

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI
BEFORE HIS LORDSHIP: HON. JUSTICE S.B. BELGORE

CLERK: CHARITY ONUZULIKE

COURT NO. 10

SUIT NO: FCT/HC/CV/923/2024

BETWEEN:

ALHAJI MUSA YAHAYA..... CLAIMANT

AND

1. ZURUHILLS INTEGRATED SERVICE LIMITED
2. OKORIE KALU
(sued in his capacity as the administrator
of NISLVentures Limited)
3. AYODELE OLAIYA ISRAEL
(carrying on business under the name
& style of DELE OLAIYA & ASSOCIATES)



DEFENDANTS

JUDGMENT

The Claimant instituted this action on **17/01/24** via an Originating summons dated the same day, in which the following questions were raised:

1. *Whether, upon a proper construction and interpretation of the express provisions of Article 3 (2) and paragraphs 10, 11 and 12 of the “Understandings” clause of the lease Agreement made on 10th April 2014 between the Claimant and ,1st Defendant, ZURUHILLS INTEGRATED SERVICE LIMITED (for itself and for the benefit of NISL Ventures Limited), the expiration date of the lease in respect of 109 Plaza situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja is not 10th of September 2024?*
2. *Whether, having regard to the provisions of Article 3(2) and paragraphs 10, 11 and 12 of the “Understandings” Clause of the Lease Agreement*

- made on **10th April 2014** between the Claimant and **ZURUHILLS INTEGRATED SERVICE LIMITED** (for itself and for the benefit of **NISL Ventures Limited**), the Claimant is not entitled to recover full and undisturbed possession of the property known as **109 Plaza** situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja from the 1st and 2nd Defendants upon the expiration of the said Lease Agreement on the **10/9/2024**?
3. Whether, upon a literal construction of **Articles 4, 5 & 6** of the Lease Agreement on **10/4/2014** vis-à-vis the 1st Defendant's Letter dated **28/10/2014** titled "Letter of Consent for change of property use" and the undertaking endorsed thereon on **29/10/2015**, the 1st and 2nd Defendants are not liable to pay the Land Use Violation Charges of **N13,446,690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira)** issued by the Abuja Metropolitan Management Council in respect of the property known and described as **109 Plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** and conveyed vide a letter dated **17th October 2023**, as well as all other Land Use Charges imposed during the term of the lease?
 4. Whether or not, having regard to the Lease Agreement made on **10th April 2014** and the entire circumstances of this suit, the 1st and 2nd Defendants are not liable to pay to the Claimant the sum of **N51,197,320.13 (Fifty-One Million, One Hundred and Ninety-Seven Thousand, Three Hundred and Twenty Naira and Thirteen Kobo)**, being the total cost of renovation necessary to put the demised property known and described as **109 Plaza** situate at **Plot 109 Plaza Adetokunbo Ademola Crescent, Wuse II, Abuja** in a tenantable condition.
 5. Whether the 3rd Defendant, **Messrs. Dele Olaiya & Associates**, being the sole agent responsible for the management and operation of the property known and described as **109 plaza, Adetokunbo Ademola Crescent Wuse II, Abuja** and the custodian of all rents received in respect thereof, ought not to pay over to the Claimant the sum of **N13,446,690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira)**, being the Land Use Violation Charges issued by the Abuja Metropolitan Management Council and the sum of **N51,197,320.13 (Fifty-One Million, One Hundred and Forty-Six**

Thousand, Three Hundred and Twenty Naira and Thirteen Kobo), being the total cost of renovation necessary to put the demised property in a tenantable condition?

The Originating Summons further urges this Court to, upon the resolution of the above questions in the Claimant's favour, grant the following reliefs:

1. **A DECLARATION OF THIS HONOURABLE COURT** that the lease Agreement dated **10th April 2014**, inclusive of all its warranties and understandings, is binding, subsisting and enforceable on/against the 1st and 2nd Defendants in this suit.
2. **A DECLARATION OF THIS HONOURABLE COURT** that by Article **3(2)** and paragraphs **10,11 and 12** of the **“Understandings”** Clause of the Lease Agreement made on **10th April 2014** between the Claimant and **ZURUHILLS INTERGRATED SERVICE LIMITED** (for itself and for the benefit of **NISL Ventures Limited**), the expiration date of the lease in respect of **109 Plaza, plot 109 Adetokunbo Ademola Crescent Wuse II, Abuja** is **10th September 2024**.
3. **A DECLARATION OF THIS HONOURABLE COURT** that by the provisions of Article **3 (2)** and Paragraph **10, 11 and 12** of the **“Understandings”** clause of the Lease Agreement made on **10th April 2014** between the Claimant and **ZURUHILLS INTEGRATED SERVICE LIMITED** (for itself and for the benefit of **NSIL Ventures Limited**), the Claimant is entitled to recover full and undisturbed possession of the property known as **109 Plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** from the 1st and 2nd Defendants upon the expiration of the said lease Agreement on the **10th September 2024**.
4. **A DECLARATION OF THIS HONOURABLE COURT** that upon a literal construction of **Articles 4,5 & 6** of the Lease Agreement made on **10th April 2014** vis-à-vis the 1st Defendant's letter dated **28th October 2014** titled **“Letter of consent for change of Property Use”** and the undertaking issued thereon **29th October 2015**, the 1st and 2nd Defendants are liable to pay the Land Use Violation Charges of **N 13,446,690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira)** issued by the Abuja Metropolitan Management Council in respect of the property known and described as **109 Plaza**

situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** and conveyed vide a letter dated **17th October 2023**, as well as all other Land Use Charges imposed during the term of the lease.

5. **A DECLARATION OF THIS HONOURABLE COURT** that by virtue of the Lease Agreement made on **10th April 2014** and the entire circumstances of this suit, the 1st and 2nd Defendants are liable to bear the cost of restoring the demised property known and described as **109 Plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** to a tenantable condition.
6. **A DECLARATION OF THIS HONOURABLE COURT** that by virtue of the lease Agreement made on **10th April 2024** and the entire circumstances of this suit, the 1st and 2nd Defendants are liable to pay to the Claimant the sum of **N51,197,320.13 (Fifty-One Million, One Hundred and Ninety-Seven Thousand, Three Hundred and Twenty Naira and Thirteen Kobo)**, being the total assessed cost of renovation necessary to restore the demised property known and described as **109 plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** to a tenantable condition.
7. **AN ORDER OF THIS HONOURABLE COURT** mandating the 1st and 2nd Defendants to relinquish and give up possession of the property known and described as **109 Plaza** situate at **plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** upon the expiration of the Lease Agreement on **10th September 2024**.
8. **AN ORDER OF THIS HONOURABLE COURT** mandating the 3rd Defendant i.e **Messrs Dele Olaiya & Associates** to, **FORTHWITH & IMMEDIATELY**, pay over to the Claimant the sum of **N13, 446,690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira)**, being the Land Use Violation Charges in respect of the property known and described as **109 Plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** issued by the Abuja Metropolitan Management Council vide a Letter dated **17th October 2023**, and/or all other subsequent Land Use Charges.
9. **AN ORDER OF THIS HONOURABLE COURT** mandating the 3rd Defendant i.e **Messr Dele Olaiya & Associates**, to **FORTHWITH & IMMEDIATELY**, pay over to the Claimant the sum of **N51,197,320.13 (Fifty-One Million,**

One Hundred and Ninety-Seven Thousand, Three Hundred and Twenty Naira and Thirteen Kobo), being the total cost of renovation necessary to put the demised property known and described as **109 Plaza** situate at **Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja** in tenantable condition.

10. **AND FOR SUCH FURTHER OR ORDER(S)** as this Honourable Court may deem fit to make in the circumstances.

The originating summons is supported by a 32-paragraph affidavit deposed to by the Claimant, **Alhaji Musa Yahaya** with 15 Exhibits annexed, which are marked Exhibits **A-J3**. The summons was also accompanied by a written address, wherein the Claimant formulated a lone issue for determination as follows:

“Whether or not, having regard to the lease agreement dated 10th April 2014 and the entire circumstances of this suit, the Claimant has made out its case in this suit, and if so, whether this Honourable Court ought not to grant all the reliefs sought herein?”.

Subsequently, the Claimant on **29/1/2024** filed a Further Affidavit in Support of the Originating Summons of 9 paragraphs, to which he attached a document marked **Exhibit “B”** which he described as the Lease Agreement in respect of Plot 109, Adetokunbo Ademola Crescent, Wuse II, Abuja, the subject matter of this suit, which he omitted to include in the affidavit in support of the originating summons.

It is pertinent to add that the originating summons was filed alongside a motion *ex parte* with Motion No.: **M/2683/2024** dated **17/1/2024** praying this Court for the following orders:

1. AN ORDER granting leave to the Claimant/Applicant to serve the originating process and all other subsequent processes in this case meant for the 2nd Defendant/Respondent by substituted means, to wit; by leaving it with any officer or other responsible person in the office of NISL Ventures Limited (in administration) at No. 9a, Freetown Street, Wuse II, Abuja.

2. AN ORDER granting leave to the Claimant/Applicant to serve the originating process and all other subsequent processes in this case meant for the 3rd Defendant/Respondent by substituted means, to wit; by leaving it with any officer or other responsible person in the office of Messrs. DELE OLAIYA & ASSOCIATES at Suite A 32, First Floor, Shakir Plaza Michika Street, Off Ahmadu Bello Way, Garki, Abuja.
3. AN ORDER OF THIS HONOURABLE COURT abridging the time within which the Defendants/Respondents may file their responses to this action to 5 days from the date of service of the originating process on them.
4. AN ORDER OF THIS HONOURABLE COURT abridging the time within which the Claimant/Applicant may file a reply (if any) to the Defendants/Respondents' response to this suit to 3 days from the date of service of such response on him.
5. AN ORDER granting accelerated hearing of this suit.
6. ANY FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this suit.

On **25/1/2024**, this Court heard the exparte application and granted same in terms of the prayers sought.

Upon being served with the originating process and other processes, the 1st Defendant on **16/4/2024** filed a counter affidavit of 25 paragraphs deposed to by **Otunba Taiwo Ayodele**, the Managing Director of the 1st Defendant and sworn on **16/4/2024**. A written address dated and filed on **16/4/2024** was also filed alongside the Counter affidavit. These processes were regularized and deemed proper before this Court on **20/5/2024**. In its written address accompanying the counter affidavit, the 1st Defendant formulated a sole issue for determination, as follows:

“Whether the Claimant has placed sufficient materials to be entitled to the reliefs sought in the originating summons?”

In reaction to the 1st Defendant's processes, the Claimant filed a further affidavit of 6 paragraphs deposed to on **20/5/2024** by Ebere Okongwu, a litigation secretary in the law office of Ojukwu Chikaosolu & Co., the Claimant's

Solicitors, to which one exhibit marked **Exhibit ‘A’** was annexed. A Reply address was also filed by the Claimant on **20/5/2024**.

On the part of the 2nd Defendant, in opposition to the originating summons, on **08/05/2024** he filed a counter affidavit of 5 paragraphs deposed to by **Ogah O. Alphonsus**, a litigation clerk in the employ of Matrix Solicitors, Counsel to the 2nd Defendant herein, annexing three exhibits marked Exhibits “1”, “2” & “3”, respectively. As is customary, the 2nd Defendant on the same day filed his written address in opposition to the originating summons, albeit undated. These processes were deemed properly filed and served on **20/5/2022**.

In his address, the 2nd Defendant formulated a lone issue which is set out below:

“Whether having regard to the facts and circumstances, the Claimant has proved his case as required by law to entitle him to the grant of the reliefs sought?”

The 2nd Defendant also filed a Notice of Additional Authority dated **28/6/2024** but filed on **01/7/2024**.

In his reaction to the 2nd Defendant’s processes, on **20/5/2024**, the Claimant filed a further affidavit of 5 paragraphs deposed to by Ebere Okongwu, to which a lone exhibit marked **Exhibit “A”** was annexed. The Claimant also filed a Reply Address embodying his reply on points of law to the written address filed by the 2nd Defendant in opposition to the originating summons.

The 3rd Defendant, though served with the processes in this suit, exercised its right not to file any process for or against. The law is that a party who has been duly served with all relevant processes in an action against him but who chooses not to respond is deemed to have conceded to the action- see: **OKEREKE & ANOR v. ABA NORTH LGA (2014) LPELR-23770(CA)**. I therefore hold that the 3rd Defendant in this suit has conceded to the claim and the reliefs sought against him.

PRELIMINARY OBJECTIONS

In opposition to the originating summons, the 1st and 2nd Defendants deemed it necessary to challenge the competence of the suit and the jurisdiction of this Court to entertain same, vide their respective Notices of Preliminary Objection.

The law, as settled in a long line of decisions handed down by the Supreme Court and the Court of Appeal, is that a Court faced with a preliminary objection must first determine same one way or another, before dealing with the merits of the matter- see: **AG OF THE FEDERATION v. AG OF ABIA STATE & ORS (2024) LPELR-62576(SC)**.

In fidelity to this established position of the law, I shall first consider the preliminary objections filed by the 1st and 2nd Defendants respectively, before proceeding into the substantive suit, if necessary.

1st Defendant's preliminary objection

On its part, the 1st Defendant filed a Notice of Preliminary Objection dated and filed on **20/02/2024** praying this Court for an order striking out this suit for being incompetent.

