defines the word 'manage' to mean ^{a)} to be in charge of or make decisions in a business or an organization; ^{b)} to organize or deal with something that one has or controls".

4.16 The same dictionary also defines the word 'regulate' at page 983 to mean "to control something by means of rules and restrictions"

4.17 We submit that the word 'manage' as defined above is coterminous with 'control' and 'regulation'. The downstream sector of the oil industry being one of the sectors in which the federal government exclusively participated in its economic activities immediately preceding the coming into force of Section 16, is a major sector of the economy which only the State by Section 16(1) (c) & (d) can manage and operate. Deregulation of the sector which entails the surrendering of the oil sector to private individuals contrary to the provisions of the Constitution and it will for that reason be illegal.

4.18 We are not unmindful of the fact that Section 16 is contained in chapter 2 of the constitution and the Defendants may argue that the fundamental objectives and directive principles of State policy contained in chapter 2 of the constitution of the Federal Republic of Nigeria 1999 are not justiciable and the provisions of Section 16(1)(c) & (d) being one of those objectives is not justiciable. To this reasoning we submit that that the law is settled that whenever there is an enactment in support of any of the objectives contained in Chapter II of the constitution, that objective by virtue of the enactment, becomes justiciable. See the case of A.G., Ondo State v. A.G., Federation (2002) 9 NWLR (Part 772) at 222 pages 382 paras. A-B, 385 D-E. Where the Supreme Court held as follows:

"As to the non-justiciability of the Fundamental Objectives and Directive Principles of State policy in chapter II of the constitution, section (6) (c) says so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State organs if they acted in disregard of them, the nature of the consequence which having to depend on the aspect of the infringement and in some cases the political will of those

in power to redress the situation. But the directive principles(or some of them) can be made justiciable by legislation”

Which the enactment of the Corrupt Practices and Other Related Offences Act, 2000 has done to Section 15 (5) of the constitution.

4.19 We submit that the National Assembly has pursuant to its constitutional powers to legislate on matters contained in the exclusive legislative list, enacted the Price Control Act, Petroleum Act, PPRA Act and the NNPC Act which have given effect to the fundamental objectives contained in Section 16(1)(c)&(d) of the constitution brought under the exclusive legislative list by item 60(a) of Part 1 of the second Schedule of the constitution. Hence the said enactments have made the provisions of Section 16(1) (c)&(d) enforceable and justiciable and we urge your lordship to so hold.

5.0 Issue 2.

Whether the attendant prohibitive hike in the prices of petroleum products would not make the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999 illusory for the Plaintiff and the generality of Nigerians.

5.1 Section 41 of the constitution of the Federal Republic of Nigeria guarantees the right of every citizen of Nigeria to move freely throughout Nigeria.

5.2 The right to freedom of movement though not absolute, can only be derogated from in accordance with the procedure permitted by law.

5.3 The Plaintiff has deposed in his affidavit in support of the originating summons that he own cars and is a regular purchaser of fuel from the various fuel stations across the country. That he is a regular traveler within Nigeria both by air and the road. That any failure by the Defendants to regulate the downstream sector and fix the prices of petroleum products as threatened will have the attendant consequence of hiking the prices of petroleum products which will cause inflation and make the products expensive and curtail the Plaintiff's and other Nigerians' movement within the country.

5.4 We humbly submit that a right is not a right unless it is capable of being enjoyed. The right to freedom of movement guaranteed by the constitution will be empty without a concomitant right to be able to afford petroleum products particularly Premium Motor Spirit (PMS) (otherwise known as fuel)

which makes such movement possible. It therefore suffices to state that the right to be able to afford fuel is a necessary condition for the effective enjoyment of the right to move freely throughout Nigeria guaranteed by Section 41(1) of the constitution and any denial of the right to be able to afford fuel at a controlled and affordable price can only render the right to free movement guaranteed in Section 41(1) illusory.

5.5 The Court of Appeal has held that the constitution does not give details in its description of the fundamental rights and the freedoms it guarantees.

