

11th August, 2020.

The Chairman,

Judicial Commission of Inquiry

For The Investigation of Mr Ibrahim MAGU

The Ag. Chairman of the EFCC

For Alleged Abuse of Office And Mismanagement of

Federal Government Recovered Assets and Finances

From MAY 2015 TO MAY 2020

My lord and Gentlemen,

**INSTRUMENT ESTABLISHING JUDICIAL COMMISSION OF
INQUIRY DATED 3RD JULY 2020 AND SIGNED BY THE PRESIDENT-
THE TRIBUNAL OF INQUIRY ACT 2004 IN PERSPECTIVE**

We remain counsel of choice to Mr Ibrahim Magu, the suspended Acting Chairman of the ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) hereinafter referred to as “Our Client” and on whose behalf and specific instructions as we write as follows

1. Please refer to the instrument establishing this **Judicial Commission of Inquiry** served on our client at

the end of the proceedings on Saturday 8th August 2020 by 6.30 pm and kindly be guided by our observations arising there from as stated here-under

2. By virtue of the referred instrument served on our client and signed by the president of the federal republic of Nigeria, this assembly is constituted pursuant to the TRIBUNAL OF INQUIRY ACT 2004. It is curious and worrisome that an administrative panel of inquiry headed by your Lordship having sat and taken evidence (both oral and documentary) in the past one month has suddenly metamorphosed into a judicial commission of inquiry. How this comes within a contemplation of a Commission of the Tribunal of Inquiry Act 2004 is very questionable.
3. This implies that this assembly is neither a panel or an investigation committee but a **Judicial Commission Of Inquiry** set up pursuant to the TRIBUNAL OF INQUIRY ACT 2004 and therefore bound to be guided by the provisions of the said ACT and the express letters of the instrument of appointment especially in the context of our constitutional democracy guided by the rule of law

4. We observe that by the instrument establishing the **Judicial Commission of Inquiry**, manner of proceedings whether public or private is to be specified by the instrument of appointment. This is expressly prescribed by **SECTION 2(D) of the TRIBUNAL OF INQUIRY ACT** which provides thus

“The instrument shall direct whether or not the inquiry is to be held in public”

The above provision was complied with by Paragraph 5 of the instrument constituting this Judicial Commission of inquiry as follows

“AND I HEREBY DIRECT THE JUDICIAL COMMISSION TO SUBMIT ITS INTERIM REPORTS TO ME FROM TIME TO TIME, BUT THE JUDICIAL COMMISSION SHALL, IN ANY CASE, SUBMIT ITS FINAL REPORT NOT LATER THAN FORTY-FIVE DAYS FROM THE DATE OF ITS FIRST PUBLIC SITTING OR WITHIN SUCH EXTENDED PERIOD AS MAY BE AUTHORISED BY ME IN WRITING”.

5. Please take notice that the power to exclude members of the public in a given situation assigned

to the judicial commission of inquiry is not in relation to the entirety of the proceedings but limited to few special situations in the context of the public sittings, this is stated in the proviso to Section 2(d) of the Act thereof which provides as follows

“ PROVIDED THAT IF THE INQUIRY IS TO BE HELD IN PUBLIC, THE TRIBUNAL SHALL HAVE POWER, IN ITS ABSOLUTE DISCRETION, TO ADMIT OR EXCLUDE THE PUBLIC OR ANY MEMBER OF THE PUBLIC OR THE PRESS FROM ANY MEETING OF THE TRIBUNAL”

6. We observe that contrary to the above, the proceedings of this Judicial Commission of Inquiry constituted since 3rd July, 2020 by Virtue of the instrument of appointment has consistently been conducted in private and most of the witnesses examined without the presence of our client who is the subject matter of inquiry until recently when our client was allowed limited access to the proceedings with his counsel who was not allowed to cross-examine the witnesses called to testify against our client.

