

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

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 13**

**CASE NUMBER : SUIT NO: CV/1642/2024**

**DATE: : FRIDAY 14<sup>TH</sup> FEBRUARY, 2025**

**BETWEEN:**

**DEVYANI INTERNATIONAL NIG. LTD.** } **PLAINTIFF**  
**(Trading under the name and style** }  
**Kentucky fried Chicken)** }

**AND**

**ABUJA MUNICIPAL AREA COUNCIL ..... DEFENDANT**

# **JUDGMENT**

The Claimant approached this court vide Originating Summons dated and filed on the 13<sup>th</sup> day of March, 2024 seeking the following questions for determination:-

1. Whether having regards to Section 4 of the National Health Act 2014, section 2 of the 3<sup>rd</sup> Schedule to the FCT (Establishment of the Functionaries) and Departments and Ministry of the Federal Capitol Territory (Dissolution) Order No.1 of 2004 as well as part vii, the National Policy on food safety and its implementation strategy and Resolution (xii) of the 61<sup>st</sup> National Council on Health, as well as the judgment of this Honourable Court per Honourable Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** Between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.**, wherein this Honourable Court expressly held that it is within the purview of the Department of Public Health and Human Services of the Federal Capital Territory Administration to issue medical certificates of fitness and to conduct training and the screening of food handlers, the

Defendant was right in issuing further demand notices and abatement notice to the Plaintiff.

2. Whether having regards to Section 4 of the National Health Act 2014, Section 2 of the 3<sup>rd</sup> Schedule to the FCT (Establishment of the Functionaries) and Departments and Ministry of the Federal Capital Territory (Dissolution) Order NO.1 of 2004 as well as part vii, the National Policy on food safety and its implementation strategy and Resolution (XII) of the 61<sup>st</sup> National Council on Health, as well as the judgment of this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** Between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR**, wherein this Honourable Court expressly held that it is within the purview of the Department of Public Health and Human Services of the Federal Capital Territory Administration to issue medical certificates of fitness and to conduct training and the screening of food handlers, the Defendant was right in receiving payments from the Plaintiff following series of demand notices sent to the Plaintiff.

3. Whether having regards to Section 4 of the National Health Act 2014, Section 2 of the 3<sup>rd</sup> Schedule to the FCT (Establishment of the Functionaries) and Departments and Ministry of the Federal Capital Territory (Dissolution) Order NO.1 of 2004 as well as part vii.. the National Policy on food safety and its implementation strategy and Resolution (XII) of the 61<sup>st</sup> National Council on Health as well as the judgment of this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** Between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR**, wherein this Honourable Court expressly held that it is within the purview of the Department of Public Health and Human Services of the Federal Capital Territory Administration to issue medical certificates of fitness and to conduct training and the screening of food handlers, the issuance of demand notices and abatement notice to the Plaintiff amounts to trespass.

And where the questions are resolved by this Honourable Court in Plaintiff's favour, the claim the following reliefs:

- a. A Declaration that the issuance of demand notices and abatement notice to the Plaintiff by the Defendant with respect to issuance of medical certificates of fitness and to conducting, training and the screening of food handlers of the Applicant is in violation of the extant provisions of the law and a grave disobedience to the judgment of this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.**
- b. A Declaration that the receipt of payments made by the Plaintiff to the Defendant with respect to the issuance of demand notices and abatement notice to the Applicant by the Defendant for the issuance of medical certificates of fitness and to conduct, training and the screening of food handlers of the Plaintiff is in violation of the extant provisions of the law and such payments were improper and made in error by the Plaintiff to the Defendant.
- c. A Declaration that the continuous issuance of demand notices and abatement notices by the Defendant to the Plaintiff in view of the extant provisions of the law and the judgment of

this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR** amounts to an act of trespass against the Plaintiff.

- d. An Order of Perpetual Injunction restraining the Defendant from issuing any further demand notices or abatement notices to the Applicant or any other persons with respect to the issuance of medical certificate of fitness and to conduct training and the screening of food handlers in the Federal Capital Territory, Abuja.
- e. An Order of this Honourable Court compelling the Defendant to refund the sum of N1,222,000.00) (One Million, Two Hundred and Twenty-Two Thousand Naira) only to the Plaintiff as payment made in error by the Plaintiff to the Defendant in issuance of demand notices with respect to medical certificate of fitness and for conducting the food handlers test from the 20<sup>th</sup> of January, 2023 to 13<sup>th</sup> of June, 2023.