The grounds upon which the Notice of Preliminary Objection are predicated are as follows:

1. *That the Claimant initiated this suit in his personal capacity and not in the name of Hafsat Umar Ahmed the Lessor.*
2. *That the law is trite that a Donee of a Power of Attorney or a representative must always sue in the name of the Donor, owner and or Lessor as in the instant suit.*
3. *That the Claimant lacks the locus standi to initiate this suit in his name.*
4. *That it is not in dispute that the Lease Agreement terminates on the 10th September, 2024 Eight (8) months from the date of the filing of this suit by the Claimant on the 17th January, 2024.*
5. *That the 1st Defendant is still within its legitimate period of the lease and as such no cause of action has arisen to necessitate the filing of this suit.*
6. *That the procedure adopted by the Claimant is strange to the Recovery of Premises Act of the Federal Capital Territory, Abuja.*
7. *That this suit is an academic exercise.*

8. *That the Claimant and the 1st Defendant being the parties that executed the Lease Agreement agreed by Clause 8 and Clause 9 of the Lease Agreement to refer any dispute, question or difference in opinion arising out of the lease, or the construction, meaning etc to arbitration.*
9. *That the Claimant did not initiate arbitration in accordance with section 33 of the Arbitration and Mediation Act, 2023.*
10. *That by section 3 of the Arbitration and Mediation Act, 2023 arbitration agreement is irrevocable.*
11. *That this Honourable Court lacks the jurisdiction to entertain this suit.*

The objection is supported by an affidavit of 16 paragraphs deposed to by **Victor Orih**, a Legal Practitioner in the law firm of **Messrs. Ali Zubairu & Associates**, Solicitors to the 1st Defendant. Annexed to the affidavit is a lone exhibit marked **Exhibit “Zuruhills1”** which is a copy of the Lease Agreement in respect of the property, subject matter of this suit. I have thoroughly considered the averments in the said affidavit as well as the exhibit annexed thereto.

A written address was also filed alongside the objection on the same **20/02/2024**, wherein the 1st Defendant submitted a lone issue for determination thus:

“Whether this suit as initiated by the Claimant is not incompetent and liable to be struck out?”

Arguing the sole issue, the 1st Defendant argued that the Claimant lacks the capacity to institute this suit in his name because, from **Exhibit B** attached to the Claimant’s Further Affidavit, the Claimant is not the Lessor over the property, instead it is one Hafsah Umar Ahmed. Relying on the decision of the Supreme Court in **Mustapha v. C.A.C. (2019) 10 NWLR (PT. 1680) P. 355**, the 1st Defendant submitted that the donee of a Power of Attorney must always sue in the name of the donor of the power and not otherwise.

The 1st Defendant further argued that no cause of action has arisen in this suit as there is no dispute as to the fact that the lease expires on **10/9/2024**. Counsel

then submitted that this suit is an academic exercise and, relying on the case of **MOBIL PRODUCING (NIG) UNLTD V. F.I.R.S. (2021) 11 NWLR (PT. 1788) P. 485**, urged me to decline jurisdiction and accordingly strike out this suit.

Finally, Counsel submitted that the Lease Agreement contains an arbitration clause which the Claimant ought to have invoked before approaching this Court. Referencing the Arbitration and Mediation Act 2023, the 1st Defendant submitted that the jurisdiction of the courts in a dispute which is subject to an arbitration clause is limited to subpoenas, interim reliefs etc. and not to assume jurisdiction. In conclusion, the 1st Defendant urged me to uphold its preliminary objection and strike out this suit for being incompetent.

Claimant's response to 1st Defendant's preliminary objection

In response to the Notice of Preliminary Objection filed by the 1st Defendant, the Claimant filed a counter affidavit of **16** paragraphs sworn to on **28/2/2024**. Filed alongside the counter affidavit is a written address dated **27/02/2024** but filed on **28/02/2024**.

In his written address, Claimant adopted the lone issue for determination raised by the 1st Defendant. Arguing this issue, Claimant's Counsel, **Segun Fiki Esq.**, submitted that the 1st Defendant's objection is misconceived, anachronistic and rigid and that the cases relied on are inapposite to this case, as none of them considered or interpreted the provisions of **Order 13** of the **F.C.T. High Court (Civil Procedure) Rules 2018** which is applicable to this case.

It is Counsel's further submission that the Lease Agreement expressly describes the Claimant herein as representing **Hafsatu Umar Ahmed** in the portion for the "**Lessor**" and that the Power of Attorney is secondary; that in any event only the donor of the Power of Attorney can complain about whether the suit was instituted in her name or not, and that it does not lie in the mouth of the Defendants to do so.

He contended that **Exhibit A** which is the Power of Attorney by which the Claimant was appointed as done over the property situate at **Plot 109, Adetokunbo Ademola Crescent, Wuse II, Abuja**, when read together with the Lease Agreement, clothes him with all rights to act in the position of the Lessor

in respect of the property. Counsel further submitted that it is for this reason that the Claimant had in fact been receiving all rents in respect of the property and exchanging correspondences with the Defendants in his capacity as Lessor, as confirmed by **Exhibit C** annexed to the affidavit in support of the originating summons; that the 1st Defendant itself had written directly to the Claimant to seek consent for change of property use, amongst other similar acts which demonstrate his interest in the subject matter.

Counsel submitted that these positive acts, amongst many others, confirm his *locus standi* to bring this action.

In what appears to be an alternative argument, Counsel submitted on the authority of the decision of the Court of Appeal in **OLUBODE V. AYOTIDE GLOBAL INVESTMENT LTD & ORS (2017) LPELR-43221 (CA)**, that the mere failure of a Plaintiff to bring an action in a representative capacity will not render a suit incompetent.

Counsel further argued relying on **Order 13 Rules 2 and 18 (1), (2) & (3)** of the Rules of this Court that, even if it is to be assumed that this suit ought to have been brought in the name of the said Hafsat Umar Ahmed, her non-joinder to the suit will not *ipso facto* render the suit incompetent; that the commencement of an action in the name of a wrong Claimant pursuant to the Rules of the F.C.T. High Court, which is applicable to this suit, is a mere irregularity which will not render the originating summons incompetent or strip the Claimant of *locus standi*; that this Court has the *vires* to rectify such an irregularity even *suo motu* in the interest of justice by adding the proper party as a Co-Claimant, without the need for any application or even an amendment; that this is precisely why the Rules provide that no action shall be defeated by the misjoinder or non-joinder of a party.

Counsel further submitted that if this Court finds that the suit ought to have been commenced in the name of Hafsat Umar Ahmed, the Court ought only to substitute or add the said person to the suit as a Co-Claimant; and that upon adding such a Co-Claimant, judgment may be given for such Co-Claimant as it may be entitled to, without any amendment whatsoever. Counsel concluded on this point that, on the authority of **AJUWA & ANOR. V. SPDC NIG. LTD (2011) LPELR-8243 (SC)**, the law has moved away from technicalities and now acts in favour of doing substantial justice.

On the issue raised by the 1st Defendant as to the alleged lack of a cause of action, Claimant's Counsel conceded that in determining the question of whether a cause of action has arisen, the Court is limited to the originating process. Counsel submitted that the originating summons in this suit discloses that there is an issue as to the interpretation of the expiration of the Lease Agreement and the resolution of the question of who bears liability for the settlement of the Contravention Notice issued by the Development Control office. Thus, according to Learned Counsel, there are live issues for determination in this suit.

On the issue of arbitration, Counsel vehemently rejects the 1st Defendant's interpretation of the arbitration clause contained in the Lease Agreement and contends that the subject matter of this suit which relates merely to the interpretation of a document and the contents of a Contravention Notice issued by the Development Control Department of the Federal Capital Territory Authority is a matter pertaining to tax/government revenue, which is non-arbitrable. Counsel submits also that the mere existence of an arbitration clause does not strip the Court of jurisdiction and that the 1st Defendant has not made any prayer before this Court for a stay of proceedings pending arbitration, which is the only course open to a Defendant seeking to invoke an arbitration clause.

Counsel concluded by urging me to dismiss the 1st Defendant's preliminary objection.

I will resolve this objection alongside the 2nd Defendant's preliminary objection.

The 2nd Defendant's preliminary objection

Similarly, the 2nd Defendant on **06/02/2024** filed an undated Notice of Preliminary Objection praying this Court for the following orders:

1. **AN ORDER** dismissing/striking out this suit in limine, for patent want of jurisdiction;
2. **AN ORDER** declaring that this suit as presently constituted against the 2nd Defendant/Applicant constitutes a gross abuse of Court process;

3. **AN ORDER** setting aside, or vacating the Order of Court made on 25th January 2024 as it pertain to abridging time within which the Defendants may file their defence to the Originating Summons, same having been made without jurisdiction and in violation of the 2nd Defendant/Applicant's constitutional right of fair hearing.
4. **AND SUCH FURTHER ORDER(S)** as the Court may deem fit to make in the circumstances of this case.

The objection is predicated on eight (8) grounds, namely:

1. The Claimant lacks the locus standi to institute the instant Suit in his personal capacity, and any award of the reliefs sought in favour of the Claimant would be null and void to the extent of its violation of known principles of law;
2. The subject matter of the Suit and the interests of the Claimant and the Defendants herein are integral parts of the Administration proceedings pending before the Federal High Court in Suit No. FHC/ABJ/CS/2074/2022; Mrs.Majiyabe Ayodapo lyabo & 5 Others V. NISL Ventures Limited & Anor;
3. By virtue of an Order of the Federal High Court made on 16th December 2022, all assets, receivables, and undertakings direct and indirect belonging to NISL Ventures Limited (in Administration), including the unexpired residue of the Lease in respect of Plot 109, Adetokunbo Ademola Crescent, Wuse II, Abuja ("subject property"/"109 Plaza") were effectually put exclusively under the management and administration of the 2nd Defendant/Applicant as the Court-appointed Administrator, subject to the supervision of the Federal High Court;
4. The Claimant's instant Suit constitutes an abuse of Court process, having regard to his full knowledge and participation in the ongoing Administration, and the pendency of Suit No.FHC/ ABJ/CS/2074/2022

- before the Federal High Court(Abuja Division) before filing this parallel Suit before another Court;*
- 5. The instant Suit filed vide an Originating Summons and the reliefs sought thereof is improperly constituted and grossly incompetent as the facts therein are highly contentious and disputable nature, and are likely to result in hostile proceedings;*
 - 6. The Suit is incompetent, as the reliefs sought therein cannot be granted without the taking of oral evidence;*
 - 7. The Order of this Honourable Court made on 25th January 2024 which purports to abridge the time within which the Defendants may file their defence to the Originating Summons was made without jurisdiction and in violation of the 2nd Defendant/Applicant's constitutional right of fair hearing and is therefore liable to be set aside; and*

Additionally, the Claimant's failure to comply with a condition precedent in violation of the Arbitration Clause in Articles 8 and 9, Clause 1.1(d)) of the Lease Agreement effectively and irreversibly deprives this Honourable Court of jurisdiction to entertain this Action.

The objection is supported by an affidavit of 6 paragraphs deposed to by **Ogah Odor Alphonsus** on **06/02/2024** with two Exhibits marked as **Exhibits “1” & “2”**.I have reviewed the contents of the said affidavit as well as the Exhibits annexed thereto.

There is also a written address in support of the objection, in which the 2nd Defendant has formulated the following issues:

- (i) Whether the Claimant/Respondent has the requisite locus standi to sue or maintain the instant suit in his personal name and capacity.*

- (ii) Whether the instant suit as constituted vide an Originating Summons is properly constituted or whether the suit is competently constituted?
- (iii) Whether the instant suit is vexatious, oppressive and constitutes an abuse of the court process having regards to the pendency of suit no. FHC/ABJ/CS/2074/2022; Mrs Majiyagbe Iyabo & 5 Ors v. NISL Ventures Limited & Anor in the Federal High Court and the Order made thereof on 16th November 2022.
- (iv) Whether this suit is competent having regard to the Claimant's failure to comply with a condition precedent in breach of the Arbitration clause in the Lease Agreement between parties thereto.
- (v) Whether having regard to the extant Rules of Court and the constitutional right of fairing (sic) of the 2nd Defendant/Applicant, this Court ought to set aside and/or discharge its Order made on 25th January 2024 abridging time within which the 2nd Defendant/Applicant may file their defence or response to the Claimant's originating processes.

I must point out at the juncture that the objections of the 1st and 2nd Defendants are similar in many respects, particularly as they relate to the challenge as to the *locus standi* of the Claimant to initiate this suit and the alleged failure to comply with the alleged condition precedent which is. To this extent, a determination of these issues as raised by either party will abide the other.

Now, arguing his issues for determination serially, Learned Counsel to the 2nd Defendant, **Adebayo O. Omole Esq.**, submitted on his issue one that the Claimant is not a party to the Lease Agreement nor has he disclosed any personal interest in the property; that the Claimant lacks the *locus standi* to initiate or prosecute this suit as he is merely the donee of a Power of Attorney and there is nowhere in the affidavit in support of the originating summons where the Claimant disclosed his authorization or consent of Hajiya Hafsat Umar Ahmed; that by the authority of **EMECHEBE V. CETO INTL (NIG.) LTD. (2018) 11 NWLR (PT. 1631) 520 and OKONKWO V NUC (2013) 15 NWLR (PT. 1378) 482 (P. 501, paras. A-D)**, generally an agent of a disclosed principal cannot commence an action in a court of law in his own name. Counsel concluded by urging me to dismiss or strike out the action.

On his issue two, Counsel submitted that the commencement of this suit by the originating summons procedure is inappropriate and renders same incompetent; further argued that originating summons are not allowed for use in hostile proceedings or where there is a likelihood of substantial dispute of facts; that all the facts revealed in the originating summons disclose highly contentious and disputable matters; that the proceedings commenced by originating summons was not initiated by due process of law, thus rendering it incompetent; that in an action for declaratory relief, oral evidence must be adduced even where the defendant expressly admitted the claim in his pleadings; that the proper order to make is one striking out the suit and urged me to do so.

