5/20/2024

No. 23-1262

In the Supreme Court of the United States

IKEMEFUNA STEPHEN NWOYE

Petitioner

v.

BARACK HUSSEIN OBAMA

MICHELLE LaVAUGHN ROBINSON OBAMA

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the 2nd Circuit erred in law in upholding the District Court's dismissal of the case on grounds of being frivolous because of presidential immunity and insufficiently pleaded facts to sustain an actionable claim against the Respondents, which is in conflict with the earlier D.C Circuit Court's decision that held that determining the legal issue of a President operating outside the scope of employment and his culpability for civil claim(s) are for factfinding during the trial of the case based on complete evidential record and not a question of law that can be determined preliminarily by a dispositive application (*sua sponte* or motion) decided by the District Court?

2. Whether the 2nd Circuit erred in law and reached a decision inconsistent with the lower court case laws when it completely ignored the doctrine of continuing wrong applicable to common law tortious and equitable claims for purposes of the proper computation of time for statute of limitation by holding that the *pro se* Petitioner's claim for unjust enrichment, quantum meruit and breach of contract claims are untimely?

3. Whether the 2nd Circuit Court erred in law and misdirected itself on facts when it held that *pro se* Party Ikemefuna Stephen Nwoye, a Foreign (Nigerian) Licensed lawyer is not entitled to the "special solicitude" afforded to *pro se* litigant?

PARTIES TO THE PROCEEDING

Petitioner *pro se* is a male Nigerian citizen domiciled in Enugu State, Nigeria. He is a Foreign (Nigerian) qualified and licensed legal practitioner with an active Nigerian law practice license. He presently resides in Maryland, United States of America with address for service in the jurisdiction at 1802 Vernon St NW PMB 2373 Washington DC 20009. He was the Appellant in the Court below.

The First Respondent sued in his personal and private citizen capacity is a Kenyan-United States of American born Citizen. His last known publicly available place of residence is 79 Turkeyland Cove Road, Martha's Vineyard, Edgartown, MA 02539 and US Government verified last known place of business is The Office of Barack and Michelle Obama P.O.Box 91000, Washington, DC 20066. He is officially recognized as the Former President of the United States of America (POTUS 44)/Senior Citizen.

The Second Respondent sued in her personal and private citizen capacity is a United States of America Citizen from Chicago, Illinois and also a Kenyan Citizen through marriage. Her last known publicly available place of residence is 79 Turkeyland Cove Road Martha's Vineyard, Edgartown, MA 02539 and US Government verified last known place of business is The Office of Barack and Michelle Obama P.O.Box 91000, Washington DC 20066. She is officially recognized as the Former First Lady of the United States of America and wife of POTUS 44.

First and Second Respondents were the Appellees in the Court below.

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Ikemefuna Stephen Nwoye proceeding *Pro Se* petitions the Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit delivered on 4th March 2024.

II. OPINIONS BELOW

The Second Circuit's Opinion Mandate is attached as **Appendix 1**. The District Court Order dismissing the case and the subject of the Appeal to the United States Court of Appeal is attached as **Appendix 2**. The Report and Recommendation dated 20th July 2023 of the Magistrate Judge of the District Court of Southern District of New York is at **Dkt #32** of the Record.

III. JURISDICTION

The Second Circuit Court entered Judgment on the 4th day of March 2024. *See* Appendix 1. This Petition is timely pursuant to the Supreme Court Rules. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1).

IV. THE CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Center to the case is the **Fifth and Fourteenth Amendments** to the United States Constitution and their provisions on procedural due process that an individual facing deprivation of life, liberty or property is entitled to adequate notice, a hearing, and a neutral judge. It also implicates **Fed. R. Civ. P Rules 7 and 8** on the pleadings allowed and the general rules of pleading respectively. Another statutory provision

involved is **N.Y.C.P.L.R § 213 (1 and 2)** on the statute of limitation for a breach of contract claim which is six (6) year for a written or an oral contract and **Executive Order 202.67** issued by the then Governor of New York State that tolled Statute of Limitation in the State of New York for 228 days. The text of each of these provisions is contained in **Appendix 3**.

V. STATEMENT OF THE CASE

A. Introduction

The international relations and trade in legal services implications of this case are of far-reaching national and international significance, especially taking into account the nationalities of the parties (Nigerian v. Kenyans-Americans) involved and the cross-border nature of the transactions from which the dispute arose. Further, implicated are important constitutional provisions upon which the pillars of justice administration are anchored or built. In addition, this is a case of first/rare impression on the application of English common law principles of continuing wrong doctrine as used in tortious and equitable claims in the United Kingdom and other common law-based jurisdictions to civil cases in the United States of America.

The Fifth Amendment guarantees due process for all persons, and it requires that a party receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the United States Government and its arms and institutions; the Fourteenth Amendment explicitly applies this due process requirement to the federating states as well.

