

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/ CV/8013/2023
DELIVERED ON THE 06/05/2025**

BETWEEN:

BILAL ABDULLAHI ADAMU.....CLAIMANT

AND

- 1. THE HONOURABLE MINISTER, FEDERAL CAPITAL TERRITORY**
 - 2. FCT RURAL WATER SUPPLY AND SANITAION AGENCY**
 - 3. SEBEST INT’L TRAD. CO. LTD**
- }DEFENDANTS

RULING

This suit was commenced by way of an amended originating summons dated the 14th day of June, 2023 and filed on the same date. It is supported by a Twenty - Two (22) paragraphs affidavit deposed to by one MARYAM UMAR ALIYU, the biological mother of the Claimant. The Defendants were duly served and the 3rd Defendant entered a conditional appearance dated the 21st day of November, 2024. The 1st and 2nd Defendants equally filed a counter affidavit in opposition to the claimants originating summons dated the 15th day of May, 2024 and filed on the same date.

In the same vein, the Claimant filed a further and better affidavit in support of the originating summons dated the 14th day of June, 2024 and filed on the same date, accompanied with a written address

which was adopted by the learned counsel for the Claimants. Thereafter, a notice of preliminary objection was filed on behalf of the 1st and 2nd Defendants/Applicants dated the 9th day of May, 2024 and filed on the 15th day of May, 2024.

Meanwhile, by the amended originating summons the Claimant seeks for the determination of the following questions:

1. **WHETHER, the 1st and 2nd Defendants having on the 19th day of July, 2022 allocated the piece of land lying and situate at Dei-Dei Trailer Park, Dei-Dei Abuja to Tuti's integrated solution (who transferred its title to the Claimant herein) have any right without first revoking the allocation, to further allocate same land as they did to the 3rd Defendants herein on the 22nd day of November, 2022.**
2. **Having regard to the equitable doctrine of first in time, whether the allocation of the piece of land lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja, to Tuti's integrated solution, from whom the Claimant acquired his title does not supersede the subsequent allocation of the same piece of land to the 3rd Defendant herein on the 22nd day of November, 2022.**

Upon resolving the questions above, the Claimant prays this Court to grant the following reliefs:

1. *A Declaration that the 1st and 2nd Defendants having on the 19th day of July, 2022 allocated the piece of land, lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja to Tuti's integrated solution (who transferred its title to the Claimant herein) lacks the legal or equitable right to further allocate*

- same piece of land to the 3rd Defendant or any other person without first revoking the earlier allocation.*
- 2. A **Declaration** that having allocated the piece of land lying and situate at Dei-Dei Trailer Park Dei-Dei, Abuja to the Claimant's predecessor in title, Tuti's integrated solution on the 19th day of July, 2022 the 1st and 2nd Defendant's subsequent allocation of the same piece of land to the 3rd Defendant is illegal, null and void.*
 - 3. A **Declaration** that the allocation of the land in issue to the Claimant's predecessor in title Tuti's integrated solution, on the 19th day of July, 2022, supersede and override the subsequent allocation of the same piece of land by the 2nd Defendant, to the 3rd Defendant on the 22nd day of November, 2022.*
 - 4. An **Order** of perpetual injunction against the Defendants from interfering with the Claimant's possession and enjoyment of all that property lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja.*
 - 5. An **Order** of perpetual injunction restraining the 1st and 2nd Defendants from further allocating the piece of land currently owned by the Claimant, lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja to any other person, natural or artificial.*
 - 6. **GENERAL Damages** and cost of this suit as may be assessed by this Honourable Court.*

The affidavit in support of the Originating summons was deposed to by one Maryam Umar Aliyu, who described herself as the biological mother of the Claimant known as Bilal Abdullahi Adamu. She

attached as Exhibit 1, a document described as the executive order 9 wherein the president of Federal Republic Nigeria declared a state of emergency on Nigeria's sanitation and hygiene sector. Other Exhibits attached include Exhibit 2 (the allocation letter in the name of Tuti's integrated solution, Exhibit 3 are pictures of the development on the disputed land, Exhibit 4, is a copy of the Deed of Assignment between Tuti's integrated solution and the Claimant, Exhibit 5 is a copy of a letter written by the Claimant to the 2nd Defendant requesting to know the status of the disputed property and for a formal search report, respectively. She further deposed to the facts that the 2nd Defendant informed her that there was no encumbrance on the property only to discover later that the 2nd Defendant had further allocated the same portion to the 3rd Defendant.