On issue three, Learned Counsel for the 2nd Defendant contended that this suit constitutes an abuse of court process as the subject matter of this suit is also the subject matter of the pending suit before the Federal High Court in **Suit No.: FHC/ABJ/CS/2074/2022** by virtue of an administration order made on **16/11/2022**; that any attempt to conduct a parallel proceedings would constitute an interference with the authority of the Federal High Court; that the Claimant was aware of the pending processes but chose to circumvent that process by filing the instant suit; that the Claimant is a creditor who ought to ventilate his claims alongside other creditors in the suit before the Federal High Court and that this suit ought to be visited with the penalty of dismissal. Counsel further submitted that the issue of abuse of court process is not an ordinary irregularity but is one which touches on the competency of the action vis-à-vis the jurisdiction of the Court to hear it. Counsel consequently urged me to dismiss this suit.

On his issue four, Counsel submitted that the institution of this suit violates the condition precedent in the Lease Agreement, which is that parties should resort to arbitration to resolve their disputes; that where parties have agreed to resolve their disputes by arbitration instead of litigation, the Court cannot assume jurisdiction where the condition precedent is not complied with; that the proper to make in the circumstances is an order striking out the suit.

Finally, Counsel argued on his issue five that this Court ought to set aside its order of **25/1/2024** wherein the time within which the Defendants were to respond to the originating summons was abridged to 5 days, on the ground that the said order violates the 2nd Defendant's right to fair hearing and the said order was made without jurisdiction. Further argued that the failure of the 2nd Defendant to be given a right to be heard in Court as in the instant case is an affront to his constitutional right of fair hearing. Counsel concluded by urging me to uphold the objection and strike out or dismiss the suit in its entirety.

Claimant's response to the 2nd Defendant's Notice of Preliminary Objection

In reaction to the objection raised by the 2nd Defendant, Claimant's Counsel, **Segun Fiki Esq.**, filed a counter affidavit of 7 paragraphs and a written address on **13/2/2024**. I have considered all of the averments contained in the counter affidavit. I shall now summarize Counsel's submissions as set out in his written address, for the sake of brevity and clarity. In his written address, Counsel adopted the five issues formulated by the 2nd Defendant and addressed them *ad seriatim*.

On issue one, Learned Counsel essentially adopted his argument in answer to the 1st Defendant's objection on the issue of *locus standi*. It is similarly contended that the objection to the *locus standi* of the Claimant is misconceived as the Claimant acted in the position of the lessor; that in Claimant's capacity as a Lessor under the Lease Agreement; that the 2nd Defendant himself had written to the Claimant requesting an extension of the tenancy by 5 months, and in the said letter the 2nd Defendant accurately referred to the Claimant's ownership of the property; that the Claimant has always exercised the powers of the Lessor over the property, including receiving rents and carrying out all repairs and renovations in his name, amongst other positive acts; that even if this were not so, in any event, on the authority of **OLUBODE V. AYOTIDE GLOBAL INVESTMENT LTD & ORS (2017) LPELR-43221 (CA)**, failure of a Plaintiff to sustain an action in a representative capacity does not render the action incompetent; that the cases relied on by the 2nd Defendant are inapposite as none of them interpreted the provisions of

the Rules of the F.C.T. High Court as it relates to the parties to a suit; that the law as decided in the case of **IZEZE VS. INEC & ORS (2018) LPELR-44284 (SC)** is that a case is only an authority for what was decided therein; that by Order 13 of the Rules of this Court, even if this Court comes to the conclusion that the proper party to bring this suit is Hafsatu Umar Ahmed, the Court has the power to either substitute or add the said person as a Co-Claimant.

On issue two, Learned Claimant's Counsel submitted relying on the decision in **ORIANWO VS ORIANWO (2001) 5 NWLR (PT. 707) 516** that where an action is for the interpretation of a document, such an action can properly be commenced by originating summons. That in an action for declaratory reliefs, the proof of the reliefs is by affidavit evidence, as in this case; that all that is sought in this case is an interpretation of documents to determine the date of expiration of the lease and the liability for violation of the land use requirements; that the documents annexed to the processes in this suit are sufficient to resolve the matter conclusively; that there is no contention or substantial dispute of facts as to warrant the calling of oral evidence.

Further submitted relying on the cases of **OKAFOR V. INEC (2023) LPELR-60593 (CA)** & **ZAKIRAI V. MUHAMMED & ORS (2017) LPELR-42349 (SC)** that even assuming there are substantial issues of fact, the law is that where the documents before the Court are sufficient to resolve such a dispute, the suit can be determined using the originating summons procedure; that in any event, the 2nd Defendant has not indicated the substantial dispute of facts that necessitates the calling of oral evidence. Counsel concluded on this issue by urging me to discountenance the 2nd Defendant's submissions.

On issue three, Counsel refuted the 2nd Defendant's arguments and submitted to the contrary that none of the elements of abuse of Court process has occurred in this suit. Further argued on the authority of **SOCIETY BIC S.A. & ORS V. CHARZIN INDUSTRIES LTD (2014) LPELR-22256 (SC)** that for an abuse to be said to have occurred, there must be a multiplicity of actions between the same parties and on the same subject matter; that the Claimant has never instituted any other case on the subject matter of this suit; that Claimant is not a party to the action before the Federal High Court in **Suit No.: FHC/ABJ/CS/2074/2022** and the processes in that suit were never even placed

before the Court. Counsel urged me to resolve this issue against the 2nd Defendant and in Claimant's favour.

On issue four which pertains to the arbitration clause in the Lease Agreement, Claimant's Counsel submitted that the 2nd Defendant is a meddlesome interloper as he is not a party to the Lease Agreement in which the arbitration clause is embedded and as such, he lacks any standing to seek to rely on it in defence of this suit; that the law is that only parties to a contract can take benefit under it; that the 2nd Defendant's legal standing aside, the issues submitted before this Court are non-arbitrable to the extent that they relate to taxes, assessments and levies. Relying on the case of **ESSO EXPLORATION & PRODUCTION (NIG.) LTD & ANOR. V FIRS & ANOR. (2017) LPELR-51618 (CA)**, Counsel submitted that matters regulated by statute or a matter of public interest such as the Notice of Land Use Contravention issued by the Federal Capital Territory Authority in respect of the property, subject matter of this suit, cannot be settled by arbitration. Claimant also argued that even assuming the arbitration clause applies, the only order which this Court can make is one staying proceedings pending arbitration, which the 2nd Defendant never prayed for. Counsel then urged me to resolve the issue firmly against the 2nd Defendant.

On the final issue, Claimant's Counsel contended that this issue is academic and urged this Court not to waste time considering same as same has been overtaken by events. Claimant further submitted that the orders made by this Court on **25/1/2024** came within the discretionary powers of the court; that beyond this, the 2nd Defendant eventually filed its response to the originating summons long after the 21 days allowed under Order 17 Rule 16 of the Rules of this Court, and not within the abridged period of 5 days, and so no miscarriage of justice was inflicted on him. Counsel concluded by urging me to also resolve this issue against the 2nd Defendant.

Upon receipt of the Claimant's reaction, the 2nd Defendant filed a further affidavit of 8 paragraphs sworn to by **Ogah O Alphonsus** on **08/05/2024**, to which a lone exhibit marked **Exhibit 3** was annexed, which is an order of the Federal High Court made on **30/10/2023** in **Suit No.: FHC/ABJ/CS/2074/2022**

between **Mrs Majiyagbe Ayodapo Iyabo & Ors Vs. NISL Ventures Ors.** Filed alongside this further affidavit on the same day is a reply on points of law in which the 2nd Defendant urged me to strike out paragraphs **3(c), (d), (n), (q), (s), 4 (h), (i), (j), (m), (r), 5 and 6** of the Claimant's counter affidavit for offending the provisions of section **115(2)** of the Evidence Act.

The 2nd Defendant contends quite vigorously that the address of Counsel, no matter how brilliant, cannot take the place of evidence and that the evidence before this Court is that the power donated to the Claimant was to defend actions in the name of Hafsatu Umar Ahmed; that the decision in **OLUBODE V. AYOTIDE GLOBAL INVESTMENT LTD (SUPRA)** is inapposite as in that case the Plaintiff disclosed his personal interest, that in any event, the decision in **EMECHEBE V, CETO INTL NIG. LTD (Supra)** is the more recent decision and is more applicable.

On the Claimant's argument that this Court has the power to substitute or add a claimant, the 2nd Defendant's Counsel contended that such an order will overreach the 2nd Defendant.

On the issue of the mode of commencement, Counsel submitted that the Claimant seeks more than an interpretation of documents and that the matter is likely to be hostile or contentious, thus requiring oral evidence.

On abuse of court process, Counsel in response submits that even though Claimant is not a party to **Suit No.: FHC/ABJ/CS/2074/2022**, the Claimant is aware that the assets of NISL Ventures are part of the subject matter of that suit. That abuse of court process can take infinite varieties of shapes.

On the issue of arbitration, Counsel submits that none of the questions sought or the reliefs submitted by the Claimant herein relate to taxes, public policy or any arbitrable matter; that even though the 2nd Defendant is not a party to the Lease Agreement, as Administrator over NISL Ventures, it can rely on the arbitration clause in the Agreement; that one of the exceptions to privity of contract is agency; that assuming this Court finds that the 2nd Defendant is not a party to the arbitration agreement, the Court should uphold the 1st Defendant's objection in that regard.

Finally, Counsel contended that there is still a need for the court to strike out the order made on **25/1/2024**, as the order of accelerated hearing was made when the suit was not ripe.

RESOLUTION OF THE PRELIMINARY OBJECTIONS FILED BY THE 1ST AND 2ND DEFENDANTS

I have already said in this Judgment that the objections raised by the 1st and 2nd Defendants in this suit are similar in many respects. I will therefore consider them together and deal with all the issues raised by respective counsel for completeness.

I have painstakingly read the processes filed and exchanged by the parties in respect of the objections and I have thoroughly reviewed all the exhibits relied upon. There is no doubt that, at the core of the objections filed by the 1st and 2nd Defendants, the following issues continue to rear their heads:

- 1. Whether the Claimant has the *locus standi* to institute this suit? And**
- 2. Whether the condition precedent to the institution of this suit was observed and whether, in the overall circumstances of this suit, the Court has the jurisdiction to entertain and determine same?**

Put simply, the issues set out above are those which this Court must now resolve, one way or another, before any attempt can be made to delve into the substance of the suit, if at all that is necessary.

However, before proceeding into the resolution of the objections, this Court notes that the 2nd Defendant's Counsel, **Adebayo O. Omole Esq.**, in his Reply on Points of Law filed in response to the Claimant's counter affidavit to his preliminary objection, raised a challenge to the competence of **3 (c), (d), (n), (q), (s), 4 (h), (i), (j), (m), (r), 5 and 6** of the Claimant's counter affidavit on the ground that the averments therein are repulsive to section 115(2) of the Evidence Act. As this is a matter of law, this Court will be remiss in its duty if it does not resolve this issue before considering the preliminary objections.

For clarity, the provisions of Section 115 of the Evidence Act are reproduced *in extenso* below:

- (1) Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.**
- (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.**
- (3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.”**

From the above provisions, especially subsection (2), it is clear and settled beyond disputation that affidavits to be used in judicial proceedings must not contain extraneous matter such as objections, prayers or legal arguments. Where this occurs, the affidavit will be defective to the extent of the offending portions thereof, and this Court will be compelled by law to discard the offending paragraphs by striking them out completely.

The test to be adopted in determining whether an averment in an affidavit offends section 115 (2) of the Evidence Act has been stated in numerous cases to be whether such an averment is one to be pressed by counsel in urging the Court to take a position- See **BAMAIYI v. STATE & ORS (2001) LPELR-731(SC)**.

To resolve this question, I have thoroughly examined the contents of the paragraphs of the Claimant’s counter affidavit alleged to be offensive to the Evidence Act. They are reproduced below:

“3. That on 13/02/2024 at about 1.15 pm at our office at No 60 Gaborone Street Wuse Zone 2, while reviewing the 2nd Defendant’s/Applicant’s Notice of Preliminary Objection with the Claimant/Respondent and Segun Fiki Esq, one of the Counsel to the Claimant in this action, I was informed by the Claimant of the following facts which I verily believe him to be true correct and accurate as follows:

- a. ...**
- b. ...**
- c. That he is not in a position to confirm or deny Paragraph 3(a) of the 2nd Defendant’s affidavit, because he is not a party to the case**

where the 2nd Defendant was appointed administrator in respect of the property, subject matter of this suit.

d. That he knows as a fact that the role of the 2nd Defendant, if any, is limited to the Administration of NISL Ventures Limited which holds only 45% shareholding in the 1st Defendant.

e.

f. ...

g. ...

h. ...

i. ...

j. ...

k. ...

l. ...

m. ...

n. That he knows as a fact that the instant objection is calculated to defeat the ends of justice in this matter.

o. ...

p. ...

q. That he knows as a fact that there is no nexus between this suit and the matter referenced in the 2nd Defendant's Exhibit 1 as the parties and subject matter are not the same.

r. ...

s. That he knows as a fact that all the questions for interpretation and the reliefs sought by the claimant in the substantive case can all be resolved by considering the depositions in the affidavit and the documents attached and there is no need for the court to call for oral evidence.

4. That I was also informed by Segun Fiki Esq, the Claimant's Counsel on 13/2/2024 at about 10:49 am, at the aforementioned address of the following facts which I verily believe to be true and correct as follows:

a. ...

b. ...

