

IN THE HIGH COURT OF JUSTICE OF THE F. C. T.
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON THURSDAY, THE 15TH DAY OF FEBRUARY, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2606/2023

BETWEEN:

MR. HARUNA IDRIS

**(The original Donor/Allotee, suing through
his authorised present attorney, Donee/Agent
GOLDBAM POWER GAS NIG. LTD)**

CLAIMANT

AND:

- 1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY (FCT)**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)**
- 3. ABUJA METROPOLITAN MANAGEEMNT COUNCIL (AMMC)**
- 4. DIRECTOR, DEPARTMENT OF DEVELOPMENT CONTROL**

DEFENDANTS

JUDGMENT

By an Originating Summons dated and filed on the 08th day of March, 2023, the Claimant instituted this action seeking the determination of the following questions:-

- 1. Whether haven gotten the necessary approvals from Abuja Metropolitan Management Council, Federal Fire Service and Nigeria Midstream and Downstream Petroleum Regulatory Authority, it is not wrong and unlawful for the Defendants to be harassing and intimidating the Claimants by trying to stop the Claimant's gas refilling business operations by pasting stop work notice at the gas refilling station premises and taking any other action(s) to stop the Claimant's gas business operation?*
- 2. Whether it is not against the rules of law and equity for the Defendants to take any step(s) to stop the Claimant from the gas refilling station business*

operations, the Defendants haven given approval and the Claimant upon the approval have finished the construction of the gas refilling station, ready to commence business and the Defendants now want to unlawfully stop the Claimants from operating the gas station business?

3. *Whether the purported Stop Work Notice issued by the Defendants against the Claimant without fair hearing is not wrongful, invalid, null and void and of no effect and same liable to be set aside by the Honourable Court?*
4. *Whether in the circumstance of this case, the unlawful, mischievous, unwanted and unnecessary harassment, intimidation and threat of the Claimant by the Defendants, did not entitle the Claimant to payment of damages, mindful of the legal principle where there is a legal wrong there is a remedy?*

Upon a positive determination of the above questions, the Claimant seeks the following reliefs:-

1. *A Declaration that the Claimant has gotten approvals from the Defendants through Abuja Metropolitan Management Council (Department of Development Control), Federal Fire Service and Nigerian Midstream and Downstream Petroleum Regulatory Authority, it is wrongful and unlawful for the 3rd Defendant to be harassing, intimidating and threatening the Claimant by pasting the Stop Work Notice and taking any other action(s) whatsoever to stop the Claimant from the gas station refilling business.*
2. *A Declaration that it is against the rules of law and equity for the Claimant to have gotten the approval for gas operation and the Defendants waited and*

watched the Claimant finished the gas station/business construction, and ready for the commencement of business, only for the Defendants to come and be harassing and intimidating the Claimant to stop the gas refilling business operation.

3. *A Declaration that the purported Stop Work Notice, issued by the 3rd and 4th Defendants Abuja Metropolitan Management Council (Department of Development Control) against the Claimant dated 1/2/2023 is wrongful, invalid, null and void, of no effect and liable to be set aside.*
4. *An Order of Court, setting aside the Stop Work Notice from the 3rd Defendant, dated 1/2/2023 for being wrongful, invalid, null and void and of no effect.*
5. *An Order of perpetual injunction, restraining the 1st, 2nd, 3rd and 4th Defendants whether by themselves, their agents, privies, servants or however described from further harassing, intimidating, threatening or taking any step(s) whatsoever, to restrain the Claimant from commencement/operation of the gas refilling station business.*
6. *An Order for award of hundred million (sic)(~~₦~~100,000,000.00) jointly and or severally against the Defendants as general damages for intimidation, harassment and threatening of the claimant by the Defendants.*
7. *Cost of this action.*
8. *Any other Order(s) the Honourable Court can make in the circumstances of this case.*

