

AGF MUST DROP ALL PENDING CRIMINAL CHARGES AGAINST EMEKA UGWUONYE NOW

I respectfully call on the incumbent Attorney General of the Federation of Nigeria (AGF) to drop all charges against Emeka Ugwuonye; a Nigerian and an American lawyer currently languishing in a Nigerian jail during his prosecution for embezzlement-related crimes because the alleged crimes were not committed in Nigeria and because, in reality, he was being punished primarily for stepping on the toes of some powerful Nigerian leaders.

A. FACTUAL BACKGROUND:

Emeka Ugwuonye was born in Nigeria. He attended the University of Benin and graduated with LL.B. degree, second-class upper division. He also attended the Nigerian Law School and was called to the Nigerian Bar in 1992 or 1991. He also bagged Second Class, upper division honors from the Nigerian Law School. He proceeded to Harvard Law School and obtained his LL.M. degree. He was admitted to the State of Maryland Bar as an attorney at law after passing its qualifying examination and meeting other requirements. He has law offices in the State of Maryland and Nigeria.

B. MY RELATIONSHIP WITH EMEKA:

I knew Emeka when I was a student at the University of Benin, Nigeria. He was my senior at the time. He was a source of inspiration to me and some other junior students because of his brilliance and academic results. He was not and has never been a personal friend of mine. I also graduated from University of Benin and the Nigerian Law School with honors and I was called to the Nigerian Bar in 1993. I practiced law in Nigeria for seven years before relocating to the United States with the aid of my older brother, an attorney at law in California. I was admitted to the Bar of the State of California on June 2, 2003 and I am the principal of my law office in California. I am a Board Certified Specialist in Consumer Bankruptcy law (by the American Board of Certification at [www.abcwORLD.org](http://www.abcwORLD.org)). I am also a Solicitor of England and Wales. I have also completed a LL.M. degree in Taxation (summa cum laude) from Taft Law School, California.

Emeka has been practicing law in the State of Maryland for close to two decades. I have been in the United States for more than a decade and this is my 9<sup>th</sup> year of legal practice in this country. We have not spoken to each other since he graduated from University of Benin. We have not contacted each other directly or indirectly since that time. I am not his personal friend and I am not related to him by marriage or blood. I have not been hired to represent him or to write this on his behalf. I am a Yoruba and he is an Igbo. One of his alleged victims is a Yoruba. I am doing this because I believe that Emeka is not going to receive a fair trial guaranteed to every Nigerian under the 1999 Constitution of Nigeria. I am doing this because I believe that Emeka's prosecution is a caricature at its best and a travesty of justice at its worse.

### C. ALLEGATIONS AGAINST EMEKA:

According to the Sahara Reporters, the State Security Services (SSS) arrested Emeka Ugwuonye on February 12, 2011 at the international airport in Lagos State on his way back to the United States over controversial real estate transactions with the Nigerian Embassy in Washington D.C. Briefly, Emeka assisted the Nigerian government to sell several real estates or properties belonging to the Nigerian government. He seized a tax refund due to the Nigerian government from the IRS in the sum of \$1.5 million because he claimed he was owed fees for other legal services he performed for the Nigerian government. The Economic and Financial Crimes Commission (EFCC) filed charges against Emeka in a federal court in Nigeria for defrauding the Nigerian government of \$1.5 in the United States. Additionally, the EFCC filed charges against Emeka in Lagos State High Court with two counts of fraudulently converting \$94,948 belonging to a client of his, Sola Adeeyo. Emeka hired some competent Nigerian lawyers including the renowned and erudite Professor Itsey Sagay, SAN, former Dean, Faculty of Law, University of Benin to defend him and to seek his bail from incarceration. A Lagos High Court judge granted Emeka bail on December 1, 2011 pending the hearing of the substantive suit on January 24, 2012. The amount and the terms of the bail were “6 million Naira with 2 sureties in like sum, each with landed properties and residing in Lagos. The sureties are to deposit the title documents of their properties and submit 3 years tax certificate which are to be verified by the Registrar General of Lagos State.” Anyway, Emeka is still in detention despite the fact that a judge has granted him bail because of Nigerian politics.