- c. ...
- d. ...
- e. ...
- f. ...
- g. ...
- h. *That the 2nd Defendant cannot turn around to challenge the Claimant's locus standi in respect of the said property.*
- i. *That he knows as a fact that even in the event that this Court finds that the said Hafsatu Umar Ahmed ought to have been joined as a Claimant in this suit, by the rules of this Honourable Court, the non-joinder or misjoinder of parties will not defeat the instant suit.*
- j. *That this Honourable Court has the inherent powers to order the substitution or addition of any person as Claimant at any stage and on such terms as may be just, even where an action has been commenced in the name of the wrong person as claimant or where it is doubtful whether it has been commenced in the name of the name of the right Claimant.*
- k. ...
- l. ...
- m. *That, further to the above, he knows as a fact that no arbitrable dispute has arisen in this matter to activate the arbitration clause, as this suit merely seeks the interpretation of documents and the satisfaction of a taxation imposed by the Government, which are matters outside the contemplation of an arbitral tribunal.*
- n. ...
- o. ...
- p...
- q. ...
- r. *That the Claimant has a right to present the questions for interpretation and the reliefs sought in the substantive case by way of Originating summons and same can all be resolved relying on the documents annexed to the processes filed by the parties.*

5. That the Applicant's Application is brought malafide, to delay the progress of the suit and to perpetuate the Defendant/Objector's refusal to give up peaceable possession of the property at expiration of the lease.

6. That the Defendant/Objector is not entitled to the reliefs sought in this objection."

It is clear to me that the deponent in the said affidavit gave particulars of the source of his information, which he said was derived in the course of a review of the 2nd Defendant's objection held together with his Counsel, **Segun Fiki, Esq.** at No. 60 Gaborone Street, Wuse Zone 2, Abuja on **13/02/2024** at about 1:15pm.

Without much ado, having x-rayed the paragraphs sought to be impugned in the light of the provisions of Section 115 of the Evidence Act, I hold that there is nothing in paragraphs **3 (c), (d), (n), (q) & (s)** and in paragraphs **4 (h), (i), (j), (m), (r)** that offends section 115 of the Evidence Act, I so hold. They are merely information as to facts derived from other sources, that is, during a meeting with Claimant's Counsel, for which sufficient particulars are provided. See the case of **AG OF THE FEDERATION v. AG OF ABIA STATE & ORS (2024) LPELR-62576(SC)** where the Supreme Court held thus:

"In addition to the Notice of Preliminary Objection filed on 6th June, 2024 by the 28th Defendant, Attorney-General of Ondo State, a motion on notice was brought for an order striking out all the paragraphs of the Affidavit in support of the summons or striking out paragraphs 8(xii), (xiii), (xiv), (xv), 9(vii), (ix), (x) and 10(a), (b), (n), (o), (p), (q), (r) of the Affidavit on alleged non-compliance with Section 115 of Evidence Act 2011. Without much ado, the motion is misconceived as the Plaintiff's Affidavit in support of the summons has substantially complied with the provisions of Section 115 of the Evidence Act since the Deponent had disclosed the source of the facts or information which he believes to be true, setting out the circumstance forming the grounds of his belief. Section 115 of the Evidence Act provides thus:- "(1) Every affidavit used in the Court shall contain only a statement of fact and circumstances to which the witness

deposes, either of his own personal knowledge or from, information which he believes to be true. (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion. (3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief. (4) When such belief is derived from information received from another person the name of his informant shall be stated and reasonable particulars shall be given respecting the information and the time, place and circumstance of the information." The averments of facts in the Affidavit in support of the summons are amply supported by the documents annexed thereto and do not constitute arguments to offend the above provisions."

However, I hold that the averments in **paragraphs 5 and 6** of the said Claimant's counter affidavit offend section 115(2) of the Evidence Act. They are hereby struck out.

On Locus Standi

Having said the above, I now turn to the objection in the main. The issue of *locus standi* has been hard fought by the parties in their respective processes. This is expected, as the issue of *locus standi*, that is, the legal standing to institute and maintain an action in court, is a fundamental and threshold issue in law. It is so fundamental that in the absence of it, the Court will not bother with the consideration of the action on the merits, no matter how germane the case.

In **OJUKWU v. OJUKWU & ANOR (2008) LPELR-2401(SC)** the Supreme Court proffered an explanation of the concept and its application in the following poignant words:

"What does LOCUS STANDI denote? Going by settled judicial authorities, the term LOCUS STANDI denotes legal capacity to institute proceedings in a Court of law. The fundamental aspect of LOCUS STANDI is that it focuses on the party seeking to get his complaint laid before the Court. In matters where a plaintiff seeks to establish a "private right" or special damage"

whether under administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition or mandamus or for declaratory and injunctive reliefs, as in the instant case, the law is sacrosanct that the plaintiff will have LOCUS STANDI in the matter only if he has a special legal right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected. All of the above will however depend on the facts of each case. However, whether an interest is worthy of protection is a matter of judicial discretion which often varies according to the remedy asked for. -see: (1) OWODUNNI VS. REGISTERED TRUSTEES OF C.C.C. (2000) 6 SC (PT.111) 60 (2) OLORIODE VS OYESI (1984) 5 SC 1 and PROF. YESUFU VS GOV. OF EDO STATE & ORS (2001) 13 NWLR (PT.731) 511.."

See also **RE:IJELU (1992) LPELR-1464(SC) & Senator Abraham Ade Adesanya v. The President of the Federal Republic of Nigeria & Anor. (1981) 2 NCLR 358.**

At the heart of the issue of *locus standi* is also the question of whether the proper parties are before the Court in an action. In **BAKARE & ORS v. AJOSE-ADEOGUN & ORS (2014) LPELR-25024(SC)**, the Supreme Court took the following position:

"And it is trite law that it is only when proper parties are before the Court that the Court will be competent to adjudicate on the suit, otherwise the Court shall be incompetent. In other words, when proper parties are not brought before the Court, there is lack of jurisdiction and locus standi as the action is incompetent. See; Justice F. O. Ayoola (nee Akanbi) v. Alhaji B. A. Baruwa & Ors (1999) 11 NWLR (Pt. 628) 595; Okonta v. Philips (2010) 18 NWLR (Pt. 1225) 320; (2010) LPELR 1373."

It is now trite that the Court process to be used in the determination of the issue of *locus standi* is the statement of claim while in an action commenced by originating summons, as in this case, the Court process to be used is the affidavit in support of the summons. See: **Inakoju V. Adeleke (2007) LPELR 1510 (SC).**

I must state that the duty of the Court at this stage is limited to determining whether the originating summons discloses a sufficient personal interest on the part of the Claimant for the purpose of clothing him with the requisite *locus standi* to bring this action. Whether that interest, where it is established, is sufficient to entitle the Claimant to the reliefs sought in this suit is a matter to be resolved in the substantive suit.

I have adverted my mind to the paragraphs of the affidavit in support of the originating summons (including the Claimant's further affidavit) and considered all the exhibits annexed thereto in consideration of whether the Claimant in this suit has disclosed a sufficient interest in the subject matter of this suit as to entitle it to bring this action. I have also considered the extensive arguments of counsel, both for and against the *locus standi* of the Claimant and reviewed the authorities cited in their support.

To resolve this issue, I find that the crucial documents to be considered are the Power of Attorney dated **2nd April 2024** annexed to the affidavit in support of the originating summons as **Exhibit "A"**, vis-à-vis the Tenancy Agreement (also variously described by the Parties as the "Lease Agreement") dated **10th April 2014**, which is annexed to the further affidavit in support of the originating summons filed on **29/01/2024** as **Exhibit "B"** and variously annexed by the 1st and 2nd Defendants to their respective affidavits.

With respect to the parties, more than any other, the central document which forms the basis of this suit and which must necessarily guide this Court in the determination of the issue of *locus standi* is the Lease Agreement, I so hold. I say so because questions **1, 2, 3** and **4** and **reliefs 1, 2, 3, 4, 5 & 6** sought in the originating summons, along with the consequential reliefs numbered as **7, 8** and **9** thereof are all predicated on the Lease Agreement dated **10th April 2014**, and no other document.

The law on whether a donee under a power of attorney can initiate an action in his name has undergone clarification over the years, to the point where it is now trite that generally, any such action should be commenced in the name of the donor of the power or, where commenced by the donee, with a description showing that the action was commenced on behalf of the donor. In **UNITED**

(NIG) CO. LTD v. NAHMAN & ORS (2000) LPELR-10460(CA), Sanusi JCA (as he then was) opined thus:

“The learned authors of Halsbury’s Laws of England, 4th Edition clause 4 page 447 paragraph 744 had this to say on agency through power of attorney: "An agent acting under a power of attorney should, as a general rule act in the name of the principal. If he is authorised to sue on the principal's behalf, the action should be brought in the principal's name. A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him, but the donee of the power may, where so authorized by the donor of the power, execute any instrument with his own signature and, where sealing is required with his own seal, and act in his own name. This provision for execution and action by the donee in his own name exists as an alternative to the statutory procedure for the execution of a conveyance by the attorney of a corporation or by a corporate attorney. Any document executed or thing done under this provision is as effective as if executed or done in the name of the donor of the power." (Underlining mine). Thus, from the foregoing the said Joseph Nahman the donee of the power of attorney is authorised to act on behalf of his principal or the donor of the power. Any act he did in his name is effective as if it was done by the donor.”

The 1st & 2nd Defendants have also correctly cited the decisions in the cases of **EMECHEBE V. CETO INTL (NIG.) LTD (supra)**, **OKONKWO V N.U.C. (Supra)** and a host of other authorities to the effect that generally, the donee under a Power of Attorney has no locus to institute an action in his name, rather such an action must be instituted in the name of the principal. This position is straightforward enough and does not require much sophistry to understand. I am bound by the inviolable doctrine of judicial precedents to follow decisions of the Appellate Courts cited to me, insofar as the issues decided therein are similar or on all fours with those before me.

Where, however, it appears or it is alleged that a material difference exists in the facts, a court sitting as a *judex* has the duty to calmly analyze the law and

apply it to the peculiar facts before him- see: **ACN v. RIVERS STATE INEC & ORS (2013) LPELR-21169(CA)**.

Having said the above, the point of divergence in this action is as to the Claimant's actual status in relation to the subject matter of this suit, having regard to the Lease Agreement which was subsequently executed on **10th April 2014**. According to the Claimant, he possesses the *locus standi* to initiate this suit as he is a Lessor under the Agreement, hence his direct and positive acts of "ownership" over the said property such as collecting rents and issuing Notices in his name, which, by his interpretation means he is not a mere agent.

Claimant referred to these purported acts of ownership as demonstrated in **Exhibit C** annexed to the originating summons, which is a letter dated **28/9/2020** written by the Claimant to the Managing Director of NISL Ventures Limited in which he was described as "Lessor"; **Exhibit "E"**, which is an application by the 1st Defendant to the Claimant in his name and personal capacity for consent for change of use of the property and on which an Undertaking was written by one **Kolawole Adewale**; **Exhibit "F"** which is a letter dated **12/8/2023** titled "**NOTICE OF EXPIRATION OF LEASE OF 109 PLAZA, 109 ADETOKUNBO ADEMOLA CRESCENT, WUSE II, ABUJA**" addressed to the 2nd Defendant; **Exhibit "G"** which is a letter dated **10/10/2023** written by the Claimant to the 2nd Defendant again as "Lessor"; **Exhibit "H"** which is a letter written by NISL Ventures dated **9/10/2023** addressed to the Claimant wherein the 2nd Defendant himself acknowledged the Claimant's ownership of the property and **Exhibit "I2"** which is a letter dated **3/11/2023** addressed to the 3rd Defendant in his capacity as "Lessor". He thus believes himself to have established sufficient personal interest as to confer him with the right to bring this action.

Rejecting this contention, the 1st and 2nd Defendants have vehemently argued that the position of the Claimant remains unchanged and he is a mere donee under the Power of Attorney, which strips him of any right to institute this action in his name. This is the conundrum which now confronts this Court.

I note that neither the 1st nor the 2nd Defendant specifically denied dealing with the Claimant as the Lessor in the course of their relationship, nor did they

attempt to discredit **Exhibits C, E, F, G, H & I2** relied on by the Claimant. It seems to me that in failing to specifically deny the Claimant's contention and discredit the documentary evidence in its support, the Defendants had unwittingly admitted same, I so hold. After all, the law is that facts not expressly denied as admitted to be true- see: **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (2017) LPELR-43940(SC)**.

In a bid to situate the arguments of the parties within the proper lens, I have had a recourse to the Lease Agreement and read it alongside the various documents annexed to the affidavit in support of the originating purpose for the sole purpose of locating the existence or otherwise of the Claimant's *locus standi*. The introduction to the Lease Agreement reads:

“LEASE AGREEMENT

This Lease is made this 10 day of April, 2014.

Between

HAFSATU UMAR AHMED, of Plot 640 Rhine Street, Ministers Hill, Maitama District, Abuja, Nigeria represented by ALH. MUSA YAHYA of No. 2 Buchanan Crescent, wuse II, Abuja (herein referred to as the “LESSOR”, which expression shall where the context admits include their successors, assigns and legal representatives) of the one part...”

A Contract represents the wishes and desires of the parties. It is therefore an established principle of our laws that persons of full age and sound mind are bound by any agreement lawfully entered into by them. See: **OKONKWO v. COOPERATIVE & COMMERCE BANK (NIG) PLC & ORS (2003) LPELR-2484(SC)**.

Furthermore, it is universally accepted that contracts are to be construed literally, in accordance with the ordinary words used therein. See: **INTERNATIONAL ENERGY INSURANCE PLC V. STERLING BANK (2017) LPELR-43567(CA); UBN V. AJABULE (2011) 18 NWLR (PT. 1278) 152 AT 185; AND OGUNDEPO V. OLUMESAN (2011) 18 NWLR (PT.1278) 54 AT 64.**

The issue which agitates the mind of the Court from the reproduced introduction to the Lease Agreement is this: if the Claimant was not intended to be regarded as a Lessor, why was his name captured in the portion reserved

for the Lessor of the property? To my mind, the only logical interpretation to be reached from the literal words employed in the Agreement is that it was agreed by the parties to that Agreement that the Claimant herein shall be one of the Lessors over the property. Simply put, a literal and ordinary interpretation of that clause will lead to the inescapable conclusion that the parties in fact intended that, for the purpose of the Lease Agreement, the Lessors over the property would be both Hafsat Umar Ahmed and Alh. Musa Yahaya.