The Originating Summons is supported by a 25-paragraph affidavit which was deposed to by Ugwa Chukwuma Onyeka who described himself therein as a director and alter ego of Goldbam Power Gas Nig. Ltd., the lawful attorney of the Claimant. Annexed to the affidavit are a number of documentary exhibits. These are the conveyance of provisional approval issued to the Claimant herein by the Abuja Municipal Area Council dated the 14th of June, 1995 in respect of Plot No. 126 situate at Kubwa Commercial Layout measuring about 2250 square meters, the survey plan in respect of the same land, an irrevocable power of attorney donated to Chief Nnamdi Martin Umeadi by the Claimant herein over the same property and executed on the 10th of November, 2008, an irrevocable power of attorney donated by Chief Nnamdi Martin Umeadi to Goldbam Power Gas Ltd on the 29th of July, 2022 in respect of the same property, a deed of assignment executed between Chief Nnamdi Martin Umeadi and Goldbam Power Gas Ltd on the 29th of July, 2022 over the same property, a payment receipt issued by Bwari Area Council in respect of payment made for the form and processing fees in respect of the property, a payment receipt issued by Bwari Area Council in respect of payment made for the certificate of occupancy in respect of the same property, the acknowledgement of the application for the regularisation of land titles and documents of FCT Area Councils from the Federal Capital Territory Administration, a conveyance of building plan approval from the Abuja Metropolitan Management Council in respect of the same property, a site inspection report from the FCT Fire Service dated the 7th of September, 2022, an approval to construct liquefied petroleum gas (LPG) refilling plant from the Nigerian Midstream and Downstream Petroleum Regulatory Authority dated the 23rd of December, 2022, a Stop Work

Notice from the Abuja Metropolitan Management Council issued on the 1st of February, 2023, and a letter from the Claimant's solicitors to the Director, Department of Development Control dated the 21st of February, 2023. These documentary exhibits were respectively marked as **Exhibits A1, A2, B, C, C1, D, D1, F, G, H, I, J and K**. The Claimant also filed a Written Address in support of the Originating Summons.

Upon being served with the originating processes on the 18th of April, 2023, the Defendants on the 16th of May, 2023 filed their joint Memorandum of Conditional Appearance and Counter-Affidavit in opposition to the Originating Summons. The Counter-Affidavit, comprising five paragraphs, was deposed to by Saidu Wodi, a Litigation Assistant in the Litigation Department of the Legal Services Secretariat of the Defendants. A Written Address accompanies the Counter-Affidavit. No document was attached to the Counter-Affidavit.

Exercising his right of reply upon being served with the Defendants' processes on the 7th of June, 2023, the Claimant filed, on the 14th of June, 2023, his Further Affidavit and a Reply on Point of Law.

This case came up for the first time in this Court on the 25th of October, 2023 for mention. Parties were represented by their Counsel. The Court thereupon adjourned the suit to the 30th of November, 2023 for hearing. On the 30th of November, 2023, the parties adopted their respective processes and the Court thereupon adjourned for Judgment.

The crux of the Claimant's case is that it was the lawful attorney of one Haruna Idris who was the original allottee of the property particularly described as Plot 126 situate and located at Kubwa Commercial Layout, Abuja measuring about 2250 square meters. It annexed documents to show how the title to the property devolved from the original allottee to it. It further stated through the deponent how it proceeded to apply for and obtained approvals from the relevant agencies in relation to the business of liquefied petroleum gas refill plant it wanted to set up on the property.

The deponent, who is also the alter-ego of the Claimant, averred that the Claimant was shocked when the 3rd Defendant invaded the property, harassed and intimidated its workers and placed a Stop Work Notice on the property on the 1st of February, 2023. He swore that it retained the services of a law firm who issued a letter to the 3rd and 4th Defendants urging them to rescind the Stop Work Notice, adding that the letter was ignored by the said persons.

In the Written Address in support of the Originating Summons, learned Counsel formulated four issues which flowed from the questions the Claimant has distilled for determination in this Originating Summons. These are:-

1. *Whether haven gotten the necessary approvals from Abuja Metropolitan Management Council, Federal Fire Service and Nigeria Midstream and Downstream Petroleum Regulatory Authority, it is not wrong and unlawful for the Defendants to be harassing and intimidating the Claimants by trying to stop the Claimant's gas refilling business operations by pasting stop work*

- notice at the gas refilling station premises and taking any other action(s) to stop the Claimant's gas business operation?*
2. *Whether it is not against the rules of law and equity for the Defendants to take any step(s) to stop the Claimant from the gas refilling station business operations, the Defendants haven given approval and the Claimant upon the approval have finished the construction of the gas refilling station, ready to commence business and the Defendants now want to unlawfully stop the Claimants from operating the gas station business?*
 3. *Whether the purported Stop Work Notice issued by the Defendants against the Claimant without fair hearing is not wrongful, invalid, null and void and of no effect and same liable to be set aside by the Honourable Court?*
 4. *Whether in the circumstance of this case, the unlawful, mischievous, unwanted and unnecessary harassment, intimidation and threat of the Claimant by the Defendants, did not entitle the Claimant to payment of damages, mindful of the legal principle where there is a legal wrong there is a remedy?*