- f. An Order of this Honourable Court directing the payment of N100,000,000.00 (One Hundred Million Naira) only as special damages by the Defendant to the Plaintiff for willful breach of the extant provision of the law and grave disobedience of the Judgment of this Honourable Court by issuing further demand notices and abatement notices to the Plaintiff in trespass and without lawful authority and in total disregard and disrespect to this Honourable Court per Hon. Justice S.U Bature delivered on the **12<sup>th</sup> day of July, 2023** in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.a.**
- g. Cost of N2,000,000.00 (Two Million Naira) only as cost of this suit and payable to Lotus Advisory.
- h. Post Judgment interest at the rate of 10% per annum from the date of judgment until judgment sum is fully satisfied.

In support of the application is an 8 paragraph affidavit deposed to by Francis Chukwu, litigation secretary in the law firm engaged to represent the Plaintiff in this suit.

It is the deposition of the Plaintiff; that the provisions of the law mandate the screening of food handlers by the Department of Public Health of the Federal Capital Territory Administration on a periodic basis of six (6) months to protect foods and edibles consumed in the FCT.

That the Defendant had issued several demand notices and threats of enforcement against the Plaintiff on several occasions and in order to avoid the threats of enforcement by the Defendants, the Plaintiff had made several payments for the food handlers screening test to the Defendant through one Cure Hope Diagnostics Limited with account number 0810026485 and also the payment of the Food Handlers Certification directly to the Defendant through its Zenith Bank account number 1225155937. The Demand Notice dated 6<sup>th</sup> January, 2023 from the Defendant to the Plaintiff wherein instructions were given to the Plaintiff to make the said payments to the said account details are hereby exhibited and marked as Exhibit (A1).

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N110, 500 (One Hundred and Ten Thousand Five Hundred Naira) only with receipt number 2515 for the KFC Gwarinpa branch of the Plaintiff on the instructions of the Defendant to the account

details of one Cure Hope Diagnostics Ltd. for food handlers screening for seventeen (17) people.

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N130,500.00 (One Hundred and Thirty Thousand Five Hundred Naira) only for the KFC Asokoro Branch of the Plaintiff on the instructions of the Defendant to the account details of the Defendant for food handlers training.

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N97,500.00 (Ninety Seven Thousand Five Hundred Naira) only with receipt number 2512 for the KFC Wuse branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for fifteen (15) people.

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N97,500.00 (Ninety Seven Thousand Five Hundred Naira) only with receipt number 000929 on the instructions of the Defendant to the account details of the Defendant for food handlers training.

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N45,500.00 (Forty Five Thousand Five Hundred Naira) only with receipt number 000932 for the KFC NNPC Branch of the Plaintiff

on the instructions of the Defendant to the account details of the Defendant for food handlers training.

That on the 20<sup>th</sup> of January, 2023 the Plaintiff made a payment of N45,500.00 (Forty Five Thousand Five Hundred Naira) only with receipt number 2514 for the KFC NNPC branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for seven (7) persons.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N104,000.00 (One Hundred and Four Thousand Naira) only with receipt number 3336 for the KFC Jabi branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for sixteen (16) people.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N149,500.00 (One Hundred and Forty-Nine Thousand, Five Hundred Naira) only with receipt number 3334 for the KFC Asokoro branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for Twenty-Three (23) people.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N65,000.00 (Sixty-Five Thousand Naira) only with receipt number 3339 for the KFC NNPC branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for ten (10) people.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N117,000.00 (One Hundred and Seventeen Thousand Naira) only with receipt number 3337 for the KFC Gwarinpa branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for Eighteen (18) people.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N104,000.00 (One Hundred and Four Thousand Naira) only with receipt number 3338 for the KFC K-City branch on the instructions of the Defendant to the account details of one Cure Hope Diagnostics Ltd. for food handlers screening for Sixteen (16) people.

That on the 13<sup>th</sup> of June, 2023 the Plaintiff made a payment of N156,000.00 (One Hundred and Fifty-Six Thousand Naira) only with receipt number 3335 for the KFC Wuse branch on the instructions of the Defendant to the account details of one Cure

Hope Diagnostics Ltd for food handlers screening for Twenty-Four (24) people.

That the total amount paid by the Plaintiff to the Defendant for the certification, training and screening of its food handlers from the 20<sup>th</sup> of January, 2023 to the 13<sup>th</sup> of June, 2023 amount to N1,222,000.00 (One Million Two Hundred and Twenty Two Thousand Naira) Only. Copies of the receipts issued to the Plaintiff with respect to the said payments are hereby pleaded and marked as Exhibit "A2".

That on the 28<sup>th</sup> of December, 2023, the Plaintiff received a demand notice from the Department of Public Health in the office of the Federal Capital Territory Administration demanding that the Plaintiff applies for the Food handlers screening, training of staff, issuance of medical certificates of fitness and food safety hygiene audit from 1<sup>st</sup> January, 2024.