Furthermore, the Claimant in paragraphs 17, 18 and 19 of the affidavit in support states thus:

- 17. The above development necessitated a meeting of the Claimant and the 2nd and 3rd Defendants. I represent the Claimant in the meeting.**
- 18. At the meeting the 2nd Defendant offered to give the Claimant a bare land elsewhere, which I out rightly rejected because the Claimant bought a developed land and not a bare land.**
- 19. The 3rd Defendant also offered to repay the Claimant the cost of development which I rejected as well in line with the Claimant's Express desire and instruction.**

The Claimant therefore urged this Court to grant all his reliefs and to discountenance with the position of the Defendants.

On their part, the 1st and 2nd Defendants jointly filed a six (6) paragraph counter affidavit deposed to by one Saidu Abdulkadir Badamasi, a litigation Assistant in the legal services secretariat of the FCT Administration. The summary of the deposition by the 1st and 2nd Defendants is that the claimant is unknown to them and as a result there is no cause of action let alone cause of action against the 1st and 2nd Defendants. The 1st and 2nd Defendants attached an exhibit described as "FCTA" showing terms and conditions that were allegedly breached by the allottee, Tuti's Integrated Solution, which led to the reallocation of the said piece of land to the 3rd Defendant. The counter affidavit of the 1st and 2nd Defendants was also accompanied with a written address adopted by the learned counsel to the 1st and 2nd Defendants.

The 3rd Defendant also filed a separate counter affidavit of 24 paragraphs deposed to by one EJIKE MADUKA, the managing director to the 3rd Defendant in this suit. The 3rd Defendant attached to the counter affidavit Exhibits **1A** and **1B** which represent the original and valid allocation made to the 3rd Defendant by the 2nd Defendant on the 22nd of November, 2022 upon an application by the 3rd Defendant to the 2nd Defendant dated the 4th July, 2022. The 3rd Defendant also attached Exhibits **2A** and **2B** which shows photographs of the completed facility in line with the terms and conditions of the 2nd Defendant. He equally Exhibited a reallocation letter of the same piece of land to him by the 2nd Defendant dated the 20th February, 2023 as Exhibit **3A** as a result of the excellent performance by the 3rd Defendant. Similarly, Exhibits **4A** and **4B** attached to the counter affidavit are copies of a court judgment in suit No. **FCT/HC/CV/205/2021** dated the 25/09/2024 delivered by

Honorable Justice S. B. I. Belgore affirming the 3rd Defendant's title to all that parcel of land directly behind this allocated facility and sharing common boundary with the same. Exhibit 4B is the certificate of judgment in respect of the above-mentioned judgment. The 3rd Defendant also denied ever having had any meeting with the Claimant or his representative and urged this Court to refuse this application under the originating summons Procedure as the issues involved in this suit are contentious. The 3rd Defendant's counter affidavit is also accompanied with a written address which was adopted by the learned counsel to the 3rd Defendant.

In response to the above averments by the Defendants, the Claimant filed a further and better affidavit in support of his case. The 16 paragraphs further and better affidavit also deposed to by Maryam Umar Aliyu is also accompanied with exhibits relied upon by the Claimant. The relevance of Exhibit 1 is to the effect that the Exhibit shows payment receipts for change of name and ownership while Exhibit 2 is a copy of the letter to the Executive Director of FCT, RUWASA informing them of the Deed of Assignment while Exhibit 3 is a copy of a Power of Attorney donated to the Claimant by his predecessor in title, Tuti's Integrated Ltd respectively.

