

**IN THE HIGH COURT OF 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/4400/2024
DELIVERED ON THE 16/06/2025**

BETWEEN:

1. GALADIMA GIWA
2. DANLAMI MURYA
3. IRIMIYA AMOS
4. HOSEA NUHU
5. NUHU KYALE
6. DANJUMA NDAMU
7. BALA JOSEPH
8. BITRUS SAMUEL
9. HASSANA BAKNI
10. ISHAYA JOSEPH
11. ABAKU TANKO
12. SAMSON SHEK WOYA
13. NAROKA MALLE
14. TAIMAKO BABA
15. DANJUMA BITRUS
16. JAMES AMALI
17. FRANCIS KAURA
18. JEREMIAH GAMBO
19. EMMANUEL KYAZHI
20. JEZHI BOKA

.....APPLICANTS

AND

1. THE MINISTER, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. FEDERAL CAPITAL TERRITORY ADMINISTRATION
4. ABUJA METROPOLITAN MANAGEMENT COUNCIL
5. PARKS AND RECREATION DEPARTMENT AMMC
6. THE NIGERIA POLICE FORCE
7. NIGERIA SECURITY AND CIVIL DEFENCE CORPS

...RESPONDENTS

JUDGMENT

This is premised on an Originating Motion brought pursuant to order 11 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules 2009, sections 34, 36, 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Article 4, 5 and 6 of the African Charter on Human and People's rights, and under the INHERENT JURISDICTION AND POWERS of this Honourable Court. The Originating motion dated the 9th day of October, 2024 was filed on the same date. The Applicants who want the court to enforce their fundamental rights pray for the following reliefs:

1. *A **Declaration** that the demolition of the Applicants houses by the agents and officers of the Respondents on the 5th day of September, 2024 is illegal and unconstitutional in that the demolition is a gross violation of fundamental right of the Applicants as guaranteed under section 44 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).*
2. *A **Declaration** that the humiliation, harassment and embarrassment of the Applicants on the 5th day of September, 2024 by the Respondents is illegal, unconstitutional and a violation of the fundamental rights of the Applicants as guaranteed under sections 34 and 36 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).*
3. *An **Order** of Perpetual injunction restraining the Respondents whether by themselves officers, servants, agents, privies or otherwise however, described from harassing, the Applicants or invading Kpaduma Community of the Applicants for the purpose of demotion except in accordance with an order of court or provision of the law.*
4. *A written apology to the Applicants from all the Respondents.*

5. *The sum of Five (N5,000,000) Billion Naira only against the Respondents jointly and severally as compensation for the breach of the fundamental rights of the Applicants.*
6. *Any other order this Honourable court may deem fit to make in the circumstances of this case.*

The reliefs sought by the Applicants are based on the grounds that the demolition of the houses of the Applicants on the 5th day of September 2024, by Respondents and their agents violate the Applicant's right to dignity, right to fair hearing and right to own immovable property as guaranteed under sections 34, 36, 43, and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

That the demotion of the houses of the applicant is not in accordance with any Procedure permitted by law and not justified in any of the circumstances stated under the Constitution.

And that the Applicants are entitled to the protection of their fundamental rights as well as compensation for the violation of the aforesaid rights.

In accordance with the Rules, the Applicants filed a statement stating the names and description of all the Applicants, reliefs sought and the grounds upon which the reliefs are sought. The 1st Applicant, Galadima Giwa, an indigene of Kpaduma village, Guzape in the Federal Capital Territory, Abuja on behalf of all the Applicants deposed to a 39-paragraph affidavit which was filed in support of this application. The affidavit dated the 9th day of October 2024 was also filed on the same date. Also attached to the affidavit are Exhibits **A1 - A20**, Exhibits **B**, Exhibit **C**, and Exhibit **D1 to D15** respectively. Exhibits **A1 - 20** are copies of the certificates of state of origin of the Applicants, Exhibits **B** is a copy of an order of interlocutory application against the Respondents in suit No. **FCT/HC/CV/5222/2011**, while Exhibit **C** is a copy of the Certificate of judgment and Exhibit **D1 - D15** are the

pictures taken showing the demolition respectively. The learned counsel for the Applicants SYLVESTER OGBELU Esq adopted his written address also filed in support of the application as his oral argument in support of the application.

