

WRIT OF SUMMONS
FORM 1
(Order 3 rule 4)
General Form of Writ of Summons

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO: **FHC/ABJ/CS/738/2021**

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

SHELL PETROLEUM DEVELOPMENT COMPANY DEFENDANT
OF NIGERIA LIMITED

TO: SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED
of Freeman House, 21/22/ Marina, Lagos,

You are hereby commanded that within thirty (30) days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of THE PLAINTIFF and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Dated thisday of2021.

By Order of the Court

.....
Registrar

N.B. This Writ is to be served within twelve calendar months from the date of thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendant may enter appearance personally or by solicitor either by handing in the appropriate forms, duly completed, at the Registry of the Federal High Court of the judicial division in which the action is brought or by sending them to the registry by registered post.



INDORSEMENTS

The Plaintiff's claims against the Defendants are for:

1. **A DECLARATION** that the representations made by the Defendant, as operator of OML 29 prior to the sale and as representative of the sellers, as contained in the Agreement for Assignment dated 17th October 2014 for the transfer of its interest in the Oil Mining Lease OML 29 (OML 29), to the effect that it owns and is in a position to transfer its rights, title and interest in Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) ("the Wells") to the Plaintiff and that the Wells were part of the assets being offered for sale by the Defendant, being sold by and being transferred by the Defendant to the Plaintiff as the Defendant transferred interest in the Joint Operating Agreement dated 11th July 1991 to the Plaintiff by the Defendant, were of a fundamental nature that go to the very basis of the agreement relating to the acquisition of those Wells by the Plaintiff.
2. **A DECLARATION** that the representations made by the Defendant as contained in both the Information Memorandum dated October 2013 and in Schedule 1, part 3 – Wells - of the Agreement for Assignment dated 17th October, 2014 with respect to Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells as interest that upon the completion of the sale will be transferred to the Plaintiff by the Defendant, and on the completion of the sale, were actually transferred to the Plaintiff, and as being part of the 45% undivided participating interest in OML 29 were false and made recklessly and/or fraudulently by the Defendant to deceive the Plaintiff, when the Defendant knew or ought to have known that the Defendant have handed over the Wells to the Federal Government of Nigerian/Nigerian National Petroleum Corporation ("NNPC") for which the Defendant received valuable consideration in or about 2009 prior to the Agreement for Assignment, the publication of the information memorandum and the sale of the OML 29 to the Plaintiff.
3. **A DECLARATION** that the Defendant by virtue of the aforementioned misrepresentations and deceit is in breach of a fundamental term of the Agreement for Assignment dated 17th October, 2014 as set out in Schedule 1 part 3 – Wells - in relation to the Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells listed in that Schedule 1 to the Agreement for Assignment.
4. **A DECLARATION** that in view of the allegations made against the Defendant, which border on fraud and deceit amongst other things, the instant action cannot be determined by arbitration.
5. The sum of \$2,135,250,000 (Two Billion One Hundred and Thirty Five Million Two Hundred and Fifty Thousand Dollars) being the amount the Plaintiff would have derived from the sale of 32,000,000 (Thirty Two Million) barrels of crude oil and other petroleum products from the Kugbo West (Nos. 1-4) listed in Schedule 1 part 3 of the Agreement for Assignment and 41,000,000 (Forty One Million) barrels of crude oil and other petroleum products from the Okiori (Nos. 93 & 94) listed in Schedule 1 part 3 of the Agreement for Assignment

totaling 73,000,000 (Seventy Three Million) barrels of crude oil at the rate of \$65.4 per barrel.

IN ALTERNATIVE TO RELIEF 5 ABOVE

6. **AN ORDER** directing the Defendant to refund to the Plaintiff the sum of **US \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars)** as payment attributable to Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells being money had and received for a consideration which has totally failed.
7. The sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** being the interest that ought to have accrued on the afore-said sum had and received by the Defendant based on the pricing of the loan facilities taken by the Plaintiff to complete the acquisition.
8. Interest on the sums claimed in paragraph 7 and 8 above and 10 below at the rate of *22% per cent, per annum* from 17th October, 2014 to date of judgement and thereafter at the rate of *10% per cent, per annum* until the judgment sum is paid in full by the Defendant.
9. The sum of \$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents) which the Plaintiff ought to have earned over the life of the Wells had the Defendant transferred the Wells to the Plaintiff
10. General Damages in the sum of **\$500,000.00 (Five Hundred Thousand Dollars) arising from the fraud, deceit and misrepresentations of the Defendant to the Plaintiff regarding the Wells.**
11. Cost of the action in the sum of N250,000,000.00 two hundred and fifty million naira only.

This Writ was issued by Nicholas Chidi OKAFOR ESQ, and Mena AJAKPOVI
FCI Arb Of..... **Udo Udoma & Belo-Osagie**..... Whose address of Service is: 10th
Floor, St. Nicholas House, Catholic Mission Street, Lagos Island, Lagos

Legal Practitioner for the said Claimants who reside at 11A, Pope John Paul II
Street, Maitama, Abuja, F.C.T.
(mention the town or district and also the name of the street and number of the
house of the Claimants residence, if any)

This Writ was served by me at.....

on the defendant (describe mode of service)on theday
of.....2021.


Signed

Address.....

This Writ of Summons is to be served out of the Federal Capital Territory, Abuja
and in Lagos State.

Dated this 27th day of July, 2021




KEMI PINHEIRO, SAN
ABDUL MOHAMMED, SAN
YAKUBU MIKYAU, SAN
EMEKA OZOANI, SAN
UZOMA HENRY AZIKIWE, SAN
NICHOLAS CHIDI OKAFOR
O. J. AJAKPOVI LL.M (Bos.), FCI Arb. ✓
John Chidera Agah
Mesuabari Mene-Josiah
Counsels to the Plaintiff
MESSRS. UDO-UDOMA & BELO-OSAGIE
St. Nicholas House
Catholic Mission Street
Lagos Island
Lagos
Tel: 080774698334
E-mail: Mena.ajakpovi@uubo.org
**WHOSE ADDRESS FOR SERVICE
WITHIN JURISDICTION IS:**
Udo Udoma & Belo-Osagie
Abia House, 2nd Floor,
Plot 979, 1st Avenue,
Off Ahmadu Bello Way,
Cadastral Zone A0,
Central Business District,
Federal Capital Territory Abuja, Nigeria.

