

FEDERATION OF NIGERIA IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 13TH DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT NO.: FCT/HC/CV/214/19

BETWEEN:

**REGISTERED TRUSTEE OF ASSOCIATION
OF WUYE ULTRA MODERN MARKET
ALLOTTEES & 1920 OTHERS**

}

-----CLAIMANTS

AND

**1. MINISTER OF THE FEDERAL CAPITAL
TERRITOR, ABUJA.**

}

----- DEFENDANTS

2. ATTORNEY GENERAL OF THE

JUDGMENT.

On the 1/11/19, the Registered Trustee of Association of Wuye Ultra Modern Market Allottees and 1920 of its members instituted this Originating Summon against the FCT Minister and the Chief Law Officer of the Federation – the A-G of Federation.

In it they raised two (2) questions for interpretation/determination by this Court. They also sought for some reliefs which are consequent upon the said question being answered in the affirmative by this Court. The two (2) questions are as follows:

- (1) Whether or not by virtue of the true interpretation of S. 44 (1) (a) & (b) of the 1999 constitution as amended, S. 5 (3), S. 7 (1), S. 6 (1) of FCT Act 2004 as amended. Article 24; 22; 4; 5 and 14 of the African Charter On Human and Peoples Right which is domesticated by Federal Republic of Nigeria, the Claimants are entitled to their right to take possession, use and enjoy the shops the 1st Defendant allocated to them at the Wuye Market for which the Claimants paid and the 1st Defendant acknowledged the payment of the Claimants but have failed to allow the Claimants their right to a quiet enjoyment of their lawful possession and right without compensation.**
- (2) Whether or not by virtue of the true interpretation of S. 44 (1) (a) & (b) of the 1999 constitution of Nigeria as amended, S. 5 (3), S. 7 (1), S. 6 (1) of FCT Act 2004 as amended, Article 22, 24, 4,5 and 14 of the African Charter, the Claimants are entitled to prompt and adequate compensation from the 1st Defendant for their legitimate shops, restaurants, cold rooms gutted by fire outbreak at the New Bakassi Market in the year 2001 under the watch, control and management of the 1st Defendant.**

The Claimants claimed the following reliefs:

- (1) A declaration that the 1921 persons are entitled to their legal rights to take the possession of their respective shops re-allocated to them by the 1st Defendant at the Wuye Market of which the 1921 persons all paid for the re-allocation of their respective shops and the 1st Defendant acknowledged the receipts of all their payments.**
- (2) A Declaration of this Court that the 1921 who where all traders before at the New Market/Bakassi Market Abuja lost all there goods and monies worth N100,000,000,000.00 (Hundred Billion Naira) only being compensation on the incident of the fire outbreak at the said New Market/Bakassi**

- Market in the year 2001 before they were relocated to Wuye Market in 2002 under the watch, control and management of
- (3) **An Order directing the 1st Defendant to pay the Claimants the sum of One hundred Billion Naira (N100, 000, 000, 000.00) only as compensation for refusing them to take possession of their respective shops since 2002 when the shops were duly and legally re-allocated to them by the 1st Defendants.**
 - (4) **10% interest on the Judgment Sum from the date of the judgment until final liquidation of the entire judgment sum.**
 - (5) **Cost of this litigation.**
 - (6) **Omnibus prayer.**

The 1921 supported the Originating Summons with an Affidavit of 20 paragraphs deposed to by the Ambrose Odo who is the 2nd Claimant in this action. The said Affidavit was for and on behalf of all the 1921 persons. They attached six (6) documents, the letters of re-allocation of the shops, cool rooms, restaurants, warehouses, shop A, B and C Types and open spaces, receipt of payments, Bank Tellers, and acknowledgement of their payments by the 1st Defendant .

In the seven (7) page Written Address, the counsel for the 1921 Mohamed Ndarani Mohamed Esq. raised an issue for determination which is:

Whether by virtue of S. 44 (1) (a) & (b), SS. 5 (3), 7 (1), 6 (1) of the FCT Act 2004. Article 24, 22, 4, 5 & 14 of African Charter of Human and Peoples Right ratified and domesticated by the Federal Republic of Nigeria, the Claimants are entitled to all the reliefs sought in this Originating Summons.

The learned counsel submitted that it is not in doubt that the 1st Defendant issued out all the Re-allocation paper to the Claimants who are 1921 going by the contents of EXHIBIT A but never deemed

it fit to handover possession of the said shops, etc to the Claimants despite their payments of Allocation Fees.

That the 1st Respondent collected huge sums of monies from the Plaintiffs without giving them shops to do their respective business and without paying them any compensation for denying the possession of their shops which they paid for.