On the other hand, the 1st to 5th Respondents having been served with the Originating motion filed a Response by way of preliminary objection dated the 13th day of February, 2025 and filed on the same date. The grounds of objection by the Respondents are that:

- 1. The subject matter of the application is an allegation of demolition of houses which does not fall within chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the fundamental Rights (Enforcement Procedure) Rules, 2009.**
- 2. This Honourable court lacks the jurisdiction to determine an allegation of demolition of houses under chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Fundamental Rights (Enforcement Procedure) Rules, 2009.**
- 3. The houses, subject matter of this suit, were demolished by the department of Development control under the supervision of the 4th Respondent due to their closeness to the water front in the area and the buildings were without permission from the 4th Respondent.**
- 4. By the combined provisions of section 46(1) and (2) and 86 of the Urban and Regional Planning Act, only the Tribunal has the vires to entertain case of demolition brought to this Honourable court by the applicants.**
- 5. The Applicant's application as presently constituted is a gross abuse of the process of this Honourable court, the same matter pending before another judge of this Honourable court in suit**

NO.FCT/HC/CV/5222/2011 as deposed to in paragraph 7 of the affidavit in support of this suit.

6. This Honourable court lacks the competence and/or jurisdiction to entertain the action.

7. The application discloses no reasonable cause of action at all.

The Respondents further stated that they will rely on the processes filed by the Applicants particularly the grounds of the application and the Reliefs sought in praying this Honourable court to dismiss this application for want of jurisdiction. The preliminary objection was supported by a written address adopted by the learned counsel for the Respondents IDRIS SULEIMAN ESQ.

Meanwhile, the Respondents filed an application for extension to time within which to file their counter affidavit having been out of time. The said motion dated the 13th day of February 2025 was filed on the same date. This Honourable court granted their application deeming their respective counter affidavit as having been duly filed and served.

Thus, the 1st to 5th Defendants/Respondents filed their counter affidavit dated the 13th February, 2025 and filed on the same date. Similarly, the 7th defendant/Respondent filed its counter affidavit dated the 14th day of February, 2025 and filed on the same date. The 6th defendant/respondent did not file any counter affidavit.

It will be in the interest of Justice to peruse the content of the 1st to 5th Defendants/Respondents counter affidavit against the Applicant's Originating motion dated the 9th day of October, 2024. The said counter affidavit of five (5) paragraphs deposed to by one Saidu Badamasi Abdulkadir who described himself as a legal assistant representing the 1st to 5th Respondents. He deposed to certain facts especially in paragraphs 3(c) (e) (h) (i) (n) (q)(r) and 4 to the effect that:

- (c) *That the houses numbering 8 were marked for demolition to create way for water front but however, stoutly denies the assertion that the marking was because those 8 houses are directly behind the house of the 1st Respondent.*
- (e) *That all lands in the entire Federal Capital Territory, Abuja has become absolutely vested on the Federal Government of Nigeria to the exclusion of any other persons or authority upon coming into effect of the Federal Capital Territory Act of 1976.*
- (h) & (i) *That in compliance to a notice of 12 months given to all the occupants claiming through customary including but limited to the Applicants herein to show their interest in writing to the 2nd Respondent were compensated and asked to park out of the Federal Capital Territory, Abuja.*
- (n) *That the houses demolished by the Department of Development Control in the office of the 4th Respondent were not only erected without title to land and obtaining an approval of building plan/permit but were built on the water front which is dangerous to the whole of the Area.*
- (q) *That the instant suit by the Applicants is an abuse of the process of the Hon. Court due to the pendency of the suit in another court within the same division in suit No. **FCT/HC/CV/5222/2011.***
4. *That the Applicants suit be dismissed for being incompetent and for non - disclosure of any reasonable course of action against the Respondents. The said counter affidavit is supported by a written address adopted by the learned counsel for the Respondents. There was no single document/Exhibit attached to the counter affidavit of the 1st to 5th Defendants/Respondents. Similarly, the 7th defendant/Respondent filed its own counter affidavit in response to notice of application for the enforcement of Fundamental Rights of Galadima Giwa and 19 ors. The said counter affidavit dated the 14th day of February 2025 was filed on the same date. The 16*

