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***International Association of Prosecutors Ninth European
Regional Conference 2009***

*The Hague
11-13th March 2009*

**Civil Recovery vs Recovery
through Criminal Courts**

“Confusion to the Enemy!”

**Keith E. Oliver
Peters & Peters, London**



Recovery in the Criminal Courts

There are numerous criminal powers in asset tracing cases available under POCA 2002, SCA 2007 and PACE 1989:

- Confiscation Orders
- Restraint Orders
- Freezing Orders
- Search and Seizure Warrants
- Production Orders

These Orders are available to the Serious Organised Crime Agency.

Increase in use of Civil Powers in Asset Tracing

- SOCA also has numerous civil powers in asset tracing under POCA 2002 including:
 - Search Orders
 - Seizure and Detention Powers
 - Continued Detention of Assets
 - Forfeiture Orders
- Aswell as SOCA investigating fraud and tracing assets, Richard Alderman, Director of the SFO, recently intimated an increase in investigations into fraud.
- There will be an increase in the SFOs use of civil powers as result of the Balfour Beatty case last autumn.
- Balfour Beatty Plc, the engineering and construction group, agreed to pay a £2.25million fine after admitting to “payment irregularities” linked to a £75 million project to build a library in Egypt almost eight years ago.

The SFO has a New Weaponry against Fraud

- Plea negotiations - so that only one or two charges proceed to court.
- Alternatives to prosecution e.g. civil recovery orders.
- Encouraging companies to come forward, admitting that fraud or corruption has been unearthed and agreeing with the SFO on how to put things right, including a “proper culture of ethics and compliance” and external monitoring.
- Cross-jurisdictional settlements with the US or other prosecuting authorities, where the SFO is looking for “global settlements” - in which a company benefits from a simultaneous resolution of an investigation by all the national prosecutors involved.
- The SFO have launched a telephone hotline to encourage people to ring in with tips about suspected frauds. So far there have been three whistleblower calls, several contacts from professional bodies and more than 100 e-mails and 70 letters and phone calls this year.

International Fraud Claims

- Dramatic growth of international fraud over the last 25 years.
- It is important to free trade and the provision of services (particularly financial services) that those who commit such frauds and those who are victims of them are aware that effective means of redress are available.
- Simultaneous developments in the international banking systems have enabled stolen money to be transferred very quickly from one institution to another and, indeed, from one country to another.
- The speed with which such funds can be transferred has facilitated the activities of professional fraudsters whose modus operandi is to commit frauds and transfer the monies away very rapidly.
- Development of international money laundering legislation has provided some fetter upon the ability of fraudsters to spirit away stolen proceeds but it has obviously not been completely effective for this purpose.

International Asset Tracing

- The tracing of and recovery of assets is seen as an important element in the delivery of justice, and sends out a strong deterrent message.
- States should be able to provide expeditious access to necessary financial information in order to assist investigations and prosecutions, and to trace assets for the purposes of confiscation.
- Criminal Mutual Legal Assistance treaties alone are not sufficient. Immediate cross-border recovery and parallel sanction approaches essential particularly where State assets are concerned.

- In international fraud claims in jurisdictions that permit disclosure *in personam*, once it has been established that the Court has jurisdiction over the defendant and that he received the funds and/or is likely to have, in some measure, assets within the jurisdiction of the Court, the Court will require him very rapidly (the standard English freezing order says "forthwith"), to disclose what has become of the proceeds of fraud and where his assets are to enable the claimant to know how and where to seize them and to ensure that third parties who hold those funds are aware of the English Court Order.
- Safeguards are, of course, written in to the process to protect the defendant's civil rights and legitimate interests. For example, his rights in relation to privilege against self-incrimination, his rights to obtain legal advice and to fund it, and his opportunity to apply to set aside the injunction on the basis that it should never have been granted.

The StAR Initiative

- The Stolen Asset Recovery Initiative (StAR) was started by the World Bank group and the United Nations Office on Drugs and Crime to help developing countries recover the assets stolen through corruption.
- StAR helps developing countries build capacity to recover the assets and stem new outflows.
- StAR works with major financial centres to lower barriers to recovering stolen assets and to detect and prevent their concealment.
- StAR is becoming the source of information and precedent for criminal cases of asset recovery.
- But what of civil recovery?

European Arrest Warrant

- Effectively calling for best parts of English Common Law and Equitable Tracing to be transposed across the EU.
- In effect implementation – of the civil equivalent of the European Arrest Warrant introduced in the UK on 1 January 2004 by The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003 No. 3334).
 - Intended to simplify procedures, reduce duplication and prevent delay in bringing accused persons to trial in Member States and in other countries with criminal justice procedures of equivalent standing to our own.
 - A national court may issue an EAW if the person whose return is sought is accused of an offence for which the penalty is at least a over year in prison or if he has been sentenced to a prison term of at least four months.
 - The state in which the person is arrested must return him to the state where the EAW was issued within a maximum of 90 days of the arrest.
 - The EAW abolishes political involvement in the extradition process. The execution of warrants should simply be a judicial process under the national judicial authority.
 - Under the EAW EU countries can not refuse to surrender their own nationals but Member States can request that the person is returned to its territory to serve his sentence

Dadourian Group International Inc and others v Simms and others
[2006] EWCA Civ 399

- After an Arbitration in the USA, the Claimants issued proceeds in England and Wales.
- Worldwide freezing order (WFO) obtained against the first four defendants.
- Contained an undertaking by the claimants that they would not seek to enforce the order in any country outside England, Wales or France, without permission of the court.
- The judge held that all the claimants needed to show about the existence of assets abroad was that there was a real prospect that the defendants were entitled to assets in that jurisdiction, and refused to discharge the Swiss variation order.
- The defendants appealed but the appeal was dismissed.

Worldwide Freezing Order

- The interests of the other parties to the proceedings and any new party likely to be affected by the grant of that permission should be just and convenient for the purpose of ensuring the effectiveness of the WFO.
- Consideration should also be given to the proportionality of the steps proposed to be taken abroad, and in addition to the form of any order.
- The interests of the applicant should be balanced against those of the external defendant to be joined to the foreign i.e. UK proceedings.



