# IN THE SUPREME COURT OF NIGERIA
# HOLDEN AT ABUJA
# ON FRIDAY, THE 10TH DAY OF APRIL, 2026

## BEFORE THEIR LORDSHIPS

| | |
|---|---|
| **MOHAMMED LAWAL GARBA** | **JUSTICE SUPREME COURT** |
| **EMMANUEL AKOMAYE AGIM** | **JUSTICE SUPREME COURT** |
| **HARUNA SIMON TSAMMANI** | **JUSTICE SUPREME COURT** |
| **STEPHEN JONAH ADAH** | **JUSTICE SUPREME COURT** |
| **MOHAMMED BABA IDRIS** | **JUSTICE SUPREME COURT** |

**SC/CV/48/2026**

**BETWEEN**

NECONDE Energy Ltd = = = = **Appellant**

**AND**

CERTIFIED TRUE COPY
Yusuf Ibrahim
REGISTRAR
Supreme Court of Nigeria
16/04/2026

1. FBN Quest Merchant Bank Ltd
2. First Trustees Limited
3. Nestoil Limited
4. Ernest Azudialu-Obiejesi
5. NnnenaAzudialu-Obiejesi

**Respondents**

## JUDGMENT

## (DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

I had a preview of the judgment delivered by my Learned brother, Lord Justice **MOHAMMED BABA IDRIS, JSC.**



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I agree with the Lead judgment that the preliminary objections have no basis because by virtue of S.233(2) of the 1999 Constitution this appeal lies as of right because the grounds of this appeal involve questions of law alone and the ruling of the Court of Appeal disqualifying Chief WoleOlanipekun SAN and other counsel from representing the appellant and others made in the course of proceedings in a pending appeal, is a final decision even though made at the interlocutory stage of the pending proceedings, because it finally determined the right of the parties concerning the issue of whether Chief Wole Olanipekun SAN and other counsel should be disqualified from representing the appellant in this and related matters, as such issue cannot be revisited or reopened by the Court of Appeal and the ruling is only open to an appeal to this court. The leading case on the finality of adecision made at an interlocutory stage is **Igunbor V Afolabi & Anor (2001) LPELR-1454 (SC) held 3 &4** in which this court stated thusly –

**"A final order or judgment at law is one which brings to an end the rights of the parties in the action. It disposes of the subject matter of the controversy or determines the litigation as to all parties on the merits. On the other**

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**hand, an interlocutory order or judgment is one given in the process of the action or cause, which is only intermediate and does not finally determine the rights of the parties in the action. It is an order which determines some preliminary or subordinate issue or settles some step or question but does not adjudicate the ultimate rights of the parties, in the action. However, where the order made finally determines the rights of the parties, as to the particular issue disputed, it is a final order even if arising from an interlocutory application. For instance, an order of committal for contempt arising in the course of proceedings in an action is a final order "See TounAdeyemi V. TheophilusAwobokun (1968) 2 All NLR 318" PER KARIBI-WHYTE, J.S.C. (P. 28, paras. A-E)**

**"The determination of the question whether an order is interlocutory or final has never been one of mean difficulty. The test has been to look at the nature of the order made rather than the nature of the proceedings resulting in the order. What has to be considered is whether the order has finally determined the rights of the parties in the proceedings in issue appealed against, and not whether the rights of the parties in the substantive**

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**action have been finally disposed of – See Omonuwa V. Oshodin (1985) 2 NWLR (pt.10) 924, U.B.A Plc. V Akinsanya (1986) 4 NWLR (pt. 33) 1 273, (1986) 7 SC 233, Ude V. Agu (1961) 1 SCNLR 98; Ojom V. Odunsi (1964) NMLR 12; Western Steel Works Ltd V. Iron and Steel Workers Union of Nigeria (1986) 3 NWLR (pt. 30) 617." Per KARIBI-WHYTE, JSC (p. 27, paras D-G)"**

Concerning the merit of this appeal, let me add as follows.

The 3rd respondent is owing debts to a consortium of banks, namely, Access Bank PLC, Union Bank of Nigeria PlC, First City Monument Bank PLC, Ecobank Nigeria Limited, United Bank for Africa PLC, Zenith Bank PLC and African Export-Import Bank in separate bilateral transactions coalesced under a Common Terms Agreement dated 8-12-2022, under which agreement, the appellant, as security for all the said debts, charged its interest in an oil well, OML 42 JV, together with its assets as source of the repayment of the debts pursuant to a Deed of charge executed between the appellant and 2nd respondent as agent of the said consortium of banks. Under the said Deed of charge, the 2nd respondent was empowered to recover the said indebtedness of the 3rd respondent either directly or through the appointment of a