Again, the Claimant in his further and better affidavit in support of the originating summons avers as follows:

- 13. That the letter of allocation from which the Claimant derived his title did not contain any condition that has been breached by the Claimant's predecessor in title, Tuti's Integrated Solution Ltd.**

- 14. That Tuti's Integrated Solution Ltd was not in breach of any terms and condition of the grant as per the letter of allocation.**
- 15. That Tuti's Integrated Solution LTD was not served or notified of such purported revocation of allocation nor were they informed of any breach of any term or condition of the allocation.**

Having thus summarised the content of the respective processes filed before this Court it will be pertinent, in the interest of Justice, to also consider the respective written addresses adopted by the learned counsel for the parties.

The learned counsel for the Claimant Y. H. Liman Esq arguing the position of the claimant formulated two issues for determination, to wit:

- 1. Whether the 1st and 2nd Defendants having on the 19th day of July, 2022 allocated the piece of land lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja to Tuti's Integrated Solution LTD (who transferred its title to the Claimant herein) have any right without first revoking the allocation, to further allocate same land as they did to the 3rd Defendant herein on the 22nd day of November, 2022.**
- 2. Having regard to the equitable doctrine of first in time, whether the allocation of the piece of land lying and situate at Dei-Dei Trailer Park, Dei-Dei, Abuja to Tuti's Integrated Solution, from whom the Claimant acquired his title, does not supersede the subsequent allocation of the same piece of land to the 3rd Defendant herein on the 22nd day of November, 2022.**

The learned counsel for the claimant submitted that without revoking the allocation of Tuti's Integrated Solution which was transferred and donated to the Claimant, the 2nd Defendant cannot rightly proceed to allocate the same piece of land to the 3rd Defendant herein. In support of this submission the learned counsel referred this Court to a number of judicial authorities that include the cases of **WUYAH V. JAMAA LG KAFAN CHAN (2011) LPELR - 9078 (CA)**, **OJIEGO & ORS V. HASSAN & ORS (2021) LPELR - 56281 (CA)** **SHESHE V. IBRAHIM (2013) LPELR - 22607 (CA)**, **AKHIGBE V. ENAGBON-MUNA (2019) LPELR - 46466 (CA)**, **ULEGEDE V. MBAPUUN (2021) LPELR - 54205 CA** respectively. He particularly referred to the case of **ONEAL FOODS & ENTERTAINMENT LTD V. PREX INT'L SERVICES LTD (2022) LPELR - 58047 (CA)** where it was held that:

"Where there are two competing equitable interests, the general rule of equity is that the person whose equity attached to the property first will be entitled to priority over the other. Where therefore, the equities are equal and neither claimant has the legal estate, the first in time prevails".

He equally referred to the case of **SHESHE V. IBRAHIM**(supra) where it was held that:

"It is trite that the underlying basis for the effectiveness of a contract for sale of land is that the vendor is the owner of the land. Where the vendor is not the owner of the land, the purported contract will be void ab initio. The buyer will not acquire even an equitable interest such a contract is

defeated by the doctrine of *memo dat quod non habet*, a person cannot give what he does not have or possess".

The learned counsel therefore submitted that the 2nd Defendant has nothing by way of the same piece of land that was allocated to the 3rd Defendant when the title of the claimant was still subsisting and not first revoked by the 2nd Defendant.

In a further reaction to the averments of the Defendants the learned counsel for the claimants submitted that with the introduction of other strange letters of allocation by the 3rd Defendant it would be difficult to determine this matter without calling oral evidence. He submitted that it is the law that regardless of the fact that an action is filed by way of originating summons this Court has the powers to order for filing of pleadings where the interest of justice will be served better as required by order 2 Rule 3 (3) of the Rules of this Court which reads thus:

"The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit".

The learned counsel also refers to order 5 Rule 1(3) of the Rules of this Honourable Court on the same principle stated above.

He therefore conceded to the fact that even if the Claimants action was commenced by a wrong method, the proper order is for this court to order for pleadings or call oral evidence to substantiate the conflicting part in the respective affidavits filed by parties that requires oral evidence for clarification. He referred to the case of

ADEGBOYEGA OSUNBADE & ORS V. JIMOH OYEWUNMI (2007) SC. 79/2002 where it was held that:

"The emergence of contentious facts during proceedings does not justify striking out the suit, the appropriate remedy is to convert the procedure to writ and proceed to trial".