FOR SERVICE ON:

1. The Defendant:
SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED
Freeman House
21/22/ Marina
Lagos

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO:

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

**SHELL PETROLEUM DEVELOPMENT COMPANY
OF NIGERIA LIMITED DEFENDANT**

STATEMENT OF CLAIM

The Parties:

1. The Plaintiff is a limited liability company incorporated in Nigeria with its registered office at 11A, Pope John Paul II Street, Maitama District, Abuja, F.C.T. and carrying on the business of oil exploration, production, bulk storage, refining, supply and marketing of petroleum products.
2. The Defendant (hereinafter referred to as "SPDC") is a limited liability company incorporated in Nigeria with its principal offices at Freeman House, 21/22/ Marina, Lagos and carrying on the business of a Joint Venture with the Nigerian National Petroleum Corporation ("NNPC") focusing on oil and gas production in the Niger Delta of Nigeria. The Plaintiff avers that SPDC, prior to the acquisition of OML 29 by the Plaintiff, is the operator of the field on behalf of the NNPC/SPDC/Total/AGIP Joint Venture for OML 29, and held a 30% of the 45% participating interest in OML 29 and was directly responsible for the actions called into question in this action.
3. The Defendant was the legal and beneficial holder of a 30% (thirty percent) undivided participating interest in Oil Mining License 29 ("OML 29") which is part of the undivided percentage interests held by the Defendant in in conjunction with TEPNG, and NAOC (Total Exploration and Production and Nigeria Agip Oil Company) in the unincorporated NNPC/SPDC/Total/AGIP Joint Operating Agreement ("JOA") dated 11th July, 1991 between the NNPC and the Defendant. The 45% comprises the sum of SPDC (30%), TEPNG (10%) and NAOC (5%) participating interests.
4. Prior to the assignment of the Lease to the Plaintiff, the Defendant as the Operator, published Information Memorandum dated October 2013 and invited bids from interested entities for the acquisition of their joint undivided 45% (forty-five percent) participating interest in the OML 29 ("The Lease") amongst other OMLs and other assets belonging to them, consequent upon

their desire to divest their global assets to cut cost following the review of their businesses in Nigeria.

5. One of the entities that responded to the Defendant's invitation for bids is the Plaintiff, which, at that time, had a strategy to position itself for greater participation in the Nigerian Oil and Gas Industry.

The Information Memorandum:

6. The information regarding the OML 29, and other OMLs published for sale by the Defendant, including legal, commercial, technical and governance matters was spelt out in the Information Memorandum on the proposed assignment of a Participating Interest in whole or in part in OML18, OML24, OML25 and OML 29 Nigeria (hereinafter referred to as "the IM") and was prepared and controlled exclusively by the Defendant on behalf of other participators named in the preceding paragraph. The Defendant made the IM available to the interested bidders including the Plaintiff. The Plaintiff shall at the trial of this suit found upon the said IM.
7. The IM was a document prepared by Defendant. The Defendant was the operator of the OML 29 and was by virtue of that status in full possession of all the data, records, information and materials relating to the state and status of the assets covered by the IM, including OML 29. The Defendant as operator also related and dealt with third parties on behalf of the NNPC/SPDC/TOTAL/NAOC JV for OML 29, including the Department of Petroleum Resources ("DPR") that regulates the Nigerian oil and gas industry.
8. The Plaintiff avers that at page 23 of the IM, the Defendant in particular fraudulently represented as follows in relation to OML 29, without taking account of the Wells with substantial reserves that the Defendant had traded about five years earlier with the Federal Government of Nigeria in a settlement deal:
 - (i) Key Fields - OML 29 OIL Production Capacity – 240 mbpd (Nembe Creek, Santa Barbara, SB South, Odeama Creek, Okoroba
 - (ii) Existing Surface Facilities/Infrastructure – 100 wells, 6No. Flow Stations & Associated Gas gathering facilities, more than 250 km flowlines, Manifolds, Evacuation Pipeline in Bonny, 1No. Field Logistics Base; Oil Production 2012 peak/Average equals 62/32 Mbpd
9. Aside from the IM, the Defendant also further furnished the prospective bidders, including the Plaintiff, with purportedly comprehensive and factual print and electronic data room with information and other bid and transaction documents in relation to OML 29.
10. All the above documents, including the IM, were assured by the Defendant to be factual and comprehensive information and guides to the Plaintiff and other bidders regarding the nature, location, operatorship and available infrastructure in relation to OML 29, relevant in persuading the Plaintiff as a

bidder, to make investment decisions in bidding for, and also, of the economic viability or otherwise of OML 29.

11. The Plaintiff shall contend at the trial of this suit that the information contained in the IM and other print and electronic data in the data room created, controlled and managed by the Defendant and in the bid and the transaction documents in relation to the OML 29 constitute material representations intended to induce the bidders, including the Plaintiff, into tendering bids for the acquisition of the assets and paying the purchase price to the Defendant.
12. Relying on, and acting upon the aforesaid representations, especially as to the number of wells, recoverable crude oil and gas volumes and the overall oil well data presented, the Plaintiff put forward a winning bid price which was eventually negotiated to the sum of US \$2,350,000,000.00 (Two Billion Three Hundred and Fifty Million United States Dollars) and which was accepted by the Defendant for the acquisition of 45% the legal and beneficial participating interests in OML 29.
13. As consideration for the Agreement, the Plaintiff made the following respective payments of:
 - (a.) US \$220,000,000.00 (Two Hundred and Twenty Million Dollars) as deposit pending the negotiation, completion and execution of the transaction documents and relevant agreements; and
 - (b.) the balance of US \$2,130,000,000.00 (Two Billion, One Hundred and Thirty Million Dollars) upon the execution of the transaction and acquisition documents and the Agreement.
14. Subsequent to the above and by virtue of an Agreement for Assignment dated 17th October, 2014 (hereinafter referred to as the "Agreement"), the Defendant in conjunction with TEPNG, and NAOC as Assignors transferred to the Plaintiff their entire participating interest in OML 29 together with their rights, interests and obligations thereto, and in the process, purportedly also transferred their participating interest in the Wells, when they knew or ought to have known that they had surrendered and given the Wells to the NNPC/the Federal Government of Nigeria about five years earlier for valuable consideration.
15. As a term of the Agreement setting out the Particulars of the wells in the Transferred Interests described in Schedule 1 of the Agreement, the Defendant included amongst other oil wells, Kugbo West Nos. 1 - 4 and Okiori Nos. 93 & 94 (hereinafter referred to as the "Wells") which were assigned to the Plaintiff by the Defendant and described as "Suspended".
16. The Plaintiff avers that by the terms of the Agreement, and as set out in the Transaction Documents, the term "suspended" meant that a rig re-entry was required for a particular well described as "suspended", but otherwise the wells were warranted as free from any defect in title and from encumbrances.

Representations regarding the Wells:

17. In the IM, the Defendant represented at paragraph 3.1.1 (titled "OML 29 Field reserves") particularly at page 24 that the Wells formed part of the remaining reserves and resources within OML 29 which was to be assigned by the Defendant to the Plaintiff.
18. Apart from the above, the Defendant in the IM also represented:

At paragraph 1.4 titled - "**Associated Infrastructure**" - that:
"The associated infrastructure in the Opportunity area includes All wells...
19. Also, at paragraph 4.3 of the IM, the Defendant further represented, either expressly or impliedly, in the diagram contained therein as Fig. 59 that the Wells formed part of the assets being assigned to the Plaintiff.
20. The representations, as stated and contained in the IM and later documented in the Agreement and the transaction and acquisition documents were taken by the Plaintiff to being of a fundamental nature that went to the very basis of the agreement relating to the acquisition of the affected Wells by the Plaintiff.
21. The representations contained in the IM, later documented in the Agreement and the transaction and acquisition documents, which were provided by the Defendant was intended to enable prospective bidders, including the Plaintiff, have sufficient information regarding the assets and which information in turn would guide their bid decision including the bid value.
22. The Plaintiff avers that by the above statements the Defendant expressly and/or impliedly represented to the Plaintiff and other potential bidders that the Wells, **Kugbo West – 001, Kugbo West- 002, Kugbo West – 003, Kugbo West – 004, Okiori- 001 & Okiori- 002** were part of the transferred participating interest being transferred to the Plaintiff by the Defendant.