This capacity is evident from the use of the words: ***“...which expression shall where the context permits include their successors, assigns and legal representatives.”*** immediately after the names and capacity of the named persons as “Lessor”. In its ordinary use, the word ***“their”*** as used in the Lease Agreement refers to something in the plural.

By the Merriam-Webster Dictionary of English, it means:

“of or relating to them or themselves especially as possessors, agents, or objects of an action.”

The Cambridge Dictionary defines it thus:

“of or belonging to them;

“belonging to or connected with them; the possessive form of they, used before a noun: It was their money, and they could spend it as they liked.”

From the above definitions, I find that the Agreement referred to the Claimant herein as a Lessor over the property at Plot 109 Wuse II, Abuja, I so hold.

I therefore have no difficulty in finding that the Claimant has the requisite *locus standi* to bring and maintain this action pursuant to the Lease Agreement, given his description as a Lessor. The implication of being a Lessor was considered in the case of **ANIMASHAWUN v. OSUMA & ORS (1972) LPELR-493(SC)** and the Supreme Court per Fatai-Williams JSC held thus:

“A lessor is one who lets any property to another by lease for an agreed term which is less than his own estate and who is entitled to the reversion of the property at the expiration of that agreed term.”

In the final analysis, I hold that the Claimant has the requisite *locus standi* to initiate and maintain this suit as he did. The objections of the 1st and 2nd Defendants on this issue are hereby dismissed.

As an aside, this Court notes without necessarily making the finding, that even if the Defendants are correct to say that this suit ought to have been instituted by Hafsat Umar Ahmed and not the Claimant himself, under **Order 13 Rule 18 (3)** of the Rules of this Court, this Court has the power to add any person to this suit, whose presence is necessary for the just determination of the action. This power is a discretionary one which exists to enable the Court do substantial justice in cases before it as opposed to technical justice. The rationale behind this liberal approach is encapsulated in **Order 1 Rule 2** of the Rules of this Court which stipulate that:

“Application of these Rules shall be directed towards the achievement of a just, efficient and expeditious dispensation of justice. Parties and Counsel shall assist the Court to further the overriding objectives of these Rules.”

However, I have already held that the Claimant has the requisite *locus standi* to maintain this suit.

I say no more on this point.

On the alleged failure to comply with a condition precedent by resorting to arbitration

This Court has considered all the arguments for and against the competence of this suit on this issue. The 1st and 2nd Defendants arguments are anchored on the provision of Article 8 of the Lease Agreement which provides thus:

“If at any time, there is a dispute, question or difference of opinion between the parties hereto, concerning or arising out of this lease, or the construction, meaning, operation or effect of any clause under it, or

concerning the rights, duties or liabilities of the parties as the case may be, the parties shall without delay confer in good faith to settle it. However, if they are unable/fail to settle it within fourteen (14) days of such disputes arising, then upon an application by either of the parties, the matter shall be referred to Arbitration. The place of arbitration shall be Abuja and the Laws applicable to the arbitration proceedings shall be Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria 2004.”

Firstly, there is no doubt that the 1st and 2nd Defendants are correct to state that where parties have entered into an arbitration agreement, the Court is bound to honour same. This is consistent with the attitude of the Courts which is to promote alternative dispute resolution, see **OWNERS OF THE M V. LUPEX v. NIGERIAN OVERSEAS CHARTERING AND SHIPPING LTD (2003) LPELR-3195(SC)**.

Thus, the existence of a valid arbitration clause generally constitutes a condition precedent to the adjudication of a dispute in the conventional Courts.

In the case now before me, the Claimant has not denied the existence or the validity of the above arbitration clause, rather he contends that the 2nd Defendant is not competent to invoke the arbitration agreement as it is not a party to same; that in any event, the 1st and 2nd Defendants have not sought the proper order before this Court and, lastly, that the issues submitted for determination in this suit are not arbitrable. I will take these arguments in that order.

The first point turns on whether the 2nd Defendant who is admittedly not a party to the Lease Agreement embodying the arbitration agreement can seek to ventilate a right under it. The Claimant disagrees with this, whilst the 2nd Defendant sees nothing wrong with it, as he is an administrator over NISL Ventures, a company with shareholding in the 1st Defendant.

Without wasting time on this point, this Court agrees with the Claimant that the 2nd Defendant lacks the right or standing to seek to invoke an arbitration

agreement to which it is not a party. I find the 2nd Defendant's arguments on this point preposterous indeed. Arbitration is a closed circle which admits of only the parties to the agreement. No third party, no matter how connected to the subject matter, can take benefit under an agreement it was never privy to. In **BILL & BROTHERS LTD & ORS v. DANTATA & SAWOE CONSTRUCTION CO. (NIG) LTD & ORS (2015) LPELR-24770(CA)**, the Court of Appeal held thus:

“The law is that a non-party to an agreement cannot enforce the same even if it is made for his benefit. See IKPEAZU V. ACB LTD (1965) NMLR 374, 379 and NWUBA V. OGBUCHI (2008) 2 NWLR (1072) 471, 481. It follows therefore that the appellants cannot seek to enforce the benefit of the arbitration clause therein. Section 5 (1) of the Act makes it clear that only a party to the arbitration agreement "may..... apply to the Court to stay proceedings". Reliance on Section 4 (1) of the Act by appellants' counsel to submit that a non-party to the agreement can apply to stay proceedings is of no avail as it amounts to reading the subsection in isolation from the related section, viz; Section 5 (1) of the Act.”

I therefore find that the 2nd Defendant's objection anchored on this point is without any basis in law, it is accordingly dismissed.

The 1st Defendant however is a party to the arbitration agreement and has rightly sought to take refuge under it. The 1st Defendant has contended that the failure of the Claimant to first resort to arbitration has completely drained jurisdiction out of this proceedings and rendered the suit liable to an order striking same out. Claimant however contends that this Court has the jurisdiction to entertain this suit, moreso as the 1st Defendant did not seek the proper order which is for a stay of proceedings. To resolve this issue, I must consider the provision of the Arbitration and Conciliation Act which is applicable to the arbitration agreement, especially section 5 thereof. It provides:

“5. (1) If any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement any party to the arbitration agreement may, at any time after

appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.

(2) A court to which an application is made under subsection (1) of this section may, if it is satisfied-

(a) that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration agreement; and

(b) that the applicant was at the time when the action was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings.”

A similar provision is contained in the recently enacted Arbitration and Mediation Act 2023, which replaced the now-defunct Arbitration and Conciliation Act. Particularly, section 5 of the new Act provides thus:

“(5) (1) Notwithstanding the provisions of any other law, a court before which an action is brought in a matter, which is the subject of an arbitration agreement shall, if any of the parties request, not later than when submitting their first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is void, inoperative or incapable of being performed.

(2) Where an action referred to in subsection (1) has been brought before a court, arbitral proceedings may be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.

(3) Where a court makes an order for stay of proceedings under subsection (1), the court may, for the purpose of preserving the rights of parties, make an interim or supplementary order as may be necessary.”

From the above provisions, there is no portion of the law which supports the 1st Defendant’s contention that this court lacks the jurisdiction to entertain this suit and same should be struck out, simply on account of the existence of the arbitration agreement. I have searched through the entire law and found no such provision. Rather, it is clear that what is provided in the law is that a party to an arbitration agreement who intends to invoke it against a Plaintiff in a suit must specifically request that the court proceedings be stayed and the matter

referred to arbitration. Additionally, this request for a stay of proceedings must be made at the earliest possible opportunity, not later than at the time of delivery of the party's first processes in the matter.

In **ZAMFARA STATE GOVT & ORS v. N. C. G. INTEGRATED ENG. WORKS LTD & ANOR (2021) LPELR-55712(CA)**, it was held thus:

"In the case of NIGERIA LNG LTD VS. AFRICAN DEVELOPMENT INSURANCE CO. LTD (1995) 8 NWLR (PT. 416) PAGE 677, Uwaifo, JCA (as he then was) listed five conditions for a resort to arbitration. They are: (a) that there is an agreement between the parties thereto or a statutory provision which compels arbitration in such matters; (b) that the parties before the Court are parties to the agreement or the transaction which compels arbitration; (c) that the arbitration sought is within the contemplation of the arbitration agreement or circumstances calling it; (d) that there is no sufficient reason why reference to arbitration should not be made; and (e) that the application for stay of proceedings pending arbitration was made in time as envisaged under Section 5 of the Arbitration Act."

I have looked at the 1st Defendant's objection, nowhere there did the 1st Defendant apply for an order staying the proceedings in this Court and referring the matter to arbitration. The 1st Defendant also never filed a separate application seeking a stay of proceedings pending arbitration. Even on this score, the 1st Defendant's objection fails, I so hold.

What is more, the 1st Defendant has robustly joined issues with the Claimant on the substantive suit and filed a series of other processes in this matter. This is not consistent with the attitude of a party who desires that the dispute be resolved by arbitration. Arbitration is not a magic wand which when waved automatically squeezes jurisdiction out of the Courts. Far from it.

In the case of **MEKWUNYE v. LOTUS CAPITAL LTD & ORS (2018) LPELR-45546(CA)**, where the Court of Appeal per **Tijjani Abubakar, JCA** (as he then was) opined thus:

"The grievance of the Appellant under this issue is that the learned trial judge refused to follow the decisions in OBEMBE v. WEMABOD ESTATE (supra) and K.S.U.D.B. v. FANZ LTD (supra) and I must say that the

Appellant's complaint is unfounded having had the benefit of studying the decisions referenced. In OBEMBE, the Supreme Court, per FATAYI-WILLIAMS, JSC held as follows: "As we have pointed out earlier, any agreement to submit a dispute to arbitration, such as the one referred to above, does not oust the jurisdiction of the Court. Therefore, either party to such an agreement may, before a submission to arbitration or an award is made, commence legal proceedings in respect of any claim or cause of action included in the submission. At common law, the Court has no jurisdiction to stay such proceedings. Where, however, there is provision in the agreement, as in Exhibit 3, for submission to arbitration, the Court had jurisdiction to stay proceedings by virtue of its power under Section 5 of the Arbitration Act (Cap 73 of the Laws of the Federation)... No stay was asked for by the defendants/respondents after they were served with the writ of summons. On the contrary, they accepted service of the statement of claim, filed their own statement of defence, testified in their defence and took part in the proceedings until judgment was delivered. In order to get a stay, a party to a submission must have taken NO step in the proceedings. A party who makes any application whatsoever to the Court, even though it be merely an application for extension of time takes a step in the proceedings. Delivery of a statement of defence is also a step in the proceedings... Moreover, if the Court has refused to stay an action, or if the defendant has abstained, as in the case in hand, from asking it to do so, the Court has seized of the dispute, and it is by its decision and by its decision alone, that the right of the parties are settled...." In K.S.U.D.B. (supra), the Supreme Court similarly held as follows: "Both the decision in Doleman & Sons v. Ossett Corporation (supra) and that of this Court Obembe v. Wemabod Estates Ltd. (supra) recognize it that the Court alone has not only the jurisdiction but also the duty to settle the dispute between the parties if called upon to do so. These cases also recognize it that under the relevant section of the arbitration law, upon the application of the defendant to an action brought in breach of agreement to proceed by arbitration the Court has power to stay the proceedings. In other words, under the provisions of the Arbitration law, the Court had power to refuse to entertain proceedings brought before it in breach of an agreement to decide the

matter by arbitration. However the defendant is not given by the law a carte blanche as to when to apply for the stay of proceedings...."

...

I am unable to, in the peculiar circumstances of the instant case, hold the view that the learned trial judge failed to follow the decision of the Supreme Court referred to by the Appellant.

...

See: MESSRS NV SCHEEP v. MV'S ARAZ (2000) 12 SC (Pt. 10) 154 at 213 where it was held: "In any event, the arbitration clause did not seek to oust the jurisdiction of the Court as all it did was to allow parties the avenue and possibilities of settling disputes amicably out of Court. The position of the law is that an arbitration clause in agreement generally does not oust the jurisdiction of the Court or prevent the parties from having recourse to the Court in respect of dispute arising therefore. A party to an agreement with an arbitration clause has the option to either submit to arbitration or to have the dispute decided by the Court...." Therefore, the reasoning of the learned trial judge earlier reproduced does not in my view, run contrary to the decision in OBEMBE (supra). Appellant's submission on this issue is therefore misconceived."

On the whole, for the reasons I have stated above, I find that the 1st Defendant's objection was not raised properly nor was the proper order sought. I also find that the 1st Defendant took steps in the proceedings after raising its objection, it therefore fails and it is accordingly dismissed. In summary I hold that this Court has the jurisdiction to entertain and determine this suit.

Having dismissed the objection to the jurisdiction of this Court predicated on the arbitration agreement as I have, the issue raised by the Claimant as to whether the dispute before this Court is non-arbitrable or not has been rendered wholly academic. It will therefore serve no useful purpose in this proceedings to dissipate any energy on its consideration. I so hold.

On the mode of commencement of this suit

I have considered all the arguments proffered by the parties and the respective authorities cited.

This issue is straightforward. I have looked at the originating summons and it is clear to me that this suit seeks the interpretation of the Lease Agreement and other documents made thereafter. The reliefs sought are also predicated on the interpretation the Claimant has asked for.

