

# Public Statement

We are constrained to issue the following statement to set the records straight and correct the erroneous reporting contained in some media publications.

RE: CONTEMPT ORDERS AGAINST FIRST BANK OF NIGERIA LIMITED AND ITS OFFICIALS BY HONOURABLE JUSTICE I.N BUBA OF THE FEDERAL HIGH COURT, LAGOS, OF 6TH JUNE, 2018.

1. On **6th June, 2018**, Honourable Justice I.N Buba of the Federal High Court, Lagos Judicial Division, granted a motion in **SUIT NO: FHC/L/NRJ/1/2018** committing the Chairman and Managing Director of FirstBank of Nigeria Ltd. for contempt Ex Facie Curiae with respect to an order given by the same Honourable Justice I.N Buba on 14th June, 2010, in **Suit No: FHC/PH/CS/231/2001** – Chief Isaac Osaro Agbara & 9 Ors. v. Shell Petroleum Development Ltd, Shell International Petroleum Ltd and Shell International Exploration and Production BV. FirstBank of Nigeria Limited (FirstBank) was not a party to the suit and earlier order of Honourable Justice I.N Buba dated 14th June 2010 in respect of which His Lordship has now committed the Board Members of FirstBank for contempt. In view of the fact that FirstBank and its Board members were not parties to the earlier orders of Honourable Justice Buba, over which he subsequently assumed jurisdiction in respect of contempt outside the face of the court, and His Lordship's earlier orders did not direct either FirstBank or its Board members to perform any obligation, neither did it impose any task on FirstBank, suffice to say that FirstBank did not and could not have disobeyed any order made by Honourable Justice I.N Buba in Suit No: FHC/PH/CS/231/2001 – Chief Isaac Osaro Agbara & 9 Ors. V. Shell Petroleum Development Ltd, Shell International Petroleum Ltd and Shell International Exploration and Production BV (Shell) made on 14th June 2010, since there was no order made against it.

2. It is pertinent to note that Shell that was the party and defendant to Honourable Justice Buba's earlier judgment and Orders has not been held to be in contempt.

3. On 5th August 2010, Honourable Justice Buba, in Suit No: Suit No: FHC/PH/CS/231/2001 – Chief Isaac Osaro Agbara & 9 Ors. V. Shell Petroleum Development Ltd, Shell International Petroleum Ltd and Shell International Exploration and Production BV (Shell), directed Shell to provide a Bank Guarantee in respect of the judgment sum which His Lordship had earlier made in the same suit on 14th June 2010, comprising both special and general damages (in the judgment sum) in the following sum as follows:

i. Special Damages in the sum of **N1,772,460,585.00 (One Billion, Seven Hundred and Seventy Two Thousand, Four Hundred and Sixty Million, Five Hundred and Eighty Five Thousand)** – Allowing for the interest for delayed Payment for 5 years from 1996 at a modest Mean Central Bank of Nigeria deregulated Rate for that volume at 25% per annum amounting to a total of **N5, 407, 777,246.00 (Five Billion, Four Hundred and Seven Million, Seven Hundred and Seven Thousand, Two Hundred and Forty Six Thousand).**

ii. Award of Plaintiffs' Claim of 25% of the said sum till the date of Judgement and thereafter 10% of the Judgment debt till payment

iii. Award of Plaintiffs' Claim against the Defendant in punitive terms of General Damages in the sum of **N10, 000,000,000.00. (Ten Billion)**  
**TOTAL: N17,180,237,831.00 (Seventeen Billion, One Hundred and Eighty Million, Two Hundred and Thirty-Seven Thousand, Eight Hundred and Thirty-One Naira),**

4. Shell, as FirstBank's customer, approached it to issue a Bank Guarantee to satisfy Shell's Compliance with the Order of Honourable Justice I.N. Buba of 5th August 2010, and FirstBank obliged Shell's request by issuing the Guarantee. Specifically, the Guarantee concluded as follows:

**"This Guarantee shall be governed by and subject to all the laws of the Federal Republic of Nigeria and shall not be construed to fetter or limit the constitutional rights of parties, including their right of appeal"**

5. Shell appealed the decision of Honourable Justice I.N Buba awarding various monetary claims against it to the Court of Appeal in Appeal No: CA/PH/396/2012 and on 23rd October 2013, **the Court of Appeal struck out the said appeal on the ground that Shell did not pay**

**sufficient filing fees. Shell immediately appealed the decision of the Court of Appeal to the Supreme Court in SC. 693/2013.**