That the Plaintiff in compliance with the provisions of the extant laws ensured the payments of the requisite fees for the screening of its food handlers through the Department of Public Health of the Federal Capital Territory Administration following the notice of the Bi-annual Food Handlers Screening, Issuance of Medical Certificate of fitness, Training of Food handlers, Food safety and

Hygiene Audit in Food Service Establishment in the FCT dated the 28<sup>th</sup> of December, 2023. The said Notice from the Department of Public Health of the Federal Capital Territory Administration and payments made accordingly are hereby annexed and marked as Exhibit "A3".

Attached to the said notice from the Department of Public Health of the Federal Capital Territory Administration was a certified true copy of the judgment of this Honourable Court in view of the fact that the Department of Public Health was empowered by law to conduct and enforce the food handlers test. A certified true copy of the said judgment is hereby annexed and marked as Exhibit "A4".

That the High Court of the FCT, Coram Hon. Justice S.U Bature delivered a judgment on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR,** and determined the question of who is empowered to conduct screening and training of food handlers test and issue certificate of fitness to that effect and in page 11 of the said judgment held in favour of the Department of Health of the Federal Capital Territory Administration that:

***"At this juncture, a careful study of the state Ministry of Health mandate on National Policy on food safety and its implementation as well as the affidavit paragraphs quoted above will reveal that the issuance of medical certificates of fitness as well as conducting training and screening of food handlers test is within the purview of the 2<sup>nd</sup> Respondent. I so hold."***

That on the 12<sup>th</sup> of July, 2023, the High Court of the FCT, Coram Hon. Justice S.U Bature delivered a judgment in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR**, and determined the question of who the Applicant in the suit is to relate with conducting screening and training of food handlers test and issuance certificate of fitness to that effect and in page 12 of the said judgment held in favour of the Department of Health of the Federal Capital Territory Administration that:

**In that respect and without further ado, I hereby resolve the issue for determination in favour of the Applicant, and order as follows:**

***That the Applicant shall relate with the 2<sup>nd</sup> Respondent as the agency that will issue certificate of***

***medical fitness as well as train and screen its food handlers.***

That the Department of Public Health of the Federal Capital Territory Administration thereafter issued certificates of medical fitness for the food handlers of the Plaintiff. The said Certificates of Medical Fitness for the food handlers are hereby annexed and marked as Exhibit "A5".

That from the 11<sup>th</sup> day of January, 2024 to 21<sup>st</sup> March, 2024, some officers of the Defendant, rather than adhere to the order of the court in Suit No: **FCT/HC/CV/983/2022**, issued a notice of demand as well as abatement notices with respect to food and water related handling services at the Asokoro district branch office of the Applicant wherein threats of enforcement were issued against the Applicant in the event of non-compliance. Copies of the said demand notices and abatement notices by the Defendant is hereby annexed and marked as Exhibit "A6".

That regardless of the fact that staff of the Plaintiff notified the officers of the Defendant about the payments already made to the Department of Public Health of the 2 instead of following the order of the court Suit No: **FCT/HC/CV/983/2022** the Defendant did not withdraw the said demand notice.

That on the 19<sup>th</sup> of February, 2024, my principal Mr. Ogenna Alex Ibe, Esq. alongside one Mr. Simon Ewache a manager in the Plaintiff's organization paid a visit to the office of the Defendant where they were informed by a staff in the compliance department of the Defendant that the Plaintiff either complies or face the consequences of non-compliance therein, regardless of the reminder as to the subsisting judgment of this Honourable Court.

That the Plaintiff through its managers approached the office of Lotus Advisory wherein the payment of N2,000,000.00 (Two Million Naira) was paid as the cost of handling the suit. A copy of the receipt of payment with respect to this suit is hereby annexed and marked as Exhibit "A19".

That it is in the interest of justice to grant to the Plaintiff all the reliefs sought in this suit.

In line with law and procedure, learned counsel for the Plaintiff filed written address wherein sole issue was distilled for determination to wit;

**Whether the Plaintiff has made out a case for the grant of the reliefs sought.**

It is the submission of learned counsel, that the use of originating summons in adjudication of matters in our legal jurisprudence is intended to enable simple matters be settled by the Court without the expense of bringing an action in the usual way, and therefore, it is not to enable the Courts determine matters which involves contentious questions. ***NATIONAL BANK OF NIGERIA LTD. & ANOR VS. ALAKIJA & ANOR. (1978) LPELR - 1949 9 SC);***

***NUTTEN VS. HOLLAND 1894, 3 Ch. 408;***

***IN REGILES REAL AND PERSON COY.VS. MICHELL (1890) 43 Ch. D. 391 were cited.***

Learned counsel submits, that where the dispute is contentious and as such cannot be determined by an affidavit evidence, then The appropriate form of proceedings, therefore, are proceedings by writ in which what is alleged by the parties will be clearly defined in the pleadings and the parties can, if they wish, seek better and further particulars of the matters alleged by their opponents. ***JEV & ANOR VS. IYORTYOM & ORS. (2014) LPELR - 23000 (SC);***