It is settled law that in any action for the interpretation or construction of a deed, instrument, statute or other document, the proper mode of commencing such an action is by originating summons. See: **OSSAI V. WAKWAH & ORS (2006) LPELR-2813(SC)&NATIONAL BANK OF NIGERIA LTD. & ANOR. V. LADY ALAKIJA & ANOR. (1978) 9-10 SC. 59.**

I note that the 1st and 2nd Defendants have argued that this matter is hostile and likely to be contentious. According to the Defendants, the reliefs sought are declaratory in nature and the subject matter is so contentious that oral evidence must be called in aid. I must confess that my examination of the processes filed in this suit has not revealed any hostile, contentious or particularly rancorous matter which takes this suit outside the realm of the originating summons procedure, I so hold. To the contrary, the parties have each fought this suit on the basis of copious documents annexed to their respective affidavits, which this Court is entitled to rely on in resolving the substantive suit, should the need arise.

I am therefore inclined to agree with the Claimant that nothing about the mode of commencement of this suit strips this Court of the jurisdiction to entertain same, I so hold.

I must add here that, as rightly observed by the Claimant, it is not the law that even where disputes or contentious matters are disclosed in an action commenced by originating summons, this will render the suit incompetent. The correct position of the law is that even in circumstances where there is a dispute, where the documentary evidence placed before the Court is sufficient to dispose of the contentious matters, the court will proceed to adopt the

originating summons procedure. See: **OKAFOR V. INEC (supra) & ZAKIRAI V. MUHAMMED & ORS (supra)**.

There is something else. It is not correct as argued by the Defendants that where a suit is improperly commenced by originating summons before a trial Court, the court lacks jurisdiction and the suit ought to be struck out. This will be stretching technicality too far. The correct principle is that in such circumstances, the Court will exercise its powers to order the filing and exchange of pleadings. See: **SUBAYA METALWARE (NIG) LTD v. ALAKIJA & ANOR (2022) LPELR-57739(CA)**.

All in all, I find no merit in this objection and it is accordingly dismissed.

On whether this suit constitutes an abuse of court process

The 2nd Defendant has contended that this suit constitutes an abuse of Court process, as it was filed notwithstanding the existence of a suit before the Federal High Court in **Suit No.: FHC/ABJ/CS/2074/2022**. I have already set out the arguments for and against this position in the body of this Judgment, it is therefore unnecessary to reproduce them here.

It is generally accepted that the term “**abuse of court process**” is amorphous and lends itself to an infinite number of occurrences. In **OGOEJEFO v. OGOEJEFO (2006) LPELR-2308(SC)** the Supreme Court considered the meaning and scope of the concept of abuse of court process and described thus:

“The questions of what actually constitutes and what does not constitute an abuse of the process of court have been considered and answered by this court in several of its decisions. One of the leading cases on this subject in which Karibi-Whyte, JSC reviewed several earlier decision of this court is the case of Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156 at 188-189 where he said: "The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognised that the abuse of the process

may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See *Okorodudu v. Okoromadu* (1977) 3 SC 21; *Oyegbola v. Esso West African Inc.* (1966) 1 All NLR 170. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right, per se.”

In this case, the issue in focus is whether this suit is abusive of the process of this court, having regard to the suit said to be pending before the Federal High Court. The law is trite that an abuse of court process will arise where there is a multiplicity of actions on the same subject matter as between the same parties.

In resolving this question, I agree with the Claimant that the originating processes in the suit said to be pending before the Federal High Court were never placed before this Court by the objector, to afford this Court the opportunity to compare and contrast the parties and subject matter of both suits. Rather, the only document annexed by the 2nd Defendant to his affidavit in support of the objection is an Order of the Federal High Court made on 16/11/2022 in **Suit No.: FHC/ABJ/CS/2074/2022**. In the absence of the processes in the suit, the 2nd Defendant has clearly invited this Court to speculate on facts not before it. This Court must and hereby refuses this invitation, as it can only act on empirical evidence provided by the parties, and not on idle speculation. See: **Addo v State** (2020) LPELR-55521(SC); **State v. Yahaya** (2019) LPELR-47611(SC); **Julius v. FRN** (2021) LPELR-54201(CA); **Ivienagbor v. Bazuaye & Anor** (1999) LPELR-1562(SC). I therefore find that the 2nd Defendant has not proven his allegation as to the multiplicity of actions on the same subject matter.

Furthermore, I have seen **paragraphs 3(o), 3(p), 3(q) and 3(r)** of the Claimant's counter affidavit in response to the 2nd Defendant's preliminary objection wherein he deposed as follows:

“3 (o) That, in response to paragraphs 4 (a, b, c, d, e, & f) of the Affidavit in support of the Preliminary objection, he knows that he is not a party in suit no FHC/ABJ/CS/2074/2022 and is not privy to the subject matter of the suit, having not been joined thereto.

(p) That he has seen and read Exhibit 1 annexed to the affidavit in support of the preliminary objection and he knows as a fact that neither Plot 109, Adetokunbo Ademola Crescent, Wuse II, Abuja, which is the subject matter of this suit, nor the Claimant in this suit is contained therein or was otherwise mentioned therein.

(q) That he knows as a fact that there is no nexus between this suit and the matter referenced in the 2nd Defendant's Exhibit 1 as the parties and subject matter are not the same.

(r) That he is not involved in any other matter where the subject matter is for the interpretation of the lease agreement which is the kernel of this instant suit.

I have also seen paragraph 4.10 of the 2nd Defendant's further affidavit made supposedly in rebuttal to the above paragraphs of the Claimant's counter affidavit in response to the 2nd Defendant's preliminary objection. It simply states:

“4.10 The 2nd Defendant/Applicant vehemently denies paras. 3 (o), (p), (q), (r) and (s) of the Claimant/Respondent's Counter-Affidavit as same is false and speculative. Contrary to the said paragraphs, the monies derived from the lease in respect of the subject property is the subject of Suit No.: FHC/ABJ/CS/2074/2022, as it remains an asset and receivable of NISL Ventures Limited until the expiration of the lease which subject, the instant suit interferes with.”

It is clear to this Court that the 2nd Defendant never denied the Claimant's averments to the effect that he is not a party to the suit before the Federal High Court. There is therefore nothing before this Court to suggest that the

Claimant herein is a party to the suit before the Federal High Court or that the subject matter of both actions are the same.

In the circumstance, I find that the 2nd Defendant has failed woefully to establish any iota of abuse of court process in this suit, I so hold.

Consequently, this objection is also dismissed.

On the objection as to the competence of the order made by this court on 25/1/2024

Without much ado on this issue, I hold that it is academic and its determination will serve no useful purpose. This is so because despite the order abridging the 2nd Defendant's time to file its response to the suit to 5 days, the 2nd Defendant in fact filed its counter affidavit and written address to the main suit on **08/05/2024**, more than four months after the order was made. This counter affidavit and written address were regularized by this Court on **20/5/2024**.

In the circumstances, the consideration of this issue is of no utilitarian value in this proceedings and has no bearing on the jurisdiction of this Court. I so hold.

In the final analysis, the preliminary objections filed by the 1st and 2nd Defendants fail in their entirety and they are accordingly dismissed.

THE MAIN SUIT

Having dispensed with the objection, this Court will now proceed to the consideration and determination of the main suit.

The respective cases of the parties are amenable to easy understanding.

The facts deposed to by the Claimant are contained in his affidavit in support of Originating Summons dated and filed on **17/01/24**. It is his case that the Lease Agreement entered into with the 1st Defendant was for the purpose of building a shopping plaza and that the lease was for a period of 10 years elapsing on **10/9/2024**; that NISL Ventures Ltd owned 45% of the 1st Defendant's shares; that it was agreed that the 1st Defendant shall obtain all licenses, approvals and

permissions as may be necessary to complete the shopping mall; that the 1st Defendant thereafter wrote a Letter to him dated 28/10/2015 requesting for consent for change of use of the property from residential to commercial; that **Kolawole Adewale**, the 1st Defendant's partner, endorsed a handwritten undertaking on the face of the said letter wherein he covenanted that the 1st Defendant will process the change of use and pay the cost of the process leading to the change; that after that, he believed that the 1st Defendant had carried out the change in line with the Lease Agreement and the aforesaid undertaking; that sequel to the appointment of the 2nd Defendant as administrator over NISL Ventures, he wrote to the 2nd Defendant giving him notice of the expiration of the lease; that the 2nd Defendant wrote back requesting a moratorium of 5 months extra.

Claimant further averred that he refused this request and indicated that the Lease Agreement makes no provision for a renewal; that the 2nd Defendant however obstinately refused to concede that the rent expires on 10/9/2024 wherefore he will be required to give up vacant possession of the property; that whilst this issue was ongoing, he was shocked to receive a Land Use Violation Charge dated **17/10/2023** notifying the property manager of a contravention penalty of **N 13, 446, 690** for improper use of the property. That he then realized that the 1st Defendant did not process the change of use as agreed; that in preparation for the expiration of the lease, he engaged Messrs. Yunnus Consult to conduct an assessment of the property and they assessed the cost of putting the property in tenantable condition at N 51, 197, 320.13; That the 3rd Defendant has funds in his possession to defray this cost; that it is imperative that this Court interpret the Lease Agreement and the undertaking for the proper determination of the rights and obligations of the parties.

In his written address, Learned Claimant's Counsel, **Segun Fiki** formulated one issue for determination, as follows:

“Whether or not, having regard to the lease agreement dated 10th April 2014 and the entire circumstances of this suit, the Claimant has made out its case in this suit, and if so, whether this Honourable Court ought not to grant all the reliefs sought herein?”

Arguing this issue, Counsel submitted that the Lease Agreement dated **10th April 2014** forms the foundation of the claim before this Honourable Court and the lease agreement and other documents made pursuant thereto should be subjected to the established principles of interpretation of written contract in order to determine the Claimant's entitlement to the reliefs sought in the suit or otherwise. He relied on the cases of **OLOWUV. BUILDING STOCK LTD. (2018)1 NWLR (PT.1601)343, P.398 PARA D-G., IHUNWOv. IHUNWO(2015) 8 NWLR (PT. 1357) 550, p. 583, para-E-G, D-E.**

Counsel further submitted that the law is quite settled that the court is bound to construe the simple, plain and ordinary meaning of the terms used in the Lease Agreement and related documents in order to determine the extent of rights, obligations, duties and liabilities created under it and should not import any extrinsic evidence to vary, alter, deviate or amend the terms agreed by the parties, relying on the cases of **SONABREWERY PLC v. PETERS (2005) 1 NWLR (PT. 908) 478, DANTATA V. DANTATA (2002) 4 NWLR (PT.756) 144, UBNLTD v. OZIGI (1994) 3 NWLR (PT.333) P.385, OWONIBOY TECH. SERVICES LTD v. UNION BANK PLC (2003) 15 NWLR (PT. 844) 545, SHELL BP PETROLUEM DEVELOPMENT COMPANY v. JAMAL ENGINEERING NIG LTD, (1974) 9 N.S.C.C.191.**

Citing the case of **OLANREWAJU COMM. SERVICES LTD V. SOGAOLU (2015) 12 NWLR (PT 1473) P.311, AT 325, PARA-G, 321 PARA C,** Counsel additionally submitted that the 3rd Defendant is merely an agent of the 1st and 2nd Defendants and can be compelled by this Honourable Court to pay over sums held by him on behalf of the landlord as parties are bound by the terms of the agreement they made which stipulated the intention and benefits each party should enjoy.

It was also submitted that the terms of any agreement are determined by the parties and not the court. This is because the Court does not have the *vires* to rewrite the agreement of parties citing the case of **A.I INV. LTD v. AFRIBANK (NIG) PLC (2013) 9NWLR (PT 1359) 380.P.409 PARA F-G, D-G,AFROTEC TECHNICALSERVICES (NIG) LTD V.MIA & SONS LTD (2000) 15 NWLR (PT 692)730** in urging the court to grant the Claimant's reliefs.

Counsel submitted finally that when the Lease Agreement is juxtaposed with all the other documents in this suit, this Court ought to arrive at the conclusion that the Claimant has established his entitlement to the reliefs sought. He concluded by urging me to resolve the sole issue in the Claimant's favour.

SUBMISSIONS BY 1ST DEFENDANT IN WRITTEN ADDRESS IN SUPPORT OF COUNTER AFFIDAVIT FILED ON 16/4/2024

In opposition to the originating summons, the 1st Defendant filed a Counter Affidavit on **16/4/2024** deposed to by one **Otunba Taiwo Ayodele** alongside a written address in opposition to the Claimant's Originating Summons.

The facts upon which the 1st Defendant oppose the Originating Summons are as contained in the Counter affidavit. Suffice it to say that the 1st Defendant vehemently rejects the Claimant's narration of the facts. According to it, the agreement never contemplated that it will be the sole responsibility of the 1st Defendant to obtain approvals and permits, rather it was stated that the Lessor should cooperate with the lessee in that regard; that Exhibit "E" annexed to the affidavit in support of the originating summons is nothing but a notice that the 1st Defendant planned to change the use of the property and did not mean that it was going to shoulder the responsibility of doing so; that the 1st Defendant is not aware of any land use violation charge.

The 1st Defendant in its written Address raised a lone issue for determination:

“Whether the claimant has placed sufficient materials to be entitled to the reliefs sought in the originating summons?”

Surprisingly, in arguing the above issue, the 1st Defendant focused on rehashing the contents of its address in support of its Notice of Preliminary Objection, which this Court has already determined in this judgment. No argument was proffered as to the substance of the action.

