

**IN OF THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE  
DELIVERED ON THE 4<sup>th</sup> OF FEBRUARY 2019**

**SUIT NO. FCT/HC/CV/2394/2017**

**BETWEEN:**

- 1. ENGR. YAKUBU MOORE**
- 2. MR. JUBRIL FOLUSHO OKELEYE.....APPLICANTS**

**AND**

- 1. THE HON. MINISTER FCT**
- 2. FEDERAL CAPITAL  
DEVELOPMENT AUTHORITY**
- 3. THE DIRECTOR,  
DEVELOPMENT CONTROL.....RESPONDENTS**

**ABDULRAZAK JIMOH ESQ FOR THE APPLICANTS.  
E.C. IKEJI ESQ, KELECHI ANIBA ESQ AND  
CHINEDU NWORGU ESQ FOR THE RESPONDENTS**

**JUDGMENT**

By way of an Application brought under the **Fundamental Rights (Enforcement Procedure) Rules 2009**, and the **1999 Constitution of the Federal Republic of Nigeria (As Amended)**, dated and filed on the 10<sup>th</sup> of July 2017, the Applicants are praying the Court for the following Reliefs: -

- a. A Declaration that the Entering and Marking for Demolition of the 1<sup>st</sup> Applicant's Property known as 'BQ' – Boys' Quarters

under Construction situated at Plot C18/1537 Block 2, 5<sup>th</sup> Avenue, Gwarinpa Abuja by Men of the Respondents without any Formal Warrant and or a Valid Court Order, despite the fact that the 1<sup>st</sup> Applicant sought and obtained a Permit from the Proper Authority, the Federal Housing Authority to build the said BQ – Boys’ Quarters, is barbaric, unconscionable, despicable, condemnable, unlawful, illegal and a violation of the 1<sup>st</sup> Applicant’s Fundamental Right to Liberty, Right to Own Immovable Property, and Personal Dignity as guaranteed by the **Provisions of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. 10 of the Laws of Federation of the Nigeria 1990, and Section 34 and 37 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

- b. An Order of Perpetual Injunction restraining the Respondents, either by themselves or acting through Agents, Servants, Privies, Officers or any Person or Persons as so ever called, from obstructing or further obstructing the Construction and the Constructions works of the 1<sup>st</sup> Applicant’s BQ – Boys’ Quartersthe 1<sup>st</sup> Applicant haven sought and obtained a Permit from harassing or further harassing or otherwise further Entering and Marking and or attempt to carry out the Demolition of the 1<sup>st</sup> Applicant’s Property known as BQ – Boys’ Quarters under Construction situated at Plot C18/1537 Block 2, 5<sup>th</sup> Avenue, Gwarinpa, Abuja.
- c. An Order directing or mandating the Respondents jointly and or severally, to pay forthwith to the 1<sup>st</sup> Applicant a Sum of N25, 000, 000.00 (Twenty-Five Million Naira Only) as Damages for the Breach of the 1<sup>st</sup> Applicant’s Fundamental Human Right to Self-Dignity, Dignity of Person, Right to Own Moveable and

Immoveable Property as protected and guaranteed by the **Provision of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. 10 of the Laws of the Federation of Nigeria 1990, and Section 34 and 37 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**

- d. Cost of the Suit assessed at N5, 000, 000.00 (Five Million Naira) only.

The 1<sup>st</sup> Applicant filed an Eighteen (18) Paragraph Affidavit in support of the Application deposed to by himself, as well as Documentary Exhibits, a Statement of Facts, a Verifying Affidavit, a Written Address of Counsel, and an Affidavit of Urgency.

In response, the 1-3<sup>rd</sup> Respondents filed an Eight (8) Paragraph Counter Affidavit and a Written Address of Counsel both dated the 11<sup>th</sup> of September 2017 via a Motion on Notice for Extension of Time also dated the 11<sup>th</sup> of September 2017.

The Applicants in response filed a Twenty-Seven (27) Paragraph Further and Better Affidavit, dated the 14<sup>th</sup> of February 2018, and attached Documentary Exhibits.

In response, the Respondents filed a Six (6) Paragraph Counter Affidavit to the Applicants Further and Better Affidavit and a Written Address of Counsel, via a Motion on Notice on the 27<sup>th</sup> of April 2018.

The Applicants then filed Fourteen (14) Paragraphs Further Affidavit exhibiting pictures of the Demolished Property on the 30<sup>th</sup> of October 2018. In response, the Respondents on the 6<sup>th</sup> of November 2018 filed a Six (6) Paragraph Counter Affidavit.