That the action of the 1st Defendant is illegal, unconstitutional and a violation of the Claimants right as provided for in **S. 44 1999 Constitution as amended.**

He referred the Court to the case of **Elpert Nigeria Ltd. Vs. Umah (2007) 1 NWLR (PT1014) 44.** He also referred the Court to the case of **Ogunleye Vs. Ohi (1990) 2 NWLR (PT135) 754 @ 773.**

He further submitted, referring to **EXHIBIT A, B & C which are letters of re-allocation, Demand Notices and Receipts evidencing payments made by the Claimants to the 1st Defendant and Receipts of Revenues, Levies and Taxes paid to the 1st Defendant by the Claimants respectively.**

That the Claimants shops were taken over compulsorily by the 1st Defendant without paying any compensation as required by law – **S. 44 1999 constitution as amended.**

That by the virtue of the provision of S. 5 (3) FCT Act 2004, the 1st Defendant appointed their officer to assign and issue written approval of re-allocation papers to all the Claimants.

That these officers acted for and on behalf of the 1st Defendant. That S. 7 (1) FCT Act provides;

“that as from commencement of this Act, no person or body shall within the FCT carry out any development unless the written approval of the authority has been obtained by such person or body provided that the authority may make a general order with respect to the interim development of the

land within the FCT and may make special Orders with respect to interim development of any portion of the land within any particular area.”

The learned counsel submitted that the Claimants meet up with the requirements as contained in the said S. 7 (1) FCT Act 2004, because the authority, which is the 1st Defendant, had issued the Claimants with a written approval of re-allocated shops as shown in EXHIBIT A – C.

That by S. 6 (1) & (2) of the same FCT Act, the Claimants have all justified claims to be recognized for adequate compensation going by Exhibits attached in support.

Again, that in Article 4 of the African Charter on Human and Peoples Right provides the clear basis for recognition of the Claimants claims and payment of adequate compensation to Claimants in the reliefs sought as can be seen in the EXHIBIT A – E attached in support.

He referred and cited in full Article 24, 22, 4, 5 & 14 of the African Charter which Nigeria has domesticated long time ago.

He submitted that it is crystal clear that Claimants are entitled to all their reliefs and he urged the Court to so hold.

He further submitted that the action of the 1st Defendant degrades and continue to degrade the economic and legal rights of the Claimants.

He went on to submit that a closer look and the true interpretation of the cited provisions of the said cited laws seeking for interpretation, the Court will see that the Claimants deserve their claims as sought and as such the Court should grant same.

He concluded that in the light of the provision of **S. 44 (1) 1999 Constitution SS. 5 (3), S. 7 (1), S. 6 (1) of FCT Act 2004 as well as Article 24; 22; 4; 5 and 14 of the African Charter On Human and Peoples Right** as well as the 6 Exhibits attached, it is beyond doubt

that the 1st Defendant's actions as alleged by the Claimants are true and that the Claimants are entitled to all the reliefs sought. He urged the Court to so hold.

The 1 & 2 Respondents were served with the Originating Summons. The 1st Respondent did not file any counter to this Originating Summons. But the 2nd Defendant filed its counter in a very stiff opposition. In the interest of justice, the Court allowed the 1 Defendant Counsel to respond on points of law. The 1st Defendant filed a Preliminary Objection but did not file a counter Affidavit to challenge the Originating Summons.

In the counter Affidavit of 5 paragraphs, the A-G Federation – 2nd Defendant denied all the averment in the Affidavit in support of the Originating Summons. That the 2nd Defendant was not privy to the contract between the Claimants and the 1st Defendant. That he was not equally informed about the said contract. That the 2nd Defendant neither received any payment, neither demanded for any payment, nor negotiated any payment with the Claimants as it relates to this case and the subject matter of the case. That it only became aware of the contract when he was served the Originating processes in this case.

Again that there is no privity of contract between the Claimants and the 2nd Respondent. And that 2nd Defendant does not watch, control and manage the Bakassi Market or the New Market. That there was no complaint or petition leveled on behalf of the Plaintiffs to the office of the 2nd Defendant. That this suit is only aimed at harassing and embarrassing the 2nd Defendant.

That the Court should dismiss the suit of the Plaintiffs against the 2nd Defendant in the interest of justice.

In a 4 page Written Address, the learned counsel from the chambers of the A – G Federation, the 2nd Defendant in this case, – Abubakar A. Nuhu raised an issue for determination which is:

“Whether in view of the applicable laws, the fact and circumstances of this case, this Hon. Court can validly make the declarations and relief sought by Claimant in the suit against the 2nd Defendant.”

He submitted that this case is a contractual relationship as alleged between Claimants and agents of the 1st Defendant and has nothing to do with the 2nd Defendant. That the Plaintiffs claimed they were re-allocated to another market place by the 1st Defendant after the fire incident in the previous market they occupied.