### D. LEGAL ISSUE IN THIS CASE

The sole legal issue in this case is whether Emeka should be tried in Nigeria for crimes allegedly committed in the United States of America? The answer to that question is simply “no” for the following reasons:

#### 1. ALL OVER THE WORLD, A PERSON IS TRIED IN THE PLACE WHERE HE IS ALLEGED TO HAVE COMMITTED A CRIME.

In the United States, a person is tried in the place where he is alleged to have committed a crime. In the case of a federal offense, the U.S. Attorney will prosecute him in the federal district court where the crime is allegedly committed, continued or consummated. In the case of an offense created by a state law, a county district attorney (local government attorney) will prosecute the accused in the county where the crime is committed, continued or consummated. In Nigeria, the rule is very similar.

In the present case, the Nigerian Government has alleged that Emeka defrauded it in Washington, United States. Another individual Nigerian called Sola Adeeyo has also alleged that Emeka defrauded him in the United States. The Nigerian government should have made allegations against Emeka to the appropriate U.S. attorney or county district

attorney for prosecution in a federal district or county court in Washington. None of the alleged crimes was committed, continued or consummated in Nigeria. The prosecution of Emeka in Nigeria for these crimes is therefore illegal and unconstitutional.

One rationale for the rule that a person must be prosecuted where a crime is committed, continued or consummated is that what constitutes a crime in one place may not be a crime in another place. For example, it is a serious crime for a married woman to commit adultery in some states in northern Nigeria where Sharia law is implemented. It is not a crime anywhere in the United States for a married woman to commit adultery even if the adultery is committed on her matrimonial bed and in the presence of her husband! So if a female Nigerian living in the United States commits adultery in the United States and visits northern Nigeria, it will be wrong to charge her with the crime of adultery under Sharia law and convict her because the act is not done in northern Nigeria. Even where an act is both a crime in Nigeria and the United States, the elements of the crime may not be the same in both countries and the defenses available in both countries may not be the same. For example, money laundering is a crime in Nigeria, United Kingdom and United States of America. The elements or ingredients of the crime are not the same in all these countries. (I happen to know this because I am licensed to practice law in the three countries). This is why an accused person must be prosecuted in the location where the crime is allegedly committed to avoid miscarriage of justice.

Another rationale for the rule is that a person alleged to have committed a crime should be tried where the witnesses and evidence are readily available. In the present case, the witnesses for both sides are readily available in the United States. The buyers of those Nigerian properties, the real estate brokers who handled the transactions, the escrow companies and the banks where monies are deposited and withdrawn are all potential witnesses readily available in the United States. The evidence in this case will include documentary evidence such as the content of email, fax and telephone conversations between the parties, bank statements, the written contracts between the parties and the controlling law on the interpretation of the contracts. One of the defenses raised by Emeka is that he was entitled to keep the tax refunds belonging to Nigeria because he has not been paid for other past services rendered to Nigeria. This is what we call ‘set off’ defense in American and Nigerian jurisprudence. If Emeka is right, he has not committed any crime. If Emeka is being tried in Washington, a typical American judge or jury will have to review the applicable Washington’s federal or state statutory and decisional law on the defense of set off depending on the forum, and apply it to the facts of the case to determine if Emeka has committed a crime.

I am aware that the disgraced former Attorney General of the Federation, Michael Aondakaa, issued a public statement that Emeka had been fully paid by the Nigerian Government for his previous services to the Nigerian government. The statement did not justify and cannot justify the incarceration of Emeka in Nigeria and did not and cannot negate Emeka’s defense. The proper procedure has not been followed. If Emeka is tried in the United States, Michael Aondakaa can fly to the United States and present evidence to the American jury to substantiate his claim that Emeka has been fully paid for his past services. If indeed Emeka has been fully paid for his past services to the Nigerian

government and Emeka is withholding money belonging to the Nigerian government without justification, why did the Nigerian government not file a complaint against Emeka with the Maryland Grievance Commission for the institution of disciplinary charges against him for violating the rules of professional ethics? (See below). In view of all other things done by Michael Aondakaa while in office as the AGF and his subsequent demotion from the rank of Senior Advocate of Nigeria, he has no credibility and his statement should be taken with a pinch of salt.