**Before delving into the issues, it is pertinent to first deal with the Notice of Preliminary Objection filed by the Respondents.**

The Respondents had filed a Notice of Preliminary Objection dated and filed on the 24<sup>th</sup> of July 2017, on the following Grounds: -

1. The Action was not initiated by Due Process of Law
2. The Action does not conform with the Condition Precedent to the Commencement of an Action under the Fundamental Human Rights Proceedings
3. That the Prayers sort by the Applicant cannot be granted by this Honourable Court without the Applicant leading credible evidence to that effect before this Honourable Court.

The Court observed that the Respondents did not file a Written Address in support of their Preliminary Objection, and did not orally adumbrate on the Three Germane Issues raised in their Objection. Clearly, the Respondents cannot just dump the Issues on the Court without thoroughly canvassing their Arguments, they ought to have either annexed a Written Address of Counsel or made their Submissions on the Issues Orally.

These Three Issues raised appear to be standing on nothing, whether on grounds of Facts or Law. All that the Court sees is Three Issues stated on a Paper and nothing more.

Therefore, since the Court is no Magician, and is also not a Seer to decipher what line of arguments the Respondents' Counsel might

follow, the Court can only deem it that the Preliminary Objection not supported by any Argument, whether Oral or Written is deemed abandoned.

**The Summary of the Case is as follows: -**

The 1<sup>st</sup> Applicant, Engr. Yakubu Moore, who also claimed to be the President/Coordinator of the Landlords Association, claimed he acquired a Three Bedroom Flat in a Two-Floored Building in Plot C18/1537, Block 2, 5<sup>th</sup> Avenue, Gwarinpa, Abuja sometime in 2014 from the 2<sup>nd</sup> Applicant via an Unregistered Deed of Assignment. The Property in question contains Two Buildings and Six Flats, and each Flat has its own Landlord, making a total of number of Six Landlords on the Property.

According to the 1<sup>st</sup> Applicant, the Property which was acquired by the Landlords from the Federal Housing Authority, is also under the Control and Authority of the Federal Housing Authority, being their Statutory Landlord. The Landlords of Plot C18/1537 Block 2, 5<sup>th</sup> Avenue, Gwarinpa sought and obtained the Approval of the Federal Housing Authority to erect a Fence and build a Boys' Quarters on the available land within the Plot, and it was on this basis that they fenced the Property and began the Construction of the Boys' Quarters.

To his utter surprise, Officers of the 3<sup>rd</sup> Respondent, the Development Control Unit forced their way into the Premises, stopped Construction, chased the Workers away and marked the Building for Demolition. Following their Actions, he immediately briefed his Lawyer, who wrote to the 3<sup>rd</sup> Respondent with a Notice to Stop the Demolition, demanded an Apology and payment

of compensation of Ten Million Naira (N10, 000, 000.00) for Breach of his Right.

According to the 1<sup>st</sup> Applicant, the 3<sup>rd</sup> Respondent's action did not only Breach his Right to own Immovable Property, but also his Right to Self-Dignity as a Practicing Engineer and the Coordinator of the Landlords Association of the said Plot.

In support of his Claims, the Applicant attached the following Documentary Exhibits: -

- a. **Exhibit A** - An Unregistered Deed of Assignment dated the 7<sup>th</sup> day of July 2014
- b. **Exhibit B** - A Federal Housing Authority Homes Ltd Deposit Slip in the Sum of Five Hundred and Fifty Thousand Naira (N550, 000.00) made by one Abubakar Bobbo paid into "Collection & Charges" Account No. 101/210/07. Written on the top of the Slip is 'Fencing and Boys Quarters.
- c. **Exhibit C** - a Dark and Unclear Photocopy of a Picture showing a Marked Fence for Demolition by the 2<sup>nd</sup> Respondent, the FCDA and the 3<sup>rd</sup> Respondent, the Development Control clearly written 'Remove BQ'.
- d. **Exhibit D** - A Letter dated the 18<sup>th</sup> of May 2017, written by Applicants' Counsel to the 3<sup>rd</sup> Respondent, indicating that the 1<sup>st</sup> Applicant had the Proper Consent of the Appropriate Authority to erect the Structure.