***DOHERTY VS. DOHERTY 1967, NMLR 241 were cited.***

It is the submission of learned counsel that the Originating Summons can be used in matters that involve interpretation of documents. Statutes, contract etc., and it is by no means a procedure to enlarge the jurisdiction of the Court. The striking aspect of suits commenced by Originating Summons is that there are no pleadings or witnesses, and so proceedings are simple and concluded quickly. ***EZE VS. UNIJOS (2017) LPELR - 42345 (SC);***

***PAM VS. MOHAMMED (2008) 5-6 SC (Pt. 1) Page 83;***

***OSUNBADE VS. OYEWUNMI (2007) 4-5 SC Page 98 were cited.***

Learned counsel contends, that Rules of Court are made for the smooth administration of justice and are intended to advance the course of justice and when Rules of Court has clearly and unambiguously provided for a particular act or a situation, the Court has a duty to enforce the act or situation as in this instant case.

Counsel submits that a Rule of Court allows for commencement of an action by Originating Summons, a party can successfully

approach the Court using that particular mode in order to obtain justice.

The apex Court held in: ***INAKOJU VS. ADELEKE (2007) 2 M.J.S.C. Page 1 At Page 45*** that:

***"Originating Summons is used whenever the law so provides and it is used when the sole or principal question in issue is or likely to be one of the construction of a written law or any instrument or of any deed, will, contract or other document or other question of law or in circumstances where there is not likely to be dispute to the facts."***

Counsel submits, that having stated the import and essence of originating summons citing relevant authorities, it is now necessary to examine the instant case in the light of the authorities.

It is also the submission of learned counsel, that the above stated provisions, the Applicant humbly posits that the averments contained in its affidavit in support of this application has shown substantial compliance with the said Rules of this Honourable

Court that the Applicant has no interest in the subject matter and has not colluded with any of the Respondent.

Learned counsel submits, that the Applicant posits that in order to protect foods and edible consumed in the Federal Capital Territory, it is trite and mandatory for the screening of food handlers every six (6) months and the Applicant in compliance with same has always ensured the screening and certification of its food handlers accordingly.

Learned counsel further submits, that the extant provisions of Section 4. Part vii of the National Health Act 2014 as well as Section 2 of the 3<sup>rd</sup> Schedule to the FCT (Establishment of the Functionaries) and Departments and Ministry of the Federal Capital Territory (Dissolution) Order No/1 of 2004 mandates of the Environmental and Occupational Health Division of the Public Health Department to carry out the above mentioned functions.

Counsel contends, that the National Policy on food safety and its Implementation Strategy 2014 clearly provides specific roles for the state Ministry of Health and Local Government (inclusive of Area Councils in the FCT) by empowering the Department of Public Health of the FCTA to ensure the certification, screening and training of the food handlers in the FCT.

Learned counsel submits, that the law was reiterated by this Honourable Court in per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.** wherein this Honourable Court expressly held that it is within the purview of the Department of Public Health and Human Services of the Federal Capital Territory Administration to issue medical certificates of fitness and to conduct training and the screening of food handlers

It is the submission of counsel, that in page 11 of the said judgment referred to above, this Honourable Court determined the question of who is empowered to conduct screening and training of food handlers test and issue certificate of fitness to that effect and in page 11 of the said judgment held in favour of the Department of Health of the Federal Capital Territory Administration that:

***"At this Juncture, a careful study of the state Ministry of Health mandate on National Policy on food safely and its Implementation as well as the Affidavit paragraphs quoted above will reveal that the issuance of medical certificates of fitness as well as***

***conducting training and screening of food handlers test is within the purview of the 2<sup>nd</sup> Respondent. I so hold."***

It is the submission of counsel, that page 12 of the said judgment referred to above, this Honourable Court determined the question of who the Applicant in the suit is to relate with conducting screening and training of food handlers test and issuance certificate of fitness to that effect and in page 12 of the said judgment held in favour of the Department of Health of the Federal Capital Territory Administration that:

***In that respect and without further ado, I hereby resolve the Issue for determination in favour of the Applicant, and order as follows:***

***That the Applicant shall relate with the 2<sup>nd</sup> Respondent as the agency that will issue certificate of medical fitness as well as train and screen its food handlers***

***However, regardless of the judgment of this Honourable Court, the Defendant has continued in reckless abandon, to issue several demand notices and abatement notice to***

***the Plaintiff and others in the business of food production in the FCT.***

Learned counsel further submits, that the Defendant cannot be seen to be in flagrant disregard and disobedience of the judgment of this Honourable Court which held that it is not within the confines of the Defendant's authority to issue demand notices and abatement notice with respect to the issuance of medical fitness, training and screening of food handlers in the FCT-Abuja.