Arguing Issues One and Two jointly, learned Counsel submitted that the Defendants, having granted the Claimant the requisite approvals for the business it proposed to set up, had conceded to the Claimant setting up the business as aforesaid. To do otherwise, Counsel maintained, would equate to a party approbating and reprobating at the same time, adding that such a person would be estopped from denying the action or its repercussions thereof. He cited sections 20 and 169 of the Evidence Act, 2011 and the cases of ***Skyebank Plc v. Akinpelu***

(2010) 8 NWLR (Pt. 1198) 179 at 198, para E, Ude v. Osuji (1998) 13 NWLR (Pt. 580) 1 and Oyeyemi v. Commissioner for Local Government & Others (1992) 2 NWLR (Pt. 226) 861 in support of his submissions.

In his arguments on the third issue, Counsel submitted that the Defendants failed to adhere to the tenets of natural hearing when it proceeded to issue the Stop Work Notice. He added that such administrative procedure, having failed the test of fair hearing, should not stand. He relied on **Oyeyemi v. Commissioner for Local Government & Others (1992) supra and Ojo v. Nigeria Custom Service Board (2018) LPELR-4410 CA.**

On the last issue, Counsel submitted that the Claimant is entitled to the reliefs sought, having suffered wrongly at the instance of the Defendants. He relied on the Latin maxim *ubi jus ibi remedium* to argue that the Claimant is entitled to the reliefs it seeks herein. He also relied on the case of **Adepoju v. Afonja (1994) 8 NWLR (Pt. 363) 376 at 452, paras A-B** in urging the Court to answer the questions formulated in the affirmative and to grant the reliefs sought in this suit.

In their defence, the Defendants denied the averments contained in paragraphs 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the affidavit in support of the Originating Summons and went on to assert that the lawful attorney was a person unknown to law and therefore lacked the capacity to sue and be sued. The deponent, Saidu Wodi, further contended that the suit was incompetent as it ought to have been commenced by way of Writ of Summons, adding that the Claimant had no legal title over the property. It added that the

documents annexed to the affidavit in support of the suit as roots of title were unknown, as the 1st Defendant never allocated the said land. He also added that the purported approval never came from them. The Defendants accused the Claimant of forging the document attached as **Exhibit G** and invited the Court to compare the said document with **Exhibit J**. They therefore urged the Court to discountenance the Claimant's claim for ₦100,000,000.00 (One Hundred Million Naira) damages as it has not shown its entitlement to same.

In his written address in support of the Counter-Affidavit, Counsel for the Defendants formulated two issues for determination: “(1) *Whether in the absence of any grant or allocation to the Claimant by the 1st Defendant, the Claimant can claim any title to Plot No. 126 at Kubwa Commercial Layout now Cadastral Zone 07-07 Kubwa Commercial Layout Abuja; and (2) Whether the prerogative Originating Summons can be employed to vest this Honourable Court with the jurisdiction to entertain a purely hostile land matter which requires calling of witnesses and tendering of documents.*”

In his argument on the first issue, learned Counsel submitted that ownership being vested in the Federal Government of Nigeria who held same in trust for the people of Nigeria, only the 1st Defendant on behalf of the President could allocate any land within the Federal Capital Territory, Abuja. After referencing paragraphs 5, 6, 7, 8, 9, 10 and 11 of the affidavit in support of the Originating Summons, Counsel cited 97 of the Constitution of the Federal Republic of Nigeria, 1999, section 51(2) of the Land Use Act, section 1(3) of the Federal Capital Territory Act, and the case of ***Madu v. Madu (2008) 6 NWLR (Pt. 1083) 296 at 324-325, paras H-C*** to support

his argument that only the Minister of the Federal Capital Territory can validly allocate land to any person. He urged the Court to discountenance **Exhibits A1, A2, D and D1** attached by the Claimant to his affidavit in support of his originating process. He further submitted that **Exhibit J** was validly issued since the Claimant does not have any valid title to the land in question.

In his submissions on the second issue, Counsel referred to Order 2 Rule 3(1) and (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and the case of **Director SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 314** to contend that the mode of commencement adopted by the Claimant in this suit was inappropriate. He drew the attention of the Court to certain paragraphs of the affidavit in support of the Originating Summons and asserted that those paragraphs contained contentious depositions that ought to be determined *via* Writ of Summons. He relied on **Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423 at 571-572**, **UNILAG v. M. I. Aigoro (1991) 3 NWLR (Pt. 179) 376 at 388-384, paras G-A** and **Alamiyeseigha v. Igboniwari (No. 2) (2007) 7 NWLR (Pt. 1034) 524 at 589**.