Representations in the Agreement:

23. Apart from the representations in the IM, the Defendant, in the Agreement for Assignment dated 17th October, 2014 ("the Agreement") restated and reiterated the earlier representations made in both the electronic data room information and the IM without qualification.
24. The aforementioned Wells, i.e.: **Kugbo West – 001, Kugbo West- 002, Kugbo West – 003, Kugbo West – 004, Okiori- 001 & Okiori- 002**, were described as forming part of the "Transferred Interest" in Schedule 1 to the Agreement.
25. The Wells were purportedly assigned to the Plaintiff by the Defendant and described as "Suspended", which by the terms of the Agreement meant that a rig re-entry was required, but otherwise the Wells were warranted as free from any defect in title or encumbrance.

26. The Defendant further warranted under the Agreement that:
- (a.) All the statements in the Agreement were true and accurate in all material aspects and particulars;
 - (b.) There was no default with any other agreements, or laws or encumbrance of any type affecting the performance of the Defendant's obligations under the Agreement;
 - (c.) The Defendant in conjunction with TEPNG, and NAOC were the legal and beneficial holders of the leasehold interest in OML 29 in accordance with their respective percentage interests as described in Schedule 1 of the Agreement, By this representation, the Defendant made direct representation relating to the Wells which was fraudulently presented as still being part of OML 29 as of that date;
 - (d.) They had not transferred or encumbered in any way their Transferred Interest. This representation is materially false as the Wells has by then been transferred by the Defendant to another person;
 - (e.) They were able to dispose of the Transferred Interest free from encumbrance and that no third party was entitled to exercise any right of pre-emption or right of first refusal in respect of the Transferred Interest;
 - (f.) They were not party to any agreement restricting their ability to operate in or directly or indirectly acquiring or disposing of any interest in the area covered by the Agreement.
27. The Defendant further warranted under the Agreement that as the operator under the Joint Operating Agreement ("JOA") with the NNPC the Defendant had not committed any act or omission that could be reasonably expected to result in a material breach or termination of the JOA/OML 29, and that in all material respect, all the obligations under the Transferred Interest had been complied with. These representations, to the knowledge of the Defendant were materially inaccurate with respect to the Wells as of the date that the Defendant made them.

Representations during negotiation meetings:

28. Furthermore, during the period of negotiations, the Defendant gave a number of management presentations wherein the representations in both the electronic data room information and the IM were reiterated and assured to be factually correct. The management presentations were organised by the Defendant against the backdrop of the fact that the Defendant was the operator of the asset and in that regard had an exclusive knowledge about the status and condition of the assets.
29. The Plaintiff's bid for the acquisition of OML 29, which included the Wells, was upon a complete reliance on the representations in the electronic data room information, IM and the Agreement, particularly as they concern the Wells contained within OML 29.

30. The consideration paid by the Plaintiff was attributable to the different asset types as set out in Schedule 1 of the Agreement which the Plaintiff asserts made the Agreement a divisible one in respect of assets transferred under the Transferred Interests.

Fraudulent Misrepresentations:

31. Sometime in 2020 upon its intention to commence work on the assigned wells, the Plaintiff found that the said "Suspended" Wells had been earlier, re-conveyed by the Defendant to the NNPC on or about 2009. .
32. The said re-conveyance of the wells was done (ostensibly by way of offsetting the Defendant's incurred liabilities to the NNPC under the JOA operated by the Defendant OR under circumstances best known to the Defendant), and the re-conveyance to NNPC was carried out prior to the preparation of the IM, the SPA and the Agreement for Assignment.
33. The Plaintiff understand that the Wells were offered to prospective buyers during the just concluded 2020 bid round conducted by the Department of Petroleum Resources ("DPR") of the Federal Ministry of Petroleum Resources.
34. The excision and re-conveyance of the said wells by the Defendant to the NNPC or the authorities was not disclosed to the Plaintiff and could not, with reasonable diligence be known to it, from the due diligence it carried out or from the information disclosed to it by the Defendant.
35. In the circumstances therefore, the Plaintiff avers that the representations made by the Defendant as aforesaid were made falsely, deceitfully and fraudulently with the intention of depriving the Plaintiff the full benefit of the assets and the undivided 45% participating interest in the Wells.

Particulars of fraudulent misrepresentation:

- (i.) Contrary to the information contained at paragraph 3.1.1 and 1.4 of the IM, the Defendant either alone or in conjunction with TEPNG, and NAOC were not the beneficial owners of the said Wells as at the time the IM was prepared and made available to the Plaintiff.
- (ii.) The Wells had been re-conveyed to the NNPC in or about 2009, by the Defendant to the knowledge of TEPNG, and NAOC.
- (iii.) As at the time of furnishing the Plaintiff with the information in the IM, the Defendant knew, or ought to have known that the representations made regarding their beneficial interest in the Wells was false, inaccurate and totally calculated to mislead and deceive.
- (iv.) Alternatively, to the above, the Defendant made the representations regarding Kugbo West – 001, Kugbo West- 002, Kugbo West – 003,

Kugbo West – 004, Okiori- 001 & Okiori- 002 recklessly without believing the truth of the same.

- (v.) The representations made by the Defendant were to induce the Plaintiff into bidding and agreeing to purchase the 45% beneficial interest in OML 29 at the price eventually agreed by the parties, and the valuation included therein, and were meant by the Defendant to include the price of the Wells.
 - (vi.) The sum paid by Plaintiff attributable to Wells is the sum of US \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars) which is for the purchase of the Defendant's legal and beneficial undivided participating interest in the said Wells.
 - (vii.) The representations were made with the intent of causing the Plaintiff to part with the afore-said sum to the detriment of the Plaintiff.
 - (viii.) The representations were made with the knowledge that the Plaintiff even with reasonable diligence, was not in a position to confirm the veracity or otherwise of said representations given the tightly controlled bid process run by the Defendant neither could the Plaintiff find out any information about the ownership of the Wells before, at or even after completion of the purchase.
 - (ix.) The Plaintiff was reasonably diligent and no further diligence would have revealed the fraudulent misrepresentations.
 - (x.) The IM and electronic data room information was made available to only prospective buyers of the assets and not the public at large, to induce them in making bids and eventually purchasing the assets; hence same was marked "confidential"
36. Furthermore, the Plaintiff avers that, it became apparent that the representations made by the Defendant as aforesaid were discovered to have been made to deceive the Plaintiff into believing that the beneficial title in the Wells in question belonged to the Defendant, even when the Defendant knew or ought reasonably to have known that the representation was not true as at the date of the IM, the documentation and the closing of the sale of OML 29 which included the Wells to the Plaintiff, and the representations are still not true as at the time of filing this suit.