The learned counsel referred to a number of judicial authorities to support his position and these include **ADESEUN V. PDP & ANOR (2019) LPELR - 47739 (CA)** to show that this court has a discretion to order oral evidence to resolve the conflicting issues raised by the parties or order for pleadings.

On the issue of whether or not the Claimant has the requisite locus standi to institute this action, the learned counsel referred to the case of **ODEDEYE V. EFUNUGA (1990) 7 NWLR (Pt. 164) pg 618** where it was held to the effect that a party need not establish absolute ownership but must show a reasonable nexus between his interest and the subject matter.

He also submitted that the facts that the present suit shows that the case is contentious does not rob this court the requisite jurisdiction to entertain the suit and therefore urged this court to reject the arguments of the 3rd Defendant that contentious facts render this suit incompetent.

According to the learned counsel for the claimant, the facts disclosed in the processes filed before this court have disclosed or establish a legal right of the Claimant and obligation of the Defendants that necessitate judicial determination which aligns with the definition of "a cause of action" as all those things necessary to

give a right of action whether they are to be done by the Claimant or a third party". He referred to the cases of **AMODU V. AMODU & ANOR (1990) LPELR - 467 (SC)**, **SODIPO V. LEMMIN KAINENOY Suit No. CA/L/70/89 or (1992) 8 NWLR (pt. 258) pg 229 at pg 242**, **PANACHE COMMUNICATIONS LTD V. AIKHOMU SUIT NO. CA/L/92/9 or (1994) 2 NWLR (pt. 327) pg 420 at pg 434** as well as **A. G. OF ABIA STATE V. A. G. OF THE FEDERATION & ORS (2005) 6 SCNJ pg 1 or (2005) 12 NWLR (pt. 940) at pg 452** respectively. Infact, in the case of **THE A. G. OF ABIA STATE V. THE A. G. OF THE FEDERATION**(supra) Uwais (CJN) said:

"For a statement of claim to disclose a reasonable cause of action it must disclose a dispute with the Defendant".

The learned counsel for the claimants therefore submitted that the 1st and 2nd Defendants, being statutory bodies created by law are juristic persons with the capacity to sue and be sued. He equally urged this court to hold that the Claimant's pleadings disclose a reasonable cause of action as defined by established legal principles showing clearly that this court has the requisite jurisdiction to entertain the Claimant suit.

The learned counsel for the 1st and 2nd Defendants on their own part submitted that this court is invited to determine the following issues, namely:

- (a) Whether the 1st and 2nd Defendants in this suit are juristic personalities with the legal capacity to sue and be sued.**

(b) Whether the claimant suit against the 1st and 2nd Defendants discloses any reasonable cause of action.

In arguing his case for the 1st and 2nd Defendants, M. S. UGWU Esq argued that the 1st and 2nd Defendants are non- juristic persons that cannot sue or be sued. He referred to the case of **SHELL PETROLEUM DEVELOPMENT COMPANY & ANOR V. DANIEL PESSU (2014) LPELR - 23325** where it was held that:

".....the law is that the name of a competent party to a suit must be the real name by which he is known in the case of a natural person, and its corporate name in the case of a non - natural legal personality".

He therefore urged this court to hold that the 1st and 2nd Defendants are not juristic persons capable of being sued and the suit should be dismissed.

The learned counsel equally submitted that this suit has not disclosed any cause of action and referred to the case of **AMODU V. AMODE & ANOR (1990) LPELR - 467 (SC)** where cause of action was defined as:

"The expression 'cause of action' means all those things necessary to give a right of action whether they are to be done by the Claimant or third party".

He also referred to the case of **SEE BMNGA V. BALOGUN (1994) 1 NWLR (pt. 323) ph 718** and the case of **RINCO CONSTRUCTION CO. V. VEEPEE LTD (2005) 9 NWLR (pt. 929) pg 85** where His lordship EJIWUNMI (JSC) as he then was said:

"For statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the Claimant and the obligations of the Defendant. It must then go on to set out facts constituting infraction of the Claimant's legal rights or failure of Defendant to fulfill his obligation in such a way that there is no proper defence, the Claimant will succeed in the reliefs or remedy he seeks".