In response to the Applicants' Claims, the 1<sup>st</sup> - 3<sup>rd</sup> Respondents contended that the 1<sup>st</sup> Applicant did not acquire the said Property, that the Deed of Assignment was not registered at any of their Offices. They further denied the Applicants' claim that he had the

Requisite Approval to build the Boys' Quarters, as the 2<sup>nd</sup> Respondent being the only Body statutorily empowered to issue the Approval, did not at any time approve the Construction of the Fence and the Boys' Quarters.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents also denied the Applicant's Allegation that they entered into the Premises, chased the Workers and stopped the Construction, adding that they did not breach any of the Applicant's Rights. They contended that the Applicant failed to point out the Right that they breached, or is in danger of been breached in his Affidavit in support of his Application.

According to the Respondents, the Applicants filed this action just to escape the Penalties of Building and Constructing an Unauthorized and Illegal Structure without a Building Plan Approval, and also to stop the Respondents from exercising their Statutory Function. Also, that the Applicant has no Cause of Action against them, and neither was this Action initiated by Due Process of Law, as it did not conform with the Condition Precedent to the Commencement of an Action under the Fundamental Human Rights Proceedings, and as such the Prayers sought should not be granted by the Court without the Applicants leading Credible Evidence before the Court.

Finally, they urged the Court in the interest of Justice to refuse the Application and dismiss it.

In response to the 1<sup>st</sup> – 3<sup>rd</sup> Respondents, the Applicant explained further that the Landlords of the Plot C18/1537 Block 2, 5<sup>th</sup> Avenue, Gwarinpa, assigned Two Landlords; Alhaji Bello Waziri, Alhaji Abubakar Bobbo Usman also known as Dan-Fulani to obtain the Approval from the Federal Housing Authority.

Upon Filling and the Submission of the Application Form from the Federal Housing Authority on behalf of the other Landlords, two Staff Members of the Federal Housing Authority were sent to the Property. They came, did their evaluation and assessed the Premises. In line with the Procedure, they were asked to pay the Sum of Five Hundred and Fifty Thousand Naira (N550, 000.00) as Approval Fee for the Fencing and Building of the Boys Quarter, which they complied with, and the Application Form submitted by Alhaji Bello Waziri and Alhaji Abubakar Bobbo Usman on behalf of the other Landlords was duly stamped by the Federal Housing Authority.

According to the 1<sup>st</sup> Applicant, as an Engineer of more than Fifteen (15) years practice, he is aware that the Federal Housing Authority has Properties all over the Federation including Abuja, and has absolute control and authority over any of these Properties, including and not limited to the collection of Ground Rents, and he made reference a Demand Notice dated the 9<sup>th</sup> of August 2017 that was issued to him by the Federal Housing Authority for the Payment of Outstanding Charges for Block 2, Flat E, 5<sup>th</sup> Avenue, Gwarinpa Estate Abuja. It was the practice that in the event of an Alteration or Construction of a Building under the Control of the Federal Housing Authority, the Approval which is verbal, is given when the Applicant meets their Requirements and pays the Appropriate Approval Fees assessed by the Federal Housing Authority, and it was based on their Verbal Approval that the Fence was erected and the Boys Quarter was being constructed.

Men of the 3<sup>rd</sup> Respondent not only marked the Building for Demolition, but also went away with Building Materials, and by their Antecedents, if nothing is done by the Court urgently, Men of the



Respondents will indeed Demolish the Structure irrespective of the Approval he sought and obtained from the Federal Housing Authority.

In further Proof the Applicant presented the following Documents: -

**1. Exhibit BB–**

- a.** A Planning Approval Application Form of the Federal Housing Authority made by Bello Alhaji Waziri dated the 5<sup>th</sup> of April 2016
- b.** A Computer Printout of Payment Details in regard to a Wall Fence Approval Fee made to the Federal Housing Authority by Abubakar Bobbo for the Fencing & BQ/Block 2, 5<sup>th</sup> Avenue, Gwarinpa in the Sum of Five Hundred and Fifty Thousand Naira (N550, 000.00)
- c.** A Photocopy of an FHA Homes Ltd Deposit Slip of Payment of Five Hundred and Fifty Thousand Naira (N550, 000.00) made by Abubakar Bobbo on the 13<sup>th</sup> of April 2016

- 2. Exhibit CC –** A Demand Notice dated the 9<sup>th</sup> of August 2017, issued out by the Federal Housing Authority to Engr. Yakubu Moore for Payment of Outstanding Charges.