That Claimant misconceived this action to be a **fundamental right action** by initiating the suit by way of Originating Summons. That this suit should have been commence by Writ because the matter cannot be determined by way of Affidavit evidence only, but required the calling of witnesses and evidence.

Again the learned Counsel submitted that a case of declaratory relief is an invitation to the Court to make a pronouncement as, to the legal position of a state of affairs. That it is accepted that the action for declaration relief is useful and important procedural method for ascertaining and determining the validity of the Orders or decision of the Courts or tribunal, or administrative and executive decision and actions. That it is the duty of Plaintiffs to establish that they are entitled to the declaratory and reliefs sought.

He referred the Court to the case of;

- (1) A – G Rivers Vs. A – G Bayelsa State (2013) 3 NWLR (PT1340) 123 @ 160 – 161 paragraph G – B.**
- (2) Next International Limited Vs. Obatoyinbo (2013) All FWLR (PT701) 1549 @ 1570 paragraph A – B and page @ 1574 paragraph C – D.**

He submitted that the Plaintiff have not placed before this Court the required evidence that will entitle them to the declaration sought; the Plaintiff having failed to prove their cases as required, cannot therefore be entitled to the declaration sought herein.

That there is nothing before this Court to establish that there is any alleged breach or anticipated breach of the Plaintiff's Right by the 2nd Defendant.

He referred the Court to the provisions of **S. 131 EA 2011 as amended.**

He further submitted that the Plaintiffs in this suit had woefully failed to prove their case against the 2nd Defendant and as such, the Court should dismiss same.

He further submitted that there is nothing put before this Court to entitle the Plaintiff to the Reliefs sought because all that is here is only speculation.

He finally urged the Court to dismiss the suit on the strength of their submission because the totality of the Plaintiffs' claims reveals no answer to the above question and the contract between the Plaintiffs and the 2nd Defendant was not attached.

That Claimant's processes did not establish or provide any evidence to substantiate its claims against the 2nd Defendants and that Claimant woefully failed to establish its case to be entitled to the declaratory relief.

Upon receipt of the 2nd Defendant Counter Affidavit, the Plaintiff's Counsel filed the further Affidavit of 8 paragraphs to the Counter reply on points of law.

In the further Affidavit, the Plaintiff Counsel denied paragraph 3 (a) – (j) of the 2nd Defendant Counter Affidavit, stating that all the averments therein are untrue.

That the 2nd Defendant denied only the averments in Claimants' Affidavit but did not deny the documents exhibited therein. That the Claimants are in Court for proper interpretation of the provision of **S. 44 (1) 1999 Constitution as amended and all the other laws, SS. 7 & 5 FCT Act and Article 4, 5, 22 & 24 African Charter on Human and Peoples Right.**

That contrary to the submission of the 2nd Defendant, the suit of the Claimant is not contentious but simply interpretative as it concerns the legal and equitable right of the Claimants. That the facts in the Affidavit were never controverted or contradicted by the 2nd Defendant.

Also that the Statute that established the 1st Defendant empowers it to be answerable for its action and inactions subject to the supervision of the President of which 2nd Defendant is its Legal Adviser in all matter before the Court.

That 1st Defendant was acting on behalf of the Federal Government as stated in paragraph 1 – 20 of the Affidavit in support of the Originating Summons. Also on behalf of the 2nd Defendant who is the Chief Law Officer of the Federal Government and as such has roles in all deposition made in the Claimants Affidavit in support of the main suit.

That 2nd Defendant has the responsibility to defend the interest of the Federal Government as a proper and necessary party in this Case. That the said 2nd Defendant can be sued in any civil matter against Federal Government or any of its agencies like the 1st Defendant in this suit.

That the Claimant are solely in Court for the Interpretation, Construction and Determination of laws and issues in the documents issued to them by the 1st Respondent hence the commencement of the present suit by Originating Summons and not by writ as the issue is non-contentious.

That granting the consequential reliefs and declarations are in tandem with the laws and the Rules as the 2nd Defendant will not be prejudiced if the reliefs are granted.

In the Written Address, the Counsel to the Claimants raised an issue for determination which is:

“Whether in view of the applicable laws, facts and circumstances, this Court can validly grant the Reliefs sought.”

He submitted that 2nd Defendant had not addressed the issue sought before the Court in their Counter Affidavit or their Written Address.

That the 2nd Defendant had failed to contradict or discontenance the averments in the 20 paragraph Affidavit of the Claimant in the main suit and has failed to attach any document or challenge any of the documents attached by the Claimants in support of their suit.

That notice of Originating Summon is for Interpretation and construction which is available to any person claiming interest under a Deed, will or other written instrument for determination of any question of construction arising under the said instrument for declaration of the person’s interest.