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receiver manager. The 4th and 5th respondents were said to have further guaranteed the 3rd respondent's payment of the said debts and for that purpose pledged their assets as collaterals. Pursuant to an alleged default in repayment, the 2nd Respondent appointed a receiver/manager in the person of Mr. Abubakar Sulu-Gambari, SAN, by a Deed of Appointment dated the 21st August, 2025, which appointment was duly registered with the Corporate Affairs Commission. After the said appointment, proceedings were instituted before the Federal High Court, Lagos Judicial Division by the 1st and 2nd respondents herein against the appellant, and 3rd to 5th defendants as defendants. A decision of the trial court on 20-11-2025 that an ex parte mareva order against the appellant and 3rd to 5th respondents had lapsed after 14 days in the absence of a subsisting order on notice caused the 1st and 2nd respondents to appeal to the Court of Appeal on 21-11-2025. In the appeal, learned counsel appointed by the receiver manager to prosecute the case of the appellant and 3rd to 5th respondents, filed an application on 3-12-2025, seeking the disqualification of Chief WoleOlanipekun SAN and other learned Counsel appointed by the appellant and 3rd to 5th respondents to represent them in the suit brought against them by the 1st and 2nd respondents, contending that only the receiver/manager

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possess the legal authority to appoint legal practitioners to represent the appellant and the 3rd to 5th respondents in the case. The Court of Appeal granted the application holding that upon the appointment of the receiver/manager, the company and its management had no power to appoint counsel to represent it in the said suit, and disqualified the legal practitioners appointed by the appellant and the 3rd to 5th respondents. This decision of the Court of Appeal has led to this appeal.

The lead judgment of this court has brilliantly reviewed and set aside the decision of the Court of Appeal. I completely agree with the reasoning and the restatement of legal principles therein. Let me however, add that in this case it is the appellant and not the 3rd to 5th respondents that filed the suit leading to this appeal. It is the 1st and 2nd respondents on behalf of their creditors that filed the suit against the appellant and 3rd to 5th respondents to enforce the Common Terms Agreement, the Deed of charge of the specific assets, the oil well, OML 42 JV and recover the debts due under the said Agreement and Deed. It is absurd for a receiver/manager to appoint lawyers for the defendant (the debtor) in a suit by the receiver or the creditor as plaintiff. The scope of the power of a receiver/manager does not include the power to appoint legal representation for the opposing party The

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power does not extend to controlling or representing adverse parties in litigation. For the same receiver or creditor to file a suit and also appoint legal representation for the opposing party involve a serious conflict of interest that would violate basic principles of fair hearing and independence of legal representation. The appellant as defendant (debtor) has the independent right to choose and appoint its lawyer and this right cannot be controlled or exercised by the receiver suing it. There would be no equality of arms of the parties to a proceedings in which one party appoints the lawyer for the opponent. Without such equality of arms the proceedings cannot be fair and must be set aside. The principle of equality of arms, a fundamental determinants of the fairness of a proceeding, guarantees that all parties in a legal proceedings have reasonable opportunity to present their case under condition that do not place them at a substantial disadvantage. This includes the fundamental right to choose a lawyer of a party's choice. If a party is prevented from exercising this right, the fair hearing guarantee under S.36(1) becomes illusory and the integrity of the judicial proceeding is destroyed.

It is surprising that learned counsel for the 1st and 2nd respondents could contend that the appellant and 3rd to 5th



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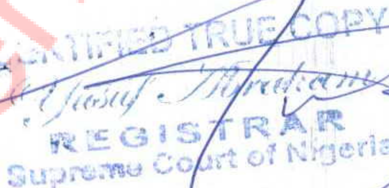
respondents, defendants to their own suit have no power to appoint a lawyer of their choice for their defence because a receiver manager have been appointed to recover the debts owed by them. Such an application cannot be in furtherance of justice and is clearly a scandalous and despicable engagement in the gross abuse of the process of court. The Court of Appeal abdicated its judicial responsibility and enabled a blatant abuse of the process of court when it granted that application.

**EMMANUEL AKOMAYE AGIM**
**JUSTICE, SUPREME COURT**

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**APPEARNACES:**

Bode Olanipekun SAN with MofesomoTayo-Oyetibo SAN with Akintola Makinde Esq., Raymond Nkannebe Esq., Ope Muritala Esq., Rita Nmarkwe Esq., Victoria Bassey Esq., for the**Appellant**

Ame Ogie Esq., for receiver/manager,

Victor Ogude SAN with Omosanya Popoola SAN., K. O. Fag bemi Esq., Bolaji Oyun Esq., KehindeWilkey Esq., and BuchiOfulue Esq., for 1st& 2nd**Respondent**

M. B. Ganiyu Esq., with M. Ilegbusi Esq., for the 3rd **Respondent**

Chinonye Edmund Obiagwu SAN with Mariam Balony Esq., V. Chinazo Esq., E. Lumba Esq., and C. Obiagwu Esq., for the 4th**Respondent**

KehindeOgunwumiju SAN., with C. Ojukwu SAN., O. Osunleti Esq., C. Omokaro Esq., C. Mayor-Eze Esq., and U. C. Osuigwe Esq., for the 5th**Respondent**

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