6. Despite the pendency of Shell's appeal to the Supreme Court, an Undefended List suit and garnishee proceedings were commenced against FirstBank in Suit No. BHC/208/2013 and FHC/PH/CS/432/2013. FirstBank responded to these suits by, maintaining that, in the light of Shell's pending appeal to the Supreme Court in SC. 693/2013, the Guarantee had not yet crystallised, whilst Chief Isaac Agbara & Ors., insisted that payment was due on the guarantee. While Suit No. FHC/PH/CS/432/2013 was struck out, judgment was given on the Guarantee dated 12th December 2012, by the High Court of Rivers State on 17th January 2014 enforcing the Guarantee given in respect of the cumulative sum of **N80,344,284,716.89 (Eighty Billion, Three Hundred and Forty-Four Million, Two Hundred and Eighty-Four Thousand, Seven Hundred and Sixteen Naira, Eighty-Nine Kobo).** Whilst judgment was given in the suit against FirstBank, sued thereat as 'FirstBank PLC', the Court of Appeal struck out the appeal filed by FirstBank for the reason that it appealed in the name of FirstBank PLC, the name by which it was sued and judgment given against it at the trial court but it did not have a right to appeal in the name of FirstBank PLC, since FirstBank PLC is not a juristic person. FirstBank has filed a subsequent appeal against that decision to the Supreme Court in SC. 511/2017.

7. Meanwhile, Shell's appeal against the Court of Appeal decision which activated the Undefended List Suit in **BHC/208/2013** and the Court of Appeal decision in **CA/PH/29M/2014** succeeded and the Supreme Court set aside the Court of Appeal's decision in CA/PH/396/2012. In the face of that decision, Chief Isaac Agbara & Ors., now contend that the decisions given in their favour enforcing the guarantee in BHC/208/2013 and CA/PH/29M/2014 are now academic and of no use. **Their current position thus validates the position of FirstBank that the Bank Guarantee cannot crystallise with the pendency of an appeal against a decision by Shell for the simple reason that if the appeal becomes successful, in the same way, Appeal No.: SC/693/2017 succeeded, the monetary judgment will no longer exist, and the basis of the Guarantee will have become eroded.**

8. In allowing Shell's appeal in SC. 693/2013, the Supreme Court directed the Court of Appeal to re-hear the appeal. **The appeal was re-heard and on 6th June, 2017, the Court of Appeal dismissed the appeal on the ground of an alleged irregularity in the time Shell filed its brief of argument despite the fact that the same Court of Appeal had, on the day the appeal was heard, deemed the briefs of argument of Shell and the respondents as having been properly filed and served. In effect, Shell's appeal against the judgment of Buba J., dated 14th June 2010, has neither been heard or dismissed on its merits.** Shell subsequently filed an appeal to the Supreme Court in SC. 731/2017 and same has been scheduled to come up at the Supreme Court on 16th October 2018.

9. Despite the pendency of Shell's appeal, Chief Isaac Agbara & Ors., on 8th June, 2017, commenced another Undefended List suit against FirstBank on the basis of the second decision of the Court of Appeal in the Rivers State High Court in Suit No: PHC/1583/2017, now alleging entitlement to the sum of **N122,533,403,392.12 (One Hundred and Twenty-two Billion, Five Hundred and Thirty-three Million, Four Hundred and Three Thousand, Three Hundred and Ninety-two Naira,**

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**Sixteen Kobo) on the Guarantee issued in the cumulative sum of N17,180,237,831.00 (Seventeen Billion, One Hundred and Eighty Million, Two Hundred and Thirty Seven Thousand, Eight Hundred and Thirty One Naira).**

10. During the pendency of the Undefended List action before Honourable Justice S.O. Iragunima, of the Rivers State High Court, Chief Isaac Agbara & Ors., on 7th September, 2017, commenced a Winding Up Petition against FirstBank at the Federal High Court in Abuja to enforce the Guarantee against FirstBank, claiming entitlement to the sum of **N122,533,403,392.12 (One Hundred and Twenty-two Billion, Five Hundred and Thirty-three Million, Four Hundred and Three Thousand, Three Hundred and Ninety-two Naira, Sixteen Kobo)** arising from the judgment of the Court of Appeal in Appeal No. CA/PH/29M/2014 which is on appeal to the Supreme Court in SC. 511/2017. Parties joined issues in this petition and on 13th December 2017, **the Honourable Justice Tsoho, in a well-informed decision, dismissed the petition and awarded costs of N500,000.00 (Five Hundred Thousand Naira) in favour of FirstBank and against Chief Isaac Agbara & Ors.**

**Chief Isaac Agbara & Ors did not appeal and have not appealed the decision of Tsoho J. dismissing their winding up petition on the enforcement of the same judgment of Buba J, and on which Buba J. has now convicted officials of FirstBank for contempt outside the face of the court.**