In response to the Applicants' Claims, the 1<sup>st</sup> – 3<sup>rd</sup> Respondents contended that the Applicants' Deed of Assignment was made without the prior Consent of the 1<sup>st</sup> Respondent, the Honorable Minister of the Federal Capital Territory or the 2<sup>nd</sup> Respondent, the Federal Capital Development Authority, which is a prerequisite for any Person to be assigned a Property within the Federal Capital Territory, and only the 3<sup>rd</sup> Respondent, the Development Control Department of the 2<sup>nd</sup> Respondent, the Federal Capital Development

Authority can give Approvals for the Development of any type within the Federal Capital Territory. The Building and Fencing of the Applicants' Property was done without their Approval.

**Exhibit BB**, which bore the names of Alhaji Bobbo and Bello Alhaji Waziri did not specifically bear the name of the Applicant, further submitting that the Documents are Public Computer Generated Documents.

The Respondents maintained that they did not withdraw the Applicants' Right to own Property, neither did they revoke his Right of Occupancy, Seized or Confiscated his Property. According to them, their actions was to ensure the Full Compliance with the Due Process of the Law as regards the Physical Development of the Federal Capital Territory.

They urged the Court in the Interest of Justice for the Court to refuse the Applicants' Claims.

The Applicant thereafter filed a Further Affidavit exhibiting Pictures of the Demolition of the Applicants' Structure. The Applicants brought to the Notice of the Court their earlier filed Further and Better Affidavit, wherein he informed the Court that the Respondents may go ahead to demolish the property if the Court did not intervene.

They stated that during the Pendency of the Suit on the 25<sup>th</sup> of October 2018, Men of the Respondents demolished the Property, despite the undertaking of the Respondents' Lawyer that nothing would be done, and the Instruction of the Court that Officers of the Respondent should stay away from the Property. The Applicant

attached Pictures evidencing the demolished property, and they are marked as **Exhibit A1**.

In response to the allegation that the Property has been demolished, the Respondents denied demolishing the property or instructing any of its Officers to do so. They also stated that the Applicant failed to mention the name of the Officer who destroyed his property, and that the Pictures of the Demolished Building was an Afterthought, Manufactured and Procured by the Applicant. Also they contended that this Court did not grant any Order restraining the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.

In his Written Address in support of the Application, Learned Counsel to the Applicant formulated Two Issues for Determination, namely: -

1. Whether from the Circumstances of this Case the 1<sup>st</sup> Applicant has not shown serious Breach and or a serious Threat of Breach of his Rights to Dignity of Human Person, Liberty, Private Family Life, Freedom of Movement and Infringement on Right to own Immoveable Property.
2. Whether considering the Circumstances of the Suit, the Applicant is entitled to the Reliefs sought accordingly.

In his Submission, Learned Counsel cited the Provisions of **Article 4 and 5 of the African Charter on Human and People's Rights**, and **Section 34 (1) of the 1999 Constitution (as amended)**, that every Human Being shall be entitled to his Rights to Life and Human Dignity of his Person, and shall not be tortured or given a Degrading

Treatment. The 1<sup>st</sup> Applicant had in his Affidavit given a narrative of Inhumane and Degrading Treatment meted out on him by the Respondents under the guise of protecting a Property, without recourse to laid down Procedure for the Preservation of Properties. As a Nigerian subject to the Law, the Applicants' Fundamental Rights to Dignity of Person and to own Property have been breached, and they are still under Threat by reason of the Respondents Activities. He placed reliance on the Case of **EZECHUKWU VS MADUKA (1997) 8 NWLR (PT 518) 635**, and he urged the Court to resolve the issue in favour of the Applicants.

Learned Counsel cited further the Provisions of **Section 35, 37, 41, 43 and 44 of the 1999 Constitution(as amended)** as to the Right to Liberty, Privacy of Citizens, their Homes and Communications, the Right to Freedom of Movement, and the Right to acquire and own Immovable Property, submitting that as a result of the Indiscretion of the Respondents, the Applicants are entitled to a Remedy, and he placed reliance on the Provisions of **Section 35 (6) of the 1999 Constitution (as amended)** and the Case of **MINISTER OF INTERNAL AFFAIRS VS SHUGABA ABDULRAHMAN DARMAN (1982) 3 NCLR**.

According to Learned Counsel, it was not necessary for the Applicants to prove that they suffered Physical Injuries, as Substantial Damages may be awarded for an Injury to a Man's Dignity and Inhumane Treatment. Therefore, the Applicants need not give Evidence of Damages to establish their Claims to specific Sums of Damages, if same has been proven to a reasonable extent.