PARTICULARS OF DECEIT

- a. **Particulars (a - j) of paragraph 36 are hereby incorporated.**
- b. **The Defendant intended that the Plaintiff should act on the said representations.**

- c. **The Plaintiff relied heavily on the said representations in the purchase of the OML 29 and did in fact rely on the representations.**
- d. **It was on the basis of the said reliance that the payment made by Plaintiff included the sum of \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars), which is attributable as consideration for the Wells.**
- e. **The Plaintiff only became aware of the deceit in 2020 when it attempted to explore the Wells and found out that the Wells are part of the blocks being offered by the Federal Government to bidders in the year 2020 licensing round.**
- f. **The Plaintiff was diligent enough and no further diligence would have revealed the wrongful misrepresentations.**

Effect of Defendant's fraud and deceit:

- 37. Prior to the execution of the Agreement, and by way of financing the payments for the assignment, the Plaintiff was obliged to accept a loan facility from Messrs. Shell Western Trading Limited, a subsidiary or affiliate of the Defendant within the same global group in the sum of US \$600,000,000.00 (Six Hundred Million Dollars approx.) at a commercial interest rate to part-fund the acquisition.
- 38. By virtue of the said loan facility the Defendant through its affiliate company Messrs. Shell Western Trading Limited became a part financier and creditor to the Plaintiff and executed various finance agreements whereupon, it (the Defendant) was also entitled to receive pre-scheduled repayments from proceeds of its operations under the JOA.
- 39. The Plaintiff's projection for repayment of the loans and its financial obligation took into cognizance the reserve of crude in the entire OML29 including the Wells and it entered a reserve based finance with the consortium of lenders including Shell Western Trading limited, a subsidiary or affiliate of the Defendant.
- 40. It was the intention of the Plaintiff to commence earnest exploitation of these wells as part of its strategy to boost and upscale its production so that it can meet its financial obligation to its financiers, including Messrs. Shell Western Trading Limited.
- 41. As a consequence of the deceit committed by the Defendant, the expectations of the Plaintiff as it relates to the Wells can no longer be achieved, as a result of which, the Plaintiff's financial position is severely and adversely impacted upon.

42. All the afore-said instances culminated into a purported debit balance of the Plaintiff with its financiers.
43. The Plaintiff shall contend at the trial of this suit that, by reason of the Defendant's fraud and deceit:
- (a.) The purported inability of the Plaintiff to fully repay its alleged indebtedness to its financiers is directly attributable to the wrongful actions of the Defendant.
 - (b.) The Plaintiff has suffered loss and damage
44. The Plaintiff avers that the sum of \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars) from the total consideration, is directly attributed as payment for the purchase price of the Wells particulars of which are provided anon.
45. The afore-said sum, if invested in other business ventures at the rate of 9.9% **interest rate** per annum from 2014 till the commencement of this suit, would have yielded an additional sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** inclusive of inflation pegged at 2% per annum from 2014 till date. Evidence shall be led at trial to establish the interest accruable.
46. By virtue of the above, the Plaintiff is entitled to a refund of the total sum of **\$99,063,820.82 (Ninety Nine Million Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** being the sum of **\$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars)** had and received by the Plaintiff for a consideration that totally failed and the sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** representing interest accruable thereto.
47. Furthermore, had the Plaintiff been in custody of the sum of **\$99,063,820.82 (Ninety Nine Million Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** it would have invested same into other profitable ventures including renewable energy which would have yielded it immense profit by virtue of which the Plaintiff is entitled to damages for being denied that income.
48. The Plaintiff has suffered the loss of expectation and earnings by its inability to work and commercially exploit the said Wells.
49. At Paragraph 4.3, Fig. 59 of the IM, the Wells are stated to have the following expected number of barrels of crude oil:
- 1. Kugbo West Wells- 32 Million Barrels;
 - 2. Okiori Wells – 41 Million Barrels.
50. By virtue of the failure of the Defendant to effectively transfer and assign its beneficial interests in the Wells as set out in the terms of the Agreement, the

Plaintiff has lost the earning expectation of a total of the 32,000,000 (Thirty Two Million) barrels of crude oil from the Kugbo West Wells and 41,000,000 (Forty One Million) barrels of crude oil from the Okiori Wells.

51. The Plaintiff states that the average price of crude oil in the month of March and April 2021 was US \$65 per barrel. The Plaintiff shall at trial rely on reports from The Balance found on <https://www.thebalance.com/oil-price-forecast-3306219>, countryeconomy.com found at <https://countryeconomy.com/raw-materials/brent>, and <https://www.eia.gov/outlooks/steo/report/prices.php>. The Plaintiff shall at trial rely on the information contained in the reports of the webpages above.
52. It is further averred that at the rate of US \$65 per barrel, the 73,000,000 (Seventy Three Million) Barrels of Crude Oil will have accrued the sum of US \$4,745,000,000.00 (Four Billion Seven Hundred and Forty Five Million Dollars).
53. By virtue of its 45% interest in OML29, the Plaintiff is entitled to 45% of the total sum of US \$4,745,000,000 (Four Billion Seven Hundred and Forty Five Million Dollars).
54. By virtue of the foregoing, the Plaintiff is entitled to \$2,135,250,000 (Two Billion One Hundred and Thirty Five Million Two Hundred and Fifty Thousand Dollars) being the amount it would have derived from the sale of 73,000,000 (Seventy Three Million) barrels of crude oil at the rate of \$65 per barrel being the average going rate for a barrel of crude oil as at March, and April 2021. The Plaintiff shall at the trial of this suit lead evidence in support of this fact.
55. The Plaintiff shall also contend and establish at trial that by the convention of the petroleum industry it is entitled to interest at the prevailing commercial rates for being put out of use of the said funds above.

Non- arbitrability of dispute:

56. The Plaintiff avers that by clause 25 of the Agreement, disputes emanating from the said agreement ought to be resolved through arbitration.
57. It is averred that the allegations made in the instant suit bother on fraud, fraudulent misrepresentation and deceit against the Defendant.
58. The Fraudulent misrepresentations complained about in the suit arise from the IM and several negotiation meetings, which fraudulent misrepresentations and deceit were repeated and documented in the Agreement.
59. The Plaintiff shall contend at trial that the IM, and the negotiation meetings are distinct and different from the Agreement wherein the purported arbitration clause is embedded
60. Furthermore, the plaintiff shall contend at the trial and invite the court to declare that the present dispute cannot be entertained at or determined by an

arbitration tribunal as the fraudulent misrepresentation of the Defendant goes to the very root of the Agreement relating to the Wells as it relates to the sale of the excised Wells by the Defendant.