Counsel also submits that, the actions of the Defendant by this Honourable Court will be to invite chaos and anarchy to the system. It is therefore submitted that the Defendant has no power to disobey Order of Court in the exercise of their administrative duties.

It is the submission of learned counsel, that the said action of the Defendant can clearly be seen to be a grave violation of the order of this Honourable Court to the extent that this Honourable Court had declared that it was within the purview of the Department of Public Health of the FCTA to demand for payment with respect to issuance of medical certificate of fitness, training and screening of food handlers, but the Defendant went ahead in grave violation of

the order of this Honourable Court to issue demand notices and abatement notice to the Plaintiff.

Counsel further submits, that the said actions of the Defendant amount to trespass in pasting the said demand notices and abatement notices therein.

Learned counsel contends, that generally, trespass being a civil wrong recognized under our laws as a tort of unauthorized Interference with the possession of land, inclusive of house or any fixture on the land by a person who cannot show nor have any better right or title to the land in issue.

Counsel also submits, that Trespass can be said to be an unauthorized disturbance or interference with the exclusive possession of land by a person, party or agents who has the right to retain it and to undisturbance enjoyment of it by another person who has no better title or right to possession or title of the property. Put in another way, it is an unjustified interference or intrusion with possession of land, building or fixtures on the land.

***YUSUF VS. AKINDIPE (2000) 8 NWLR (Pt. 669) Page 376;***

***OGUNLEYE VS. ADEWUNMI (1988) 5 NWLR (Pt. 93) 215;***

***DAVID OYE OLAGBEMIRO VS. OBA OLADUNNI  
AJAGUNGBADE III AND ANOR (1990) NWLR (Pt. 136) 37  
were cited.***

In conclusion, learned counsel submits, that in view of the extant provisions of the law as well as in view of the judgment of this Honourable Court, the payments made to the Defendant upon issuance of several demand notices were made in error accordingly.

Learned counsel urge the Honourable Court to grant all the reliefs sought in this application.

On their part, Complainant/Respondent filed 16 paragraph counter affidavit in opposition to Claimant/Applicant originating summons duly deposed to by one San James Danjuma, a staff of the Complainant/Respondent in this suit.

It is the deposition of the counsel that, the Defendant was not represented in Suit No: **FCT/HC/CV/983** as whomsoever the Plaintiff in the above mentioned suit served with the Court Processes on behalf of the Defendant did not bring it to its notice, hence the Defendant was not aware of the suit and was not also

aware of the judgment until the said judgment was attached to the process served on them in this suit.

That the Defendant has appealed against the said judgment. A copy of Notice of Appeal against the judgment is hereby attached as Exhibit "J1".

That paragraphs 5(xxi) of the Plaintiff's Affidavit in support of their originating summons is true only to the extent that the Defendant became aware of Exhibit "A5" in this suit that it was served with the court processes in this suit as they were not represented at all in Suit No. **FCT/HC/CV/983**. That the Defendant is also empowered by its Bye- Law to issue certificates of fitness for food handlers and others.

That paragraphs 5(xxii) of the Plaintiff's Affidavit in support of their originating summons is true only to the extent that the Environmental Health Officials served notice of Demand and abatement with respect to food and water related handling services to the Plaintiff. That there was no evidence that the Plaintiff had complied with relevant provisions of the Regulations that is National Environmental Health Practice Regulation 2016, and AMAC Bye-Law No 17.(2012) as Amended by obtaining the

requisite certificates as at the time the Environmental Health Officials came for Inspection.

That the Defendant is not aware of the judgment in Suit No **FCT/HC/CV/983/2022**. That after service of notice and the said abatement letter, the Defendant did not and has not threatened the Plaintiff in any manner whatsoever.

That paragraphs 5(xiii) and (xxiv) of the Plaintiff's Affidavit in support of their originating summons are false that the Defendant is not aware of the judgment in Suit No: **FCT/HC/CV/983/2022**. That the Defendant became aware of the said judgment when the Plaintiff served it with court processes of this suit.

That the Defendant is not in a position to deny or ascertain paragraph 6 of the Plaintiff's affidavit in support of their originating summons.

That it will be in the interest of justice to refuse this application.

In line with law and procedure, written address was filed wherein lone issue was formulated for determination to wit;

**Whether by the express provisions of the 1999 constitution of the Federal Republic of Nigeria and the**

**instant Abuja Municipal Area Council Bye-Law No: 17 (2012) and non service of the judgment per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: FCT/HC/CV/983/2022 between DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR, the Plaintiff is entitled to the reliefs sought.**

It is the submission of learned counsel, that the Plaintiff is not entitled to any of the reliefs sought.