He further submitted that **Exhibits A and A1** could be used to prove a point in this case only through *viva voce* evidence, adding that the Court's duty is to determine the contending rights of the parties before it on the basis of what they have placed before the Court.

Submitting on whether the Claimant's case disclosed a reasonable cause of action, Counsel maintained that the Claimant failed in this case to disclose a reasonable cause of action. He cited the case of **Thomas v. Olufosoye (1986) 1 NWLR (Pt.**

18) 669 among other cases in this regard in urging the Court to hold that the suit of the Claimant has not disclosed a reasonable cause of action against the Defendants. He maintained that none of the paragraphs of the affidavit in support of the Originating Summons has shown any real dispute between the parties.

On the legal personality of the Claimant, learned Counsel contended that the Claimant lacked the capacity to sue and be sued as it is not a person known to law. He cited *Nduka v. Ezenwakua (2001) 6 NWLR (Pt. 709) 494 at 511 paras E-G*.

In the Further Affidavit of the Claimant, the deponent reiterated his averments in the affidavit in support of the Originating Summons. He further asserted that the Claimant has the power to sue as it is an incorporated company. He attached the certificate of incorporation of the lawful attorney in support of his claim. He also maintained that the Defendants have not been able to establish the case of forgery against the Claimant as the person who signed **Exhibits G and J** are two different persons. He insisted that the 1st Defendant authorised the Area Councils to make allocations of land within the Federal Capital Territory on his behalf.

In his Reply on Points of Law, learned Counsel submitted that the Claims of the Claimant and not the statement of defence determines whether the Claimant has a cause of action against the Defendant. He cited *A.G. Lagos v. Eko Hotels Ltd & Anor and N.N.P.C. v. Famfa Oil Ltd (2012) 17 NWLR (Pt. 1328) 148 at 189, paras E-F*. He further asserted that the Defendants, apart from their bare denial and their equally bare claim of forgery, have not placed any sufficient materials before the Court to move the Court to believe that **Exhibit G** was forged.

To enable this Court determine the issues in this suit, this Court shall adopt and modify the questions the Claimant has formulated in the Originating Summons vis-à-vis the issues raised by the Defendants in their Counter-Affidavit. The issues I shall consider are these:

- 1. Whether the suit of the Claimant as presently constituted is not competent vis-à-vis the mode of commencement the Claimant has adopted herein.**
- 2. Whether the Defendants have not made out a case of forgery against the Claimant as to enable this Honourable to discountenance Exhibit G.**
- 3. Whether it is not considered inappropriate, unlawful, illegal and inequitable for the Defendants to harass and intimidate the Claimants, attempting to halt the Claimant's gas refilling business operations by posting stop-work notices and taking other actions, despite the Claimant having obtained the necessary approvals from the Abuja Metropolitan Management Council, Federal Fire Service, and Nigeria Midstream and Downstream Petroleum Regulatory Authority?**

RESOLUTION OF THE ISSUES

ISSUE ONE

“Whether the suit of the Claimant as presently constituted is not competent vis-à-vis the mode of commencement the Claimant has adopted herein.”

I shall begin the resolution of this issue by a consideration of the provisions of the Rules of this Court as they pertain to the modes of commencement of action. The

High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides for the nature of action that can be commenced by each type of originating process. Order 2 Rule 2(1) provides that:-

(1) The under listed proceedings shall be commenced by writ except any applicable law requires that the proceedings shall be begun otherwise, than by writ:

a. Proceedings in which claimant claims:

(i) Any relief or remedy for any civil wrong or

(ii) Damages for breach of duty, whether contractual, statutory or otherwise, or

(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.

b. Where the claim is based on or includes an allegation of fraud, or

c. Where an interested person claims a declaration.

On the other hand, Order 2 Rule 3 of the Rules of this Court stipulates the nature of cases most appropriate to be commenced by way of Originating Summons. The Rule provides as follows:-

(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the

determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

There have been judicial pronouncements on modes of commencement of action. For instance, in *Ezeigwe v. Nwalulu (2010) 4 NWLR (Pt. 1183) 159 S.C. at 215, para B*, the apex Court held that “**The mode of commencement of action is an indispensable aspect of our civil procedure, hence various courts have it embodied in their Civil Procedure Rules.**” The Supreme Court was quite emphatic on this subject in the case of *Riok (Nig.) Ltd. v. Incorpor. Trustees, N.G.F. (2022) 16 NWLR (Pt. 1857) 725 S.C. at 779, paras E – F* when it held that the subject matter of a suit determines the mode of commencement of the suit. Speaking further **at page 780, para B**, the Court held that “**Where a procedure for carrying out a matter is clearly spelt out in a law, a party has no choice but to comply fully with the procedure. Failure on the part of a plaintiff shows that he has not fulfilled the condition precedents for commencement of such action.**” See also in this regard *Kwara State Govt. v. Guthrie (Nig.) Ltd. (2022) 13 NWLR (Pt. 1846) 189 S.C. at 207, paras. A-C*.