The court further held that the fact or combination of facts which give rise to a right to sue consists of two elements viz:

- (a) The wrongful act of the Defendant which gives the Claimant his cause of complaint**
- (b) The consequential damages.**

The learned counsel for the 1st and 2nd Defendants submitted that the claimant's claim falls short of fulfilling the two elements fundamental to establishing the existence of a reasonable cause of action against the 1st and 2nd Defendants.

He therefore urged this court to in the circumstances dismiss this suit for lack of jurisdiction to entertain same even if the 1st and 2nd Defendants are adjudged to be juristic persons.

The 3rd Defendant's written address contained two issues for determination by this court, namely:

- (a) Whether the suit has been initiated under the due process of law to clothe the Honourable court with the requisite jurisdiction to determine same.**

(b) Whether the Claimant has the locus standi to initiate this suit via this procedure of law or any other form against the 3rd Defendant.

In arguing the issues distilled above the learned counsel C. J DIMGBA ESQ submitted that a combination of the facts alleged in paragraphs 8 - 20 of the affidavit in support of the originating summons and the 24 paragraphs counter affidavit of the 3rd Defendant shows that the procedure adopted by the Claimant in instituting this suit is wrong and cannot be sustained. According to him, where in a proceeding initiated by way of originating summons it becomes obvious from the facts placed before the court that the facts are in dispute and hostile, a writ of summons would and should be ordered because pleadings rather than affidavit evidence should take the pride of place. He referred to the case of **EZE V. UNIJOS (2017) LPELR - 42345 (SC)** and the case of **UGWUANYI V. NICON INSURANCE PLC (2013) 11 NWLR (pt. 11366) pg 546** to show that the facts disclosed via the respective processes before this court clearly show that the suit was not initiated under due process of the law.

The learned counsel further submitted that the Claimant lacks the locus to institute this action against the 3rd Defendant and therefore urged this court to dismiss this suit for lacking the requisite jurisdiction to entertain the suit as presently constituted.

It will now be in the interest of justice to at this stage consider and evaluate the facts as presented before this court vide the respective affidavits. It is important to observe that the bone of contention of the Defendants mainly is that facts are hostile and cannot be determined by way of originating summons as presently constituted.

The Defendants referred to paragraphs 8 - 20 of the affidavit in support of this suit and the 24 - paragraph counter affidavit of the 3rd Defendant as rendering the facts of this suit hostile and cannot therefore be determined as presently constituted. In the same vein, the content of the entire paragraph 3(a) - (q) of the counter affidavit of the 1st and 2nd Defendants raised facts and issues that cannot be effectively determined without hearing oral evidence from the parties.

The Claimant too in their reply on point of law in support of the Claimants in opposition to the 3rd Defendant's counter affidavit referred this court to the provision of Order 2 Rule (3) of the Rules of this court and Order 5 Rule(1)(3) of the same Rule and submitted thereby that even if the action was commenced by a wrong method the proper order is for this court to either order for pleadings or call oral evidence to substantiate the conflicting part in the respective affidavits filed by parties that requires oral evidence for clarification. He equally submitted that at the time of filing the originating summons the facts were straight forward and focused on the interpretation of the Claimants allocation rights but that the contentious issues arose after the 3rd Defendant's counter affidavit introduced new documents and factual assertions.

The learned counsel referred to the case of **ADEGBOYEGA OSUNBADE & ORS V. JIMOH OYEWUNMI (2007) SC 179** where the Supreme Court unequivocally held that:

".....the emergence of contentious facts during proceedings does not justify striking out the suit, the appropriate remedy is to convert the procedure to writ and proceed to trial".

It is therefore clear from the facts of this case that disputed and hostile facts have emerged from the respective affidavits filed before this court. This being the case, the question distilled by this court for determination is:

"Whether upon a proper construction of the relevant instruments, the facts disclosed in the respective affidavit evidence and the exhibits placed before the court it can be said that the facts are hostile and therefore robs this court the requisite jurisdiction to grant the reliefs sought by the claimants"

In responding to the above lone issue distilled by this court it should be observed that in a proceeding commenced by way of originating summons it is the nature of the claim that ought to be examined to determine whether the facts are contentious or not.