Finally, Learned Counsel submitted that a Person can file for the enforcement of a Fundamental Right, when there is a likelihood of a Breach or a Violation, and cited the following Case of **MUSICAL COPYRIGHT SOCIETY OF (NIG) LTD VS NCC (2016) LPELR-41009 (CA), UNILORIN VS OLUWADARE (2003) 3 NWLR PT 808 PG, GOVERNOR OF EBONYI STATE VS ISUAMA (2003) I WRN PG 123.**

In Response to the Applicants' Contentions, Learned Counsel to the Respondents in his Written Address in support of his Counter Affidavit raised Two Issues for Determination, namely: -

1. Whether any of the Fundamental Rights of the Applicants as contained in **Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** has been breached having regard to the Affidavit Evidence before this Honourable Court.
2. Whether this Suit was properly commenced having regard to the prayers sort by the Applicant.

It was Learned Counsel Submission that the Provisions of **Section 46 (1) of the 1999 Constitution (As Amended)** is not a Cover for any Applicant to use to cause an abuse of the Judicial Process, as there must be substantial proof of an Infringement before a Court of Law can be called upon to enforce same. In this case the Court is being called upon to adjudicate on an Application lacking in Evidence of any Abridgement of a Fundamental Right.

Further, Learned Counsel in response to the Sections of the Constitution cited by Learned Counsel to the Applicants submitted that there is an absence of Evidence of Torture or Degrading Treatment, and no Paragraph of the Applicant's Affidavit supports a Breach of **Section 34 of the 1999 Constitution (as amended)**. It is not enough to allege a Breach, there must be Substantial Evidence on the Balance of Probabilities supporting the Allegation. Since the Case lacks Evidence, he urged that the Court shall not exercise its Powers in favour of an Untruthful Applicant, and he urged the Court to so hold placing reliance on the Case of **UZOCHUKWU VS EZEONU (1991) 6 NWLR (PT. 708) 777**.

On the Provisions of **Section 37 of the 1999 Constitution (as amended)**, which the Applicants claimed was contravened by the Respondents, Learned Counsel to the Respondents submitted that the Right guaranteed in the above Section did not Permit the Applicant to erect Illegal Structures within the Federal Capital Territory without an Approved Building Plan, and it is evident that the Applicants erected an Illegal Structure without a Building Approval, and therefore, the actions of the Respondents in marking the Illegal Structure is a Legal Procedure permitted by the Laws of the Federal Capital Territory.

On the **Section 35 of the 1999 Constitution (As Amended)**, the Applicant in his Address only made allusions and nothing more, and Learned Counsel drew the Court's attention to the fact that **Section 35** is not at large and has some limitation contained therein.

Learned Counsel to the Respondents further submitted that there is no Evidence of a Detention or an Arrest, and it is the Duty of the

Applicants to prove their Allegations, and the burden was not on the Respondents. He placed reliance on the Court of Appeal decision in the Case of **ONAH VS OKENWA (SUPRA) AT PAGE 535-536, PARAS H-A**, and urged the Court to adopt the said decision and hold that the Applicants have failed to prove their Rights were breached and dismiss the Case. Further, that the Applicants having failed to prove their allegations are not entitled to the Award for Damages, and he cited the case of **UDO VS ESSIEN (2015) 5 NWLR (PT. 1451) 83**.

He also added that the Case of **SHUGABA VS ABDULRAHMAN DAMAN (1982) 3 NCLR** as cited by Learned Counsel to the Applicants is not the situation in the instant case.

Finally, Learned Counsel submitted that the Fundamental Rights Procedure cannot be used in respect to Rights not encapsulated in **Chapter IV of the Constitution of the Federal Republic of Nigeria**, which is the alleged Entry, Marking and Demolition of an Illegal Structure by the Respondent, that it does not fall under the Right guaranteed under **Section IV of the 1999 Constitution**, and he placed reliance on the following cases; **DANGOTE VS CIVIL SERVICE COMMISSION OF PLATEAU STATE (2001) 9 NWLR (PT. 717)**, **UZOUKWU VS EZEONU II (1991) 6 NWLR (PT. 200) PG. 708**, **TUKUR VS GOVT. OF TARABA STATE (1997) 6 NWLR (PT. 510)**, and urged the Court to dismiss the Case of the Applicant for lacking in Merit and an Abuse of Court Process.