61. The Plaintiff shall at trial, rely on all relevant documents whether expressly mentioned or not. Notice is hereby given to the Defendant to produce the documents which are by law expected to be in its custody, including those in the data room.
62. WHEREOF the Plaintiff claims jointly and severally against the Defendant for the following:
 1. **A DECLARATION** that the representations made by the Defendant, as operator of OML 29 prior to the sale and as representative of the sellers, as contained in the Agreement for Assignment dated 17th October 2014 for the transfer of its interest in the Oil Mining Lease OML 29 (OML 29), to the effect that it owns and is in a position to transfer its rights, title and interest in Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) ("the Wells") to the Plaintiff and that the Wells were part of the assets being offered for sale by the Defendant, being sold by and being transferred by the Defendant to the Plaintiff as the Defendant transferred interest in the Joint Operating Agreement dated 11th July 1991 to the Plaintiff by the Defendant, were of a fundamental nature that go to the very basis of the agreement relating to the acquisition of those Wells by the Plaintiff.
 2. **A DECLARATION** that the representations made by the Defendant as contained in both the Information Memorandum dated October 2013 and in Schedule 1, part 3 – Wells - of the Agreement for Assignment dated 17th October, 2014 with respect to Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells as interest that upon the completion of the sale will be transferred to the Plaintiff by the Defendant, and on the completion of the sale, were actually transferred to the Plaintiff, and as being part of the 45% undivided participating interest in OML 29 were false and made recklessly and/or fraudulently by the Defendant to deceive the Plaintiff, when the Defendant knew or ought to have known that the Defendant have handed over the Wells to the Federal Government of Nigerian/Nigerian National Petroleum Corporation ("NNPC") for which the Defendant received valuable consideration in or about 2009 prior to the Agreement for Assignment, the publication of the information memorandum and the sale of the OML 29 to the Plaintiff.
 3. **A DECLARATION** that the Defendant by virtue of the aforementioned misrepresentations and deceit is in breach of a fundamental term of the Agreement for Assignment dated 17th October, 2014 as set out in Schedule 1 part 3 – Wells - in relation to the Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells listed in that Schedule 1 to the Agreement for Assignment.

4. **A DECLARATION** that in view of the allegations made against the Defendant, which border on fraud and deceit amongst other things, the instant action cannot be determined by arbitration.
5. The sum of \$2,135,250,000 (Two Billion One Hundred and Thirty Five Million Two Hundred and Fifty Thousand Dollars) being the amount the Plaintiff would have derived from the sale of 32,000,000 (Thirty Two Million) barrels of crude oil and other petroleum products from the Kugbo West (Nos. 1-4) listed in Schedule 1 part 3 of the Agreement for Assignment and 41,000,000 (Forty One Million) barrels of crude oil and other petroleum products from the Okiori (Nos. 93 & 94) listed in Schedule 1 part 3 of the Agreement for Assignment totaling 73,000,000 (Seventy Three Million) barrels of crude oil at the rate of \$65.4 per barrel.

IN ALTERNATIVE TO RELIEF 5 ABOVE

6. **AN ORDER** directing the Defendant to refund to the Plaintiff the sum of **US \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars)** as payment attributable to Kugbo West (Nos. 1 - 4) and Okiori (Nos. 93 & 94) oil wells being money had and received for a consideration which has totally failed.
7. The sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** being the interest that ought to have accrued on the aforesaid sum had and received by the Defendant based on the pricing of the loan facilities taken by the Plaintiff to complete the acquisition.
8. Interest on the sums claimed in paragraph 7 and 8 above and 10 below at the rate of *22% per cent, per annum* from 17th October, 2014 to date of judgement and thereafter at the rate of *10% per cent, per annum* until the judgment sum is paid in full by the Defendant.
9. The sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** which the Plaintiff ought to have earned over the life of the Wells had the Defendant transferred the Wells to the Plaintiff
10. **General Damages** in the sum of **\$500,000.00 (Five Hundred Thousand Dollars)** arising from the fraud, deceit and

misrepresentations of the Defendant to the Plaintiff regarding the Wells.

Cost of the action in the sum of N250,000,000.00 two hundred and fifty million naira only.

Dated this 27th day of July, 2021



KEMI PINHEIRO, SAN
ABDUL MOHAMMED, SAN
YAKUBU MIKYAU, SAN
EMEKA OZOANI, SAN
UZOMA HENRY AZIKIWE, SAN
NICHOLAS CHIDI OKAFOR
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Central Business District,
Federal Capital Territory Abuja, Nigeria.

FOR SERVICE ON:

The 1st Defendant:
Shell Petroleum Development Company of Nigeria Limited
Freeman House
21/22/ Marina
Lagos

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO:

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED

LIST OF WITNESS

1. ONYEDIKA OFFOR

Dated this 27th day of July, 2021



KEMI PINHEIRO, SAN
ABDUL MOHAMMED, SAN
EMEKA OZOANI, SAN
YAKUBU MIKYAU, SAN
UZOMA HENRY AZIKIWE, SAN
NICHOLAS CHIDI OKAFOR
O. J. AJAKPOVI LL.M (Bos.), FCI Arb. ✓

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FOR SERVICE ON:

The Defendant:
Shell Petroleum Development Company of Nigeria Limited
Freeman House
21/22/ Marina
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IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO:

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

**SHELL PETROLEUM DEVELOPMENT COMPANY
OF NIGERIA LIMITED DEFENDANTS**

WITNESS STATEMENT ON OATH OF ONYEDIKA OFFOR

I, Onyedika Offor, male, Nigerian Citizen and Legal Officer of at 11A, Pope John Paul II Street, Maitama, Federal Capital Territory, Abuja do hereby make oath and state as follows:

1. I am the Legal Officer of Aiteo Eastern E&P Company Limited, the Plaintiff in this matter and by virtue of my position, I am familiar with the facts of this case. I have the consent of the Plaintiff to depose to this written statement on oath (the "Written Statement on Oath").
2. The Plaintiff is a limited liability company incorporated in Nigeria with its registered office at 11A, Pope John Paul II Street, Maitama District, Abuja, F.C.T. and carrying on the business of oil exploration, production, bulk storage, refining, supply and marketing of petroleum products.
3. The Defendant (hereinafter referred to as "SPDC") is a limited liability company incorporated in Nigeria with its principal offices at Freeman House, 21/22/ Marina, Lagos and carrying on the business of a Joint Venture with the Nigerian National Petroleum Corporation ("NNPC") focusing on oil and gas production in the Niger Delta of Nigeria. The Plaintiff avers that SPDC, prior to the acquisition of OML 29 by the Plaintiff, is the operator of the field on behalf of the NNPC/SPDC/Total/AGIP Joint Venture for OML 29, and held a 30% of the 45% participating interest in OML 29 and was directly responsible for the actions called into question in this action.
4. The Defendant was the legal and beneficial holder of a 30% (thirty percent) undivided participating interest in Oil Mining License 29 ("OML 29") which is part of the undivided percentage interests held by the Defendant in conjunction with TEPNG, and NAOC (Total Exploration and Production and Nigeria Agip Oil Company) in the unincorporated NNPC/SPDC/Total/AGIP Joint Operating Agreement ("JOA") dated 11th July, 1991 between the NNPC and the Defendant. The 45% comprises the sum of SPDC (30%), TEPNG (10%) and NAOC (5%) participating interests.