A High Profile Victim of the the 419 Nigerian Letter
Advance Fee Fraud:

THE BANCO NOROESTE STORY

419 Fraud – the Basics

- A confidence trick in which the target is persuaded to advance sums of money in the hope of realising a much larger gain.
- This type of scam, originally known as the “Spanish Prisoner Letter,” has been carried out since the sixteenth century via ordinary postal mail.

- The number "419" refers to the article of the Nigerian Criminal Code (part of Chapter 38: "Obtaining Property by false pretences; Cheating") dealing with fraud.
- These scams have come to be associated in the public mind with Nigeria due to the massive proliferation of such confidence tricks from that country since the mid-eighties, although they are often also carried out in other African nations, and increasingly from European cities with large Nigerian populations, notably London and Amsterdam



The Facts

- Perpetrated by three Nigerians who impersonated various officials from the Central Bank of Nigeria.
- Convinced an employee of Banco Noroeste to invest in the building of an airport in Abuja, Nigeria.
- Banco Noroeste lost \$242m through the latter half of the 1990s.
- The fraud was discovered in 1998 when Banco Noroeste was bought by a Spanish bank.

K. 00000007686

20



CENTRAL BANK OF NIGERIA
TINUBU SQUARE, LAGOS

P.A.M.N. 115
Telegram CBN
Telephone 01-660100

Ref. No. FMA/132/019/87
Date 1st March, 1987

TO: NELSON T. SAKAGUCHI
STANTON DEVELOPMENT CORP. BRAZIL

CREDIT ADVICE

This is to inform Stanton Development Corp., Brazil, that instructions has been forwarded to the offshore bank of Central Bank of Nigeria in New York (The Standard Finance Clearing House N.Y. 10023) 978, Franklin St. New York to pay the sum of US Dollars \$231,002,000.15 (Two Hundred and Thirty One Million, Eight Hundred and Eighty Two Thousand, Fifteen Cents US Dollars only). Including the overriding interest for the 1st Quarter of the year 1987.

The Standard Finance Clearing House shall be forwarding these funds as soon as the necessary protocols has been observed to your designated Bank, that is to say

CHEMICAL BANK OF NEW YORK
BANCO NORDESTE S/A CAYMAN ISLANDS BRANCH
ACCOUNT NUMBER: 544-7-07768

We once again congratulate you
Regards.
Dr. Obint Owole

Cc: STANDARD FINANCE CLEARING HOUSE
CENTRAL BANK OF NIGERIA.
MINISTRY OF AVIATION & TRANSPORT

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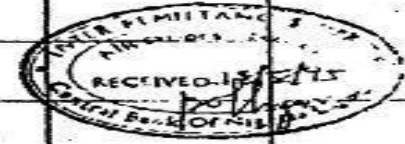
KA 00000007669



CENTRAL BANK OF NIGERIA
FOREIGN EXCHANGE RELEASE ORDER

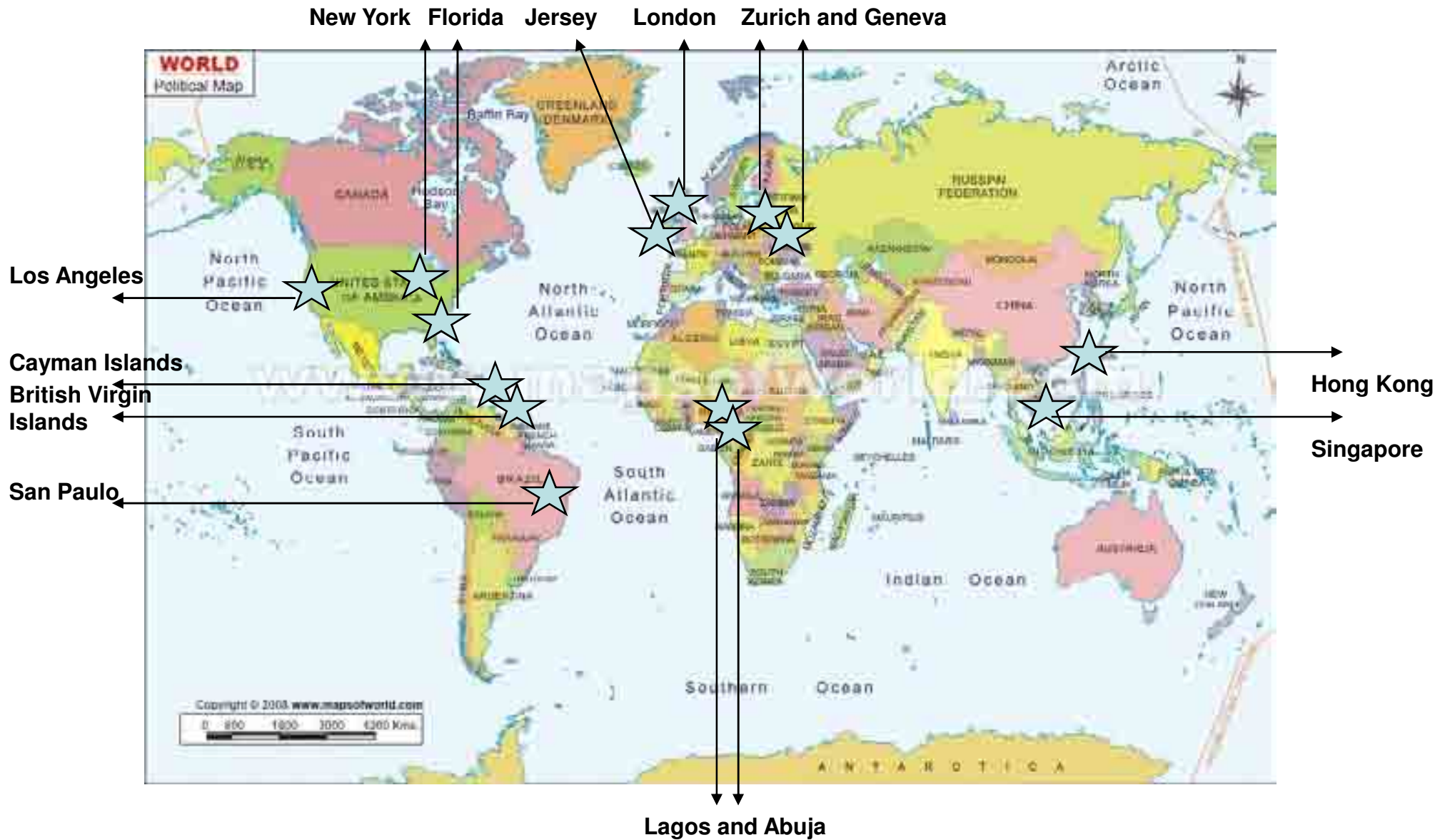
PAYMENT SCHEDULE (INTERNATIONAL) FOR 1st QUARTER 19 95
 SCHEDULE "D" NON OIL TRANSFER WORLD WIDE PROJECTS
 EXTERNAL ACCOUNT RESERVE