It is important to state here that the crux of the Claimant's action is the Stop Work Notice which the 3rd and 4th Defendants pasted on its property. This Notice, attached as **Exhibit J**, precipitated this action. The case of the Claimant is not one for declaration of title. It was the Defendants who, in their Counter-Affidavit and the Written Address in support, set up the case of declaration of title. The law is settled that it is the originating processes filed by the Claimant, and not the statement of defence or any other process filed by the Defendant in defence of the Claimant's suit, that determines the cause of action. See *Agi v. Eno (2010) 5 NWLR (Pt. 1188) 626 C.A. at 641, paras B-C; Charles v. Gov., Ondo State (2013) 2 NWLR (Pt. 1338) 294 C.A. at 314, paras C-D; Victor v. F.U.T.A. (2015) 4 NWLR (Pt. 1448) 1 C.A. at 50, paras E-G*. Thus, as I have noted, **Exhibit J** set in motion this present suit. In *Obasanjo v. Wuro Bogga (Nig.) Ltd. (2023) 2 NWLR (Pt. 1868) 253 S.C. at 266, paras C-E*, the Court held that *"A cause of action arises as soon as the combination of facts giving the right to complain happens. In other words, a cause of action is said to have accrued when the entire factual situations which give a person the right to a judicial relief are present or have happened. That is, when all that is necessary to make the matter in litigation an enforceable right or an actionable wrong have occurred. It is the accrual of the cause of action that confers on the appellant the right to institute an action to enforce the cause of action or right to a judicial relief."*

The task before the Court is quite simple and straightforward: it is the construction of **Exhibits G, H, I and J** and to determine, upon their construction, whether Exhibit J was proper in the light of **Exhibit G**. What the Claimant has done in relation to

Exhibits A1, A2, B, C, C1, D, D1, E and F is to show that he came into the property lawfully as the owner, having acquired interest in the property through a process recognized by the law. Yet, that is not his contention before the Court. An examination of the questions he has formulated in this suit finds relevance beginning from **Exhibits G, H and I**. By virtue of **Exhibit G**, the 3rd and 4th Defendants granted the Claimant approval to commence development of the property in question. This is consistent with its powers under section 28(1) of the Nigerian Urban and Regional Planning Act, CAP N138 Laws of the Federation of Nigeria 2004 where it is stated that “**Approval of the relevant Development Control Department shall be required for any land development.**” Beyond this approval, the Claimant also obtained an approval from the FCT Fire Service which issued its report, that is, **Exhibit H**, on the 7th of September, 2022 certifying that the site was “conducive”. **Exhibit I** is the approval from the Nigerian Midstream and Downstream Petroleum Regulatory Authority in relation to the Claimant’s business.

It is against this background that one begins to appreciate the Claimant’s consternation when it was served with **Exhibit J**, that is the Stop Work Notice. Against the backdrop of **Exhibits G, H, I and J**, can it be said that the case of the Claimant is one that is contentious as to require the calling of witnesses and the taking of oral evidence? I do not think so. In **Sani v. Kogi State HA (2019) 4 NWLR (Pt. 1661) 172 S.C. at 184, paras A-D**, the Court held that “**Originating summons is best suited for cases where there are no substantial disputes of facts or likelihood of facts. originating summons should only be applicable in circumstances where there is no dispute on the question of**

facts or even the likelihood of such dispute. Where it is obvious from the state of the affidavit that there would be an air of friction in the proceedings, then an originating summons is not appropriate. originating summons should be used only where the proceeding involves question of law, rather than disputed facts, even where the facts are not in dispute, the originating summons should not be used, if the proceedings are hostile.”