5. Prior to the assignment of the Lease to the Plaintiff, the Defendant as the Operator, published Information Memorandum dated October 2013 and invited bids from interested entities for the acquisition of their joint undivided 45% (forty-five percent) participating interest in the OML 29 ("The Lease") amongst other OMLs and other assets belonging to them, consequent upon their desire to divest their global assets to cut cost following the review of their businesses in Nigeria.
6. One of the entities that responded to the Defendant's invitation for bids is the Plaintiff, which, at that time, had a strategy to position itself for greater participation in the Nigerian Oil and Gas Industry.
7. The information regarding the OML 29, and other OMLs published for sale by the Defendant, including legal, commercial, technical and governance matters was spelt out in the Information Memorandum on the proposed assignment of a Participating Interest in whole or in part in OML18, OML24, OML25 and OML 29 Nigeria (hereinafter referred to as "the IM") and was prepared and controlled exclusively by the Defendant on behalf of other participators named in the preceding paragraph. The Defendant made the IM available to the interested bidders including the Plaintiff. The Plaintiff shall at the trial of this suit found upon the said IM.
8. The IM was a document prepared by Defendant. The Defendant was the operator of the OML 29 and was by virtue of that status in full possession of all the data, records, information and materials relating to the state and status of the assets covered by the IM, including OML 29. The Defendant as operator also related and dealt with third parties on behalf of the NNPC/SPDC/TOTAL/NAOC JV for OML 29, including the Department of Petroleum Resources ("DPR") that regulates the Nigerian oil and gas industry.
9. At page 23 of the IM, the Defendant in particular fraudulently represented as follows in relation to OML 29, without taking account of the Wells with substantial reserves that the Defendant had traded about five years earlier with the Federal Government of Nigeria in a settlement deal:
 - (i) Key Fields - OML 29 OIL Production Capacity – 240 mbpd (Nembe Creek, Santa Barbara, SB South, Odeama Creek, Okoroba
 - (ii) Existing Surface Facilities/Infrastructure – 100 wells, 6No. Flow Stations & Associated Gas gathering facilities, more than 250 km flowlines, Manifolds, Evacuation Pipeline in Bonny, 1No. Field Logistics Base; Oil Production 2012 peak/Average equals 62/32 Mbpd
10. Aside from the IM, the Defendant also further furnished the prospective bidders, including the Plaintiff, with purportedly comprehensive and factual print and electronic data room with information and other bid and transaction documents in relation to OML 29.
11. All the above documents, including the IM, were assured by the Defendant to be factual and comprehensive information and guides to the Plaintiff and other

bidders regarding the nature, location, operatorship and available infrastructure in relation to OML 29, relevant in persuading the Plaintiff as a bidder, to make investment decisions in bidding for, and also, of the economic viability or otherwise of OML 29.

12. I know that the information contained in the IM and other print and electronic data in the data room created, controlled and managed by the Defendant and in the bid and the transaction documents in relation to the OML 29 constitute material representations intended to induce the bidders, including the Plaintiff, into tendering bids for the acquisition of the assets and paying the purchase price to the Defendant.
13. Relying on, and acting upon the aforesaid representations, especially as to the number of wells, recoverable crude oil and gas volumes and the overall oil well data presented, the Plaintiff put forward a winning bid price which was eventually negotiated to the sum of US \$2,350,000,000.00 (Two Billion Three Hundred and Fifty Million United States Dollars) and which was accepted by the Defendant for the acquisition of 45% the legal and beneficial participating interests in OML 29.
14. As consideration for the Agreement, the Plaintiff made the following respective payments of:
 - (a.) US \$220,000,000.00 (Two Hundred and Twenty Million Dollars) as deposit pending the negotiation, completion and execution of the transaction documents and relevant agreements; and
 - (b.) the balance of US \$2,130,000,000.00 (Two Billion, One Hundred and Thirty Million Dollars) upon the execution of the transaction and acquisition documents and the Agreement.
15. Subsequent to the above and by virtue of an Agreement for Assignment dated 17th October, 2014 (hereinafter referred to as the "Agreement"), the Defendant in conjunction with TEPNG, and NAOC as Assignors transferred to the Plaintiff their entire participating interest in OML 29 together with their rights, interests and obligations thereto, and in the process, purportedly also transferred their participating interest in the Wells, when they knew or ought to have known that they had surrendered and given the Wells to the NNPC/the Federal Government of Nigeria about five years earlier for valuable consideration.
16. As a term of the Agreement setting out the Particulars of the wells in the Transferred Interests described in Schedule 1 of the Agreement, the Defendant included amongst other oil wells, Kugbo West Nos. 1 - 4 and Okiori Nos. 93 & 94 (hereinafter referred to as the "Wells") which were assigned to the Plaintiff by the Defendant and described as "Suspended".
17. By the terms of the Agreement, and as set out in the Transaction Documents, the term "suspended" meant that a rig re-entry was required for a particular

well described as "suspended", but otherwise the wells were warranted as free from any defect in title and from encumbrances.

18. In the IM, the Defendant represented at paragraph 3.1.1 (titled "OML 29 Field reserves") particularly at page 24 that the Wells formed part of the remaining reserves and resources within OML 29 which was to be assigned by the Defendant to the Plaintiff.
19. Apart from the above, the Defendant in the IM also represented:

At paragraph 1.4 titled - "**Associated Infrastructure**" - that:
"The associated infrastructure in the Opportunity area includes All wells...
20. Also, at paragraph 4.3 of the IM, the Defendant further represented, either expressly or impliedly, in the diagram contained therein as Fig. 59 that the Wells formed part of the assets being assigned to the Plaintiff.
21. The representations, as stated and contained in the IM and later documented in the Agreement and the transaction and acquisition documents were taken by the Plaintiff to being of a fundamental nature that went to the very basis of the agreement relating to the acquisition of the affected Wells by the Plaintiff.
22. The representations contained in the IM, later documented in the Agreement and the transaction and acquisition documents, which were provided by the Defendant was intended to enable prospective bidders, including the Plaintiff, have sufficient information regarding the assets and which information in turn would guide their bid decision including the bid value.
23. By the above statements, the Defendant expressly and/or impliedly represented to the Plaintiff and other potential bidders that the Wells, **Kugbo West – 001, Kugbo West- 002, Kugbo West – 003, Kugbo West – 004, Okiori- 001 & Okiori- 002** were part of the transferred participating interest being transferred to the Plaintiff by the Defendant.
24. Apart from the representations in the IM, the Defendant, in the Agreement for Assignment dated 17th October, 2014 ("the Agreement") restated and reiterated the earlier representations made in both the electronic data room information and the IM without qualification.
25. The aforementioned Wells, i.e.: **Kugbo West – 001, Kugbo West- 002, Kugbo West – 003, Kugbo West – 004, Okiori- 001 & Okiori- 002**, were described as forming part of the "Transferred Interest" in Schedule 1 to the Agreement.
26. The Wells were purportedly assigned to the Plaintiff by the Defendant and described as "Suspended", which by the terms of the Agreement meant that a rig re-entry was required, but otherwise the Wells were warranted as free from any defect in title or encumbrance.