paragraphs affidavit of the 7th Respondent was deposed to by one Goodness Tosin Akomolafe, an Administrative officer with legal unit of the 7th Respondent at her FCT command, zone 5, Wuse, Abuja. According to the deponent, in his averments in para 10 (a) of the 7th Respondent's counter affidavit they did not provide demolition equipment such as cranes or any other equipment or gadget to demolish any civilian objects, homes, business places or residence including the residence of the applicants. They deposed to the fact that their role in such situations is to operate as part of a joint task force set up by the appropriate authority by providing safety and security for all the individuals involved in the processes of the demolition exercise. They denied ever having pointed AK 47 against the applicants. It is also contained in paragraph 10(p) that the 7th Respondent denies any infringement of fundamental rights of the applicants, demolition, destruction of valuables, imposition of any form of trauma whether psychologically, emotionally, financially or otherwise, including any form of torture or wickedness as alleged by the applicants. The counter affidavit is also accompanied by a written address adopted by the learned counsel for the Respondents. There was no single document attached to the counter affidavit of the 7th Respondent while the 6th Respondent never filed any counter affidavit.

In response to the above counter affidavit of the 1st to 5th and 7th Respondents, the Applicants filed a further affidavit in support of the Fundamental Rights application of 26 paragraphs deposed to by the 11th Applicant Abaku Tanko. The further affidavit is accompanied with Exhibits 1, 2A, 2B, and 3 which are described as the copy of the 1st page of the report of the Committee headed by Senator Alh. A. D. Rufai to look into the claims of the Applicants and to determine among others the resettlement of indigenes/inhabitants at the expense of the Federal government submitted on the 31st day of January, 1981. The other

exhibits are also described as copies of letters relating to the commencement of enumeration of the Applicant's community by the 1st to 4th Respondents for possible integration or relocation and these are exhibits 2A and 2B while exhibit 3 is a sample of the form given to each household in that respect.

Furthermore, the content of the further affidavit of the Applicants shows that the houses demolished are fifty (50) and are all directly behind the residential house of the 1st respondent. They also deposed to the fact that they wrote to the Federal Government through the 1st and 2nd Respondents informing them of their interests, claims and stake in the area now acquired. They also deposed to the fact that it was as a result of the aforementioned letter that led to setting of the committee headed by Hon. Senator Alh. A. D. Rufai whose report was submitted on the 31st day of January, 1981. It was further deposed to the fact that the recommendation of the Committee was not complied with but they promised to resettle and compensate the communities which was never done till date. The Applicants admitted that Wuse and Maitama were compensated and relocated to Kubwa Abuja while they were neither compensated nor resettled anywhere. They also challenge the Respondent by deposing in paragraph (ii) as follows:

"We challenge the Respondents to produce evidence of our compensation or relocation".

15. That our houses demolished are not on water ways or water front and we have lived in those houses for over fifty years and not had any water issue.

16. That no notice was served on us except the marking on few houses on the 4th day of September, 2024 and the brutal demolition of the houses and those not marked carried out on the 5th day of September, 2024".