The charges against Emeka are felony charges. In the United States and in most jurisdictions, a crime punishable by more than six months imprisonment is a felony by definition. If Emeka is tried in the United States, he will be entitled to a jury trial that arises from *Article Three of the United States Constitution*. A jury trial is unknown to Nigerian jurisprudence. A *jury trial* is preferred to a *bench trial* that ordinarily exists in the Nigerian criminal system. In a jury trial, the court will choose 12 people or jurors to hear the facts of a case as presented by the prosecution and the defense counsel and their witnesses and evidence. The judge will explain to the jurors the applicable law in a layman's language and the burden imposed on the prosecution by law in order to prove the commission of a charged offense (beyond a reasonable doubt) and what the defense has to prove to establish a defense. A conviction can only be sustained if the jury returns a *unanimous verdict* of guilt. In other words, all 12 jurors must be satisfied that an accused person has committed an offense beyond a reasonable doubt. If one juror is not convinced that the accused has committed a crime based on the totality of the evidenced produced at trial, an accused person must be acquitted and released. In Nigeria, since a single judge or magistrate tries an accused person on a criminal charge, it is evident that a judge can easily convict an accused person of committing a crime if the judge is bribed or influenced or if the judge does not like the accused person for whatever reason known to him/her. I really do not think Emeka will get a fair trial in Nigeria based on my experience as a lawyer in Nigeria.

Also, Emeka should be prosecuted in the United States because the charges arose from his rendition of services to his clients in the United States as their attorney. The fact that the clients and Emeka have a link to Nigeria is irrelevant. Emeka was hired by the Nigerian government to sell properties for it in the United States. *If the Nigerian government had hired an attorney who was born in the United States of America to sell its properties in the United States, it would not think of prosecuting United States Citizen in Nigeria for allegedly defrauding the Nigerian government.* The same submission is made here on the prosecution of Emeka for allegedly defrauding one Sola Adeeye in the United States.

Exhaustion of Remedies: Finally, the doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been exhausted in the original one. The doctrine was originally created by case law based on the principles of comity. The Nigerian government was allegedly aggrieved by the conduct of Emeka in handling its money and in handling another Nigerian's money in

the United States. Under this internationally known doctrine of exhaustion of remedies, the Nigerian government must first avail itself of the remedies provided by the United States laws. This means that the Nigerian government ought to have pressed for criminal charges against Emeka in the United States and also sought his disbarment from the practice of law in the State of Maryland. The doctrine requires the Nigerian government to seek all levels of appellate review in the United States if it receives an adverse ruling before seeking remedy in Nigeria, consistent with the universal notion of justice and fair trial. *The Nigerian government did not follow this honorable path.*

2. *THE NIGERIAN GOVERNMENT IS GUILTY OF DOUBLE STANDARD IN HANDLING EMEKA'S ISSUE*

When some Nigerians commit crimes in the United States and flee to Nigeria to avoid criminal prosecution in the United States for those crimes, the Nigerian government always arrests those Nigerians; surrenders them over to the United States government to be tried in the United States and under United States laws. A Nigerian, Emmanuel Ekhaton, was recently extradited to the U.S. in July 2011 after fleeing to Nigeria when he was accused of partaking in several member fraud ring which caused at least 80 law firms and lawyers in the U.S. and Canada to lose more than \$31 million to an intricate scam ring because the offenses were allegedly committed in the United States. Several other Nigerians have been extradited from Nigeria to United States in the past. *But when it comes to Emeka Ngwuonye, the Nigerian government did not follow the standard procedure because his trial is really a Kangaroo trial.*

3. *THE REMEDIES AVAILABLE TO EMEKA'S FORMER CLIENTS IN THE UNITED STATES ARE MORE THAN SUFFICIENT.*

As I pointed out previously, Emeka was alleged to have committed crimes in his professional capacity as an attorney against his former United States' clients. There is no need for Emeka to be prosecuted in Nigeria for offenses he was accused of committing in the United States because there are sufficient remedies for his alleged victims in the United States of America. Emeka is admitted to practice law in the State of Maryland in the United States of America, and he is therefore bound by the rules of professional conduct of that state. *Rule 8.5 of Maryland Lawyer's Rules of Professional Conduct* provides:

"A lawyer admitted by the Court of Appeals (highest court) to practice in this State (Maryland) is subject to the disciplinary authority of this State, regardless of where the lawyer's conduct occurs." Rule 1.15 also provides "that a lawyer shall hold property of his clients or third persons in a lawyer's possession in connection with a representation separate from the lawyer's own property.." The essence of Rule 1.15 is to prevent Maryland lawyers from embezzling their clients' monies and properties. In the case of *Atty. Griev. Comm'n of Md vs Patterson*, 421 Md. 708; 28 A. 3d 1196; 2012 Md. LEXIS 575, September 21, 2011, filed, the Court of Appeals (highest court) of Maryland suspended attorney Patterson indefinitely from practice of law for violating, among others, Rule 1.15 of Maryland's Rules of Professional Conduct. If the same misconduct occurs in California, the outcome will be the same. Indeed, the outcome will be the same

in most of the 50 states comprising the United States of America. If the Nigerian government really believes that Emeka misappropriated Nigerian money, as Emeka's former client, it should have reported the matter to the Maryland's Attorney Grievance Commission for investigation and possible filing of disciplinary charges against Emeka for violation of Rule 1.15- which requires all Maryland attorneys to keep their clients money and property in trust and to avoid misappropriating them. In the Patterson case (supra), the Maryland attorney was suspended indefinitely from practicing law in Maryland because he misappropriated his client's money. Misappropriation of clients' funds in the State of Maryland (and in most of the United States) involves conduct constituting moral turpitude. *Att'y Griev. Comm'n v. Moore*, 301 Md. 169, 482 A. 2d 497 (1984). Disbarment is the general punishment for egregious misappropriation of clients' funds. See *Att'y Griev. Comm'n v. Theriault*, 390 Md. 202, 888 A. 2d 292 (2005).

There are fifty states in the United States and each has its own rules for licensing lawyers to practice law. In general, once a lawyer is disbarred or put on an indefinite suspension in one state, he will be prevented from practicing law in any other state where he may be licensed. Also, the fact is displayed to the public at the website of the state bar for potential clients and every one to know. In other words, his career as a lawyer in the United States has ended. If he relocates to Canada or the United Kingdom or Europe and pass a qualifying examination to become a lawyer in those two countries, he will not be admitted to their bar because of his disbarment in the United States! The bar of any advanced country generally requires the bar of all state or country where a lawyer is licensed to practice law to send a certificate of good standing directly to it before the same lawyer can be admitted in a new jurisdiction. Additionally, each State or country has a board or committee statutorily empowered to discipline lawyers who violate rules of professional conduct. The discipline that can be imposed ranges from simple private rebuke, public rebuke, temporary suspension from practice for some few months or years, indefinite suspension and permanent disbarment. The discipline may also include the imposition of fine or restitution on the erring attorney. Each state board is required to report lawyers whose misconduct also amounts to a crime to the appropriate District attorney/U.S. attorney for criminal prosecution. So it is possible for a lawyer to lose his license in the United States and still end up in jail for defrauding his clients. The United States penal system often provides for restitution and forfeiture of assets. In general, all assets acquired by criminal means in the United States will be forfeited to the United States or its political subdivision upon conviction. In general, you cannot keep the proceeds of a crime in the United States.

4. *THERE IS NO JUSTICE IN NIGERIA IF THE ACCUSED PERSON IS POOR OR LESS PRIVILEGED AND THE ALLEGED VICTIM IS RICH OR INFLUENTIAL*

It is shameful that there is no justice in Nigeria for the poor or the less privileged if he is alleged to have committed a crime against a powerful person in Nigeria and the latter is determined to destroy the former. During the seven years that I practiced law in Nigeria before relocating to the United States, I saw it first hand how the innocent were declared guilty and the guilty were declared innocent because of inequality in economic and political power. Nothing really has changed in Nigeria. Justice is sold to the highest bidder. For those who are not familiar with the Nigerian law enforcement and judiciary,