NUMBER	NAME OF BENEFICIARY	CATEGORY	TOTAL FUND
* 1.	STANTON DEVELOPMENT CORP, BRASIL ✓		\$39,016,000.00
2.	SITAK HANDLES AG		\$87,200,000.00
3.	TRANS AMERICAN IMPEX LTD.		\$101,100,000.00
4.	LINCOLD SHOP ENT.		\$24,250,000.00
5.	UNITED STATES GYPSCMS		\$52,050,000.00
6.	C.C. WINSTON & CO. INC.		\$9,100,000.00
7.	BELUMU FISCHER GMBH		\$10,400,000.00
8.	PROJECT FIELD SERVICES		\$11,400,000.00
ALL PAYMENTS TO BE EFFECTED ON THURSDAY BEING 18-5-95 at 15.00			
HRS., NIGERIAN TIME TO THE ABOVE EIGHT RESPECTIVE COMPANIES.			



The Proceedings

- Involved a worldwide legal team in **over eight jurisdictions** with proceedings running simultaneously in all the jurisdictions.
- This is a case that ran the length - insofar as the UK proceedings were concerned - of all possible interlocutory and emergency civil procedures.
- Aside from civil proceedings in the **UK**, the US and Hong Kong, simultaneous civil and criminal investigations and proceedings were commenced in Switzerland, and subsequently in **Nigeria**.
- The Defendants and the third parties who had dealt with them were cornered and held judicially accountable by a series of litigation 'pincer' movements around the globe.



The Nigerian Proceedings

Challenges

- Country's image problems.
- Time that had elapsed since fraud perpetrated.
- Major suspects had become extremely wealthy, and powerful, as result of crimes.
- Operation of Nigerian judicial system.

Challenges of litigation in Nigeria.

- System based upon UK's common law system.
- Adversarial system.
- In practice, system plagued by archaic rules of practice & procedure; extremely generous rights of appeal; system that does nothing to discourage abuses.

Enter the EFCC!!

- EFCC established by Nigerian Government by legislation passed in December 2002, as result of pressure from the Financial Action Task Force (FATF) of the Organisation for Economic Cooperation and Development (OECD) to introduce more effective anti Money Laundering provisions.
- Commission actually established in May 2003.
- Within few days of establishment of Commission in May 2003, action taken to arrest, detain and prosecute fraudsters who had previously avoided or stalled prosecutions, including major Nigerian beneficiaries of fraud, Emmanuel Odinigwe Nwude and Martina Amaka Anajemba.
- After initially evading arrest, and mounting legal challenge to powers of EFCC, both were eventually arrested in July 2003 (Nwude) and November 2003 (Anajemba)

- Arraigned in February 2004.
- After taking advantage of judicial system for eight months, defendants suffered serious blow when interim forfeiture of assets was obtained in October 2004.
- Had effect of seriously undermining ability to fund their expensive lawyers.
- Forced them to negotiate more realistically!
- July 2005, Amaka Anajemba pleaded guilty to reduced charges and is ordered to forfeit assets in Nigeria worth US\$ 20.4 million.
- November 2005, Nwude also pleads guilty to reduced charges; Sentenced to five 5 year jail terms; Ordered to make restitution of US\$110 million to victims of fraud.

Present Position with recoveries

- Anajemba assets yielded all of the US\$46 million she agreed to re-pay.
- Nwude assets have yielded US\$74.5 million thus far – possible to realise further US\$ 35-50 million. However, he is endeavouring to reverse the forfeiture order by way of an appeal, and a criminal complaint against EFCC & SOOB.

The UK Proceedings

- Bankers Trust –v- Shapira proceedings against around 16 different Banks with offices in London
- Substantial disclosure of bank statements and banking records which was then utilised to produce detailed tracing schedules
- Substantive proceedings against one of the second level recipients in London – Chief Nwandu and his English company MacDaniels. Resulted in jurisdiction in the UK to bring proceedings directly against the main defendants.

- US\$150million interim payment orders and US\$240million summary judgment orders against the main conspirators which were exported to other jurisdictions for enforcement purposes
- Search & seizure orders, freezing orders, passport orders, Norwich Pharmacal orders (disclosure orders), interim payment orders, summary judgment, third party debt orders, charging orders and orders for sale
- In total forty two defendants were joined to the UK substantive proceedings.