In his reaction, Claimant on **20/5/2024** filed a further affidavit of 6 paragraphs to which he annexed one exhibit marked **Exhibit "A"**, which is a Tenancy Agreement between the 1st Defendant and one **T-Mart Multiservices**. Claimant averred that the 1st Defendant is fully aware of the land use violation charge;

that the 1st Defendant has entered into a Lease Agreement as in the annexed Exhibit A with a third party which is to expire in **October 2025**, beyond the period in the original Lease Agreement between the Claimant and the 1st Defendant; that unless this Court resolves the questions in this suit, the 1st Defendant will extend and perpetuate the lease beyond the agreed period.

In his reply on points of law filed on **20/5/2024**, Claimant's Counsel urged me to strike out paragraphs **7, 9, 20, 21** and **23** of the 1st Defendant's counter affidavit for offending section 115 of the Evidence Act. Claimant also rehashed his argument in response to the 1st Defendant's preliminary objection.

SUBMISSIONS BY 2ND DEFENDANT IN HIS WRITTEN ADDRESS IN SUPPORT OF COUNTER AFFIDAVIT FILED ON 8/05/24

On his part, the 2nd Defendant in opposition to the Claimant's Originating summons filed its Counter affidavit dated **8/5/2024** and annexed 3 exhibits marked "exhibit 1-3" supported with a written address.

In the written address, **Adebayo O. Omole Esq.**, Counsel to the 2nd Defendant formulated a lone issue for determination as follows:

"Whether having regard to the facts and circumstances, the Claimant has proved his case as required by law to entitle him to the grant of the reliefs sought?"

Counsel argued that extant principles of law mandate the Claimant to obtain the consent of the 2nd defendant or leave of the Federal High Court before instituting this legal proceeding, the object of which seeks to attach funds belonging to the 2nd Defendant (i.e., NISL Ventures Ltd), citing **Section 480 and 868 of Companies and Allied Matters Act, 2020**.

Also argued that the claimant failed to discharge the evidential burden to be entitled to the reliefs sought, citing the case of **ODUM v. CHIBUEZE (2006) ALL FWLR (PT.848) 714 at 742-743**, **NWAOGU v. ATUMA (2013) ALL FWLR (PT.693)1893 at paras E-G.**, **BAGUDU v. F.R.N (2004) 1 NWLR (Pt. 853) 182 (P.199, paras. D-E)**; that substantial issues have not been disclosed in this suit that the Honourable Court should expend scarce judicial resources to

determine relying on the case of **SKYE BANK PLC V. IWU (2017) 16 NWLR (Pt. 1590) 24 (Pp. 153-154, paras. G-A)**; that the Claimant is incompetent to institute the suit in his personal capacity and therefore lacks *locus standi*; that there was no cause of action against the 2nd Defendant; that the courts have no jurisdiction to deal with hypothetical questions, citing the case of **DICKSON v. SYLVA (2017) 10 NWLR (Pt.1573) 299 (Pp 320-321, paras. H-A)**. **OLAFISOYE v. F.R.N (2004) 4 NWLR (Pt.864) 580 (P.655, para. A)**.

Counsel concluded by urging me to resolve the issue in the 2nd Defendant's favour and to dismiss the suit.

SUBMISSIONS BY CLAIMANTIN REPLY FILED ON 20/05/2024 IN OPPOSITION TO THE 2ND DEFENDANT'S COUNTER AFFIDAVIT.

The Claimant filed a 6-paragraph further Affidavit deposed to by Ebere Okongwu to which he annexed 1 document marked "**Exhibit A**", which is a building plan approval obtained by the 1st Defendant in respect of the property. It is averred in the further affidavit that the Lease Agreement was entered into with the 1st Defendant, and not the 2nd Defendant (NISL Ventures Ltd, which was merely a shareholder); that the Claimant is not a party to the Joint Venture Agreement annexed to the 2nd Defendant's counter affidavit; that the letter seeking consent for land use change was personally delivered to the Claimant by **Kolawole Adewale**, a known partner of the 1st Defendant who had participated in several high-level meetings and discussions on behalf of the 1st Defendant; that having processed the building approval which required the consent of the title holder without any recourse to the Claimant, the Claimant was entitled to believe that the 2nd Defendant had similarly obtained the land use change; that this suit is strictly for interpretation of the Lease Agreement and other documents.

Learned Claimant's Counsel also filed a reply on points of law in opposition to the 2nd Defendant's Counter Affidavit. In the Counsel submitted that the suit was filed against **Okorie Kalu** not **NISL Ventures Limited**, to compel the 3rd Defendant to pay monies in its custody citing **Section 549 of Companies and Allied Matters Act 2020, IHESIABA & ORS v. OCHEPA (2015) LPELR-24822(CA)**.

Counsel submitted that the argument of the 2nd Defendant was misconceived and the provisions of **Sections 480** and **section 868** of **Companies and Allied Matters Act 2020** sought to be invoked are manifestly inapposite and inapplicable to this case, as there is no question or issue as to the administration of NISL Ventures Ltd; that the legal process contemplated by CAMA in those sections relates to matters concerning the administration of a company and must have been commenced against the Company or against the Company's property; that neither NISL Ventures Ltd nor any of its property is the subject matter of this suit; that the 2nd Defendant is not one and the same with NISL Ventures Ltd; that in any event, any question as to CAMA can only be ventilated at the Federal High Court, whereas a matter of simple interpretation can properly be brought before this Court. Counsel urged me finally to discountenance all of the 2nd Defendant's submissions as contained in his written address.

It's the argument of the Claimant that when interpreting statutes, the literal and ordinary words used therein must be applied, no party is permitted to import words and meanings into the express wordings of any statute, relying on the case of **MARWA & ORS v. NYAKO & ORS (2012) LPELR-7837 (SC)**, **GANA v. SDP & ORS (2019) LPELR-47153 (SC)**.

Counsel concluded by urging me to discountenance the 2nd Defendant's submissions in their entirety.

RESOLUTION OF THE MAIN SUIT

I have thoroughly reviewed and examined the processes filed and exchanged by the parties and considered all the authorities cited both for and against. To my mind, the issue which conveniently addresses the kernel of this case is as formulated by the 2nd Defendant, as follows:

“Whether having regard to the facts and circumstances, the Claimant has proved his case as required by law to entitle him to the grant of the reliefs sought?”

I therefore wholly adopt the above issue as mine in the consideration of this matter.

Before proceeding into the resolution of this issue, I must address the 2nd Defendant's contention that the Claimant ought to have sought leave to institute this action, as it pertains to administration. I have examined the provisions of CAMA cited by the parties in the light of the originating summons and the Rules of this Court.

In scrutinizing the originating summons, I have considered whether any question or relief was sought in respect of the administration of the 1st Defendant company, and I have found none. I therefore agree with the Claimant that the provisions of CAMA cited by the 2nd Defendant are inapplicable to this case which mainly seeks for the interpretation of documents. I hold that the Claimant was not required to seek leave of Court to institute this action.

Now, the nucleus of this matter is the interpretation of the Lease Agreement dated **10th April 2014** as to the date of expiration of the lease and whether same is capable of extension under the Agreement. Furthermore, another issue before me is as to who has the responsibility to bear the cost of the land use charges imposed on the property, subject matter of the property as well as the issue of the Claimant's claim for the cost of renovation of the property, which the Defendants completely refute.

In resolving these knotty issues, the task with which this Court has been saddled in this suit is to meticulously analyze the agreement entered into by the parties and other surrounding documents vis-à-vis the claim of the Claimant, and no more. The law is settled that parties are bound by the terms of contracts freely entered into by them and it is not the duty of a Court of law to rewrite or alter them- see **DESEMYOF (NIG) LTD v. KWARA STATE GOVT & ORS (2018) LPELR-45705(CA) 2018** where it was held thus:

"...The duty of the Court is to interpret the terms in the binding contract that binds both parties, the Court cannot in the performance of its duty to interpret same, alter the agreement."

Also see the case of **AMINU ISHOLA INVESTMENT LTD V. AFRI BANK NIG. PLC (2013) LPELR-20624 (SC)** where **Alagoa JSC** held thus:

“Parties are bound by the terms of an agreement freely entered into by them and the duty of a trial Court is simply to give effect to that agreement freely entered into by the parties and not to make a new agreement for them. This is an age old legal principle- a notorious one for that matter and there is a plethora of case law on that subject matter. See **AFROTEC TECHNICAL SERVICES (NIG) LTD V. MIA & SONS LTD & ANOR (2000) 15 NWLR (PART 692) 730; (2000) 12 SC (Pt. 11) 1; (2000) ALL NLR 533; BOOKSHOP HOUSE LTD V. STANLEY CONSULTANT LTD (1986) NWLR (PART) 26 87 at 97.”**

It is also trite law that interpreting any Contract, the document must be read as a whole to decipher the true intent of the parties- see: **MBANI v. BOSI & ORS (2006) LPELR-1853(SC)**.

Where, as in this case, there are multiple documents which are relied on, the Court will also consider the documents as a whole. See: **ROYAL EXCHANGE ASSURANCE (NIG.) LTD. & 4 ORS. V. ASWANI TEXTILE INDUSTRIES LTD. (1991) 2 NWLR (PT. 176) 639 AT 669.**

I have painstakingly reviewed the Lease Agreement and the other relevant documents. For the sake of clarity, I hereby reproduce the apposite portions of the documents below:

The Lease Agreement

**“NOW IT IS HEREBY AGREED AS FOLLOWS:
UNDERSTANDINGS**

- 1. That this shall be a 10 years lease.**
- 2. That the Lease payment shall be made on installments.**
- 3. That the 10 years lease shall be made on 4-2-2-2 basis.**
- 4. That such instalment payments shall be subject to a review by the lessor.**

5. That the review shall be 10% at the 5th & 6th year and 20% increment for the remaining years.
6. That the first four years lease shall be Fourteen Million Naira (N 14, 000, 000) per annum, payable in advance.
7. That the lessee shall made an immediate payment of 2 years to the lessor.
8. That the lessee shall make another 2 years payment to the lessor after 4 months from the date of the initial payment (“second instalment”).
9. That the payment for the residue 6 years shall be made on a 2 years payment in advance after the elapse of the second instalment.
10. That notwithstanding any provision in this Agreement, the term of the lease granted on the property shall commence after a 5 month moratorium period given for construction.
11. That the lease (including the moratorium period) commences from the day this agreement is executed.
12. That the moratorium period lapses after 5 months irrespective of whatever stage of construction the project may be.”

ARTICLE 1: PURPOSE

1. The purpose of the lease shall be as expressly stated in the recital above.

ARTICLE 2: PRINCIPAL PLACE OF BUSINESS

1. The principal place of business of the parties shall be in Abuja, the Federal Capital Territory or any other place as the parties shall from time to time select.

ARTICLE 3: DURATION OF THE LEASE

1. This lease shall take effect from the date of its execution and be discharged on effluxion of time.
2. This lease shall not be subject to renewal after the expiration of the 10 years and the property shall there by revert to the lessor.

ARTICLE 4: OWNERSHIP AND LIABILITIES

Unless otherwise provided in this lease.

1. The parties in accordance with their respective participating interests shall all have rights and interests in and under this lease.

ARTICLE 5: WARRANTIES

- 1. d. The lessor covenants to cooperate with the lessee in obtaining relevant approvals, licenses and permissions as may be necessary to successfully complete the construction of the shopping mall, provided;**
- a. the lessee shall bear the financial cost of the said approvals, licenses and permissions levied by the relevant authorities**
 - b. the lessee shall abide by all the requirements, rules and relevant laws as handed down by the relevant authorities.**
 - c. the lessee shall submit copies of the design, bill of quantities and all documents related, needed and necessary for the construction of the said mall to the lessor for his perusals and subsequent keep.**

ARTICLE 6: MUTUAL INDEMNITIES

- 1.1 The parties hereby undertake to indemnify one another against all liabilities, claims, demands, actions, cost, damages or loss arising out of any breach by one party of any of the terms of this lease agreement.**
- 1.2 In the event of any claims, disputes, actions, writs of summons in connection with this lease, the parties agreed to provide full details to the other.”**

The Claimant’s contention is that by the combined interpretation of paragraph 10 of the “**Understandings**” clause and **Article 3** of the Lease Agreement, the tenancy shall determine on the **10th of September 2024** without the possibility of any extension even by a day. Acting on this interpretation, the Claimant issued a letter dated **12/8/2023** to the 2nd Defendant, followed by another letter dated **10/10/2023** addressed to the 2nd Defendant which has the following contents:

ALH. MUSA YAHYA

10th October 2023
The Administrator,
NISL Ventures Limited (in Administration)
Grand Square, 4th Floor
Plot 270 Muhamamad Buhari Way,
Central Business District,
Abuja.

Attention: Okorie Kalu, Esq.

Dear Sir,

**RE: NOTICE OF EXPIRATION OF LEASE OF 109 PLAZA, PLOT 109 ADETOKUNBO
ADEMOLA CRESCENT, WUSE II, ABUJA**

Please refer to the above subject matter and my earlier letter dated 12th August 2023.

This letter is to call your attention to the error in the computation of date of expiration of the Lease as communicated to you in my earlier letter of the 12th August 2023.

You will note that the Lease Agreement commenced on the 10th April 2014 and by the provision of paragraphs 10, 11 and 12 of the “Understandings” Clause of the Lease Agreement, the Lessee’s agreed 5 months moratorium period from the execution/commencement dated (10/4/2014) of the Lease. Thus, the correct expiration date of the 10 years Lease is 10th September 2024 and not 10th October 2024 as I erroneously presented in my previous letter. Consequently, applying the 5 months moratorium from 14th April 2024, the correct date of expiration of the Lease is 10th September 2024.

Please accept my sincere apologies for the error. I am confident that you will take note of the correct date of the expiration of the Lease, as explained above.

Thank you.