The Procedural Due Process Clause of the 5th and 14th Amendments to the United States Constitution aim to ensure that the parties receive proper notification throughout the litigation, and ensuring

that the adjudicating court has the appropriate jurisdiction to render a judgment.

An elementary and fundamental requirement of due process in any proceeding, which is to be accorded finality is notice reasonably calculated under all the circumstance to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950)

The Second Circuit departed from the above constitutional requirement for a fair trial and other judicial precedents on procedural due process when it decided that the District Court was not required to provide the 1st and 2nd Defendants (now Respondents) notice before ruling in their favour.

Due process as envisaged by the United States Constitution requires several elements for it to be said to exist in any given legal proceedings. The elements amongst others are an unbiased tribunal, notice of the proposed action and the grounds asserted for it, opportunity to present reasons why the proposed action should not be taken, the right to present evidence and these include the right to call witnesses. etc. It has been held that it is bad practice for a district court to dismiss a case without affording a plaintiff the opportunity to be heard in opposition. *Snider v. Melindez,* 199 F.3d 108, 112–13 (2d Cir. 1999).(underlining mine)

As for the Petitioner Ikemefuna Stephen Nwoye, the Second Circuit without trial of his case or a proper analysis of the legal issues and judicial authorities raised in arguing the legal issues ordered and held that the Petitioner (then Appellant) was provided sufficient notice and opportunity to be heard in response to the District Court's order to show cause. Further, the decision that the Petitioner's claims are untimely is contrary to the doctrine of continuing

wrong and added to a confusing and inconsistent body of Lower Court and State Court Case laws. The requirement of the Fed R. Civ P. is that parties (i.e. both sides to the dispute) plead their respective cases, this will enable the court to be seised of the preliminary facts upon which a *sua sponte* proceedings can be premised, if at all there are glaring grounds to justify such *sua sponte* proceedings. This Honourable Court should grant review and reverse.

B. Relevant Facts and Procedural History

The Petitioner's claims are against Barack Hussein Obama a kenyan-American by birth and his wife Michelle LaVaughn Robinson Obama, an American and later a Kenyan by marriage. (**1st** and **2nd Respondents** collectively the '**Respondents**').

The Respondents acting through an intermediary the law firm of Messrs Sidley Austin LLP employed the Petitioner a Nigerian licensed legal practitioner (then with 1-2 years Post-Call Experience) and other LL.M students from New York University as Externs into the law firm's Africa-Asia Pro Bono Program. From the months of October 2013 to May 2014, the Petitioner collaborated with other members of the team led by Mr. Scott Andersen (Managing Partner, International Trade and Finance based in the Geneva Office), Mr. Neil Horner, Mr. Adeolu Sunday; Mr. Nelson Cory and the then Program Director Ronalee Biasca. Precisely, the United States Attorneys and Nigerian licensed Legal Practitioners were responsible for representing several Nigerian agricultural cooperatives in negotiations with private sector investors for investments in agricultural processing facilities supported by the World Trade Organization Standards and Trade Development Facility.

In addition, the Petitioner worked on the Legal Framework for Land Tenure in some African Countries providing legal advisory services, which amongst other covered titling or land registration system(s) in place, the government body that administers land titling and/or registration, applicable legal scheme and law, ownership, and transfer of land etc.

Further, Mr. Horner based and working in Sidley Austin LLP's New York office personally and specifically approached the Petitioner to offer consultancy services on the First Respondent's Administration US$7Billion Power Africa Initiative and also on the Global Entrepreneurship Summit (2015) in Nairobi, Kenya on utmost confidentiality and a strict oral basis. It is nationally and internationally undisputed that the Power Africa Initiative and the 2015 Global Entrepreneurship Summit in Nairobi, Kenya remain the most prominent and significant engagements of the First Respondent during his presidency with the African continent for which he received enormous accolades, commendations, and recognitions.

According to Mr. Horner, there are concerns and worries by the First Respondent and generally in the then administration about systemic corruption in Africa and its impact on the US$7Billion Power Africa Initiative aimed at increasing access to electricity and spurring economic growth in Sub-Saharan Africa. Further that these two projects (i.e., the Power Africa Initiative and 2015 Global Entrepreneurship Summit) are topmost on the President's to-do list for Africa before he leaves office in 2017.

Going by the Term of Reference, Mr. Neil Horner sought to know if there is any Nigerian businessperson from the private sector that readily comes to mind that is not active in the political arena

in Nigeria, that can be brought in as the major private sector player for the 2015 Global Entrepreneurship Summit, Nairobi, Kenya that the First Respondent will be actively involved and participating in. The Petitioner mentioned a few names and provided a summary profile of their business and private sector interests, especially in the financial services and major economic sectors. This conversation led to the Petitioner and Mr. Neil Horner agreeing on Mr. Tony Onyemaechi Elumelu. The decision on Mr. Elumelu was reached after considering his involvement in the Power Africa Initiative through his proprietary investment company Heirs Holdings Limited.