**ADVERTISEMENT PLACED PURSUANT TO THE ORDER OF THE HONOURABLE
MR. JUSTICE JACOB IN THE CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE,
LONDON, ON FRIDAY 9 AUGUST 2002**

IMPORTANT NOTICE CONCERNING:-

**AMAKA MARTINA ANAJEMBA
CHIEF INNOCENT ANAJEMBA
DAX PETROLEUM NIGERIA LIMITED
PRIMOLE COMMUNICATIONS LIMITED and
FYNBAZ NIGERIA LIMITED
ALL OF GODAX HOUSE, 4, OGUI ROAD, ENUGU, ENUGU STATE, NIGERIA**

IN LONDON ON FRIDAY 9 AUGUST 2002, THE HONOURABLE MR. JUSTICE JACOB ORDERED AMAKA MARTINA ANAJEMBA (sued personally and as Administratrix of the Estate of Chief Christian Ikochukwu Anajemba), CHIEF INNOCENT ANAJEMBA (sued as Administrator of the Estate of Chief Christian Ikochukwu Anajemba), DAX PETROLEUM NIGERIA LIMITED, PRIMOLE COMMUNICATIONS LIMITED AND FYNBAZ NIGERIA LIMITED, **TO MAKE AN INTERIM PAYMENT OF US\$150 MILLION (ONE HUNDRED AND FIFTY MILLION US DOLLARS) TO CLAIMANTS IN PROCEEDING COMMENCED AGAINST THEM FOR CONSPIRACY TO DEFRAUD.**

THE CLAIMANTS ARE ASSIGNEES OF BANCO NOROESTE SA OF SAO PAULO BRAZIL. BETWEEN 1995 AND 1997, BANCO NOROESTE WAS DEFRAUDED OF **\$242 MILLION (TWO HUNDRED AND FORTY TWO MILLION US DOLLARS).**

THE INTERIM PAYMENT ORDER MADE BY THE COURT IN ENGLAND AGAINST EACH OF THE ABOVE NAMED IS ON ACCOUNT OF THE DAMAGES, DEBTS OR OTHER SUMS, TOGETHER WITH ACCRUED INTEREST, THAT THE COURT MIGHT FINALLY HOLD EACH OF THEM LIABLE TO PAY TO THE CLAIMANTS.

A SET OF SERVICE DOCUMENTS FOR EACH OF AMAKA MARTINA ANAJEMBA, CHIEF INNOCENT ANAJEMBA, DAX PETROLEUM NIGERIA LIMITED, PRIMOLE COMMUNICATIONS LIMITED AND FYNBAZ NIGERIA LIMITED, IN "ULL" (CONTAINING COPIES OF THE INTERIM PAYMENT ORDER, INTERIM THIRD PARTY DEBT ORDERS (IN RESPECT OF BANK ACCOUNTS), INTERIM CHARGING ORDERS IN RESPECT OF PROPERTIES AND AN ORDER APPOINTING A RECEIVER OF CERTAIN PROPERTIES IN AID OF EQUITABLE EXECUTION OF THE INTERIM PAYMENT ORDER AND SUPPORTING APPLICATION NOTICES) IS AVAILABLE FOR COLLECTION FROM THE OFFICES OF SOFUNDE, OSAKWE, OGUNDIPE & BELGORE OF ST NICHOLAS HOUSE, CATHOLIC MISSION STREET, PO BOX 80367, LAFIAJI, LAGOS, NIGERIA UPON PROOF OF IDENTIFICATION.

The ill-gotten gains

- Luxury cars.



- Homes across the globe.

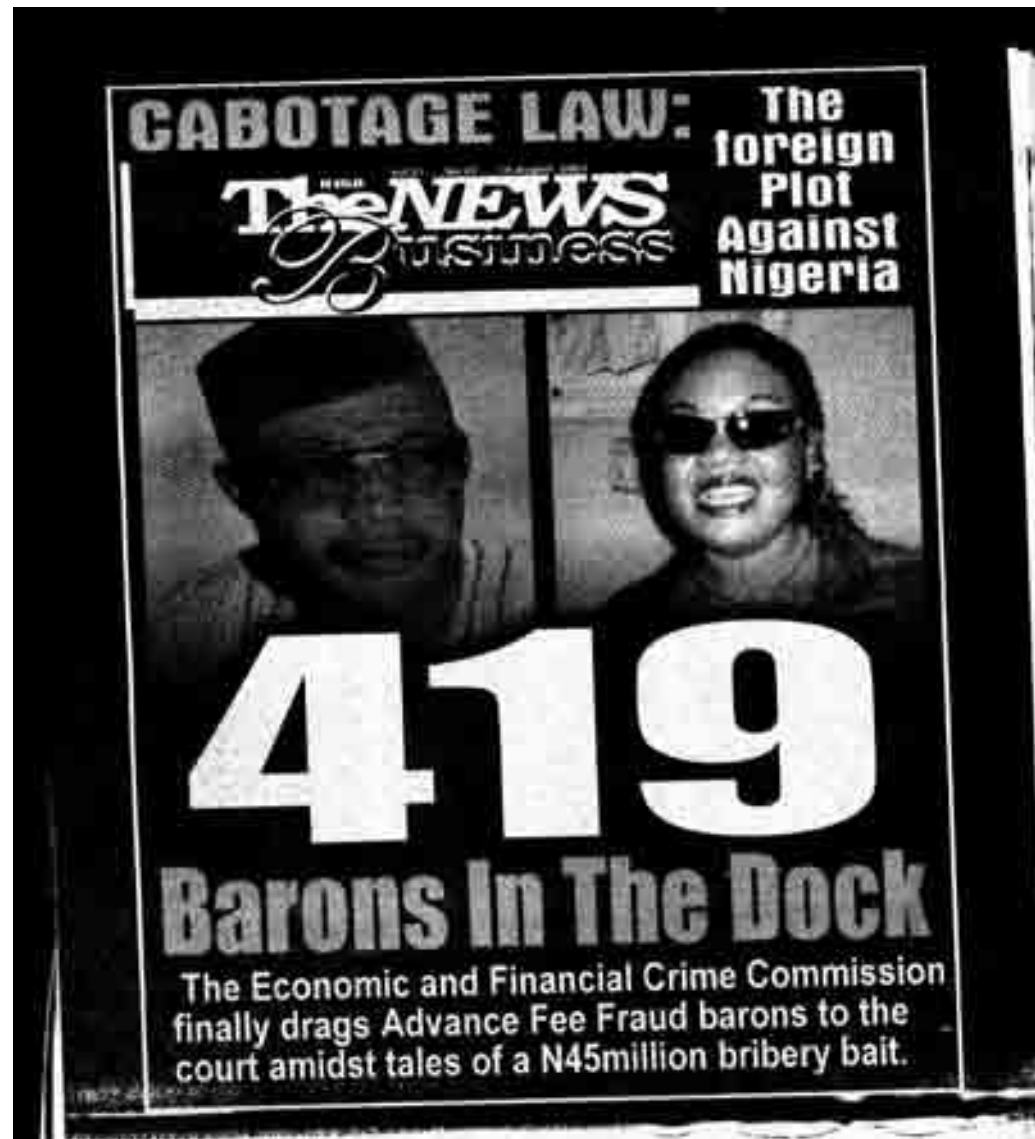


- Large amounts of cash.