ALH. MUSA YAHYA
(LESSOR)

Claimant has also relied on the 2nd Defendant's letter dated **9/10/2023** wherein the 2nd Defendant proposed as follows:

2. The Administrator has assessed that a further period of about 15 months would be needed to complete and or wind down the Administration whichever way, and therefore requests for a moratorium of an additional 5 months at no cost from you. As you would imagine, this is a request which is not based on the tenancy agreement, but based on the nature of the court supervised process being conducted and the mandate of the Administrator to implement an orderly and collective insolvent administration regulated by CAMA 2020 and subsidiary legislations to that effect.

The Administrator sincerely values and covet your further understanding, accommodation and indulgence in this regard dear Sir."

On the part of the 1st Defendant, it is *ad idem* with the Claimant on the date of expiration of the lease being **10th September 2024**, as can be seen from **paragraph 14** of the 1st Respondent's counter affidavit to the Claimant's originating summons filed on **16/4/2024**, wherein it was stated thus:

"14. That most importantly the Lease Agreement (Exhibit B) is expected to terminate on the 10th September, 2024 which is about Eight (8) Months from the date of the filing of this suit by the Claimant."

However, the 2nd Defendant has taken a contrary position. Whilst he does not appear to contend that the date of expiration of the lease is **10th September 2024**, his contention is that upon his request for an extension, he construed the fact that he did not receive a further letter from the Claimant as evidence that the said lease has in fact been extended by the Claimant, to enable him tidy up his administration duties. This position can be deduced from **paragraphs 3.16-3.18** of the 2nd Defendant's counter affidavit in opposition to the affidavit in support of the Originating Summons filed on **08/05/2024**, where it is averred as follows:

“3.16 In the course of tracing of assets, the property otherwise known as 109 Plaza, located at Plot 109, Adetokunbo Ademola Crescent, Wuse II, Abuja (hereafter, "109 Plaza"/ "subject property") was discovered to be an asset into which NISL Ventures Limited had committed funds into building and construction of the same; so vested for the time being under a leasehold arrangement between Hafsatu Umar Ahmed and Zuruhills Integrated Service Ltd - the 1st Defendant and agent of NISL Ventures Limited, through whom the lease was consummated for the benefit of NISL Ventures Limited and its business partner.

The proceeds comprising rentals and other receivables derived from the lease in respect of 109 Plaza are already subject of the pending and ongoing administration proceedings in Suit No. FHC/ABJ/CS/2074/2022; Mrs. Majiyabe Ayodapo Iyabo & 5 Others V. NISL Ventures Limited & Anor over which the Federal High Court is seised of jurisdiction;

3.17 In response to paras. 12, 13, 14 and 15 of the Claimant's Affidavit, upon receipt of the Claimant's letter, the 2d Defendant made a sympathetic plea requesting for an extension of the lease and explained that the said extension was required to tidy up the administration activities based on the Court-ordered Administration process;

3.18 Contrary to para. 16 of the Claimant's Affidavit, the Administrator did not receive a further letter from the Claimant refusing the extension sought and had interpreted the Claimant's silence to mean concurrence;”

From the foregoing, I find that, as agreed by all the parties, the date of expiration of the Lease Agreement dated 10th April 2014 is 10th September 2024, I so hold.

On the issue of the extension of the Lease, I have closely examined **Article 3.2** of the Lease Agreement which provides for the expiration of the lease. It is clear to this Court that by that clause; the Agreement prohibits the extension of the lease. That is the sacrosanct agreement of the parties which this Court is duty bound to uphold. There is no evidence that the parties subsequently

resiled from this position. It is pertinent to observe that **Article 7** of the Lease Agreement provides the procedure for the amendments and alterations to the Agreement in the following words:

“ARTICLE 7: AMENDMENTS AND ALTERATIONS

1.1 Any further amendments, alterations, or additions to this lease agreement must be in writing and signed by authorized signatory of each party. Such amendments, alterations or additions shall form part of this lease.”

That being the case, this Court finds in agreement with the Claimant that the date of expiration of the Lease Agreement i.e. **10th September 2024** is sacrosanct and does not admit of or permit any extension. I so hold.

The next issue which has agitated the minds of the parties is as to who between the Claimant or the Defendants should bear responsibility for the penalty of **N 13, 446, 690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand, Six Hundred and Ninety Naira)** imposed by the Department of Development Control of the Federal Capital Territory Administration for land use contravention, communicated vide Notices dated **10/10/2023** and **17/10/2023** respectively as contained in Exhibit I2 annexed to the affidavit in support of the originating summons. The said documents are predicated on what was described as the **“conversion of the use of Plot. No. 109, Cadastral Zone A08 from the designated use as Residential to Plaza without approval of the relevant agencies.”**

Claimant has contended that the 1st Defendant has the obligation to pay this penalty, by virtue of Clauses 1 (a) and (b) of Article 5 of the Lease Agreement already reproduced above coupled with the undertaking endorsed by one

Otunba Kolawole Adewale on the 1st Defendant's behalf on **29/10/2015** (see **Exhibit "E"** annexed to the affidavit in support of the originating summons). Claimant also submits that the 3rd Defendant ought to be compelled to defray this cost from the rent receipts in his custody. The 1st and 2nd Defendants agree and contend that it is not their responsibility to shoulder.

I have carefully examined **Clauses 1(a) and (b) of Article 5** of the Lease Agreement and the aforesaid Exhibit "E". Before proceeding on this issue, this Court must resolve the question of the validity of the so-called undertaking endorsed on the face of **Exhibit "E"** which the Claimant has made very heavy weather of.

Upon close scrutiny of the document, the handwritten words inscribed thereon read:

"I Kolawole Adewale onhave (sic) of my Partner (Zuru Hills Intergrated Services Ltd write an Undertaking with Allaji Musa Yahyah on the properties at plot 109 Ademola Adetokunbo on the issue of change of use from Residential to commercial in other to soult our purpose of the plaza already belt on the plot pending the time of our Lease agreement with him as the Landlord to the plot and in case of any charge in future we will bear the cost."

The 2nd Defendant contends that this purported undertaking is of no moment, as the said **Kolawole Adewale** is not a Director or Partner of the 1st Defendant and has never been authorized to enter into any undertaking on behalf of the Company.

I am inclined to agree with the 2nd Defendant's submission on this point. The law is settled that Companies, being artificial persons cannot act by themselves but through human beings. However, the law is that for the action of a human being to bind a company, such a person must be a director, officer or authorized agent of the Company- see: **PETROL LOGISTICS LTD & ANOR v. ABUBAKAR (2024) LPELR-62248(CA)**.

I have examined the particulars of the shareholders of the 1st Defendant annexed to the affidavit in support of the originating summons as Exhibit “D” which lists the shareholders of the Company as: **“AYODELE TAIWO”** and **“NISL VENTURES LTD”** respectively, and cannot find any reference to any the said **Kolawole Adewale**.

I have also scrutinized the Lease Agreement and the other correspondences exchanged between the parties to this suit prior to the institution of this suit and it is clear to me that the said **Kolawole Adewale** never authored or received any correspondence on behalf of the 1st Defendant. There is also nothing before me to suggest that the said **Kolawole Adewale** was ever appointed a Partner in the 1st Defendant by any known or valid instrument.

It is therefore wrong as postulated by the Claimant that the so-called undertaking written by **Kolawole Adewale** who is neither an officer nor a director of the 1st Defendant binds the 1st Defendant, I so hold. I therefore find that the undertaking is of no moment in the consideration of the obligations of the parties to the Lease Agreement and hereby discountenance same, I so hold.

I now turn to an examination of **Article 5** of the Agreement. For the avoidance of doubt, it is the agreement of the parties to the Agreement therein that the Lessor shall ***“cooperate with the lessee in obtaining relevant approvals, licences and permissions as may be necessary to successfully complete the construction of the shopping mall”*** and that the Lessee, which is the 1st Defendant, shall ***“bear the financial cost of the said approvals, licences and permissions levied by the relevant authorities.”***

The provisions of the Agreement are as clear as daylight; the Claimant shall cooperate with the 1st Defendant to obtain all relevant licences, whilst the 1st Defendant shall pay the cost of obtaining such licences.

I however cannot agree with the 1st and 2nd Defendants that the obligation of the Claimant to cooperate with the 1st Defendant extends to also shouldering the financial burden of obtaining the necessary permits and licences. If it were

so, the parties would have included that in their Agreement. It seems more to me that the Claimant's obligation pertains merely to granting all relevant permissions as may be necessary to allow the 1st Defendant apply for the licences it needs, such as granting consent for applications etcetera. I am fortified in this position by the contents of **Exhibit "E"** which is an application by the 1st Defendant for the Claimant to grant consent for change of property use.

The point I am trying to make is that there is no portion of the Lease Agreement which removes the financial burden for obtaining licences, permissions and approvals from the 1st Defendant herein. I therefore find no reason to allow the 1st Defendant resile from its obligation under the Lease Agreement. It is settled law that a party who has taken advantage under a contract cannot subsequently avoid his obligations under same. See the decision of the Court of Appeal in the case of **IDUNORBA v. KEYSTONE BANK LTD & ORS(2018) LPELR-43840(CA) Pp. 22-28.**

This Court takes judicial notice of the fact that the Department of Development Control of the F.C.T.A is a relevant authority in relation to the building construction of shopping malls, such as the property in issue in this suit. Thus, to the extent that the 1st defendant agreed in the Lease Agreement to bear the costs of all approvals, licenses and permissions levied by the relevant authorities, I hold that the 1st Defendant is bound in law to pay the cost of the change of use in respect of the property, including the penalty levied by the Government.

I therefore hold the 1st Defendant liable for the payment of the sum of **N 13, 446, 690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand, Six Hundred and Ninety Naira)** imposed by the Department of Development Control of the Federal Capital Territory Administration for land use contravention, communicated vide the Notices dated **10/10/2023** and **17/10/2023** respectively, I so hold.

The next issue is the Claimant's claim for the renovation of the property in the sum of **N 51, 197, 320. 13 (Fifty-One Million, One Hundred and Ninety-Seven Thousand, Three Hundred and Twenty Naira and Thirteen Kobo)**. In support of

the claim, Claimant contended that in preparation for the reversion of the property, he retained the services of Messrs. Yunnus Consult Ltd to conduct an assessment of the cost of renovation of the property, which he now wants to be borne by the 1st and 2nd Defendants. 2nd Defendant's position is that the Lease Agreement does not make any provision for the renovation of the property upon the expiration of the lease.

I have scanned through the entire **17 Articles** in the Lease Agreement and cannot find any portion thereof which mandates or compels the 1st Defendant to bear the cost of renovation works on the property. It is an alien concept sought to be introduced by the Claimant at this stage of the contract. I have already held in this judgment that parties are bound by the express terms of their contract and cannot import any extraneous contents into it. I find no basis for this claim and it is accordingly dismissed. I so hold.

All in all, the Claimant's claim succeeds in part. Judgment is entered for the Claimant in terms of Reliefs **1, 2, 3, 4, 7 and 8** sought in the originating summons. **Reliefs 5, 6 and 9** fail and are hereby refused.

Consequently, judgment is entered in the following terms:

1. **IT IS HEREBY DECLARED** that the Lease Agreement dated 10th April 2014, inclusive of all its warranties and understandings, is binding, subsisting and enforceable on/against the 1st and 2nd Defendants in this suit.
2. **IT IS HEREBY DECLARED** that by Article 3 (2) and Paragraphs 10, 11 and 12 of the "Understandings" Clause of the Lease Agreement made on 10th April 2014 between the Claimant and ZURUHILLS INTEGRATED SERVICE LIMITED (for itself and for the benefit of NISL Ventures Limited), the expiration date of the lease in respect of 109 Plaza, Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja is 10th September 2024.
3. **IT IS HEREBY DECLARED** that by the provisions of Article 3 (2) and Paragraphs 10, 11 and 12 of the "Understandings" Clause of the Lease Agreement made on 10th April 2014 between the Claimant and ZURUHILLS INTEGRATED SERVICE LIMITED (for itself and for the benefit of NISL Ventures Limited), the Claimant is entitled to recover full and

undisturbed possession of the property known as 109 Plaza situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja from the 1st and 2nd Defendants upon the expiration of the said Lease Agreement on the 10th of September 2024.

4. **IT IS HEREBY DECLARED** that upon a literal construction of Articles 4, 5 & 6 of the Lease Agreement made on 10th April 2014 vis-à-vis the 1st Defendant's Letter dated 28th October 2014 titled "Letter of Consent for Change of Property Use" the 1st and 2nd Defendants are liable to pay the Land Use Violation Charges of N 13, 446, 690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira) issued by the Abuja Metropolitan Management Council in respect of the property known and described as 109 Plaza situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja and conveyed vide a Letter dated 17th October 2023, as well as all other Land Use Charges imposed during the term of the lease.
5. **AN ORDER IS HEREBY MADE** mandating the 1st and 2nd Defendants to relinquish and give up possession of the property known and described as 109 Plaza situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja upon the expiration of the Lease Agreement on 10th September 2024.
6. **AN ORDER IS HEREBY MADE** mandating the 3rd Defendant i.e. Messrs Dele Olaiya & Associates to, FORTHWITH & IMMEDIATELY, pay over to the Claimant the sum of N 13, 446, 690.00 (Thirteen Million, Four Hundred and Forty-Six Thousand Six Hundred and Ninety Naira), being the Land Use Violation Charges in respect of the property known and described as 109 Plaza situate at Plot 109 Adetokunbo Ademola Crescent, Wuse II, Abuja issued by the Abuja Metropolitan Management Council vide a Letter dated 17th October 2023, and/or all other subsequent Land Use Charges.

I make no order as to costs.

This is the judgment of this Court.

.....
HON. JUSTICE S.B. BELGORE
JUDGE (10/10/2024)