The combined effect of paragraphs 20, 23 and 24 of the further affidavit according to the Applicants shows that their claim for five billion naira as compensation was within the law while the action of the 7th Respondent on the day of the demolition was not done in accordance with the law as it was only aiding and abetting the destruction of lives and properties. The further affidavit of the Applicants was also accompanied with a written address adopted by the learned counsel for the applicants, Sylvester Ogbelu Esq. In addition to the above-mentioned processes filed before this court the Applicants also filed a written address in opposition to the preliminary objection filed by the Respondents. It was adopted by the learned counsel for the Applicants, Sylvester Ogbelu Esq.

Having thus listed the various processes filed before this court in respect of this suit, it will now be in the interest of Justice to consider and analyse the various written addresses of counsel for the parties in this suit. I will start with the written addresses filed by the Applicants which are written addresses in support of the Originating motion for the enforcement of fundamental Rights of the Applicants and written address in support of the further affidavit in support of the application for the enforcement of the Fundamental Rights of the Applicants as well as written address in opposition to the preliminary objection.

In arguing the application for the Enforcement of the fundamental rights of the Applicants, the learned counsel for the Applicants, Sylvester Ogbelu Esq formulated a lone issue for determination by this Honourable court, to wit:

"Whether from the evidence before the court, the Applicants are entitled to the orders sought in view of the absence of any reasonable/accepted reason allowed by our laws for the demolition of the house and harassment of the applicants. In

other words, whether the act of the Respondents is excusable in a democratically governed society such as ours".

The learned counsel for the Applicants submitted that every citizen of Nigeria has a right to own property anywhere in Nigeria. He referred to section 43 of the 1999 Constitution of the Federal Republic of (as amended) which provides as follows:

" subject to the provisions of this Constitution every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

He equally submitted that no property owned by any person in Nigeria can be compulsorily taken away without following due process of the law. He again referred to section 44 of the 1999 Constitution of Nigeria as amended which states thus:

"No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over, or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law".

He submitted that the demolition of the properties of the Applicants by the Respondents is not and cannot be absorbed under any of the exceptions to this fundamental right as provided in section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The learned counsel also referred this Honourable court to section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides that:

"Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment etc.".

Having thus laid foundation through constitutional provisions the learned counsel referred to a number of judicial authorities to prove that the demolition of the applicant's houses by the Respondents should be declared null, void and unconstitutional. He referred to the cases of **NEMI V. ATTORNEY GENERAL LAGOS STATE (1996) 6 NWLR (PT. 452) PG 42 AT PG 44, DR. PATRICK NWANGWU & ANOR V. BARRISTER JOHN DURU (2002) 2 NWLR (PT. 751) PG 267, FAJEMIROKUN V. C. N. (CL) (NIG) LTD (2000) 10 NWLR (PT. 774) PG 55 AT PG 98 RATIO 1**, all to show that there is a breach of the fundamental rights of the Applicants and it is the duty of the Respondents to show that their action, which is alleged to be unlawful, was lawful.

The learned counsel further referred to the cases of the **SOCIAL ECONOMIC RIGHTS ACTION CENTRE FOR ECONOMIC AND SOCIAL RIGHTS VS. GS NIGERIA (COMMUNICATION 155/96), NGOZI ADINUSO & ORS V. OMEIRE & ORS CHR 354 AT 356** as well as the case of **JIM - JAJA V. C. O. P, RIVERS STATE (2013) 6 NWLR (Pt)** where the Supreme court held thus:

"It is automatic even where the applicant did not specifically ask for the compensation, fundamental rights enforcement proceedings being sui generis, admit that it is incumbent on the trial judge to award a just amount of compensation once it is established that any of the fundamental rights of the applicant was violated by the Respondents".

He therefore urged this Honourable court to grant all the reliefs by holding that the Applicants' right was grossly infringed upon by the acts of the Respondents.

The 1st to 5th Respondents filed their Notice of preliminary objection without an affidavit in support of same but accompanied it with a written address adopted by the learned counsel for the Respondents, Idris

Suleiman Esq. It is equally important to observe that no single document by way of exhibits is attached to any of the processes of the Respondents. According to the learned counsel for the Respondents, they filed the Notice of Preliminary Objection challenging the jurisdiction of this Honourable court to hear and determine the application of the Applicants on the ground that the subject matter of the instant suit does not fall within chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and on the grounds that the Honourable court lacks the requisite jurisdiction to hear and determine the case of the Applicants which borders on demolition of houses. He submitted that their objection is predicated on four (4) grounds as stated on the Objection of the Respondents/objectors.