News

\$242m Scam: Anajemba Pleads Guilty, Jailed

A new twist occurred yesterday before an Ikeja High Court judge, Justice Olubanmi Oyewole, when both Amaka Anajemba (Mrs.) and Fyrbaz (Nig.) Limited (2nd and 4th accused persons respectively), pleaded guilty in a 12-month old trial of seven accused persons who were alleged to have defrauded a Brazilian bank, Banco Noroeste S.A. of \$242million.

Anajemba, who had constantly expressed her readiness to face trial in the often-stalled trial, pleaded guilty to a fresh four-count charge (counts 88 - 91) contained in an amended information filed against her by the

By Abimbola Akosile and Waziri Jusuif

Economic and Financial Crimes Commission (EFCC) and was thereafter sentenced to two and a half years imprisonment, said sentence to commence from January 30, 2004, when she was first remanded in prison custody.

In addition to her prison sentence (where she is expected to be freed on September 9 this year), Justice Oyewole also ordered that numerous valued assets of 2nd accused person, both local and foreign, which value exceeded N3billion and \$2million respectively, should be forfeited to the victims of the said

fraud named in the charge, as restitution.

Other accused persons in the case described as the 'single biggest advanced fee fraud case in the whole world' included Chief Emmanuel Nwude (aka Tossman, Paul Ogwuma Odinriywe) 1st accused, Mr. Nzeribe Edeh Okoli (3rd accused), Emrus (Nig.) Ltd., Ocean Marketing Co. (Nig.) Ltd. and African Shelter Bureau (Nig.) Ltd. (5th - 7th accused). However trial of remaining accused persons are to continue on September 13 and 14.

When the matter came up yesterday, Justice Oyewole was informed by Mr. Rotimi

Jacobs, lead prosecution counsel for EFCC, about the amended information, dated June 17, which contained 91 counts against the seven accused persons; in contrast against the first 86-count charge previously filed against them before an Abuja High Court judge, Justice Lawal Garma, on February 4th, 2004, and the 98 count charge filed against them when they were arraigned in Lagos before Justice Oyewole.

The amended charge was thereafter read to the accused persons, with varying responses. While Nwude pleaded not guilty to all the counts against him, Edeh-

Okoli declined to reply, which led to a plea of 'not guilty' being recorded against him; while Anajemba pleaded guilty to the four counts against her and her company, Fyrbaz Ltd.

Delivering judgment, Oyewole read, 'having listened to the 2nd accused representing herself and 4th accused, and having listened to the submissions of Chief Chris Uche, SAN their counsel and having also considered the facts as presented by Mr. Jacobs for prosecution, I am satisfied that the 2nd and 4th accused persons do intend to plead guilty to the charge against them as contained in the amended information'.

'Accordingly I hereby pronounce as follows; the 2nd accused is found guilty on counts 89 and she is hereby convicted accordingly. The 4th accused is found guilty on counts 88, 90, and 91 respectively and it is hereby convicted accordingly. I shall now listen to counsel', he ruled.

Both Mr. Olisa Agbakoba, SAN, who represented Nwude and Mr. Adeshina Ogunlana, counsel to Edeh-Okoli raised no objection to the judgment, though Ogunlana sought an adjournment of the matter, which was refused. He thereafter sought permission to leave the courtroom, on ground of ill-health, while his junior counsel, Mr. Taiwo Adedeji took over the brief. Chief G.O.K. Ajayi, SAN, who previously was lead counsel to Nwude, did not appear at

yesterday's proceedings.

Passing his sentence after the allocutus from Chief Uche, Justice Oyewole read, 'I have considered submissions of learned counsel for the prosecution and defence and I must say that I was touched by the passionate plea of learned legal defence counsel whose conduct since the inception of this case had been quite exemplary. I have also noted the demeanor and general comportment of the 2nd accused since the inception of this case which shows sobriety and penitence'.

'However, the message must still be sounded that no one must be permitted to profit from criminality. I therefore sentence the accused persons as follows. 2nd accused, Amaka Martina Anajemba is hereby sentenced to 2 and a half years imprisonment on count 89. Said sentence shall be deemed to have commenced from January 30, 2004, when she was first remanded in prison custody'.

'On count 88, the 4th accused person shall forfeit the sum of \$5million to the Federal Government of Nigeria. On count 90, 4th accused shall pay a fine of N1million; and on count 91, it shall pay a fine of N1million and in addition thereto, the properties listed in schedules A and B in the 5th additional proof of evidence dated July 12, 2005, being proceeds of fraud shall be forfeited to the victims of the said fraud named in the charge, as restitution', Oyewole ruled.

ing to the appointment of a substantive IGP this month when Ehindero would have been six months in office.

High ranking police sources told THISDAY during the week that Ehindero, who docked 32 years in service on May 1, 2005, will be 60 years of age officially on March 20, 2006, when he is expected to retire from service. The source said, he was seen as too old for the job and lacking the ability to stand serious pressure.

Besides, the source added that while his crime prevention and fighting ability have not been too impressive, he was found not to have done much up till now in the area of turning the men and officers of the Force from their old ways of doing things, to service delivery commu-

nication to court was meant to preempt the outcome of the presidential investigation," the source said.