That it is the procedure where the evidence in the main is by way of documents and that there is no serious dispute as to facts but the claims are declaration of their right which is consequent to the answer to the questions raised in the Originating Summons.

He referred the Court to the case of **Famfa Oil Limited Vs. A-G Federation (2003) 9 – 10 SC 31.**

He went on to submit that as far as what the law is as regard Originating Summon is appropriate for the commencement of an action, the parties are at ad idem as in the present suit of the Claimants.

That it is apparent in this case from the question for determination in the main suit that the reliefs sought and Affidavit they issued are NOT contentious at all, as it is only interpretation of the relevant Statutes documents and Section of the Constitution as outlined therein.

That failing to file a counter, the 1st Defendant is assumed to have demurred and admitted the facts deposed to in the Affidavit filed in support of the Originating Summons.

That Originating Summon procedure adopted in this suit is appropriate from the processes filed as there is no single relevant paragraph of the 2nd Defendant Counter Affidavit to support the 2nd Defendant's contention. That the facts were disputed.

He referred to the case of **Fabumi Vs. Registered Trustee of Foursquare Gospel Church in Nigeria (2011) LPELR – 9168 C.A.**

We went on to submit that this is an action where oral evidence need not to be taken. He referred to the provision of **Order 2 Rule 2 (1) & Rule 3 FCT High Court Rules 2018.**

He further submitted that the present suit is competent as there are no substantial dispute of the facts. That since in this case what is in dispute is mere interpretation of the law and Constitutional provision. Pleading are not necessary as there are no dispute of the facts between the parties in the suit.

He further submitted that in view of the circumstance about this suit was properly commenced by Originating Summons and is therefore competent before this Court.

He referred to the case of **Lawal Vs. APC (2019) 3 NWLR (PT1658) 86 SC.** And submitted that what the Claimant asked the Court to do is to interpret and construct the laws and Section of the Constitution as contained in the face of the Originating Summons as well as all the documents attached whether they constitute an existing legal rights that will warrant the Defendants to compensate the Plaintiffs as per

their reliefs as sought. That the Plaintiffs matter is not contentious to warrant the calling of evidence and witness as the 2nd Defendant is misleadingly stating.

He referred the Court to the case of

**(1) Yarádua & others Vs. Yandoma & other 39 WRN 40 SC
47 Ratio 4.**

**(2) Tanko Vs. Modi (2019) 8 NWLR (PT 1675) 396 @ Ratio
10**

Where the apex Court held that an action will not be void if it is commenced by wrong Originating process and should therefore not be set aside for that sole reason.

He submitted based on the above alone, the Originating Summons is proper, same having been on matter of interpretation and construction of the extant laws and documents – Exhibit which the 2nd Defendant did not dispute.

He further submitted that the 2nd Defendant filing a Counter to the Originating Summon does not mean that the facts in the suit are disputed.

That where facts are disputed, it is only the Court that has the right and discretionary power to state so and Order for call of evidence and witnesses. But that in this case, the facts are not disputed at all.

He referred to the case of **NPF Vs.Omosho (2019) 3 WRN 32 @ 49
Ratio 14 & 15.**

He submitted that going by the decision of the Court in the above case, the facts contained in the Claimants suit are not in dispute or contentious but are based on interpretation of the extent laws therein and the allocation papers issued to Claimants by 1st Defendant. That 2nd Defendant did not deny any of those facts or the documents attached therein. That those documents form part of the

Affidavit in support of this case as the apex Court stated in the case of **Iyeke Vs. P.T.I (2019) 2 NWLR (PT. 1656) 217 SC Ratio 12.**

That 2nd Defendant did not deny any of the documents attached as EXHIBITS. He urged Court to answer the question in the Affirmative and grant all the Reliefs sought which are consequent upon the said questions.

On the Plaintiff not having any cause of action in this suit, the Counsel for the Plaintiff disagree and state there is a cause of action against the 2nd Defendant that since there is a cause of action against the 1st Defendant since 2nd Defendant is the Chief Law Officer of Nigeria of which the 1st Defendant is one of its established institutions.

That 2nd Defendant is the proper party to be proceeded against in any action against the Federal Government or any of its agencies which the 1st Defendant is one.