7. Specifically our client and his counsel were excluded from the proceedings of 11th, 12th, 13th of July 2020 amongst others in spite of presence at the venue of the sittings. In all the days of exclusion from the proceedings of the judicial commission of inquiry, witnesses were called, testified, interrogated and documents tendered and admitted in the proceedings in the absence of our client and his counsel. It should be emphasized that the nature of allegations against our client is that is criminal. Consequently, his right under the Constitution to fair hearing ought not to have been crassly violated in the circumstances so far demonstrated by the Commission.
8. This runs contrary to the instrument of appointment stipulating that the Judicial Commission of Inquiry is designated as **“INSTRUMENT CONSTITUTING A JUDICIAL COMMISSION OF INQUIRY FOR THE INVESTIGATION OF MR MAGU IBRAHIM, THE AG. CHAIRMAN OF THE EFCC FOR ALLEGED ABUSE OF OFFICE AND MISMANAGEMENT `OF FEDERAL**

GOVERNMENT RECOVERED ASSETS AND FINANCES FROM MAY 2015 TO MAY 2020”.

9. Clearly from the above our client is the subject matter of inquiry and to exclude the presence of our client and his counsel in any of the proceedings is a gross violation of the express letters of the instrument of appointment dated 3rd July, 2020 as well as powers conferred by the Tribunal of Inquiry Act 2004.
10. The other issue critical as provided by the Tribunal of Inquiry Act 2004 and the nature of these proceedings being one of Judicial Commission of inquiry is mandatorily to administer oath on witnesses before evidence of such witnesses are taken in the proceedings.
11. **Section 5(b) of the TRIBUNAL OF INQUIRY ACT 2004 provides as follows “THE POWER TO REQUIRE SUCH EVIDENCE TO BE GIVEN ON OATH AS IS REQUIRED OF A WITNESS TESTIFYING BEFORE A MAGISTRATE’S COURT.**
12. We observe that oaths were not administered on all the witnesses who have given evidence before this judicial commission of inquiry.

13. Please be further advised that by the instrument of appointment signed by the president of the federal republic of Nigeria on the 3rd of July, 2020 and served on our client on 8th August 2020, the judicial commission of inquiry is to conclude all proceedings of the Inquiry within 45 days unless given express extension in writing by the president of the federal republic of Nigeria. Paragraph 5 of the instrument of instruction provides as follows

“AND I HEREBY DIRECT THE JUDICIAL COMMISSION TO SUBMIT ITS INTERIM REPORTS TO ME FROM TIME TO TIME, BUT THE JUDICIAL COMMISSION SHALL IN ANY CASE SUBMIT ITS FINAL REPORT NOT LATER THAN FORTY FIVE DAYS FROM THE DATE OF ITS FIRST PUBLIC SITTING OR WITHIN SUCH EXTENDED PERIOD AS MAY BE AUTHORISED BY ME IN WRITING

14. In view of the above, we humbly require clarification on the judicial commission of inquiry's timeline for sittings. This is in the context of the fact that our client was not formally invited to the proceedings of the judicial commission of inquiry until

the 6th of July, 2020, even if the judicial commission of inquiry was supposed to have been constituted since the 3rd of July, 2020.

15. We observe that our client is the principal subject of the judicial commission of inquiry not only in relation to his person but also connected to the office he occupied at the time of the inquiry and thereby making our client the principal suspect in the proceedings. In the circumstances our client is entitled to be served with the copies of the allegations against him or at best a copy of the terms of reference of the judicial commission of inquiry immediately upon the commencement of this proceedings or timeously upon his appearance before this judicial commission of inquiry on the 6th of July 2020. In spite of the repeated request by our client and his counsel, the instrument embodying the terms of reference was not served on our client until 8th of August 2020 (35 days) after the sitting of the judicial commission of inquiry. Thus:

- (a) Our client has been denied the opportunity of timeously raising objection to and challenging the composition of the commission membership, assuming he would have had any.

- (b) Our client's constitutional right of being afforded adequate opportunity of preparing for his defence to those allegations has been violated.

16. Section 18 of the TRIBUNAL OF INQUIRY ACT PROVIDES AS FOLLOWS

“ANY PERSON WHOSE CONDUCT OR AFFAIRS ARE THE SUBJECT OF INQUIRY UNDER THIS ACT OR WHO IS IN ANY WAY IMPLICATED OR CONCERNED IN THE MATTER UNDER INQUIRY SHALL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THE WHOLE OF THE INQUIRY AND SUBJECT

TO PARAGRAPH (1) OF SECTION 2(1) OF THIS ACT, ANY OTHER PERSON MAY WITH THE LEAVE OF THE MEMBERS BE REPRESENTED IN LIKE MANNERS”

17. We observed that in recent time when our counsel was allowed to appear in the proceedings, counsel was not given the opportunity to cross-examine witnesses, a prerogative only given to our client who is not a trained lawyer in spite of the presence of counsel. This obviously negates the right of our client to be represented by counsel endowed with full participatory powers in the proceedings.