While government was very much embarrassed by Tafa Balogun's alleged involvement in corruption and money laundry, they were said to have never cease to admire him as a 'real policeman' and finding a suitable replacement to match his charisma, managerial and policing skills, particularly with the 2007 elections coming, it was gathered, have been responsible for the long delay in the appointment of a substantive successor to him.

With the office remaining zoned to the South West, one of these men, except government decides to retire them all along with the DfGs and tick a Commissioner of

NEW IG Cont'd from P1

Geography. The 56-year old deeply religious man from Ede, Osun State, is due to retire in April 18, 2009, when he would have attained the mandatory retirement age of 60. Gazali Lawal, AIG Zone 5, Benin City, who is from Ifelodun Local Government Area of Osun State, joined the Police in 1976, with a Bachelor of Science degree. Fifty-six-year old Lawal will retire from the Force on April 2, 2009, when he would have attained the mandatory retirement age of 60.

Iseal Ajao, until recently CP, Lagos, is Acting AIG Zone 2, Lagos. A qualified Lawyer, Osun state - born Ajao, who has also been CP, Crime, Federal Criminal Investigation Department (FCID) Armer, Alagbon, Ikoji, Lagos, and Ogun State

Police Command, is said to be government's favourite for the position. Sources said he is believed to possess some of those qualities wanted by government in an IGP, but his health problems lately are said to be of concern.

However, aside the interest in a tough-posturing officer for the office, Adeoye is said have a slight edge over the others, being the only one, who has attended a Senior Executive

Management Course at the Nigeria Institute of Policy and Strategic Studies (NIPSS), Kuru, near Jos. The course, which is said to be compulsory for top government officials, desiring to hold such sensitive top positions, are said to be conducted by the NIPSS and the War College.

\$242m Scam: Nwude Pleads Guilty, Bags 25 Yrs Jail Term

With the clear words, "I am guilty," uttered by Chief Emmanuel Nwude and his accomplice, Mr. Nzenibe Edeh Okoli, trial ended yesterday and judgment was passed by an Abuja High Court judge, Justice Olubunmi Oyewole in a \$242-million advance fee fraud (a.k.a. 419) case involving fraudulently obtained from a Brazilian banker, Mr. Nelson Sakaguchi over a three-year period, from April 2, 1995 to January 20, 1998.

Nwude, (a.k.a. Paul Ogyurna Odinigwe) 1st accused person, Okoli (3rd accused), Erimus (Nig.) Ltd, Ocean Marketing Co. (Nig.) Ltd. and African Shelter Bureau (Nig.) Ltd. (5th-7th accused), pleaded guilty to an amended 12-count charge filed yesterday by Economic and Financial Crimes Commission (EFCC) in a plea-bargain move that saw the accused persons receiving 25 years and 12 years jail terms respectively and varying fines for the companies. The sentences are, however, to run concurrently from day of incarceration.

The 1st accused, who was first arrested June 4, 2003, was ordered to refund \$110 million to Bruno Noronha, and forfeit 14 properties (located in Lagos, Abuja, Enugu,

By Abimbola Akosile

in Nigeria, Okoli (arrested on January 20, 2004) is to forfeit an uncompleted filling station, residential complex and all landed properties located at 6, Ocean Avenue, Nkpokiti, Enugu State, while the three companies (Erimus, Ocean Marketing and African Shelter Bureau) are to be wound up after refunding \$11.5 million to the Federal Government.

The judgment is coming 15 months after accused persons were first arraigned in a de novo trial before Justice Oyewole on July 23, 2004, following an Abuja High Court's dismissal of the previous 86-count charge brought against them for lack of jurisdiction (offences were committed within Lagos jurisdiction). Eminent lawyers like Chide Alex Ikenyon (SAN), G.O.K. Ajayi (SAN) and Mr. Oluwa Agbatoba (SAN) had appeared earlier and brought several applications on behalf of Nwude. Late Chief Rotimi Williams (SAN) (who briefly represented Amaka Anajemba) and Chief Chris Uche, who facilitated a plea-bargain for her.

When the matter came up yesterday morning, Mr. Rotimi Jacobs, lead prosecution counsel, informed court of

12-count charge from Mr. Ricky Tarfa (SAN) lead defence counsel to Nwude and Mr. Adeshina Ogulana, Okoli's counsel, after which the judge adjourned briefly to his chambers with all counsel to deliberate on the new dimension.

At 10.50am, when hearing resumed, Jacobs applied that the new charge be read to the accused persons, with again no objection from defence counsel. In a reading which spanned 25 minutes (11.15am), Nwude, who sported an ash coloured two-piece kaffar, pleaded guilty to every charge read to him by the court registrar. Mrs. Rosulu, a move which was copied by Okoli (who wore a navy-blue suit on a white shirt) both accused also pleaded guilty on behalf of their companies when the charge was read to 5th - 7th accused.

Jacobs thereafter sought to present enough evidence before the court to convict accused persons, tracing the history of the fraud from March 20, 1995, when Sakaguchi (who was in court all through yesterday's proceedings) was contacted by letter for a contract, using Okoli's phone line to send a fax, after which regular contact was made by Nwude and late Christian Anajemba to obtain

award for construction of Abuja International Airport.