That the federal government and its agencies have their interest adequately represented by the 2nd Defendant as its Chief law Officer and legal Adviser as created in **S. 150, 1999 Constitution as amended.**

He cited in support the case of

1. **A – G Kano State Vs. A – G Federation (2007) 6 NWLR (PT. 1029) 164 @ 192.**
2. **A – G Anambra Vs. A – G Federation (2007) 12 NWLR (PT. 1047) 4 @ 47**
3. **Ezomo Vs. A – G Bendel (1986) 4 NWLR (PT36) 448.**

Again he submitted that 1st Defendant is an agency of the Federal Government by virtue of **S. 147 (14) & (20) 1999 Constitution as amended.**

That it is part of Federal Government and its interest cannot be different from that of Federal Government. That the 2nd Defendant being his Chief Law Officer is responsible for conducting of the case of the Federal Government, its agencies like the 1st Defendant whenever their interest is in issue.

He referred the Court to the case of **Registered Trustee of Association of Proprietors of Private Schools Vs. A – G River State (2018) LPELR 45 @ 52 (C.A).**

He went on to submit that by virtue of **Section 174 (3) 1999 Constitution** and the Court decision in the plethora of cases. It is trite that A – G Federation is a member of the cabinet as Minister of Justice responsible for legal Affairs of the government. That it is the responsibility of the A – G Federation to advise 1st Defendant on the implication of breaching the right of the Claimants. That since he did not do so, the Claimants are right and have the right to join him as a party in any action as this against public office of which the 2nd Defendant has responsibility to prevent the 1st Defendant from committing such wrong.

He referred to

- 1. SS. 174 (3) & 211 1999 Constitution as amended.**
- 2. Anyaebe Vs. State (1986) 1 S.C 87.**
- 3. State Vs. Ilori (1983) 2 S.C 155 (2001) All FWLR (PT52) 2182.**

He submitted that 2nd Defendant is a necessary party in any instituted against the Federal Government or its agent as in this particular case. He urged the Court to so hold.

He concluded relying on all the cases cited, that the 2nd Defendant as a necessary party as his legal adviser is germane in the responsibility to any government agency, establishment or institution. He urged

the Court to discountenance the Counter Affidavit and grant all the reliefs sought by the Plaintiffs.

This Court answers the two questions posed in the Originating Summons in the affirmative and further states thus:

Be it known to all and sundry that demurrer proceeding has been abolished and as such does not operate neither is it applicable in the FCT Judiciary nor in its Court proceedings.

Order 23 Rule 1 FCT High Court Rule 2018 provides:

“No demurrer shall be allowed.”

Order 23 Rule 2

“Any party may by pleading raise any point of law and the judge may dispose off the point of law so raised before or after the trial.”

To demure means to want or to stay without responding to a process served until judgment is given to determine whether to answer or respond to issues raised by the Plaintiff in its pleading.

It involves a situation where the Defendant after being served an Originating process decides for a reason best known only to it, not to respond to the said Originating process served on it by the Plaintiff stating that although the facts therein alleged may be true but are insufficient for the Plaintiff to ask for or be entitled to a claim or relief and for the Defendant to frame an answer or defence or counter in response to the Originating process.

At all times, the Court had been called upon to do substantial justice diligently and timeously because justice delayed loses its efficacy and taste, and does no good to the parties, the public and the polity and posterity. The reasoning of the drafters of **Order 23 FCT High Court Rule 2018** had envisaged that continuous use of Demurrer as pleading, delays dispensation of justice and clogs the wheel of

justice. That is why the Courts had in the interest of justice, adopted the front loading system as part of our jurisprudence.

It is a common mantra chanted in all Court and among lawyers within and outside Nigeria that unchallenged, uncontroverted and un rebutted facts are deemed admitted as such facts remains unchallenged. It is more so where the facts are contained in an Affidavit or in an Affidavit based proceeding.

In this case, the 1st Respondent who is at the centre of the debacle in this case was served with the Originating Summons filed by the Plaintiffs on the 12/11/19. They were represented in Court by a Counsel – R. Umar on the 22/11/19 when this matter came up before this Court for hearing.

The 1st Defendant Counsel informed and confirmed to the Court that they were served but were yet to file their response to the Originating Summons as their time was still running. She referred the Court to **Order 17 Rule 16 FCT High Court Rules**, where it is provided that the 1st Defendant has 21 days after service of the Originating Summons on it to respond by filing its Counter Affidavit. She asked for a date to enable her do the needful. She stated that the 1st Defendant still has eleven (11) days within which to respond going by the said provision of the **Order 17 Rule 16 FCT High Court Rules**.

The Court in the interest of justice obliged them the time to do so and adjourned the matter to 9/12/19, 16 days after the hearing of the suit of the Plaintiff and everything in between the Preliminary Objection and any other application pending before the Court in the suit.

The 1st Defendant filed the Preliminary Objection which this Court had just dismissed. But shockingly, the same 1st Defendant did not file a single paragraph of Counter Affidavit in response or to challenge the Originating Summons. The Counsel that represented

the 1st Defendant – A.N. Anukwu Esq. came with U.M. Yusuf Esq. to represent the 1st Defendant. He told the Court that:

“He did not file any Counter Affidavit challenging the Claimant’s Originating Summons. That 1st Defendant intends to take some steps in respect of this suit.”