11. Despite the foregoing, Chief Isaac Agbara & Ors. filed another winding up Petition against FirstBank in the Federal High Court, Lagos Judicial Division, before Honourable Justice Aikawa on **14th December 2017, repeating verbatim the pleadings and content of their dismissed winding up petition by Tsoho J., arising from the same judgments of Buba J. earlier mentioned. This Winding Up petition became the third in the series of cases filed and lined-up by the same judgment creditors against FirstBank, in respect of the enforcement of the Bank Guarantee earlier mentioned.**

12. Not done yet, the same judgment creditors, Chief Isaac Agbara & ors., during the pendency of their winding up Petition before Aikawa J., in the Lagos Judicial Division of the Federal High Court, commenced garnishee proceedings before Alagoa J on 5th January 2018, of the Owerri Judicial Division of the Federal High Court, in respect of the same Guarantee, asking the court to enforce same in satisfaction of the judgment of Buba J. given on 14th June 2010. The said garnishee proceedings was later transferred to the Lagos Judicial Division and is also pending before Buba J.

**While the said garnishee proceedings was pending, the same judgment creditors (Chief Isaac Agbara & Co.) commenced contempt proceedings against the Chairman and Managing Director of FirstBank of Nigeria Ltd in Suit No. FHC/L/NRJ/1/2018 on 19th March, 2018, before Buba J; by respectively filing Forms 48 and 49 dated 26th February, 2018 and 2nd March, 2018 respectively. FirstBank of Nigeria joined issues with the judgment creditors, both in the form of a preliminary objection and on the substantive subject of the contempt proceedings.**

13. While the Bank respects the institution of the judiciary, however, it states with much respect, that:

**a. No liability is due from it to Chief Isaac Agbara & ors. from the Bank Guarantee issued and dated 17th December 2012.**

**b. Further to (a) above, no law criminalises breach of an undertaking, how much more criminal liability for imprisonment upon such alleged breach.**

The Bank further states that in respect of the same contempt proceedings in which the Honourable Justice Buba has convicted its

officials, garnishee proceedings for the enforcement of the same judgment are pending before the same Buba J., which he has adjourned to 19th June 2018.

In effect, before the same Buba J., the Bank is subjected to two proceedings, one penal and one civil, for the enforcement of the judgment of the same Buba J. It is worthy of note that no court has awarded any monetary liability against FirstBank and in favour of Chief Isaac Agbara & Ors. Contrariwise, the same Federal High Court which has now convicted the officials of FirstBank, had earlier dismissed all the claims of the same Chief Isaac Agbara & Ors. in the Winding Up Petition filed against FirstBank, on the same guarantee and in respect of the same sum and judgment of Buba J.

It is interesting to note that, the decision of Buba J in respect of contempt was given in the most recent of the various (5) suits filed by Chief Isaac Agbara & ors to enforce the Bank Guarantee. Some of the suits filed before same are still pending, including one before the same Buba J. This is also without prejudice to the appeals pending at the Supreme Court in respect of the same subject, and which appeals are borne out of the Constitutional right of appeal donated by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). We are compelled in total deference to the Supreme Court as the apex adjudicatory body in Nigeria to pose the following questions:

i. If Shell's appeal to the Supreme Court in SC. 731/2017 succeeds, will there still be any rights inuring in favour of Chief Isaac Agbara & Ors.

ii. Arising from (i.) above, could the court have rightly condemned and convicted officials of FirstBank during the pendency of the appeals to the Supreme Court

iii. Assuming Chief Isaac Agbara & Ors had obtained payment under the Bank Guarantee after the initial judgment of the Court of Appeal in CA/PH/396/2012, as they attempted to do through the use of the same type of court actions which they have now instituted, will irreversible damage and injustice not have occurred to both the Nigerian Judicial and financial system after the Supreme Court decision in SC. 731/2017.

14. FirstBank of Nigeria Ltd has been in business since 1894, (124 years ago); and since then, it has demonstrated to all and sundry that it is a leading corporate citizen in Nigeria, and a foremost provider of financial services. The Bank states humbly that it has been a partner to the Federal Republic of Nigeria and all Nigerians in the task of development and nation building. Its positive footprints are seen all over the country. As a law abiding corporate citizen of Nigeria, the Bank respects the judiciary; as such, it has instructed its counsel to take all the constitutional steps with immediate effect to challenge the decision of Buba J. to the Court of Appeal.

**15. Finally, in the face of constant, persistent and unprovoked use of judicial processes to intimidate, harass and threaten the Bank, it has decided to remain calm, steadfast and unflinching in its resolve to continue to provide first-class services to its teeming customers within and outside the country. FirstBank further asserts that it will always defend its interests within the ambit of the law and seek redress for any temporary injustice done to it. The Bank is not aware and has not been advised as to the provision of any law in Nigeria which allows the use of criminal contempt to enforce monetary judgements or obligations.**