Thus, in the case of **OGUEGBO V. PDP (2016) 4 NWLR (pt. 1503) pg 446 at pg 485 para C - D** it was held that:

"In determining whether facts in support of an originating summons are contentious it is the the nature of the claim and the facts deposed to in the affidavit in support of the claim that will be examined to see if they disclose disputed facts and a hostile nature of the proceedings".

This is more so that in originating summons proceedings, affidavits serve as a statement of claim and statement of defence. Thus, in the case of **OWURU V. ADIGWU (2018) 1 NWLR (pt. 1599) pg 27 para E - G** Per Kekere - Ekun JSC (as she then was) said:

"When the originating process is an originating summons, the affidavit filed in support serve as the statement of claim while the counter affidavit serve as the statement of defence. They are of the same evidential value as a witness statement on oath. It is not sufficient to simply say that an averment is untrue and incorrect. There must be a specific denial of every material averment otherwise it will be deemed admitted".

However, in the case of **DEJONWO V. DEJONWO (2000) 3 WRN PG 74 at pg 784** it was held that:

"Originating summons is not a proper process for trying dispute turning upon disputed facts".

Similarly in the case of **FAMFA OIL V. A. G. FEDERATION (2003) 18 NWLR (pt. 852) pg 453** the Supreme Court held thus:

"The Appellant, as the Claimant upon taking out his suit on originating summons had applied midstream for production by the Respondent of some documents. The lower court, taken aback and amazed by this bizarre step, had held correctly that "whatever documents or processes the Appellant wants a determination of, should have formed the body" of the originating summons. This procedure of originating summons does not avail the litigant, particularly the Claimant to resort to interrogatories, inspection or discoveries of documents that are extraneous to the originating summons".

It is clear from the content of the respective averments of the parties to this originating summons that the facts are not only seriously in

dispute but are also contentious. The combined effect of paragraphs 13, 14, 15, 16, 17, 18 and 19 of the affidavit in support of the amended originating summons of the claimants, paragraphs 13, 14, and 15 of the Claimant's further and better affidavit of the originating summons, paragraphs 3 (b)(c)(e)(f)(g)(j) and (o) of the 1st and 2nd Defendants counter affidavit as well as paragraphs 11, 12, 13, 15, 17, 18 and 21 of the 3rd Defendants counter affidavit clearly shows that the entire suit is hostile in nature having raised disputed facts.

It will be in the interest of Justice to by way of demonstration of the disputed facts sample out some paragraphs from the various affidavits before this court. Thus, the content of paragraph 13 of the amended originating summons states as follows:

13: "Due to paucity of funds as a result of the cash crunch as a result of the Naira redesign policy of the Central Bank of Nigeria, the Claimant could not complete the construction of the public convenience on the disputed land".

Conversely, in paragraphs 13 and 14 of the Claimants further and better reply in support of the originating summons, it states thus:

13: "Contrary to paragraphs 3 (c) of the 1st and 2nd Defendant's counter affidavit the letter of allocation from which the Claimant derived his title did not contain any condition that has been breached by the Claimant's predecessor in title, Tuti's Integrated Solution Ltd".

14: "Contrary to paragraph 3 (j) Tuti's Integrated was not in breach of any terms of letter of allocation".

On the other hand, the 1st and 2nd Defendants averred in paragraph 3 (b) that:

"The allocation made for the purpose of building, operating and maintaining public toilet are subject to terms and conditions.

3(e) the claimant here in is not the allottee of the piece of land for the construction, maintenance and management of public toilet at Dei-Dei Trailer Park FCT.

3(g) the claimant in this suit is unknown to the 1st and 2nd Defendants and alien to the privity of contract between them and the allottee, Tuti's Integrated Solution LTD.

3(j) Tuti's Integrated Solution LTD, the allottee of the subject matter (the plot) was in breach of the terms and conditions of the grant.

3(k) consequent upon the breach, it forfeited the allocation to the FCT administration".

Furthermore, the 3rd Defendant averred thus:

17. That the Claimant was never given any allocation by the 2nd Defendant that borders on the current allocation given to the 3rd Defendant.