Learned counsel submits, that the Defendant is empowered under Section 1 (k) (iv) of the 4<sup>th</sup> schedule of the 1999 constitution, to control and regulate restaurants, bakeries and other places for sale of food to the public thus;

1. The main functions of a local government council are as follows:

(k) Control and regulation of:

(iv) Restaurants, bakeries and other places for sale of food to the public,

Further to the 4<sup>th</sup> schedule of the 1999 Constitution Section 2(d) provides that:

2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters:

(d) Such other functions as may be conferred on a local government council by the House of Assembly of the State.

It is also the submission of counsel, that the 1999 Constitution of the Federal Republic of Nigeria (as amended) which is the grundnorm is supreme over and above every other law in the land. Counsel refers the court to Section 1(3) of the 1999 Constitution which provides that:

(1.) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

(3) If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

See also the case of ***CADBURY NIGERIA PLC. VS. FEDERAL BOARD OF INLAND REVENUE (2010) 2 NWLR (Pt. 1179) 561*** where the Court of Appeal reiterate the supremacy of the constitution and held that, section 20(1) of VAT Act is invalid in

view of its inconsistency with section 251 of the 1999 Constitution by virtue of section 1(3) of the 1999 Constitution.

Counsel further submits that the provision of section 1 (k) (iv) and 2 (d) of 4<sup>th</sup> schedule of the 1999 Constitution that Abuja Municipal Area Council Bye-Law No. 17 (2012) as amended was made which empowered the Defendant to control and regulate, restaurants, bakeries and other places for sale of food to the public by issuing certificate of fitness and other relevant licenses to the owner occupiers.

Section 7(1) of the 1999 Constitution established all Local Government Councils in Nigeria which is inclusive of the Defendant and they derived their main functions from the provisions of paragraph 1(k)(iv).

Part 1, First Schedule of the Constitution listed all the 36 states of the Federation and their Local Government Areas, while Part 11 of the Constitution delineated its six Area Councils as follows:

- a. Abaji;
- b. Abuja Municipal
- c. Bwari

4. Gwagwalada
5. Kuje
6. Kwali

Learned counsel submits, that the constitutionally guaranteed functions that the Abuja Municipal Area Council (AMAC) enacted the above named Bye-Law No 17(2012) as amended which empowers it to collect payments on control and regulation of food premises.

Learned counsel submits that the Plaintiff in its argument centered heavily on the judgment per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: FCT/HC/CV/983/2022 Between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.** which the Defendant was not aware of, but they refused to produce any evidence of compliance to the Health Officer who was at their premises for inspection in contravention to section 3(b) above which necessitated the issuance of the Demand Notice and the abatement Notice on them.

Counsel further submits, that the above regulation provides that the Plaintiff should show evidence of compliance to the Health

Officer that came for inspection but Plaintiff resorted to suit against the Defendant on the ground that there was threats of enforcement by the Defendant. It is trite that "He who alleges must prove", from the entire depositions of the Plaintiff, there are no facts to show that they produced any evidence of compliance from any authority as at the time of inspection by the health officer as provided for by section 3(b) of the AMAC Bye- Law. The Plaintiff also did not serve nor show the said Judgment in Suit No: FCT/HC/CV/983/2022 to the Defendant since the said judgment was served on him by the Department of Public Health in the office of Federal Capital Territory Administration (FCTA) as conversed in paragraph 3.2.10 of their written address, having gone through the judgment and saw that the Defendant was never represented in the suit and may not be aware of the judgment.

Learned counsel submits, that there is also no proof that the Defendant abated the Plaintiff from operating its businesses uptill date that would have necessitated this action.

Section 13 of Abuja Municipal Area Council (AMAC) of the above named Bye-Law No 17(2012) as amended empowers an Environmental Health Officer to;

- a. Inspect any regulated premises at all reasonable time.
- b. Carry out inspection of the regulated premises, to prevent, discourage and disallow food displayed or kept in an unsanitary or unhygienic environment.
- c. Seize or confiscate any unwholesome food items.

Learned counsel further submits, that by the above provisions the Health officer from the office of the Defendant is empowered to enter any regulated premises for the purposes of compliance and counsel urge the court to so hold.

Sections 14 of Abuja Municipal Area Council (AMAC) of the Bye-Law No 17(2012) as amended provides for medical certificate of fitness for all food handlers in establishments after carrying out medical examination.

The above also buttresses that the Defendant are saddled with the responsibility of carrying out medical examination and issuing certificate of fitness by their Environmental Health officers and counsel urge the court to so hold.