27. The Defendant further warranted under the Agreement that:
- a. All the statements in the Agreement were true and accurate in all material aspects and particulars;
 - b. There was no default with any other agreements, or laws or encumbrance of any type affecting the performance of the Defendant's obligations under the Agreement;
 - c. The Defendant in conjunction with TEPNG, and NAOC were the legal and beneficial holders of the leasehold interest in OML 29 in accordance with their respective percentage interests as described in Schedule 1 of the Agreement. By this representation, the Defendant made direct representation relating to the Wells which was fraudulently presented as still being part of OML 29 as of that date;
 - d. They had not transferred or encumbered in any way their Transferred Interest. This representation is materially false as the Wells has by then been transferred by the Defendant to another person;
 - e. They were able to dispose of the Transferred Interest free from encumbrance and that no third party was entitled to exercise any right of pre-emption or right of first refusal in respect of the Transferred Interest;
 - f. They were not party to any agreement restricting their ability to operate in or directly or indirectly acquiring or disposing of any interest in the area covered by the Agreement.
28. The Defendant further warranted under the Agreement that as the operator under the Joint Operating Agreement ("JOA") with the NNPC the Defendant had not committed any act or omission that could be reasonably expected to result in a material breach or termination of the JOA/OML 29, and that in all material respect, all the obligations under the Transferred Interest had been complied with. These representations, to the knowledge of the Defendant were materially inaccurate with respect to the Wells as of the date that the Defendant made them.
29. Furthermore, during the period of negotiations, the Defendant gave a number of management presentations wherein the representations in both the electronic data room information and the IM were reiterated and assured to be factually correct. The management presentations were organised by the Defendant against the backdrop of the fact that the Defendant was the operator of the asset and in that regard had an exclusive knowledge about the status and condition of the assets.
30. The Plaintiff's bid for the acquisition of OML 29, which included the Wells, was upon a complete reliance on the representations in the electronic data room information, IM and the Agreement, particularly as they concern the Wells contained within OML 29.
31. The consideration paid by the Plaintiff was attributable to the different asset types as set out in Schedule 1 of the Agreement which the Plaintiff asserts made the Agreement a divisible one in respect of assets transferred under the Transferred Interests.

32. Sometime in 2020 upon its intention to commence work on the assigned wells, the Plaintiff found that the said "Suspended" Wells had been earlier, re-conveyed by the Defendant to the NNPC on or about 2009.
33. The said re-conveyance of the wells was done (ostensibly by way of offsetting the Defendant's incurred liabilities to the NNPC under the JOA operated by the Defendant OR under circumstances best known to the Defendant), and the re-conveyance to NNPC was carried out prior to the preparation of the IM, the SPA and the Agreement for Assignment.
34. The Plaintiff understand that the Wells were offered to prospective buyers during the just concluded 2020 bid round conducted by the Department of Petroleum Resources ("DPR") of the Federal Ministry of Petroleum Resources.
35. The excision and re-conveyance of the said wells by the Defendant to the NNPC or the authorities was not disclosed to the Plaintiff and could not, with reasonable diligence be known to it, from the due diligence it carried out or from the information disclosed to it by the Defendant.
36. In the circumstances therefore, the Plaintiff the representations made by the Defendant as aforesaid were made falsely, deceitfully and fraudulently with the intention of depriving the Plaintiff the full benefit of the assets and the undivided 45% participating interest in the Wells.
 - (i.) Contrary to the information contained at paragraph 3.1.1 and 1.4 of the IM, the Defendant either alone or in conjunction with TEPNG, and NAOC were not the beneficial owners of the said Wells as at the time the IM was prepared and made available to the Plaintiff.
 - (ii) The Wells had been re-conveyed to the NNPC in or about 2009, by the Defendant to the knowledge of TEPNG, and NAOC.
 - (iii) As at the time of furnishing the Plaintiff with the information in the IM, the Defendant knew, or ought to have known that the representations made regarding their beneficial interest in the Wells was false, inaccurate and totally calculated to mislead and deceive.
 - (iv) Alternatively, to the above, the Defendant made the representations regarding **Kugbo West – 001, Kugbo West- 002, Kugbo West – 003, Kugbo West – 004, Okiori- 001 & Okiori- 002** recklessly without believing the truth of the same.
 - (v) The representations made by the Defendant were to induce the Plaintiff into bidding and agreeing to purchase the 45% beneficial interest in OML 29 at the price eventually agreed by the parties, and the valuation included therein, and were meant by the Defendant to include the price of the Wells.

- (vi) The sum paid by Plaintiff attributable to Wells is the sum of US \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars) which is for the purchase of the Defendant's legal and beneficial undivided participating interest in the said Wells.
 - (vii) The representations were made with the intent of causing the Plaintiff to part with the afore-said sum to the detriment of the Plaintiff.
 - (viii) The representations were made with the knowledge that the Plaintiff even with reasonable diligence, was not in a position to confirm the veracity or otherwise of said representations given the tightly controlled bid process run by the Defendant neither could the Plaintiff find out any information about the ownership of the Wells before, at or even after completion of the purchase.
 - (ix) The Plaintiff was reasonably diligent and no further diligence would have revealed the fraudulent misrepresentations.
 - (x) The IM and electronic data room information was made available to only prospective buyers of the assets and not the public at large, to induce them in making bids and eventually purchasing the assets; hence same was marked "confidential"
37. Furthermore, it became apparent that the representations made by the Defendant as aforesaid were discovered to have been made to deceive the Plaintiff into believing that the beneficial title in the Wells in question belonged to the Defendant, even when the Defendant knew or ought reasonably to have known that the representation was not true as at the date of the IM, the documentation and the closing of the sale of OML 29 which included the Wells to the Plaintiff, and the representations are still not true as at the time of filing this suit.
38. I verily believe that the above representations made by the Defendants were meant to deceive because:
- a. **Particulars (a - j) of paragraph 36 are hereby incorporated.**
 - b. **The Defendant intended that the Plaintiff should act on the said representations.**
 - c. **The Plaintiff relied heavily on the said representations in the purchase of the OML 29 and did in fact rely on the representations.**
 - d. **It was on the basis of the said reliance that the payment made by Plaintiff included the sum of \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars), which is attributable as consideration for the Wells.**

- e. **The Plaintiff only became aware of the deceit in 2020 when it attempted to explore the Wells and found out that the Wells are part of the blocks being offered by the Federal Government to bidders in the year 2020 licensing round.**
 - f. **The Plaintiff was diligent enough and no further diligence would have revealed the wrongful misrepresentations.**
39. Prior to the execution of the Agreement, and by way of financing the payments for the assignment, the Plaintiff was obliged to accept a loan facility from Messrs. Shell Western Trading Limited, a subsidiary or affiliate of the Defendant within the same global group in the sum of US \$600,000,000.00 (Six Hundred Million Dollars approx.) at a commercial interest rate to part-fund the acquisition.
40. By virtue of the said loan facility the Defendant through its affiliate company Messrs. Shell Western Trading Limited became a part financier and creditor to the Plaintiff and executed various finance agreements whereupon, it (the Defendant) was also entitled to receive pre-scheduled repayments from proceeds of its operations under the JOA.
41. The Plaintiff's projection for repayment of the loans and its financial obligation took into cognizance the reserve of crude in the entire OML29 including the Wells and it entered a reserve based finance with the consortium of lenders including Shell Western Trading limited, a subsidiary or affiliate of the Defendant.
42. It was the intention of the Plaintiff to commence earnest exploitation of these wells as part of its strategy to boost and upscale its production so that it can meet its financial obligation to its financiers, including Messrs. Shell Western Trading Limited.
43. As a consequence of the deceit committed by the Defendant, the expectations of the Plaintiff as it relates to the Wells can no longer be achieved, as a result of which, the Plaintiff's financial position is severely and adversely impacted upon.
44. All the afore-said instances culminated into a purported debit balance of the Plaintiff with its financiers.
45. I believe that, by the reason of the Defendant's fraud and deceit:
- a. The purported inability of the Plaintiff to fully repay its alleged indebtedness to its financiers is directly attributable to the wrongful actions of the Defendant.
 - b. The Plaintiff has suffered loss and damage