After the discussions, Mr. Horner appreciated the Petitioner for his invaluable suggestion and promised to communicate this information and his continued invaluable role to his Sidley team and the First and Second Respondents. During several months in 2014, the Petitioner and Mr. Horner sometimes met physically and sometimes over a telephone call, intermittently discussing the ongoing pro bono project, the 2015 Global Entrepreneurship Summit ('**GES**') and the Power Africa Initiative.

The Petitioner's reasonable and legitimate expectations as a business-minded person were that the First and Second Respondents would be forthcoming with an invitation for a physical meeting and some form of compensation for the legal and business consultancy service rendered, especially after the subsequent successful conduct of the 2015 GES based on his advisory work.

Despite the successful launching and/or completion of the various projects that the Petitioner worked on the sideline, particularly the Power Africa Initiative and the 2015 Global Entrepreneurship Summit, wherein about US$100milion was allocated for entrepreneurs in Africa, the First and Second

Respondents never paid for the consultancy services rendered by the Petitioner based on the prevailing commercial percentage rate of 10% or even on a *quantum meruit* basis. The First and Second Respondents have since 2017 left office as President and First Lady of the United States of America, respectively, now living their lives as private citizens of the United States of America.

The Petitioner filed his initial Complaint against the Respondent on March 3, 2022. (District Court Case file Dkt. 1.) The following day, the Court issued an order granting Petitioner leave to correct his Complaint because four pages appeared to be missing due to scanning errors by the District Court Clerk's office. (Dkt. 4.) On March 8, 2022, the Petitioner filed the FAC, which included those four pages. (Dkt. 7.)

After the filing of the Complaint at the United States District Court of Southern New York and issuance of the summons to the First and Second Respondents respectively, steps were immediately taken to personally serve the Summons and Complaint on them as required by the extant Federal Civil Procedure Rules of the District Court. The service of a duly registered and licensed Constable and Process Server based in Massachusetts was obtained and the relevant court processes were sent to him through UPS courier company.

The personal service of the First and Second Respondent at their publicly available place of residence could not be effected or the personal service of any adult of suitable age could also not be effected at their dwelling place due to the heightened level of security and their evasive actions. The Process Server effected service on Friday March 18, 2022, through affixing the Summons and Complaint at First Respondent and Second Respondent's dwelling place or usual place of abode - 79 Turkeyland Cove Road,

Edgartown (Martha's Vineyard) MA 02539 and also took steps to mail the said Summons and Complaint to the said dwelling place and usual place of abode address.

The mailed Summons and Complaints were returned to the Process Server undelivered by the United States Postal Service (USPS), which necessitated the mailing through first-class mail of the Summons and Complaint to the First and Second Respondent at their actual place of business – The Office of Barack and Michelle Obama Post Office Box 91000, Washington D.C. 20066. The Affidavits of Service of the Summons and Complaints on the First Respondent and Second Respondents were filed on March 22, 2022, and April 7, 2022, respectively, and these documents are in the District Court Case Docket as **Dkt. #s 9 and 11** respectively.

After the time statutorily provided for the First and Second Respondents to Answer to the Complaint expired, on May 10, 2022, the Petitioner *pro se* filed the required court processes requesting for the Clerk's Certificate of Default to wit- (i) Proposed Clerk's Certificate of Default, and (ii) Affirmation in Support of Request for Certificate of Default attaching (iii) a Request for Clerk's Certificate of Default; these documents are in the District Court Case file as **Dkts. #s 12 and 13** respectively.

In a subsequent Notice titled "**Notice to Attorney Regarding Rejection of Proposed Clerk's Certificate of Default**" received through the ECF to his designated email address on 10th May 2022, the Petitioner was notified of the Clerk's rejection of his request for the Certificate of Default. One of the reasons for the Clerk's refusal to issue the Certificate of Default is the alleged improper service of the Summons and Complaint on the First and Second Respondents.

Given the express provision of the law on the issuance of the Clerk's Certificate of Default, the Petitioner (Plaintiff) wrote a Letter dated May 11, 2022, to the Clerk of the District Court providing his clarifications to the reasons given by the Court's Clerk for rejecting his request for Clerk's Certificate of Default. The said Letter dated May 11, 2022, is in the Case Docket as **Dkt. #14**.