Earlier, the Court had held in *Eze v. Unijos (2017) 17 NWLR (Pt. 1593) 1 S.C. at 14-15, paras. G-B; D-E* “***Originating summons is one of the ways of commencing an action. It can be used in matters that involve interpretation of documents, statutes, contract, etc., but 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. Affidavit takes the place of pleadings in originating summons proceedings. Reliance is placed on affidavits and facts are not in dispute. Originating summons is thus not suitable for hostile proceedings where the facts are seriously in dispute. So once a suit has been filed by originating summons and it becomes obvious that facts are in dispute or the proceedings are likely to be hostile, a writ of summons would be ordered.”***

The issues thrown up by the exhibits are such that they can be determined by mere examination of the documents annexed as exhibits. Interestingly, while learned Counsel for the Defendants dedicated paragraphs 4.00 through to 4.09 in arguing that the Claimant’s case is contentious and ought to be commenced by way of Writ

of Summons, he made an abrupt volte face in paragraphs 4.10 through to 4.17 that the Claimant's suit failed to disclose a reasonable cause of action against the Defendants. In fact, in paragraph 4.15, Counsel argued thus: "*The supporting affidavit is comprised of (sic) 25 paragraphs. Not one of these 25 paragraphs has shown any serious dispute between the Claimant and the Defendants to warrant their being dragged before this Honourable Court.*" in other words, Counsel conceded that the proceeding is not really hostile! In ***Canal Inv. Ltd. v. Tourist Countryside Resorts Ltd (2017) 3 NWLR (Pt. 1553) 411 CA at 460, para C.***, the Court counseled that "***A counsel should always be consistent in presenting his case, not to approbate and reprobate.***"

The mode of commencement of this action is therefore appropriate. I so hold. Issue One is hereby resolved in favour of the Claimant.

ISSUE TWO

"Whether the Defendants have not made out a case of forgery against the Claimant as to enable this Honourable to discountenance Exhibit G"

In paragraph 3(m) of the Counter-Affidavit, the Defendants levelled an allegation of forgery against the Claimant. According to them, "***...Exhibit G attached to the Claimant[s] Originating Summons as evidence of purported approval of the gas station by the 3rd and 4th Defendants never and did not emanate from them, same document is a forged document.***" In proving this allegation, the deponent states thus under the particulars of forgery: "***(1) The name of the person who purportedly signed Exhibit G on behalf of the 3rd Defendant is not a director with the 3rd***

Defendant; (2) **Exhibit G** does not contain any logo of the 3rd Defendant as can be seen on **Exhibit J** which is the letter written by the 4th Defendant to the Claimant to stop work.” The legal argument in support of this allegation is contained in paragraph 3.05 of the Written Address in support of the Counter-Affidavit.

It must be stated here that forgery is a criminal offence. In **Nnachi v. Iborra (2004) 16 NWLR (Pt. 900) 614 C.A. at 634, para A**, it is defined thus: **“forgery means fraudulently making or altering anything, especially a document; counterfeit; deceit; to make falsely for purpose of fraud.”**

Being a criminal offence, its allegation must not be treated with levity. Where the allegation of a crime, as in this case, forgery, is made in a civil action such as this, the standard of proof is one beyond reasonable doubt. Section 135(1) of the Evidence Act, 2011 state that **“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”** In **Arije v. Arije (2011) 13 NWLR (Pt. 1264) 265 C.A. at 287, para G**, the Court held that **“The prove required for forgery is proof beyond reasonable doubt.”** In **Onubogu v. Anazonwu (2023) 17 NWLR (Pt. 1914) 425 S.C. at 464, paras. F-G; 465, paras. F-G; 466, paras. B-C**, the Supreme Court emphasized that **“The allegation of forgery is criminal in nature and, irrespective of whether it is raised in criminal or civil proceedings, it must be proved beyond reasonable doubt. In this case, by section 135(1) of the Evidence Act, the appellant was bound to prove the allegation of forgery beyond reasonable doubt. But he failed woefully to discharge this burden.”**

To establish forgery, the original must be placed side by side with the copy claimed to have being forged. In *Shehu v. Ahmad (2023) 27 NWLR (Pt. 1888) 27 C.A. at 50-51, paras G-B*, the Court held that *“forgery cannot be established in respect of a document in the absence of the original. Put differently, to prove forgery or that a document is forged, two documents must be produced: (a) the document from which the forgery was made, and (b) the alleged forged document... In this case, in order to prove that the delegates list used for the primary election was forged, the 1st respondent who made the allegation is required to present the authentic delegates list and the alleged forged delegates list to the trial court. It is not enough to merely allege that the delegates list had been forged, without more.”*

The Defendants failed to discharge the evidentiary burden incumbent on them as the proponent of the allegation of forgery. They failed to point how **Exhibit G** was a forged copy. The **Exhibit J** with which they compared **Exhibit G** is an entirely different document signed by two entirely persons. When they claimed that the person who signed **Exhibit G** was not a director with the 3rd Defendant, they failed to adduce evidence to show who occupied the seat of director of the 3rd Defendant at the time **Exhibit G** was issued. The only ground upon which they relied to ground their allegation of forgery is that **Exhibit G** does not have the logo of the 3rd Defendant as seen on **Exhibit J**. Can this distinction constitute proof beyond reasonable doubt? I do not hesitate in answering the question in the negative.