Learned Counsel to the Respondents in his Written Address in support of the Counter Affidavit opposing the Applicants' Further and Better Affidavit, formulated a Sole Issue for Determination, namely: -

1. Whether the Applicant's Right to own Property has been threatened or breached.

Learned Counsel rehashed his earlier argument that the Applicant's Rights to own moveable and immovable property was not breached, and cited **Section 44 of the 1999 Constitution** in specific reference to **Subsection 2 (a) and (b)**, stating that this Right differed from the Right to Build without an Approval. The Right to own Property did not give the Applicants an Automatic Permission to build without an Approval, and the Payment of Wall Fence Approval cannot become a Building Plan.

Finally, that **Exhibit BB**, the Payment Receipt for the Wall Fence Approval is a Public Document and a Computer Generated Document, and did not satisfy the Requirements of **Section 104 and 84 of the Evidence Act 2011**, and he urged the Court to disregard the Document, and placed reliance on the Cases of **OMISORE VS AREGBESOLA (2015) 15 NWLR (PT. 1482) AT 205 RATIO 22, TABIK INVESTMENT LTD. VS. GTB PLC (2011) 17 NWLR (PT. 1276) 240, NWABUOKU VS ONWORDI (2006) ALL FWLR (PT. 331) 1236 and KUBOR VS. DICKSON (2013) 4 NWLR (PT. 1345) PG. 534, RATIO 14.**

After a careful consideration, the Court finds the following Issues necessary for Determination, namely: -

- a. Whether from the Evidence adduced the Applicants' Rights under Chapter IV of the 1999 Constitution (as amended) was breached by the Respondents.



b. Whether the Applicants' Claims of breach are meritorious to be entitled to the Reliefs sought.

It is important to note that the Fundamental Rights guaranteed **under Chapter 4 of the 1999 Constitution (As Amended)** are Basic and Fundamental. **Eso JSC** (as he then was) in the Case of **RANSOME KUTI VS AG FED (1985) 2 NWLR PT 211**, held that a Fundamental Right is a Right which stands above the Ordinary Laws of the Land, and which is antecedent to the Political Society. It is a precondition to a civilized existence.

It goes without saying that the Observance of Human Rights is a tribute to the Rule of Law. In the case of **JOSEPH ODOGU VS A.G. FED (1996) NWLR PT 456 AT PG 508**, a Fundamental Right was defined as a Right guaranteed in the Nigerian Constitution and is a Right, which Every Person is entitled, when he is not subject to the Disabilities enumerated in the Constitution, to enjoy, by virtue of being a Human Being. These Rights are so Basic and Fundamental that they are entrenched in a Specific Chapter of the Constitution. In the case of **NEMI VS A.G. LAGOS STATE (1996) 6 NWLR PT 452 AT 42**, the **COURT OF APPEAL** held that if those Rights guaranteed under **Chapter 4 of the Constitution** are to be meaningful, they must be thoroughly examined from every angle and determined in an action complaining of their breach. When breached, they are to be addressed in all circumstances as appropriate.

**Articles 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification Enforcement) Act Cap 10 LFN 1990** also guarantees the Right of every Individual to the Dignity of his Person and to Liberty and Security of his person. The **United Nations Universal Declaration on Human Rights 1948** also has similar Provisions.

After reviewing the Rules regulating the Fundamental Rights of the individual, it is necessary to examine the Acts complained of against the Respondents in conjunction with Statutory Enactments to determine whether these Provisions have been violated or complied with in accordance with the Rule of Law.

Without bothering to rehash the fact as presented by the Parties, the Applicants' grievance against the Respondents, specifically Officers of the 3<sup>rd</sup> Respondent, is that they marked their Fence and Building for a Boys' Quarters for demolition, and eventually did demolish same.

On the other hand, the Respondents claim amongst others that (1) The Applicants do not have a Valid Title to the Property in question; the Deed of Assignment was Unregistered with any of their Offices, and the 1<sup>st</sup> Respondent, the Honourable Minister's Consent was not obtained; (2) The Fence was erected and the construction of the Boys' Quarters was without the Approval of the 2<sup>nd</sup> Respondent, the FCDA, and by extension the 3<sup>rd</sup> Respondent, the Development Control Department; and (3) The actions of the 3<sup>rd</sup> Respondent, in marking the Fence for Demolition was not a Breach of the Applicants' Rights to own Immoveable Property.

It is the contention of the Respondents that only they have the Authority to grant an Approval to the Applicants for the Construction of the Fence and the Boys' Quarters.