See the case of *Agbakoba v. The Director, S.S.S (1998) 1 HRLRA at 252 page 282 para. E – G.* where the Court in holding that the right not to have ones passport impounded is a necessary concomitant of the freedom of exit guaranteed by Section 38(1) of the 1979 Constitution of the Federal Republic of Nigeria found per Ayoola, J.C.A as follows:

“the constitution is an organic document which must be treated as speaking from time to time. It therefore can only describe the fundamental rights and freedoms it guarantees in broad terms. It is for the courts to fill the fundamental rights provisions with contents such as would fulfill their purpose and infuse them with life. A narrow and literal construction of the human rights provisions in our constitution can only make the constitution arid in the sphere of human rights. Such approach will retard the realization, enjoyment and protection of those rights and freedoms, and is as such unacceptable”.

5.6 The word illusion is defined by the oxford English dictionary at page 592 to mean “¹ a false idea, belief or impression: ² a thing that a person wrongly believes to exist: a false appearance”. And illusory is defined on the same page as something being based on illusion, not real.

5.7 We submit that the Plaintiff has shown that he has a right to move freely within the country. The Plaintiff is therefore entitled to the concomitant right to be able to buy fuel at an affordable and controlled price. The Defendants being agents of the State, have the attendant obligation not to infringe on the Plaintiff’s right by making his right to freedom of movement illusory which any neglect to regulate or fix the prices of petroleum products as required by law will occasion.

5.8 We therefore, humbly urge your lordships to tow the line of the Court of Appeal in the case of *Agbakoba v. The Director, S.S.S (supra)* and construe the right to free movement guaranteed in Section 41(1) of the constitution as carrying a concomitant obligation not to make that right illusory by making the price of fuel which makes the enjoyment of that right possible, unaffordable.

5.9 We further submit that deregulation of the downstream sector of the oil industry by not fixing the price of petroleum products as planned by the Defendants will constitute an infringement of the Plaintiffs fundamental right to freedom of movement outside the procedure permitted by law.

5.10 The scope and circumstances of derogation from the right to free movement are clearly set Sections 41(2) and 45 of the constitution as follows:

S.41(2) " Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society:

a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

b) providing for the removal of any person from Nigeria to any other country to-

i) be tried outside Nigeria for any criminal offence, or

ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty.

Provided there is a reciprocal agreement between Nigeria and such other country in relation to such matter."

S. 45. Provides as follows:

'Nothing in Sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society –

a) in the interest of defense, public safety, public order, public morality or public health; or

b) for the purpose of protecting the rights and freedom of other persons."

5.10 We submit that it is clear from the above provisions that there is no circumstance of derogation as provided by the constitution that permits the Defendants to contravene the Plaintiff's right to free movement throughout Nigeria by denying him access to affordable fuel which any neglect by them to fix and control the price of petroleum products will occasion.

6.1 CONCLUSION:

6.2 It is the Plaintiff's case that deregulation of the downstream sector of the oil industry by not fixing the prices of petroleum products will constitute a violation of Section 4 of the Price Control Act (cap P28) LFN 2004, Section 6 of the Petroleum Act (cap P10) and Section 7(b) and (g) of the Petroleum Products Regulatory Authority Act which imposes an obligation on the Defendants to fix and regulate the prices of Petroleum products and Section 16(1) of the Constitution of the Federal Republic of Nigeria 1999.

It is also the Plaintiff's case that any neglect by the Defendants to regulate and fix the prices of petroleum products will result in hike in the prices of these products particularly fuel which aids the Plaintiff's movement within the country and in turn curtail his movements thereby rendering his fundamental right guaranteed by Section 41(1) of the constitution of the Federal Republic of Nigeria 1999 illusory.

DATED THIS ----- DAY OF ----- 2009.

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Federal Secretariat Abuja

2. 2nd Defendant

Ministry of Commerce and Tourism,

Federal Secretariat Abuja.

3. 3rd Defendant

Federal Ministry of Justice,

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