The Court thought may be plans are under way to settle the matter out of Court amicably with the Plaintiff.

It is the law that demurrer does not operate within the jurisdiction of this Court. It is the decisions of our Court from the lowest to the apex Court that fact uncontroverted are deemed admitted and the Court does not aid the indolent or a party that sleeps on its right.

It is evident that the 1st Defendant’s failure to challenge the Originating Summons filed and served on it by the Plaintiff, means it has no response. It cannot and have not controverted the facts as contained there and have invariably admitted all the facts hook, line and sinker. That means as far as the Originating Summon is concerned, the 1st Defendant has admitted all facts contained therein and as such, the facts remains unchallenged and this Court have no reason not to grant the Reliefs or the claims of the Plaintiffs against the Defendant as sought. That is what this Court holds in that regard.

In every Originating Summon the Court is called upon to determine, interpret and construct, the extent provisions of the laws and Constitution referred to in the body of the question raised in order to determine whether or not the Plaintiff is entitle to the claims/reliefs after answering that question raised.

In this case, the Plaintiffs are seeking the Court to interpret

Section 44 (1) 1999 Constitution. Section 5 (3), S. 6 (1) and S. 7 (1) FCT Act 2004 as well as Article 4, 5, 14, 22 and 24 African Charter on Human and Peoples Right Law of Federation

in Order to determine whether the Plaintiffs are entitled to their rights to take possession, use and enjoy the shops, restaurants, cold rooms and open spaces re-allocated to them by the 1st Defendant and by implication of **Section 150, 301 & 302**, which the 2nd Defendant with the 1st Defendant having failed to allow them access and quiet enjoyment of the said shops.

And the second question is for Court to determine after the interpretation of those extent sections of the Constitution and the law to determine whether or not the Claimants are entitled to compensation adequately and promptly from the Defendant for the legitimate shops, warehouses, restaurants and cold rooms gutted by the fire outbreak at the new market Bakassi market in 2001 before they were re-allocated to Wuye market under the watch and control as well as management of the 1st Defendant and invariably on the advice of the 2nd Defendant who is the Chief Law Officer of the 1st Defendant too.

They have claimed the declaratory and compensatory reliefs as read out earlier in this judgment.

For clarity it is imperative to state **Section 44 (1) (a) & (b) 1999 Constitution;**

“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property SHALL be acquired compulsorily in any part of Nigeria (FCT inclusive) except in a

manner and for the purposes prescribed by law that among other things

(a) requires the PROMPT PAYMENT OF COMPENSATION thereof; and

(b) gives any person claiming such compensation a right of ACCESS for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having Jurisdiction in that part of Nigeria.” (emphasis mine)

From the above, it is the sacred provision of the constitution **Section 44 (1) (a) & (b)** that NO one SHALL take possession of another person’s moveable property or another interest in an immovable property compulsorily.

Again, no right over or interest in any such property should be acquired compulsorily in any part of Nigeria including within the Federal Capital Territory (FCT).

Again when such compulsory possession takes place, it must be in a manner and for the purposes PRESCRIBED by law:

Such compulsory possession can only be lawful and legal and in such a manner and purposes prescribed by law if and only if there is prompt and adequate payment of compensation for acquiring the said moveable property and interest in the immovable property.

In other words, it is illegal for anyone – government, organisation, agents or establishment and even private individual to acquire and take possession of the moveable and immovable property of another citizen compulsorily.

Where that is done, it must be in a manner and for the purposes prescribed by a law.

That manner and purposes prescribed by law entails prompt payment of adequate compensation to the person whose property

was acquired and possessed. That payment of compensation shall be by the person or body that had acquired and taken possession of such property. Anything outside the above amount to illegal, unlawful acquisition and possession of the said property and such is therefore a violation of that sacred provision of **Section 44 (1) (a) 1999 Constitution.**

Where that happens, it is an unforgivable constitutional sin committed by that person against the grand law of our father land. Again, by **Section 44 (1) (b)** of the same Constitution, one is said to possess legally acquire moveable and interest on immovable property of another under **Section 44 (1) (a)** in a manner prescribed by law, where the person gives to anyone claiming such compensation the right of access to determine his interest as he deems proper and also to determine the amount to be paid to him as compensation before the Court of competent jurisdiction.

This means that the person whose property has been compulsorily acquired and who has been denied possession compulsorily has the right to state the nature and amount of the compensation he wants for the compulsory acquisition and dispossession of the property.