**Now, by virtue of Sections 1(3) and 18 of the Federal Capital Territory Act, as well as Section 297 of the 1999 Constitution, and the Decided Case Law Authorities of MICAH & ORS V. HON. MINISTER OF THE FCT & ANOR (2018) LPELR-44917 (CA) PER ABOKI, J.C.A. (PP. 14-16, PARAS. E-D), all lands in the Federal**

Capital Territory Abuja belong to the Federal Government of Nigeria, who has vested the Power and Control of such Lands on the Minister of the Federal Capital Territory, who in the exercise of his powers and functions acts in the capacity of a Governor within the purview of the **LAND USE ACT, CAP 202 LFN 1990** which includes the powers of grant and revocation under **S.5&28 of the LAND USE ACT**.

Therefore, to all intent and purposes, the only Recognizable Authority to deal with Land Matters in the Federal Capital Territory, is the Honourable Minister. The suggestion that the Federal Housing Authority authorized the Construction of the Boys' Quarters and received Payment in its regard is neither here nor there to the fact that they had no right to authorize construction in the first place. The only way they could communicate the Permit to proceed with the Construction, would be when, and only when they on their own part had sought for and obtained the Permission of the Honourable Minister, with specific regard to the Flat in question.

It was expected that the Applicants would have furnished this Approval to construct and the Requisite Building Plan Approval from the Office of the Honourable Minister of the FCT, but there was none produced before the Court as Evidence. It is clear that the President of the Federal Republic of Nigeria delegated this Power to the Minister of the FCT, and by the Principle of "***delegatus non potest delegare***", a delegate cannot himself delegate his power over land to any other person or authority. See the case of **NASIRU VS BINDAWA & ORS (2004) CA PER UMOREN J.C.A.**

The Federal Housing Authority had to at the onset seek the consent and approval of the Minister of the FCT before they were allocated the land on which the block of flats were erected and had to have

also obtained the requisite building approval plans from the Developmental Control Unit under the control and direction of the Minister.

It was expected that the Applicant furnish these authorizations given to the Federal Housing Authority or at best join them as a Party in this Action. As it stands, the picture is incomplete before the Court.

Now, this Suit is a somewhat mixed Suit because it encompasses other issues not pertaining to a claim under the Fundamental Human Rights Procedure because it seeks for Injunctive Reliefs in Relief No.2, which can only be determined when rights to title have been determined conclusively.

In the case of **WAEC VS AKINKUNMI (2008) SC LPELR-3468**, it was held **Per AKINTAN (JSC) AT PAGE 22, PARAS D-F**, that the Law is well settled that only Actions founded on a Breach of any of the Fundamental Rights guaranteed in the Constitution can be enforced under the Rules. It is also a Condition Precedent to the exercise of the Court's Jurisdiction that the enforcement thereof, should be the main claim and not an Accessory Claim. See also **NWACHUKWU VS NWACHUKWU & ANOR (2018) SC Per ONNOGHEN (CJN) AT PAGES 11-12, PARAS D-F**, wherein His Lordship made reference to the Case of the **FEDERAL MINISTER OF INTERNAL AFFAIRS AND ORS VS SHUGABA ABDULRAHMAN DARMAN (1982) 2 NCLR 915**. In this latter Case, it was held inter-alia that "...however, where the Main or Principal Claim is not the Enforcement or Securing the Enforcement of a Fundamental Right, the Jurisdiction of the Court cannot be properly exercised, as it would be incompetent by reason of the foregoing feature of the Case."

Even though in this Case, the Issue of Entitlement and Approval are germane, the Main thrust of the Issues canvassed for determination are based on some of the Fundamental Human Rights enshrined in Chapter IV of the 1999 Constitution, and therefore the Court can rightfully assume Jurisdiction to determine this Case.

Now, if the Federal Housing Authority do not have the Statutory Authority to manage and administer Land within the FCT, then they do not have the Powers to approve any improvements or construction on any Land, without being bestowed the Permit by the Minister of the FCT. Therefore, the contention by the Applicants that they were given such Approval, and the Production before this Court of the Receipt of Payment for Fencing and Construction of Boys' Quarters, by Federal Housing Authority all goes to no issue.

The Right to Construct must be a Right from the Proper Authority, and in the absence of this, there can be no Right capable of being Infringed.