In its Order of May 12, 2022 (in the District Court Case Docket as **Dkt. #15**) the Presiding Magistrate Judge Honourable Robert W. Lehrburger ordered as follows – "*The amended Complaint is appropriately filed pursuant to the Court's Order at Dkt 4. However, the Clerk of Court correctly declined to issue a Certificate of Default as proof of proper service has not been provided. Plaintiff's proofs of service indicate that service was attempted through "nail and mail" (8-9,11) "Nail and mail" is an authorised form of service pursuant to N.Y. C.P.L.R 308 (as made applicable by Fed.R.Civ P. 4(e) (1) but only "where service under paragraph 1 and 2 cannot be made with due diligence." Plaintiff has not made that showing. Nor do the proofs of service indicate that other requirements of the applicable rule have been met (such as that the summons and complaint were placed in an envelope bearing the legend "personal and confidential").*

On the same day i.e. May 12, 2022, the Petitioner timeously filed a Motion without Notice (*Ex Parte*) dated May 12, 2022 (in the District Court Case Docket as **Dkt. #16**) seeking amongst others that the Court *"1. Order the personal service of the Summons and Complaints in this civil action by the United States Marshal on the First Defendant and Second Defendant respectively pursuant to Fed. R. C. P 4 (c)(3)."*

The District Court *sua sponte* dismissed the Complaint and closed the case by issuing the Order of Dismissal dated May 29, 2022, on the grounds that the Respondents enjoy absolute immunity from damages liability predicated on official acts, including the ones at issue in this lawsuit. The Court further held that even if the Second Defendant was not subject to absolute immunity from damages liability predicated on official acts of the Obama administration, the Plaintiff has failed to allege adequately that his claims had any link to conduct by her.

The Petitioner then appealed the District Court's dismissal Order of the civil action (**Appeal No: 22-1253**). The Notice of Appeal was duly served on the First and Second Respondents in accordance with the provisions of the Federal Rules of Appellate Procedure (FRAP) at their place of abode and place of business. Just as in the District Court proceedings, the First Respondent and Second Respondent completely ignored and shunned the judicial proceedings and did not even send an Attorney to represent them or notify the Court of the waiver of their right to appear and defend the appeal. On January 25th 2023, the United States Court of Appeals for the Second Circuit delivered its decision vacating the judgment of the District Court and remanding the case back to the District Court for further proceedings on the ground *inter alia* that notice ought to have been given to the parties and an opportunity to be heard afforded the Petitioner before the Court can *sua sponte* dismiss the case.

On January 27th, 2023 the District Court ordered that Petitioner must show cause as to why the case should not be dismissed as frivolous or for failure to state a claim by no later than February 17, 2023. Pursuant to this order of the District Court, the

Petitioner (*Pro Se*) on February 3, 2023 filed the following court processes (i)Memorandum dated February 3, 2023 Showing Cause Why the Case Should not be Dismissed for being Frivolous or for failure to State a Claim (**Dkt #25**) (ii) Plaintiff's Motion dated February 3, 2023, seeking Leave to Amend the Complaint and join Sidley Austin LLP as the Third Defendant (**Dkt #22-24**). On June 20th, 2023 the District Court *per* Magistrate Judge Robert W. Lehrburger issued an order that the Petitioner (pro se) show cause in writing why his claims should not be dismissed and his pending motion to amend denied, based on the Statute of Limitations (**Dkt #30**). On June 26th, 2023, the Plaintiff complied with this order by filing a Memorandum to Show Cause II_Statute of Limitation Issue dated June 26, 2023 (**Dkt #31**).

On July 20th, 2023, the District Court *per* the Magistrate Judge Robert W. Lehrburger submitted his Report and Recommendation (**Dkt #32**) and in summary, recommended that the First Amended Complaint be dismissed with prejudice and that the Petitioner be denied leave to file the Second Amended Complaint, but that he be afforded the opportunity to file an amended claim for breach of contract against Sidley Austin LLP. Through a Letter dated July 21st, 2023 (**Dkt #33**), the Petitioner (Pro Se) objected to the Report and Recommendation in its entirety for being clearly erroneous or contrary to the law and urged the Court to set it aside on the grounds that (i) there was a complete absence of procedural due process and fairness; and (ii) Absence of completely pleaded facts (controverted and uncontroverted or admitted).

On August 11, 2023, the District Court issued its order (dispositive order) adopting in part the Report and Recommendation (**Dkt #32**) of the Honourable Magistrate Judge. The District Court denied the Petitioner's Motion for leave to file a second

amended complaint and dismissed the First Amended Complaint with prejudice and without leave to file an amended complaint. The Court further held that the portions of the Petitioner's objections to the Magistrate Judge's conclusion that the claims in the First Amended Complaint and proposed second amended complaint are untimely, conclusory, and regurgitated arguments previously made. The Court further held that the review for clear error shows none with respect to the Magistrate Judge's recommendation to dismiss the First Amended Complaint with prejudice and to deny Petitioner leave to file the proposed second amended complaint. The Court concluded by directing the Clerk of Court to terminate the open motion at docket and to close the case.