Again the person has the right to determine the interest but such must be done before a Court of competent jurisdiction. So in other words, the Court have the last say on the amount to be paid as compensation in that regard. The Court has that discretion to fix the amount for compensation notwithstanding any amount the Plaintiff had stated.

Again no Plaintiff has the right to take laws into its hand where such issue is in dispute because it is the Court that has the final say on that issue.

Furthermore, whatever the amount the Court decide to grant as adequate compensation **MUST** be paid promptly without undue

delay. That means in this kind of situation there is no room for garnishee proceeding as is open in enforcement of Judgment sum in other civil proceeding going by the use of **“SHALL”** as the provision is not an option but a command.

Section 5 (3) FCT ACT provides thus:

“...The authority (1st Defendant) may appoint such other persons to be officers and servant of the authority as it deems fit.” (emphasis mine)

This means that anyone appointed to perform a duty or do an act for the (1st Defendant) authority, and any action so taken is deemed to be the action /inaction of the same authority and is binding on it, the 1st Defendant.

Again a closer look at the **Section 1 (3)** of the said FCT Act provides that;

The area in the FCT shall henceforth be governed and administered by and under the control of the government of the federation to the exclusion of other person or authority. Whatsoever

Section 6 (1) FCT Act provides:

“...Compensation payable in respect of any land comprised in the FCT shall be assessed and computed in accordance with the provision of this Act.

This means that compensation where issue of compulsory acquisition is established shall be in accordance with provision of the Act.

It is imperative to note that the provision of the issue of compensation as provided in the **Section 44 (1) 1999 Constitution**, and also to note that the provision of the Constitution is superior to the FCT Act 2004.

Again provision of the

Section 7 (1) FCT Act States:

“...No person or body shall within the FCT carry out any development within the meaning of this act unless written approval of the authority has been obtained by such person.”

The above is very self explanatory. In this case the Plaintiff had tendered several documents of re-allocation of the various shops given to them by the 1st Defendant. They have also exhibited in support, the receipt of payment made and the several acknowledgment of receipts of the said payments by the 1st Defendant in this case as it pertain to the said shops.

In this case the Plaintiffs attached document marked EXHIBIT A which is the letter of allocation issued to most of the Plaintiffs titled; **“Letter of Provisional Allocation.”**

In the body of the document it states;

“I am directed to convey to you with pleasure an approval of the allocation of the shop/open space CRM 1 at Wuye.”

The letter further stated in paragraph 2 the condition for the said allocation which included payment of fourty Thousand Naira (N40,000.00).

In paragraph C of Exhibit A, the Claimant is instructed to further among other things

“Submit copy of the receipt of payment and duly signed letter of acknowledged overleaf to the Secretary’s office.”

Once the Claimants had done so, they will **“...Obtain Original letter of allocation and will write letter of acceptance thereafter.”**

All the Claimants in this case duly complied with the directive and conditions set out in the said letter. They went on to pay and comply accordingly.

The Plaintiff attached Exhibit B which is titled:

“Demand Notice for outstanding Rent on FCDA SHOPS/STALLS.”

In the said notice, it is stated that Plaintiff were to pay within two (2) weeks from the day of the demand notice the amount stated therein where they fail to do so the letter stated; **“failing which the Hon. Minister of FCT may direct the enforcement unit of the Territory to take necessary action against you.”**

It is important to note that the FCT Minister is the 1st Defendant in this suit and the technical committee that allocated the shops were delegated by him. The FCT market management are all departments and establishment under him and his authority and any action taken by them are actions taken by him and on his behalf. That is as provided for in **Section 5 (3) FCT Act 2001.**

The Claimants also attached evidence of payment of the Demand Notices made in the designated bank as instructed by the 1st Defendant and its agents.

In the Demand Notice, the 1st Defendant had instructed that the payment must be made in,

“...the FCT Market Management Committee Account Number 2202000151 with ASO savings and loan.”

A closer look at the Bank Teller attached shows that the said payment was promptly made at the designated bank as instructed by the 1st Defendant.

The Plaintiff also Exhibited the receipts issued by FCDA which is the main establishment and power house of the 1st Defendant. The said receipts acknowledged the receipt of payment made by the Plaintiffs showing that the Plaintiffs paid the said amount on the said days for the designated years as per the Demand Notice.

The 1st Defendant is invariably bound by the action of its agents and officers. The document attached by the Plaintiff speak louder than

the human voice in the sense that the 1st Defendant has no way to wriggle out of the web it has created in this case, for itself.

It puts no one in doubt whether the allocation is legitimately issued by the Defendant. It also puts no one in doubt that the Plaintiffs had diligently paid the Defendants for the said allocation. Otherwise, they will not have been asked to pay for outstanding rent when they were duly re-allocated the shops after they have all suffered for the fire outbreak at the Bakassi market.