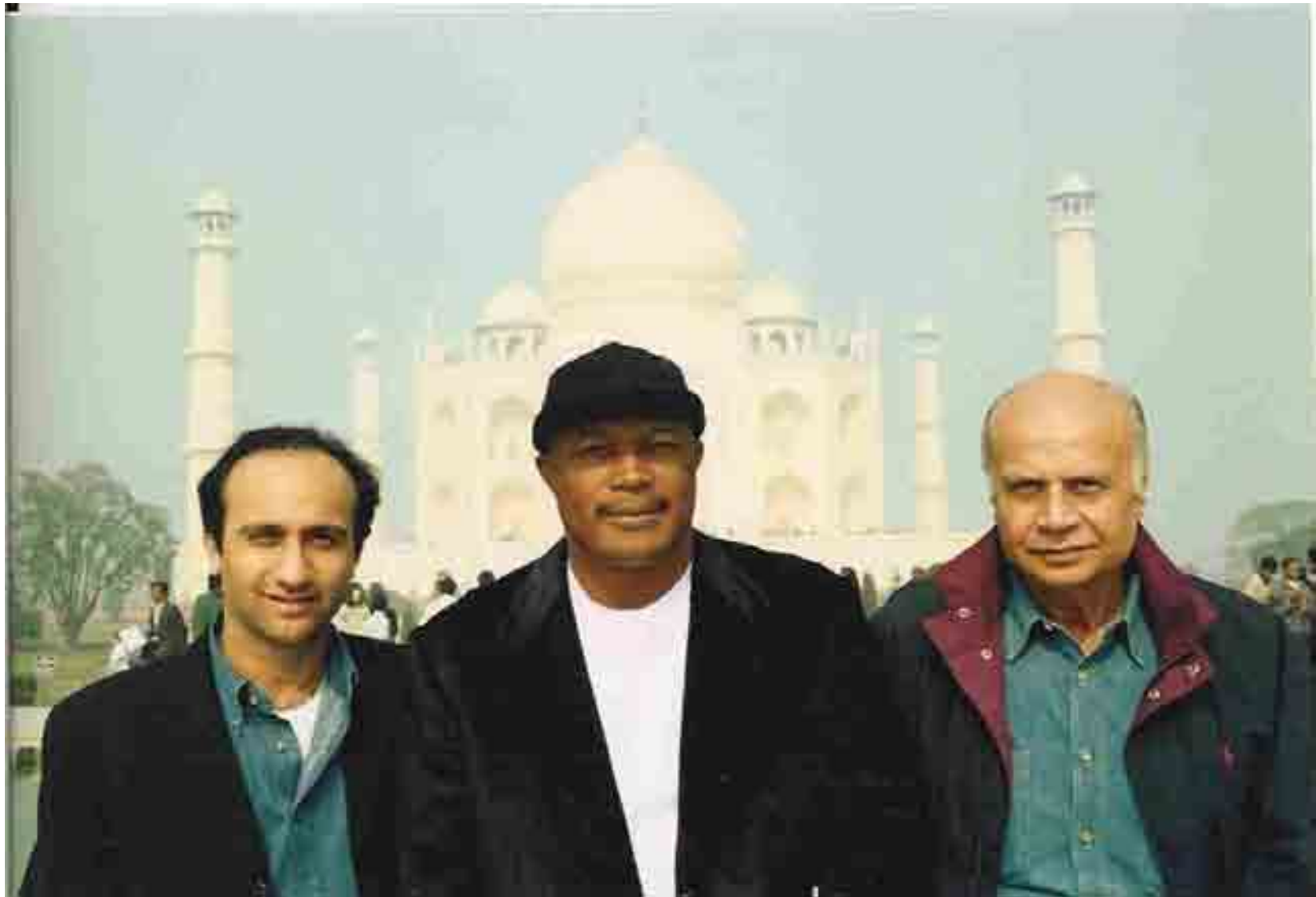
Justice Oyewole, who convicted the accused persons after listening to Jacobs' submissions, listened to the allocutus from Tarfa and Ogulana (defence counsel) before rising for one hour, ten minutes to deliver his judgment and sentence on the convicts. Though he was urged to temper justice with mercy, Oyewole insisted that a balance must be struck between the plea for mercy and need for a deterrent for would-be scammers. The judge thereafter sentenced Nwude to 3 years imprisonment for each of the five counts against him (counts 1, 2, 3, 4 & 5), while Okoli was sentenced to 4 years for each of the three counts preferred against him (counts 1, 6, & 7), which are to run concurrently.

Trial began October 5, 2004 in the matter, when six prosecution witnesses out of 28 (both local and foreign) have testified so far in court, in a de novo (fresh) case in which trial judge favours accelerated hearing. However, both Amaka Anajemba (Mrs.) and Fyrbac (Nig.) Limited (2nd & 4th accused respectively), initially charged alongside other suspects, pleaded guilty to a fresh 4-count charge on July 15, and were subsequently

Anajemba was sentenced to two and a half years imprisonment, and the said sentence to commence from January 30, 2004, when she was first remanded in prison custody. In addition to her prison sentence Justice Oyewole also ordered that numerous valued assets of 2nd accused person, both local and foreign, which value exceeded N3 billion and \$25 million respectively, be forfeited to the victims of the said fraud (named in the charge, as restitution).

First arraigned in Abuja on February 4, 2004, accused persons, in an 86-count-charge, were alleged to have defrauded Sakaguchi of \$242 million from April 2, 1995 to January 20, 1998 at Opebi, Ibeja, Lagos State, contrary to Sections 1(1)(a) and (3) of the Advance Fee Fraud Act of 1995 as amended by Act 62 of 1998. Amount obtained was to represent payment due to the Federal Government of Nigeria on the alleged contract No. FMA/L32/019/82 for construction of Abuja International Airport, Nigeria. Penalties for each of the counts range between 5 - 10 years.

Sakaguchi, star prosecution witness in the case, who first appeared in court on Tuesday, November 15, yesterday hailed the court judgment on the grounds that it has vindicated him after all the years of



THE OUTCOME: A LANDMARK ACHIEVEMENT

Nwude (Odiwigwe)

- Convicted.
- Concurrent five year jail sentence.
- Ordered to disgorge \$110 million to Victim shareholders and \$10 million to Nigerian Government.
- Ordered to forfeit 14 properties (located in Lagos, Abuja, Enugu, Anambra, Rivers, and England), six choice cars and over 100 million shares in banks and various companies in Nigeria.

Amaka Anajemba

- Convicted.
- 2.5 year jail sentence
- Ordered to disgorge \$20 million to Victim shareholders in addition to existing litigation proceeds.
- Judge in Lagos Justice Olubunmi Oyewole insisted balance must be struck between plea for mercy and need for a deterrent for would-be scammers.