policed officers in the Nigerian Police Force prosecute most crimes in Nigerian courts. Most of them did not attend law school and are not lawyers. They receive some basic in-house training on criminal procedure and that is it. The typical rich person goes to a police officer, tells him that someone has committed a crime against him or his dependents or relatives. He bribes the officer and the officer becomes the investigating police officer (IPO) and tells him not to release the accused person on bail. The IPO tells the rich person how to fill out his statement form to the police in order to incriminate the accused person and to justify bail refusal. The IPO then proceeds to arrest the accused person. He tells the accused person to complete a statement form and also state that he admits committing the crime and to sign accordingly. If he refuses, the IPO beats him up, writes a confession on behalf of the accused person and forces the accused person to sign it. If the accused person gives the IPO a bribe, the IPO tears the confession and recommends a “good lawyer” to the accused person. The IPO then charges the case to court as soon as possible. If the accused person does not give the IPO a bribe, the IPO detains the accused on a false charge for a week or several weeks or months and then releases him on bail or charges him to court. In general, most Nigerians are not corrupt but most police officers, magistrates and judges in Nigeria are very corrupt. The rich basically pay them to refuse bail to persons charged with bailable offenses or grant bail on onerous terms, which the accused persons will never be able to meet. The accused persons are then remanded in prison pending their trial. The Nigerian prisons are horrible and invested with all sorts of viruses and bacteria. Death may be preferable to imprisonment in a typical Nigerian prison.

The above probably explains why Emeka is being tried in Nigeria for offenses he allegedly committed in the United States. The truth must be told. Many Nigerians here believe Emeka stepped on the powerful toes of some eminent Nigerians of the Nigerian embassy including a former Nigerian Ambassador to the United States and elsewhere when he refused to give them bribe from the proceeds of the Nigerian properties he helped them to sell. For them, Emeka must be punished for not behaving like a typical Nigerian in the circumstances. When they realized that they could not ‘get’ him under American law, they shamefully opted for Nigerian law and waited for him to visit his fatherland! In the process, they have destroyed his career as a lawyer in the United States. They have alienated him from his wife and children in the United States. They have dealt psychological and emotional pain and suffering to this intelligent and “stubborn” man.

**5. THE ATTORNEY GENERAL OF THE FEDERATION MUST DROP ALL CHARGES AGAINST EMEKA NGWOUNYE IMMEDIATELY.**

The cardinal canon of justice is that justice must not only be done but it must be seen to be done. The principles of natural justice are (1) that a man shall not be a judge in his own cause-*nemo iudex in causa sua* and (2) that a man must be given fair trial-*alteram partem*. I respectfully call on the Attorney General of Federation of Nigeria to drop all pending charges against Emeka Ngwounye forthwith by filing a *Nolle Prosequi* in all the courts where criminal charges have been filed against Emeka in Nigeria because Nigeria is not the proper place to try him. Again, the accuser is the Nigerian government and the judge is also the Nigerian government. §174(c) of the 199 Constitution confers extensive powers on the AGF to proceed or discontinue a criminal trial before a judgment is

delivered. Since no judgment has been rendered against Emeka so far, the A.G. should act quickly withdraw all pending charges against Emeka before he is judicially raped.

There are ample precedents for the exercise of this constitutional power in Nigerian jurisprudence to redress anomalous prosecutions. On January 13, 2009, Nuhu Ribadu, former boss of EFCC, was charged before the Code of Conduct Tribunal, (CCT) by the disgraced and incompetent former Attorney General of Federation, Michael Aondakaa, over Ribadu's alleged failure to declare his personal assets while in office as the EFCC boss. The subsequent Attorney General of the Federation in the person of Prince Adetokumbo Kayode, SAN, reviewed the case against Ribadu and correctly directed that the charges should be withdrawn and they were withdrawn.

The current Attorney General of the Federation, Mohammed Bello Adoke, SAN, entered nolle prosequi (no prosecution) in at least 16 criminal cases involving 16 persons facing corruption charges in various courts within 6 months of assuming office without giving any reason for his decision. Even though he was not required to give any reason, he was severely censored by the Nigerian press because it believed that those 16 persons were indeed very corrupt. The exercise of the power of nolle prosequi in the 16 cases would be less deserving than the exercise of the same power in the case of Emeka. Emeka has not corruptly enriched himself from public office unlike those 16 politicians. Emeka is being tried because he stepped on powerful toes. *Who knows, I may be the next victim for writing this piece when I step on Nigerian soil. And unfortunately for me, I have no godfather in Nigeria to deliver me. But I am satisfied that I have followed my conscience.* I like to remind our leaders that one day they will stand before God and give account of themselves. Emeka must be released now and allowed to return to the United States to pick up the broken pieces of his life during or after his trial set for January 24, 2012 in Nigeria.

Respectfully submitted,

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