The condition as established by the Courts in a long line of cases is that the two documents, one the purportedly forged copy and the other the purported original

copy, must be produced and placed side by side. The proof of forgery is not done by bringing two distinct documents and seeking to draw out fine lines of distinctions as to their features as the Defendants have sought to do in their Counter-Affidavit. It is my considered view, and I so hold, that the Defendants have failed to prove the allegation of forgery. **Exhibit G** is therefore a valid document before this Court and the Court can act on it. I hereby resolve Issue Two in favour of the Claimant. This takes me to Issue Number Three.

ISSUE THREE

“Whether it is not considered inappropriate, unlawful, illegal and inequitable for the Defendants to harass and intimidate the Claimants, attempting to halt the Claimant’s gas refilling business operations by posting stop-work notices and taking other actions, despite the Claimant having obtained the necessary approvals from the Abuja Metropolitan Management Council, Federal Fire Service, and Nigeria Midstream and Downstream Petroleum Regulatory Authority?”

In my resolution of Issue One, I highlighted how the Claimant sought to establish his compliance with due process of the law by methodically delineating how the title of the property in question devolved on him. That is the purport of **Exhibits A1, A2, B, C, C1, D, D1, E and F**. In furtherance of his compliance with due process, he sought for and obtained approvals from the relevant agencies in relation to his field of business. Thus, he obtained building plan approval from the 3rd and 4th Defendants in relation to the property. This is **Exhibit G**. He applied for and

obtained a Site Inspection Report from the Federal Capital Territory Fire Service certifying that the property was suitable and safe for the business of liquefied petroleum gas refill plant. This is **Exhibit H**. Finally, he applied for and got approval from the Nigerian Midstream and Downstream Petroleum Regulatory Authority to construct a liquefied petroleum gas (LPG) refilling plant on the property. This is **Exhibit I**.

Though the Stop Work Notice which is **Exhibit J** made reference to the visit by the Management Team of the 3rd Defendant and ‘reports that the unapproved gas station development violates the designated land use and its operations will endanger the lives and properties of adjoining residential buildings’, the Defendants in this suit did not attach any documentary evidence in support of their claim that the use into which the Claimant put the land was unapproved by the 3rd and 4th Defendants. In fact, there was no response by the 3rd and 4th Defendants to the letter written to them by the Counsel for the Claimant and which is attached to the Originating Summons as **Exhibit K**. The position of the law is that where official correspondences which require answers are not responded to, the addressee is deemed to have admitted the contents of the correspondence. See, for instance, ***Adebayo v. Benue State University (2021) LPELR-54221 (CA) at 27-28, paras F-F***, where the Court of Appeal, relying on its Judgment in ***John Tunde Oriloye v. Lagos State Govt (2014) LPELR-22248 (CA) at 31-32, paras G-A***, held that “***The law is that, where a party to a contract receives a correspondence from the other party on the contract and he keeps silent thereon in circumstances in***

which reply or reaction is obviously expected, he is presumed to have consented to the contents of the correspondence.”

I agree with learned Counsel for the Claimant that the Claimant cannot approbate and reprobate simultaneously. See *Mohammed v. Farmers Supply Co. (KDS) Ltd. (2019) 17 NWLR (Pt. 1701) 187 at p. 211, paras. F-H, the Supreme Court per Eko, JSC; BB. Apugo Ltd. v. O.H.M.B (2016) 13 NWLR (Pt. 1529) 206 at p. 254, paras B-C the Court of Appeal per Kekere-Ekun, JSC; Thomas W. & Son (N. Nig. Ltd) v. P. I. Ltd (2019) 12 NWLR (Pt. 1687) 540 CA at 553, para G*. Besides, having made the Claimant to alter its position by constructing the liquefied petroleum gas refill plant and taking all the steps necessary to the setting up the business upon the effect of **Exhibit G**, the Defendants are estopped from denying the facticity of **Exhibit G** and the repercussions thereof. See *Oni v. Oyebanji (2023) 13 NWLR (Pt. 1902) 507 S.C. at 582, paras D-E*.