The Applicants had also furnished their Deed of Assignment to show entitlement to the Flat in issue, and it noted that this Instrument was not registered. It is trite Law that Unregistered Land Instruments are inadmissible to prove Title, but are only admissible to prove Purchase and can be utilized as Purchase Receipt. It is therefore admissible to prove Equitable Interest only. Reference is made to the Case of **THOMAS AWAOGBO VS CHUKWU EZE (1995) 1 SCNJ 157**. Generally an Unregistered Instrument is inadmissible as Proof of Title see the Case of **USMAN VS KAREEM (1975) 2 SCNJ 158**.

It is therefore clear that from the position of the Law that the Exhibit A, the Unregistered Deed of Assignment, which the 1<sup>st</sup> Applicant affirmed is yet to be registered is not proof of Title for Flat E, Block

2, 5<sup>th</sup> Avenue, Gwarimpa Estate but is proof that he purchased it from the 2<sup>nd</sup> Applicant. This document clearly does not show that the Applicant did not purchase the Property from the Federal housing Authority directly and neither did it show that the 1<sup>st</sup>, 2<sup>nd</sup> Applicant or even the Federal Housing Authority, obtained the consent of the Honourable Minister of the FCT, Abuja and therefore, is not entirely relevant to the issues at stake. The title of the Flat is not in contention. What is in contention is his right to extend, alter, construct, build or renovate the property, which is hinged on the Approval from the Authorized and Proper Authority, which in the FCT, is the Honourable Minister of the FCT and not the Federal Housing Authority.

Therefore, there is unsatisfactory evidence of the Approval from the Minister and the rights sought to be enforce, cannot be evoked by the Applicants.

From the foregoing it is clear that the structures erected by the Applicants were illegal having not obtained proper approval from the requisite authority, which brought about the demolition of the structure. Even though the Respondents denied any involvement of the demolition, the point is, their Red Paint Markings on Exhibits C, and A1 points to the fact that after having declared the structure to be illegal for failing to obtain a Building Approval, and the fact of their averment in Paragraph 4 (b) of their Counter Affidavit against the Applicants Further and Better Affidavit exhibiting pictures of the demolished property, that there was no Restraining Order from any Court of Law, irresistibly show that they were responsible for the demolition exercise carried out on the Res of this Suit.

However, the Applicants have not shown Proper Authorization to kick-start the commencement of their Rights in this regard and therefore, there is no justification for the reliefs sought.

The Claim for Perpetual Injunction restraining the Respondent et al from obstructing the construction works of the Boy's Quarter and from further entry to demolish cannot be granted unless and until, the Applicants take the right steps to obtain proper approvals from the 1st to 3<sup>rd</sup> Respondent.

As regards the claim for N25 Million as General damages for breach of right to self-dignity and the right to own moveable and immovable property, this claim is for damages which the law implies in every breach and in every violation of a legal right. It is the loss that flows naturally from the defendant's act and its quantum need not be pleaded or proved as law generally presumes it. The manner in which general damages is quantified is by relying on what would be the opinion and judgment of a reasonable person in the circumstances of the case. See **NDINWA VS. IGBINEDION (2001) 5 NWLR (PT. 705) 140 AT 150; OSUJI VS.ISIOCHA (1989) 3 NWLR (PT.111) 633; ODULAJA VS.HADDAD (1973) 11 SC 357; OMONUWA VS.WAHABI (1976) 4 SC 37; LAR VS.STIRBUG ASTALDI LTD. (1977) 11 - 12 SC AND ACME BUILDERS LTD. VS.KADUNA STATE WATER BOARD (1999) 2 NWLR (PT.590) 288." PER OMOKRI, J.C.A. (P.28, PARAS.E-A)**

In this instance, the Right to have the Boy's Quarter erected have not been evoked by due process, and if not yet evoked, they cannot be said to be violated. Since, there is no Right conferred, then no breach occurred and therefore there can be no entitlement to damages.

As regards the claim for costs of the action in the sum of Five Million Naira Only, it is trite that costs follows events and they are usually granted to a successful party in the prosecution of his case, which by the award, are not meant to be punitive but to compensate the party for reasonable expenses incurred. It is not meant as a bonus or as a punishment and should not be affected by sentiments. Reference is made to the decided cases of **UNION BANK OF NIGERIA LTD V. NWAOKOLO (1995) 4 SCNJ 93; 6 NWLR PART 400 PAGE 127; and HACO LTD V. DAPS BROWN (1973) 4 SC 149.**

Therefore, no Order will be made as to costs in this instant case.

In conclusion, the Applicants Claims fail in its entirety and is accordingly dismissed.

HON. JUSTICE A.A.I. BANJOKO

JUDGE