18. That the 3rd Defendant has never been in a meeting with the Claimant on this matter nor made any negotiation or offer for settlement.

19. That the Claimant (applicant) herein has intentionally filed this suit via originating summons in order to

escape the calling of oral evidence and refusal to subject."

There is no doubt that the foregoing content of the respective affidavits of the parties have clearly shown that this suit as presently constituted cannot be determined by way of originating summons. The facts in dispute are contentious and require oral evidence to compliment the documentary evidence attached to the various processes.

Above all, the content of Exhibit 6 attached to the amended originating summons also states in paragraphs 6 and 7 of the allocation of space for the construction of public convenience in the Federal Capital Territory that:

6: "Commence construction of the facility within two weeks of approval".

7: "Complete construction of the facility within ten weeks of allocation of space otherwise the allocation may be forfeited.

This court is of the humble view that a combination of the effect of the above terms and conditions of the allocation paper when read together with the relevant paragraphs of the respective parties' affidavits earlier mentioned in this judgment shows that the suit is contentious and require oral evidence to determine the case as required by law. In the same vein, the content of Exhibits **1A, 1b, 2A, 2B, 3A, 4A** and **4B** attached to the **3rd** Defendant's counter affidavit equally raises contentious issues that cannot be determined by way of originating summons.

Thus, the issue raised by this court for determination clearly deserves a positive answer to the effect that in view of the contentious nature of this suit the reliefs sought by the claimant cannot be granted under the originating summons presently constituted before this court. The possible question at this stage is whether or not to dismiss or order pleading in this suit. In this wise, this court hereby refer to order 2 Rule 3 (3) of the FCT High Court Civil Procedure Rules 2025 which states as follows:

"The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit".

Infact, Order 7 rule 1(3) of the FCT High Court Civil Procedure Rules 2025 further provides as follows:

3 "The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by an originating process other than the one used".

In support of the above position of the law, the following judicial authorities will bring home the point being made which is whether or not to dismiss or strike out or to order pleadings. Thus, in the case of.....**ADEGBOYEGA OSUN BADE & ORS V. JIMOH OYEWUNMI (2007) SC. 79/2002** it was held that:

"The emergence of contentious facts during proceedings does not justify striking out the suit, the appropriate

remedy is to convert the procedure to writ and proceed to trial".

Similarly, in the case of **ADESEUN V. PDP & ANOR (2019) LPELR - 47739 (CA) PP 19 - 21 Paras F - E PER TSAMMANI JCA (NOW JSC)** that:

"the law is that, where there is no conflict in the affidavit evidence of the parties which cannot be resolved by documentary evidence, oral evidence will be required to resolve the conflict. In other words, where there is a material issue raised in the affidavit of the parties which cannot be resolved by documentary evidence attached to the affidavits of the parties' oral evidence will be required to resolve the conflict".

Finally, let me also refer to the case of **JEV V. IYORTYOM (2014) LPELR - 23000 (SC)** where OKORO (JSC) held thus:

"The general principle of law regarding conflict in affidavit in an originating summons Procedure is that where this is the case the court should order for pleadings in order for the parties to lead evidence to resolve such conflicts. However, where there are documents annexed to the affidavit of the parties which can be effectively used to resolve the seemingly conflicts, there would be no need to order for pleading and this is exactly what the learned trial Judge did which was confirmed by the Court of Appeal".

Unfortunately, in the present suit the documentary evidence presented by the respective parties are not enough or capable of resolving the seeming conflicts that exist in the present suit. The

only alternative order to make ought to be an order for pleadings to be filed by the parties and I accordingly so order.

Meanwhile, having arrived at the above final order of this court, it will be inappropriate to embark on the journey of determining the issues of the locus standi as it relates to the status of the Claimant and whether or not there is a cause of action disclosed in this suit. It is equally premature to delve into the issue of the legal capacity of the 1st and 2nd Defendant at this stage bearing in mind the order of this Court for parties to file pleadings.

The parties are accordingly ordered to file pleadings.

SIGNED:
HON.JUDGE
06/05/2025

APPEARANCE:

Ugochi Obialor, Esq, for the 1st and 2nd Defendants

U. E. Oyomette, Esq, for the 3rd Defendant