The Defendants have not shown any justification for issuing **Exhibit J** in the light of the subsistence of **Exhibit G**. There is no evidence that it follows the procedure stipulated in section 39 of the Nigerian Urban and Regional Planning Act before issuing **Exhibit J**. Section 39 of the Act provides as follows:

“(1) A development permit already granted and communicated to a developer or holder for the time being may be revoked by the Control Department which shall serve a notice of its intention to revoke the development permit.

(2) The notice in subsection (1) of this section shall state the reasons for the revocation of the development permit.

(3) The Control Department shall consider any representation made by a developer to it.”

There is no evidence that a notice was communicated by the 3rd and 4th Defendants to the Claimant before **Exhibit J** was issued. There is no evidence that the 3rd and 4th Defendants allowed the Claimant to make representations to them in relation to **Exhibit J. Exhibit K** which the Claimant wrote to them was totally ignored by the 3rd and 4th Defendants. It is not difficult, therefore, for me to hold that **Exhibit J** was unfounded, utterly inappropriate, manifestly unlawful and grossly inequitable. It is an administrative process and document that gravely infringed the right to fair hearing of the Claimant. In the absence of any better and compelling evidence and cogent justification from the Defendants, this Court will not allow **Exhibit J** and other illegal actions of the Defendants herein, particularly the 3rd and 4th Defendants to stand. It is in view of this that I hasten to resolve the third issue in favour of the Claimant.

Having resolved the three issues I have formulated herein in favour of the Claimant, I hereby answer the four questions the Claimant has formulated in this Originating Summons in the affirmative. Accordingly, the reliefs sought by the Claimant are hereby granted as follows:-

- 1. THAT it is inappropriate, unlawful, illegal and inequitable for the Defendants, particularly the 3rd and 4th Defendants to issue and paste on the property of the Claimant particularly described and known as Plot 126 Cadastral Zone 07-07 Kubwa Commercial Layout, Kubwa**

District, Federal Capital Territory, Abuja the Stop Work Notice dated the 01st of February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got building plan approval from the Defendants through Abuja Metropolitan Management Council (Department of Development Control) and other relevant approvals from other relevant agencies such as the Federal Fire Service and the Nigerian Midstream and Downstream Petroleum Regulatory Authority.

2. THAT the Stop Work Notice dated the 01st of February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got all the necessary approvals from the relevant agencies including from the 3rd and 4th Defendants is wrongful, invalid, null and void, of no effect and liable to be set aside.
3. THAT AN ORDER is hereby made setting aside for being wrongful, unlawful, illegal and inequitable the Stop Work Notice dated the 01st of February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got all the necessary approvals from the relevant agencies including from the 3rd and 4th Defendants.
4. THAT AN ORDER OF PERPETUAL INJUNCTION is hereby made restraining the 1st, 2nd, 3rd and 4th Defendants whether by themselves, their agents, privies, servants or however described from further harassing, intimidating, threatening or taking any step or steps whatsoever in execution of the Stop Work Notice dated the 01st of

February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got all the necessary approvals from the relevant agencies including from the 3rd and 4th Defendants.

5. THAT AN ORDER OF PERPETUAL INJUNCTION is hereby made restraining the 1st, 2nd, 3rd and 4th Defendants whether by themselves, their agents, privies, servants or however described from embarrassing, harassing, intimidating, threatening the Claimant or otherwise taking any step or steps whatsoever in execution of the Stop Work Notice dated the 01st of February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got all the necessary approvals from the relevant agencies including from the 3rd and 4th Defendants.
6. THAT the sum of ₦1, 000,000.00(One Million Naira is hereby awarded against the Defendants jointly and severally as general damages for the embarrassment, harassment, intimidation and the prejudicial steps the Defendants have taken in the execution of the Stop Work Notice dated the 01st of February, 2023 purporting to restrict the Claimant from carrying out its liquefied petroleum gas refill business after the Claimant has got all the necessary approvals from the relevant agencies including from the 3rd and 4th Defendants.
7. THAT the cost of ₦300,000.00 is hereby awarded against the four Defendants herein jointly and severally as the cost of this action.

This is the Judgment of this Court delivered today, the 15th day of February, 2024.

HON. JUSTICE A. H. MUSA
JUDGE
15/02/2024

APPEARANCES:

FOR THE CLAIMANT:

J. O. Okpor, Esq.

FOR THE DEFENDANTS:

Idris Suleiman Esq.