Dissatisfied with the dispositive order of the District Court, the Petitioner appealed to the United States Court of Appeals for the Second Circuit by filing a Notice of Appeal on August 18th, 2023. On Petitioner's appeal, the Second Circuit followed suit, upholding the decision of the District Court, and dismissing the Appeal in a published opinion issued March 4, 2024, *Ikemefuna Stephen Nwoye v. Barack Hussien Obama and Michelle LaVaughn Robinson Obama 23-1178-cv (2d Cir. Mar. 4, 2024).*

1. How the Questions Presented were Raised and Decided Below

a. The District Court Order adopted the Report and Recommendation of the Magistrate Judge that held that granting the Petitioner leave to replead the Complaint will be futile given that the claims against the 1st Respondent are frivolous because of presidential immunity; and that the FAC and Proposed SAC fail to State any Actionable Claim against the 1st and 2nd Respondents and this decision was upheld by the Second Circuit Court.

The District Court in its Dismissive Order issued on August 11, 2023 adopted the Report and Recommendation of the Magistrate Judge and denied the Petitioner's motion for leave to file a Second Amended Complaint (SAC) and dismissed the First Amended Complaint (FAC) with prejudice and without leave to file an amended complaint because doing so will be futile given that the 1st Respondent enjoy presidential immunity and that the FAC and proposed SAC fail to state an actionable claim against the 1st and 2nd Respondents and even the law firm of Sidley Austin that the Petitioner sought to join as the 3rd Defendant at the trial court. See Appendix 2 pages. 3 – 6.

Specifically, the Report and Recommendation of the Magistrate Judge (**Dkt. #32**) issued on July 20, 2023 (at pages 15 to 27) recommended that the lawsuit against the 1st and 2nd Respondents be dismissed for being frivolous because the 1st Respondent enjoys Presidential Immunity. In reaching this conclusion, the Magistrate Judge had relied on *Nixon v. Fitzgerald*, 457 U.S. 731, 749, 102 S. Ct. 2690, 2701 (1982); *Clinton v. Jones*, 520 U.S.

681, 693, 117 S. Ct. 1636, 1644 (1997), and on the immunity continuing after the official has left office. District of Columbia v. Jones, 919 A.2d 604, 607 n.4 (D.C. 2007).

As it happened at the Second Circuit on appeal of the dismissive order, the Petitioner had pointed out and relied on the D.C Circuit Court decision of April 13 2023 in ***Trump v. Carroll*** D.C Ct App No 22-SP-745 a case where former President Donald Trump asserted presidential immunity in claims of defamation against him, the D.C Circuit Court hearing the appeal based on the certification from the 2nd Circuit, held that presidential immunity is dependent on what amounts to the President acting within the scope of his employment or acting for the United States Government. And that this is a question for factfinding during the trial of each case on complete evidential record and not a question of law that can be determined preliminarily by dispositive application decided by the District Court.

Without attempting to distinguish the *Trump v. Carroll* D.C Circuit decision, the Second Circuit completely ignored it and proceeded to hold that the District Court did not err in dismissing the Petitioner's claims against the 1st and 2nd Respondents because the Petitioner failed to allege that he entered into an agreement with them an essential element of a breach of contract claim. Though the Petitioner alleges that the 1st and 2nd Respondent entered into a contract with him through Sidley Austin, the Petitioner alleges no facts showing that Sidley Austin had the authority to contract with the Petitioner on the Respondents' behalf. *Appendix 1 page 4.*

b. The United States Court of Appeals for the Second Circuit upheld the District Court decision and

completely ignored the doctrine of continuing wrong and contingency contract/fee in the computation of time for statute of limitation and proceeded to hold that the pro se Petitioner's claim for unjust enrichment, quantum meruit and breach of contract claims are untimely?

The District Court in it order of August 11, 2023 adopted the Report and Recommendation of the Magistrate Judge on the Petitioner's claim being untimely. The Court stated that the portion of the Petitioner's objection to the Magistrate Judge's conclusion that the claims in the First Amended Complaint and proposed Second Amended Complaint are untimely are conclusory and regurgitated arguments previously made to and rejected by the Magistrate Judge. *Appendix 2 pages 3 – 4.*

Specifically, the Report and Recommendation of the Magistrate Judge (**Dkt. #32**) stated and recommended that notwithstanding the potential viability of the Petitioner's claims for unjust enrichment and quantum meruit, they are barred by the statute of limitations. The Court raised the statute of limitations issue by its order to show cause, and the Petitioner filed a responding brief. His arguments, however, do not withstand scrutiny. The Magistrate Judge had noted the six (6) years statute of limitation for breach of contract and unjust enrichment in the State of New York. That the Petitioner filed the instant action on March 3, 2022. His claims normally would be time-barred to the extent they accrued prior to March 3, 2016. But the Petitioner benefits from New York's tolling of all statute of limitations for 228 days during the COVID-19 pandemic. - *Doe v. State University of New York Purchase College,* 617 F. Supp.3d 195, 206-07 (S.D.N.Y. 2022); Vasquez v. Tri-State Lumber Ltd., 78 Misc. 3d 1230(A), 187 N.Y.S.3d

579, at 6 (N.Y. Sup. Ct. 2023). Accounting for that additional period, the Petitioner's claims are time-barred to the extent they accrued prior to July 19, 2015.