46. The sum of \$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars) from the total consideration, is directly attributed as payment for the purchase price of the Wells particulars of which are provided anon.
47. The afore-said sum, if invested in other business ventures at the rate of 9.9% **interest rate** per annum from 2014 till the commencement of this suit, would have yielded an additional sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** inclusive of inflation pegged at 2% per annum from 2014 till date. Evidence shall be led at trial to establish the interest accruable.
48. By virtue of the above, the Plaintiff is entitled to a refund of the total sum of **\$99,063,820.82 (Ninety Nine Million Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** being the sum of **\$46,200,000.00 (Forty Six Million Two Hundred Thousand Dollars)** had and received by the Plaintiff for a consideration that totally failed and the sum of **\$52,863,820.82 (Fifty Two Million Eight Hundred and Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** representing interest accruable **thereto**.
49. Furthermore, had the Plaintiff been in custody of the sum of **\$99,063,820.82 (Ninety Nine Million Sixty Three Thousand Eight Hundred and Twenty Dollars Eighty Two Cents)** it would have invested same into other profitable ventures including renewable energy which would have yielded it immense profit by virtue of which the Plaintiff is entitled to damages for being denied that income.
50. The Plaintiff has suffered the loss of expectation and earnings by its inability to work and commercially exploit the said Wells.
51. At Paragraph 4.3, Fig. 59 of the IM, the Wells are stated to have the following expected number of barrels of crude oil:
 1. Kugbo West Wells- 32 Million Barrels;
 2. Okiori Wells – 41 Million Barrels.
52. By virtue of the failure of the Defendant to effectively transfer and assign its beneficial interests in the Wells as set out in the terms of the Agreement, the Plaintiff has lost the earning expectation of a total of the 32,000,000 (Thirty Two Million) barrels of crude oil from the Kugbo West Wells and 41,000,000 (Forty One Million) barrels of crude oil from the Okiori Wells.
53. The average price of crude oil in the month of March and April 2021 was US \$65.per barrel. The Plaintiff shall at trial rely on reports from-The Balance found on <https://www.thebalance.com/oil-price-forecast-3306219>, countryeconomy.com found at <https://countryeconomy.com/raw-materials/brent>, and <https://www.eia.gov/outlooks/steo/report/prices.php>. The Plaintiff shall at trial rely on the information contained in the reports of the webpages above.

54. Furthermore, at the rate of US \$65 per barrel, the 73,000,000 (Seventy Three Million) Barrels of Crude Oil will have accrued the sum of US \$4,745,000,000.00 (Four Billion Seven Hundred and Forty Five Million Dollars).
55. By virtue of its 45% interest in OML29, the Plaintiff is entitled to 45% of the total sum of US \$4,745,000,000 (Four Billion Seven Hundred and Forty Five Million Dollars).
56. By virtue of the foregoing, the Plaintiff is entitled to \$2,135,250,000 (Two Billion One Hundred and Thirty Five Million Two Hundred and Fifty Thousand Dollars) being the amount it would have derived from the sale of 73,000,000 (Seventy Three Million) barrels of crude oil at the rate of \$65 per barrel being the average going rate for a barrel of crude oil as at March, and April 2021. The Plaintiff shall at the trial of this suit lead evidence in support of this fact.
57. By the convention of the petroleum industry, it is entitled to interest at the prevailing commercial rates for being put out of use of the said funds above.
58. By clause 25 of the Agreement, disputes emanating from the said agreement ought to be resolved through arbitration.
59. The allegations made in the instant suit bother on fraud, fraudulent misrepresentation and deceit against the Defendant.
60. The Fraudulent misrepresentations complained about in the suit arise from the IM and several negotiation meetings, which fraudulent misrepresentations and deceit were repeated and documented in the Agreement.
61. The IM, and the negotiation meetings are distinct and different from the Agreement wherein the purported arbitration clause is embedded
62. I state further that the court is entitled to declare that the present dispute cannot be entertained at or determined by an arbitration tribunal as the fraudulent misrepresentation of the Defendant goes to the very root of the Agreement relating to the Wells as it relates to the sale of the excised Wells by the Defendant.
63. I shall at trial, rely on all relevant documents whether expressly mentioned or not. Notice is hereby given to the Defendant to produce the documents which are by law expected to be in its custody, including those in the data room.
64. I depose to this Witness Statement on Oath conscientiously, believing same to be true and in accordance with the Oaths Act.



DEPONENT

SWORN AT THE FEDERAL HIGH COURT REGISTRY,
ABUJA, THIS 27th DAY OF July 2021

BEFORE ME


COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
COMMISSIONER FOR OATH

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO:

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED DEFENDANT

LIST OF DOCUMENTS

1. The Information Memorandum on the proposed assignment of a Participating Interest in whole or in part of OML18, OML24, OML25 and OML 29 Nigeria.
2. Agreement for Assignment dated 17th October, 2014.

Dated this 27th day of July, 2021



KEMI PINHEIRO, SAN
ABDUL MOHAMMED, SAN
YAKUBU MIKYAU, SAN
EMEKA OZOANI, SAN
UZOMA HENRY AZIKIWE, SAN
NICHOLAS CHIDI OKAFOR
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Federal Capital Territory Abuja, Nigeria.

FOR SERVICE ON:

The Defendant:
Shell Petroleum Development Company of Nigeria Limited
Freeman House
21/22/ Marina
Lagos

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA

SUIT NO:

BETWEEN:

AITEO EASTERN E&P COMPANY LIMITED..... PLAINTIFF

AND

SHELL PETROLEUM DEVELOPMENT COMPANY
OF NIGERIA LIMITEDDEFENDANTS

AFFIDAVIT OF NON-MULTIPLICITY OF ACTION ON THE SAME SUBJECT
MATTER

I, Onyedika Offor, male, Nigerian Citizen and Legal Officer of at 11A, Pope John Paul II Street, Maitama, Federal Capital Territory, Abuja do hereby make oath and state as follows:

1. I am the Legal Officer of Aiteo Eastern E&P Company Limited, the Plaintiff in this matter and by virtue of my position, I am familiar with the facts of this case. I have the consent of the Plaintiff to depose to this written statement on Affidavit.
3. I know that the Plaintiff has not instituted any multiple action, either in this or any other court, on any subject matter which is the same or similar to the current action.
4. I depose to this Affidavit conscientiously, believing same to be true and in accordance with the Oaths Act.



DEPONENT

SWORN AT THE FEDERAL HIGH COURT REGISTRY,

ABUJA, THIS 27th DAY OF July 2021

BEFORE ME


COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
COMMISSIONER FOR OATH