18. We observe that by the instrument of appointment, this judicial commission of inquiry in the nature of a tribunal (an inferior court). Consequently such an inferior Court lacks the powers to entertain matters pending before superior courts of records including the high court, federal high court, Court of Appeal and the Supreme Court respectively.

It is therefore a major surprise that cases pending before the Federal High Court, Court of Appeal such as FRN V DAUDA LAWAL and other cases in that category are subject to enquiry before these proceedings. We humbly draw attention to this development

19. We observe that the terms of reference of this Judicial Commission of Inquiry are expressly specified in the instrument of appointment dated 3rd July 2020 signed by the President of the Federal Republic of Nigeria.
20. Matters outside the terms of reference cannot be entertained and are not entertainable without infringing the express letters of the instrument of appointment and the clear provisions of the **TRIBUNAL OF INQUIRY ACT 2004.**
21. We note that the term of reference does not authorize the detention of our client who was taken into custody for nine days after his appearance before the Judicial Commission of Inquiry on 6th July 2020. We observe that the chairman had clarified that the detention was not at the instance of the judicial

commission of inquiry. We urge this distinguished commission to note this infraction of our client's fundamental right to liberty and make appropriate recommendations deprecating this development to the appointing authority.

Our duty is to draw attention to the above for consideration and guidance of this distinguished gathering.

22. Our client observes that witnesses appearing before the panel interfaced ahead of the proceedings and in many instances, our client is unable to have access to documents forming the basis of witnesses' testimonies before the panel. In our client's view the atmosphere around the proceedings is clearly disturbing to our client especially since his counsel is unable to cross-examine the witnesses and some of the witnesses were unable to conclude their testimonies before the panel.

23. In summary we have concerns regarding the legality of the honourable tribunal in the areas highlighted above such as;

- A) The tribunal has consistently sat in private (camera) and not in public of the applicable law;
- B) The tribunal has held proceedings and invited and entertained witnesses to the exclusion of our client and his counsel in violation of the applicable law on rules of fairhearing.
- C) The tribunal has sat and conducted proceedings in the absence of our client in violation of the applicable law and rules of fairhearing.
- D) The detention of Mr. Magu and subsequent denial of Mr. Magu's detention by both your panel and the police.
- E) The suspension of twelve officials (investigators and prosecutors) of the EFCC without query, interrogation, or any other expected standard treatment for such an action.
- F) The appearance of several conflicting reportage in the media without any official statement from your committee
- G) Failure to allow Mr. Magu's counsel to cross-examine our client's accusers and witnesses.

H) Failure of the committee to reveal its mandate, terms of reference and timeline until 8th August 2020(35 days after the panel was expected to have commenced public sitting by virtue of the instrument of mandate. It is also unclear whether proceedings of the panel before the date of the issuance of the instrument of mandate will be deemed to be part of the forty-five days timeline prescribed in the instrument of mandate or proceedings will be deemed to commence when our client was served the instrument of mandate on 8th August 2020.

We appreciate the tremendous work done by my lord and the committee members in the last few weeks and consider the sacrifices as service to country. However this is a moment of decision and not to decide is to decide. Our democracy is founded on the rule of law. This forum can only lawfully proceed on the basis of strict adherence to the letters of its instrument of mandate as well as the enabling legal regime from which the instrument of mandate derives its authority including the Constitution of the Federal Republic of Nigeria which is the grundnorm.

This is not just about our client but about everyone else including lawful process and the rule of law.

Notwithstanding the above factual and legal observations, should this distinguished body decide to proceed with the inquiry; our client will be ready to present his defence and meritorious case.

According to the immortal words of **Martin Luther-King JR:**

“The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenges and controversy”

We rest our case.

Please accept our best professional regards.

Wahab Shittu (Esq)

W.K. Shittu & Co.