Further, the Report and Recommendation (**Dkt #32**) noted that in arguing that his claims are timely, the Petitioner points to Sidley's website, which, at least when accessed by Petitioner on February 3, 2023, contained information about the Land Tenure Work and Shea and Sesame Project without mentioning Petitioner's contributions. The Petitioner then argues that the "continuing wrong" doctrine "serves to toll the running of a period of limitation to the date of the commission of the last wrongful act." However, the Magistrate Judge then noted that the Petitioner does not cite – and the Court is unaware of – any legal authority applying such an exception to a claim for unjust enrichment. Thus, for this reason, the Court declines to apply the continuous wrong doctrine to Petitioner's claim for unjust enrichment." On the Quantum Meruit claim, the Report and Recommendation stated that although Petitioner's quantum meruit claim is directed to different projects (the 2015 Global Entrepreneurship Summit and the Power Africa Initiative) than his unjust enrichment claim (the Land Tenure Work and Shea and Sesame Project), it too is time-barred because the Petitioner's externship ended in May 2014. Further, in an attempt to move the accrual date further in time, the Petitioner focuses on the fact that the 2015 Global Entrepreneurship Summit took place from July 25-26, 2016. (see Dkt. 31 Pg. 29-33.) But, again, that is irrelevant to when the Petitioner provided his services to Sidley in connection with those projects. Thus, both of the Petitioner's otherwise potentially viable claims against Sidley are time-barred.

As it happened on the Petitioner's appeal to the United States Court of Appeals for the Second Circuit, the Petitioner had relied on the doctrine of continuing wrong as an exception to the general rule that is usually employed where there is a series of continuing wrong and serves to toll the running of a period of limitation to the date of the commission of the last wrongful act" as held in *Jonathan M. Henry v. Bank of America* 147 A.D. 3d 599 especially as it relates to the claims for due recognition of intellectual contributions and the continuing infringement of his intellectual property rights.

On the compensation (*quantum meruit*) claims for the 2015 Global Entrepreneurship Summit in Kenya and the Power Africa Initiative, the Petitioner relied on and urged the Second Circuit based on ***Erie doctrine*** to follow the New York case precedents on statute of limitation in ***Gaidon v. Guardian Life Ins. Co. of Am.*** 96 N.Y.2d 201 (2001) where the Court held that a cause of action accrues, initiating the commencement of the statute of limitation period, when all the factual circumstances necessary to establish a right of action have occurred, so that the plaintiff would be entitled to relief. Significantly, the Appellant and Mr. Neil Horner met physically in New York City on **November 7, 2016,** when they discussed varied issues including the success of the 2015 GES. And that, if at all, the time for the statute of limitation purposes should begin to run from 2016 after the Petitioner met with Mr. Horner and it became crystal clear that the Respondents may not be interested in performing or making good their contractual obligation or promise. The mathematical calculation from **November 7, 2016, to March 3, 2022,** when the action was filed would show that the Petitioner is very much within time and not yet cut off by the 6 years statute of limitations rule. Further, the Petitioner

relied on the basis of a contingency oral legal advisory services contract and payment of contingency fees for the services rendered. The Petitioner noted that 2015 GES is undisputedly and globally acknowledged and known to have been held on 25-26 July 2015 at the United Nations Complex in Nairobi, Kenya. This is the sixth Annual Global Entrepreneurship Summit (GES) which started in 2009. The First Respondent was in attendance and same for Mr. Tony Onyemaechi Elumelu who was the selected non-political shortlisted leading Nigerian businessman. Thus, the performance of the contingency upon which the agreement was entered. The mathematical computation of 6 years statute of limitation time from the 27 July 2015 date would show that six years elapsed on **26 July 2021**. The Petitioner, however, submits to the Second Circuit Court, that his Claims (i.e 2015 GES and the Power Africa Initiative Business Consultancy Contracts) were not statute-barred by virtue of **Executive Order 202.67** issued by the former Governor of New York that tolled statute of limitation in the State of New York for **228 days** specifically from March 20 to November 3, 2020. The legal implications of this are that for those seven (7) months and six (6) days, the statute of limitations time clock was stopped. Consequently, on March 3, 2022, when the Petitioner filed this civil action at the Southern District Court of New York against the Respondents, he was very much within time and not cut off by the statute of limitations law of the State of New York as applied by Federal Court under the ***Erie*** **Doctrine**.