It is the submission of counsel, that rules of court must be obeyed. "An Order of Court whether valid or not must be obeyed until it is set aside". ***RT. HON. MICHAEL BALONWU AND***

***ORS. VS. GOVERNOR OF ANAMBRA STATE & ORS. (2007)  
5 NWLR (Pt. 1028) Page 488 at 564 565 Paragraphs B – G  
was cited***

In conclusion, learned counsel submits that the Plaintiff made heavy weather on section 4 of the National Health Act 2014, section 2 of the 3<sup>rd</sup> Schedule to the FCT (Establishment of the Functionaries) and Departments and Ministry of the Federal Capital Territory (Dissolution) Order No. 1 of 2004 as well as part vii, the National Policy on food safety and its implementation strategy and Resolution (xii) of the 61<sup>st</sup> National Council on Health which is subject to the Constitution. It is in furtherance of its constitutional responsibility that AMAC Bye Law No 17 (2012) was enacted, and as such it cannot be said that AMAC lacked in capacity to perform its constitutionally preserved functions and as such the National Health Act 2014, or any other regulation cannot hijack such function under the hiding of their regulations.

That the Defendant was represented in Suit No FCT/HC/CV/983/2022, the opinion and the Decision of the Court may have been different. The said Judgment has been appealed upon as deposed to in their Counter affidavit.

## **COURT:**

I have read and assimilated the arguments of Plaintiff on one hand, and the reaction of the Defendant on the other hand.

It is instructive to state from the onset that the principal reliefs sought by the Plaintiff against the Defendants are declaratory in nature. The law is founded in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

Indeed, declaratory relief is one that seeks the pronouncement of the court as to the status of a named matter, things or situation, ***NWAGU VS. FADIPE (2012) LPELR 7966 COURT OF APPEAL.***

By the endorsement and claim of Claimant, it seeks a directive from this Honourable court on which agency or authority the Claimant/Applicant should liaise with, pay relevant fees or charges in respect of screening a training of its food handlers.

Having read and perused the originating summons, reliefs sought and Counter Affidavit in opposition...along with all annexures

attached therewith, this court has formulated the following issue for the determination of this suit.

Whether the Applicant has made out a case for the grant of the reliefs sought.

Judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence ***MOTUNWASE VS. SORUNGBE (1998) NWLR (Pt. 92) 90.***

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading that he is entitled.

The imperativeness of this arises from the facts that the court has discretion to grant or refuse to grant such declaration. ***SAMESI VS. IGBE & ORS. (2011) LPELR 4412.***

The forgone authority remains good law and binds this court as well.

The gamut of the Plaintiff's case before this court is, that the Plaintiff in this suit is into the business of food production as well as other related businesses in the Federal Capital Territory and other states of the Federation.

The extant provisions of the law ensure the periodic payment for the certification, training and screening of food handlers within the FCT, Abuja to the Department of Public Health of the Federal Capital Development Administration. However, the Plaintiff had been inundated with several demand notices from the Defendant as well as from the Department of Public Health of the Federal Capital Territory Administration thereby causing confusion as to the rightful authority to receive such payment with respect to the certification, training and screening of the food handlers in the FCT.

A suit was instituted in Suit No: FCT/HC/CV/938 between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.** via an originating interpleader summons wherein this Honourable Court was called upon to determine the rightful authority to make such demands with respect to the certification, screening and training of the food handlers in the FCT-Abuja.

On the 12<sup>th</sup> of July, 2023, this Honourable Court per Hon. Justice S.U Bature delivered a judgment in Suit No: **FCT/HC/CV/983/2022** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL**

**& 1OR.** and determined the question of who is empowered to conduct screening and training of food handlers test and issue certificate of fitness to that effect and in page 11 of the said judgment held in favour of the Department of Health of the Federal Capital Territory Administration that:

***"At this juncture, a careful study of the state Ministry of Health mandate on National Policy on food safety and its implementation as well as the Affidavit paragraphs quoted above will reveal that the issuance of medical certificates of fitness as well as conducting training and screening of food handlers test is within the purview of the 2<sup>nd</sup> Respondent. I so hold."***

Despite the Judgment of this Honourable Court, the Defendant issued further demand notices and abatement notices to the Plaintiff regardless and in total disobedience to the judgment of this Honourable Court and the extant provisions of the law.

The Plaintiff had, prior to the said judgment, made several payments to the Defendant in error.

Upon further demands and abatement notices, the Plaintiff had informed the Defendant of the fact that payments were already made to the Department of Public Health of the FCTA but the Defendant still insisted on the payments with threats of enforcement if the demands were not complied with.

In contention; Defendant states, that they were not represented in Suit No: **FCT/HC/CV/983/2022** as whomsoever the Plaintiff in the above mentioned suit served with the Court Processes on behalf of the Defendant did not bring it to its notice, hence the Defendant was not aware of the suit and was not also aware of the judgment until the said judgment was attached to the process served on them in this suit.