Nzeribe Okoli

- Convicted
- 12 year jail sentence
- Ordered to forgo an uncompleted filling station, residential complex and all landed properties located at 6, Ocean Avenue, Nkpokiti, Enugu State.

Lessons

- Example of what can be achieved in problematic jurisdiction such as Nigeria.
- Proof that Nigeria's law enforcement agencies are not necessarily corrupt and ineffective.
- How foreign judicial proceedings used to secure valuable results in Nigeria.
- Effects of regime change.

Outwitting the Defendant

- Clever fraudsters use their resources to delay proceedings - especially in international asset recovery. Some of the tactics used are:
 - Challenging the court's decisions.
 - Side tracking court time with applications that the claimant has been guilty of non-disclosure when making without notice disclosure order.
 - Seeking lengthy trial timetables on the basis of alleged difficulties giving instructions on purported complex issues.
 - Need to give evidence abroad.
 - Claiming defendant is too sick to give instructions / participate in litigation. Examination by independent doctors is objected to on the grounds the defendant is too sick to consent.
 - Repeatedly changing lawyers (whilst failing to pay the previous lawyer's costs so that lawyer may exercise a lien causing further delay)

Creating the International Fraud Litigation Team

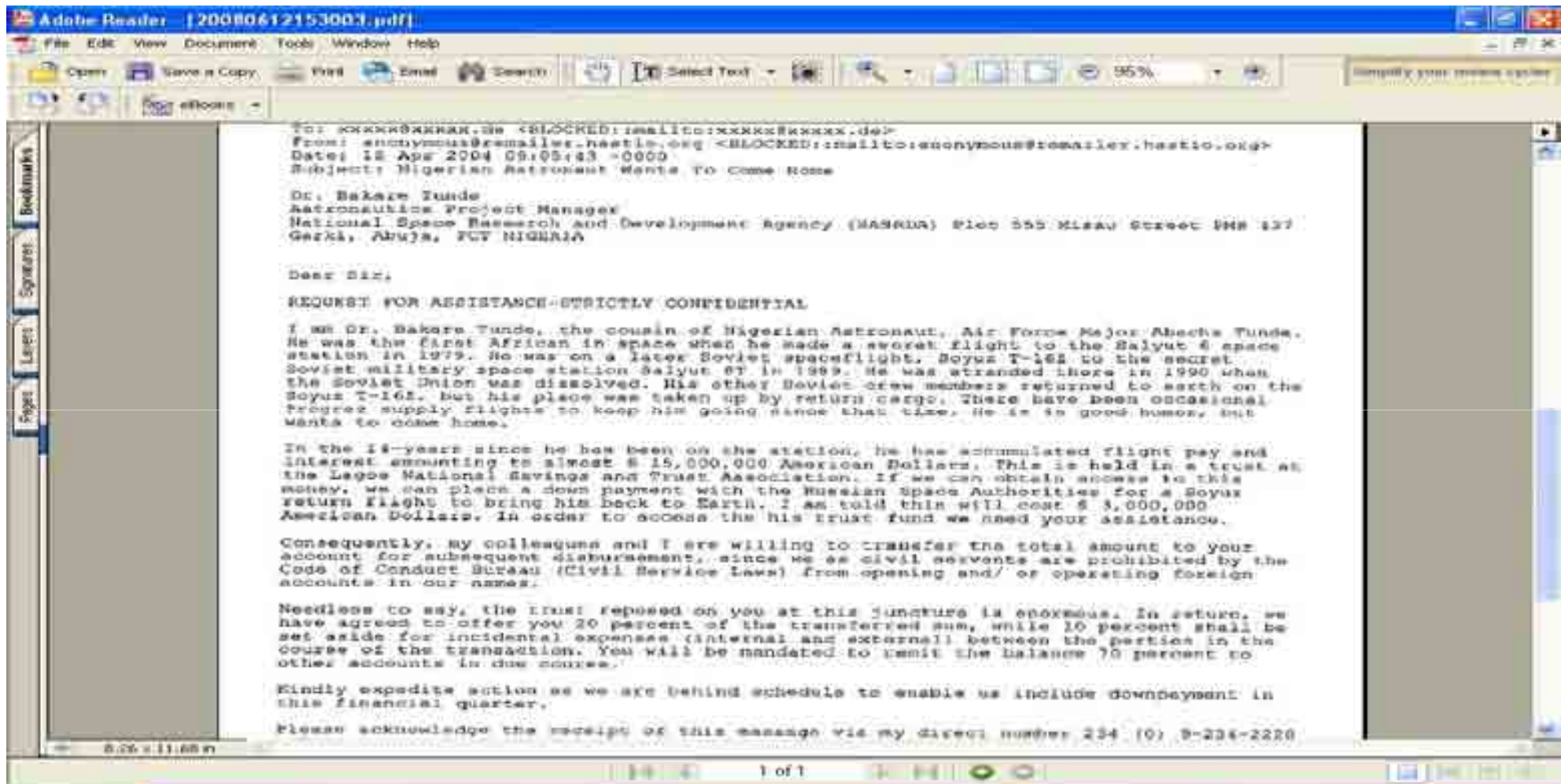
- Decision making seat.
- Seek to ensure the right chemistry and collective fit – collective team work is fundamental.
- Ease of communication – team mail approach
- Regularity of meetings and conference calls

Choice of Jurisdictions

- Exercise the greatest care – only make an election on the basis of the fullest possible information and check carefully proposed defendant(s) local connections.
- Treat ancillary jurisdictions – and their Judiciary - with respect and equally your own lawyers there.
- Meet the local lawyers if time permits.
- Make an effort to understand local rules – even if they seem arcane!
- Strike the right balance – tensions between the common law jurisdictions and civil law regimes. Consider service distinctions and use of evidential material.

Managing the Team and the Personalities

- Team ethos.
- Sense of humour essential.
- No prima donnas or “my jurisdiction” chest beating.



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