The Second Circuit Court without any attempt at making a detailed evaluation and analysis of the Petitioner's submission on the claims being timely or even distinguishing the doctrine of continuing wrong as applied in tortious and equitable claims, simply

held that the District Court correctly concluded that the Petitioner's unjust enrichment and *quantum meruit* claims are untimely. The Second Circuit further held that a *quantum meruit* claim accrues immediately after the plaintiff services for the defendant have concluded. That the Petitioner's unjust enrichment claim is premised on his work as an extern of Sidley Austin from October 2013 through May 2014, and the Petitioner's *quantum meruit* claim is premised on conversations he had with a Sidley Austin partner in 2014. We thus conclude that both claims are untimely because they accrued in 2014. Appendix 1 pages 3-4.

c. The Second Circuit Court erred in law and misdirected itself on facts in its decision to affirm the District Court decision that pro se Party Ikemefuna Stephen Nwoye a Foreign (Nigerian) Licensed lawyer is not entitled to the "special solicitude" afforded to pro se litigant?

The District Court in its dispositive order of August 8, 2023, concluded that the Petitioner was proceeding *pro se* and that the Court does not afford the Petitioner the liberal consideration normally provided to *pro se* plaintiffs because the Petitioner is a legal practitioner. The District Court noted that the Petitioner has already amended the complaint once and has proposed a second amended complaint; none of the three complaints that he has filed or has proposed has stated a viable claim. The court finds that granting the Petitioner a fourth bite at the apple would be futile and waste judicial resources. Appendix 2 pages 5-6.

On the Petitioner's appeal, the Second Circuit Court held that the Petitioner is a lawyer, and he is not entitled to the "special solicitude" we afford *pro se*

litigants relying on *Chevron Corp v. Donziger*, 990 F.3d, 191 203 (2d Cir. 2021). This conclusion was reached based on the Second Circuit Court's characterisation, that the Petitioner a Nigerian trained, qualified and licensed legal practitioner with only one (1) year study for a Master of Laws Degree (International Business Regulation, Litigation and Arbitration) from New York University in the United States of America and not licensed or practising under any State Bar in the USA, is a US Lawyer.

VI. REASONS FOR GRANTING THE WRIT

This Honourable Court should grant the petition for three reasons adduced below –

A. The Second Circuit decision conflicts with the D.C Circuit Court and this Honourable Court's directives on trial of the case involving the civil culpability of a President acting outside the scope of his employment based on complete evidential record.

The issue of Presidential Immunity in civil claims has been held by even this Court to be qualified and not absolute immunity and the need to enquire whether the President acted within the scope of his office. This Court in *Nixon v. Fitzgerald* 457 U.S. 731 (1982) dealing with presidential immunity civil liability held that a president is not necessarily immune from criminal charges stemming from his official or unofficial acts while he is in office. This Honourable Court further found that "the President's absolute immunity extends to only acts within the 'outer perimeter' of his duties of office." In *Clinton v. Jones* 520 U.S. 681 (1997) this Court also established that a sitting President has immunity from civil law

litigation in federal courts for acts done before taking office and unrelated to the office.

The District of Columbia Circuit Court decision of April 13 2023 in ***Trump v. Carroll*** D.C Ct App No 22-SP-745 mirrored the legal reasonings in prior US Supreme Court decisions in this case where former President Donald Trump asserted presidential immunity in claims of defamation against him, the D.C Circuit Court hearing the appeal based on the certification from the Second Circuit, held that presidential immunity is dependent on what amounts to the President acting within the scope of his employment or acting for the United States Government. And that this is a question for factfinding during the trial of each case on complete evidential record and not a question of law that can be determined preliminarily by dispositive application decided by the District Court.

In complete disregard for the judicial precedential effect of the Supreme Court cases and the persuasive effect of the decision of DC Circuit Court that heard the appeal in the *Trump v. Carroll* based on certification from the same Second Circuit Court upheld the decision of the District Court of Southern District of New York that held that the Petitioner's claims are frivolous because the First Respondent enjoyed presidential immunity.

B. The Second Circuit's decision that the claim is untimely is contrary and completely ignored the doctrine of continuing wrong applicable to common law tortious and equitable claims and added to a confusing and inconsistent body of lower Court and State Court Case laws.

The ***Erie*** doctrine as established by the US Supreme Court in the case of *Erie Railroad Co. v.*

Tompkins 304 U.S. 64 (1938) is that federal courts exercising diversity jurisdiction apply federal procedural law of the Federal Rules of Civil Procedure but must also apply state substantive law. Further, it has been held that the statute of limitations is substantive law for *Erie* purposes – *Guaranty Trust Co v. York* 65 S. Ct. 1464.