That they (Defendant) have appealed against the said judgment. A copy of Notice of Appeal against the judgment is attached as Exhibit "J1".

Moreso, the Defendant is also empowered by its Bye- Law to issue certificates of fitness for food handlers and others. Environmental Health Officials served notice of Demand and abatement with respect to food and water related handling services to the Plaintiff. That there was no evidence that the Plaintiff had complied with relevant provisions of the Regulations

that is National Environmental Health Practice Regulation 2016, and AMAC Bye-Law No 17.(2012) as Amended by obtaining the requisite certificates as at the time the Environmental Health Officials came for Inspection.

From the above facts, it is clearly not in dispute that the Plaintiff is mandated by law to ensure the screening of its food handlers every six months in order to protect foods and edibles consumed in FCT Abuja.

Now the question that comes to mind is who is empowered by the law to conduct training and screening of food handlers in FCT?

I shall beam my searchlight on the provisions of the State Ministry of Health mandate on National Policy on food safety and its implementation strategy 2014.

Under the Mandates of Ministry of Health, duties of States Ministry of Health are provided for as follows:

- “i. Transform food hygiene and safety policies into programmes of activities for implementation in the states.***

- ii. ***Coordinate and supervise all activities on food hygiene and safety within the LGA(s) and other sectors in the state.***
- iii. ***Provide Technical support to the LGA(s) in the Development and Implementation of food hygiene and safety programmes, inspect and register all food premises and hospitality establishments within the state.***
- iv. ***Act as liaison between the Federal and local government on food hygiene and safety surveillance reporting and information system.***
- v. ***Conduct public health surveillance on the food premises under their jurisdiction.***
- vi. ***Investigate food hygiene and safety complaints in food establishments.***
- vii. ***Conduct by annual medical examination of food handlers and issue medical certificate of fitness accordingly."***

Certainly speaking, a perusal of the State Ministry of Health mandate on National Policy on food safety and its implementation

as well as the Affidavit in support of the application shows that the issuance of medical certificates of fitness as well as conducting training and screening of food handlers is clearly not within the purview of Defendant.

Consequently, it is my humble opinion that from the totality of the evidence before this court, the Plaintiff has successfully made out a case to be entitled to the grant of the reliefs.

Accordingly, I hereby enter judgement in favour of Plaintiff as follows:

- a. A Declaration that the issuance of demand notices and abatement notice to the Plaintiff by the Defendant with respect to issuance of medical certificates of fitness and to conducting, training and the screening of food handlers of the Applicant is in violation of the extant provisions of the law and a grave disobedience to the judgment of this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.** is hereby granted.

- b. A Declaration that the receipt of payments made by the Plaintiff to the Defendant with respect to the issuance of demand notices and abatement notice to the Applicant by the Defendant for the issuance of medical certificates of fitness and to conduct, training and the screening of food handlers of the Plaintiff is in violation of the extant provisions of the law and such payments were improper and made in error by the Plaintiff to the Defendant is hereby granted.
- c. A Declaration that the continuous issuance of demand notices and abatement notices by the Defendant to the Plaintiff in view of the extant provisions of the law and the judgment of this Honourable Court per Hon. Justice S.U Bature delivered on the 12<sup>th</sup> day of July, 2023 in Suit No: **FCT/HC/CV/983/2022** between **DUNES INVESTMENT & GLOBAL SERVICES VS. ABUJA MUNICIPAL AREA COUNCIL & 1OR.** amounts to an act of trespass against the Plaintiff is hereby granted.
- d. An Order of Perpetual Injunction restraining the Defendant from issuing any further demand notices or abatement notices to the Applicant or any other persons with respect to

the issuance of medical certificate of fitness and to conduct training and the screening of food handlers in the Federal Capital Territory, Abuja is hereby granted.

- e. An Order of this Honourable Court compelling the Defendant to refund the sum of **N1,222,000.00) (One Million, Two Hundred and Twenty -Two Thousand Naira)** only to the Plaintiff as payment made in error by the Plaintiff to the Defendant in issuance of demand notices with respect to medical certificate of fitness and for conducting the food handlers test from the 20<sup>th</sup> of January, 2023 to 13<sup>th</sup> of June, 2023 is hereby granted.

Relief "F" is refused and dismissed.

Cost of this action assessed at N500,000.00.

Post judgment interest at the rate of 10% per annum is granted until Judgment sum is fully paid.

***Justice Y. Halilu***  
***Hon. Judge***  
***14<sup>th</sup> February, 2025***

**APPEARANCES**

**O.C.A Ibe, Esq.** – for the Applicant.

Defendant not in court.