The Plaintiffs have suffered because of the denial of the possession of the said shops without compensation coupled with the suffering coupled with the huge loss of monies and properties after the fire outbreak that happened in 2001.

They no doubt deserve adequate compensation since the 1st Defendant had compulsorily acquired and took possession of their property thereby violating their fundamental right to acquire property in any part of Nigeria as provided by the Constitution.

They are right in coming before this Court, to seek interpretation of the extant law and consequential relief. They were right in setting out their interest in the Originating Summons. It is not in doubt that the 1st Defendant and by implication of his inability to advise the 1st Defendant, the 2nd Defendant as the Chief Law Officer for the 1st Defendant and the President, is equally fully liable and had also violated the right of the Plaintiffs as per the provision of the **Section 44 (1) of the 1999 Constitution**, by not advising the 1st Defendant on the implication of the breach of contract or their action, in this regard.

There is no doubt, there is in existence privity of contract between the Plaintiffs and the 1 & 2 Defendants going by the contents of the documents attached in support of this Originating Summons. So this Court holds

The status of the 1st Plaintiff is not in doubt as it is the umbrella body through which aggrieved member can run into for protection to herald them to seek redress for the wrong done to them by any one like the 1st Defendant had wronged these 1920 Nigerians who have families and dependants across the length and breadth of this country, who have suffered untold hardship by the actions and inactions of the 1 & 2 Defendants, and their agents.

The document evaluation report of the status of the shops, cold rooms, warehouses and open spaces by the Estate Valuer, Austin Chinegwu & Co., further buttresses the genuineness of the case and claim of the Plaintiff so also the document titled the **“Certificate of Value.”**

The Plaintiffs are right in commencing this action by Originating Summons seeking interpretation as elucidated above.

This Court adopts as part and parcel of this Judgment its reasonings in the 2 Rulings in which the preliminary objections by the 1 & 2 Defendants were dismissed, particularly its reasoning as per the role of the 2nd Defendant as the Chief Law Officer of the 1st Defendant.

After all this, the question is from the summary of the submission of the Plaintiff and 2nd Defendants for and against the Originating Summons as well as the brief interpretation and reasoning of this Court between the Rulings, in the 2 Preliminary Objections in this Judgment, can it be said that this Court can validly grant the consequential Order, claims and reliefs sought, in that the Plaintiffs through their Counsel M.N. Mohammed have been able to establish their claims, this Court having answered the two questions posed in the affirmative and as such the Plaintiffs are entitled to the claims sought.

This Court hereby answers the two (2) questions in the affirmative to wit:

- (1) That by virtue of the listed provisions of the extent laws as stated in the face of the Originating Summons which laws were ratified by the Federal Republic of Nigeria and so domesticated too, the Claimants are entitled to their Rights to take possession, use and enjoy the shops the 1st Defendant and by implication as stated in this judgment the 2nd Defendant re-allocated to them at WUYE ultra MODERN Market for which they paid and 1st Defendant acknowledged the payment made by the Plaintiffs but have failed to allow the same Plaintiffs their right to quiet enjoyment of their lawful possession and right without compensation in violation of provision of **Section 44 (1) 1999 Constitution**.

Again this Court also answer the 2nd question in the Originating Summon in affirmative and state that plaintiffs are also entitled to prompt and adequate compensation from the 1 & 2 Defendants for the legitimate shops etc gutted by fire outbreak at the said Bakassi market in the year 2001 before they were relocated to Wuye market under the watch, control and management of the 1st & 2nd Defendants.

This Court holds that the Defendants are both equally liable. Therefore the Plaintiffs are entitled to the reliefs sought and this Court grants same to wit:

- (1) Fifty billion naira (N50, 000,000,000.00) is hereby award as compensation against the 1st & 2nd Defendants for refusing the Plaintiffs to take possession of their respective shops since 2002 when the said shops were duly and legally re-allocated to them by the Defendants.
- (2) The 1st Defendant is to pay to the Plaintiffs the sum of Fifty billion naira (N50, 000,000,000.00) as compensation for the lost of goods and money as a result of the fire incident at the

Bakassi market in 2001 before they were relocated at Wuye market in 2001 under the watch, control and management of the 1st Defendant.

In addition, the 2nd Defendants shall pay as compensation to Plaintiffs the sum of Fifty Billion Naira (N50, 000,000,000.00) for its failure to ensure and properly advise the 1st Defendant to avoid the breach of the rights of the Plaintiffs.

The Court also Order the payment of 0.01% post judgment interest from the date of judgment until the full and final liquidation of the entire judgment sum.

This is the Judgment of this Court delivered today the 13th day of December, 2019 by me.

JUSTICE K.N. OGBONNAYA

HON. JUDGE