Under **New York Law**, the doctrine of continuing wrong is an exception to the general rule that is usually employed where there is a series of continuing wrong and serves to toll the running of a period of limitation to the date of the commission of the last wrongful act" as held in *Jonathan M. Henry v. Bank of America* 147 A.D. 3d 599

The **Tenth Circuit** in *Wyo-Ben Inc v. Haaland* No. 20-8065, 2023 U.S. App. LEXIS 6491 clarified the application of 'Continuing-Violation' and 'Repeated-Violations' Doctrines by considering the case involving a broadly applicable federal statute of limitations. In the case, twenty-five years after the BLM's determination, Wyo-Ben brought an action against the Secretary and the BLM alleging a violation of the Administrative Procedure Act because the Secretary "unlawfully withheld" and "unreasonably delayed" agency action by failing to review Wyo-Ben's application to determine whether it was exempt from the moratorium. Id. at 2–3. The government filed a motion to dismiss arguing that the complaint was barred by the statute of limitations that applies to claims against the United States, which provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." 28 U.S.C. § 2401(a). The Tenth Circuit Court here agreed with the Appellant that the continuing-violation doctrine brought the claim within the six-

years limitation period and that the doctrine divides what might otherwise represent a single, time-barred cause of action into separate claims, at least one of which accrues within the limitation period prior to the suit.

The **Second Circuit Court** decision ignores New York Law on the Continuing violation Doctrine and did not make any attempt at giving a detailed evaluation and analysis of the Petitioner's submission on the claims being timely or even distinguishing the doctrine of continuing wrong as applied in English common law tortious and equitable claims.

C. The Second Circuit decision misread *Chevron Corp v. Steve Donziger* and conflicts with this Court's directives for 'special solicitude' to be afforded *pro se* litigant, especially given the fact that the Petitioner is a Nigerian qualified and licensed lawyer with not prior US jurisdictional practice experience.

The Supreme Court of the United States of America had long fashioned a rule of special solicitude for *pro se* pleading. Accordingly, *pro se* complaints, however inartfully pleaded, are held to less stringent standards than formal pleading drafted by lawyers. *Estelle v. Gamble* 429 U.S. 97, 106 (1976). The Judiciary Act of 1789 ch. 20 S.35,1 recognised that in all the courts of the United States, the parties may plead and manage their own cause personally or by the assistance of such counsel or attorney at law as by the rules of the said court respectively.

Special Solicitude can only be withdrawn if the pro se litigant is deemed to have become generally experienced in litigation through participation in a large number of previous legal action. In *Tracy v. Freshwater* 623 F.3d 90 2d Cir. 2010) the **Second**

Circuit Court held that "the degree of solicitude may be lessened where the particular *pro se* litigant is experienced in litigation and familiar with the procedural setting presented" it also embraces relaxation of the limitations on the amendment of pleadings, *see Holmes v. Goldin*, 615 F.2d 83, 85 (2d Cir. 1980) ("A *pro se* plaintiff . . . should be afforded an opportunity fairly freely to amend his complaint."), leniency in the enforcement of other procedural rules, *see LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (*"[P]ro se* plaintiffs should be granted special leniency regarding procedural matters."); *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993) ("A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation.

In *Chevron Corp v. Steven Robert Donziger,* the pro se litigant, was qualified to practice law in two US jurisdictions - the State of York and District of Columbia. Assuming, it is even conceded that this judicial authority decided that a lawyer is not entitled to the "special solicitude" afforded *pro se* litigants, it is respectfully submitted that the meaning of a lawyer in a United States public court proceedings cannot by any stretch of interpretation be said to include foreign lawyers licensed to practice law in non-US jurisdictions or non-US oversea territories or admitted even in a limited capacity to practice law in any US jurisdiction. The Second Circuit misread and misapplied its earlier decision in the *Donziger's* case to the Petitioner *pro se* Ikemefuna Stephen Nwoye, who is a foreign qualified lawyer trained, qualified, and licensed to practice law in Nigeria with just 1 year of study for a Master of Laws Degree (LL.M) from New York University in International Business

Regulation, Litigation and Arbitration (LL.M in IBLRA).

VII. CONCLUSION AND PRAYER FOR RELIEF

This is a case of significant national importance given that the 1st and 2nd Respondents occupied the exalted office of The President of the United States of America and The First Lady of the United States of America both in the Executive Arm of Government. Significantly, the civil action involves claims on transactions done during the presidential tenure of the 1st Respondent, raising legal questions of whether he acted outside the scope of his employment as a public servant for which he would not be entitled to immunity and would be personally held liable.

This Honourable Court should grant certiorari to review the Second Circuit's judgment refusing to remand the case for trial by the District Court of South District of New York based on complete evidential record, summarily reverse the decision below or grant such other relief(s) as the justice of this case requires.

Dated....30th.....of May 2024

Respectfully submitted,

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