In arguing the preliminary objection the learned counsel for the Objectors formulated three (3) issues for determination by this Honourable court, to wit:

- 1. Whether this Honorable court has the requisite jurisdiction to hear/determine the instant application of the Applicants particularly when the subject matter of the application relates to an allegation of demolition of houses which is outside chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and due Fundamental Rights (Enforcement Procedure) Rules 2009". Grounds 1 & 2.**
- 2. Whether this is the proper court for the Applicants to institute this claim no demolition of houses or structure. Grounds 3 and 4.**
- 3. Whether this application as presently constituted does not constitute a gross abuse of the processes of this Honourable court in view of a pending case in FCT/HC/CV/5222/2011 and the suit disclose reasonable cause of action". Grounds 5, 6 and 7.**

In support of the first issue the learned counsel for the Respondents submitted that for a suit to come under the Enforcement of Fundamental Rights Procedure the court is bound to examine the reliefs sought, the ground for such reliefs and the facts relied upon. He submitted that where the facts failed to reveal or disclose any breach of the Applicants' Fundamental Rights as the basis of initiating the claim, the claim will fall like a pack of cards. According to him, from the facts relied upon by the Applicants and the reliefs sought it is clear that there was no basis in initiating this claim under a Fundamental Rights enforcement procedure. He referred to the case of **ALHAJI TSOHO DAN AMALE V. SOKOTO LOCAL GOVERNMENT & ORS (2012) 5 NWLR (PT. 1292) PG 181 AT PG 199 PARAGRAPHS A - H TO 200 A - E** where the Supreme court, Per Fabiyi, JSC held that:

"A trial court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under chapter iv of the Constitution if the main claim relied discloses a breach of the fundamental right of the applicant."

The learned counsel for the Respondents submitted that this suit remains within the realm of demolition of houses and not a breach of the fundamental rights of the Applicants. He referred to paragraphs 17, 18, 19, 20, 23, 24 and 29 of the affidavit in support of the Applicants' case. He equally referred this Honourable court to the case of **SEA TRUCKS NIGERIA LTD V. PANYA ANIGBORO (2001) 2 NWLR (PT. 696) PG 159 AT PG 179 PARAGRAPHS C - H** where the Supreme court reiterated the same principle earlier stated on the need to consider the reliefs and grounds of the Applicants' claim. He also referred to the cases of **TUKUR - V. GOVERNMENT OF GONGOLA STATE (1989) 1 NWLR (PT. 117)**, **TUKUR V. GOVERNMENT OF TARABA STATE (1997) 6 NWLR (PT. 510) PG 549** as well as the case of **UNIVERSITY OF ILORIN V. OLUWADARE (2006) 14**

NWLR (PT. 1000) PG 751 AT PGS 770 - 771 PARAS H - A. where the court held thus:

"The law in relation to the claim for the Enforcement of Fundamental Right is trite. It is to the effect that the Enforcement of Fundamental Rights or securing the Enforcement thereof must form the basis of the applicant's claim as presented to the court and not merely an assess or claim. In other words, where the main or principal claim is not for the enforcement or securing the Enforcement of Fundamental Rights, the jurisdiction of the court cannot be properly exercised because it will then be incompetent".

On the issue of jurisdiction of this Honourable court to entertain this suit, the learned counsel referred to the locus classicus case of **MADUKOLU V. NKEMDILIM (1962) 2 SCNLR PG 341 AT PG 348** wherein factors to be considered as to the competence of a court were stated. He also referred to other judicial authorities on the same principle such as **NIGERITE LTD. V. DALAMI (NIG) LTD (1992) 7 NWLR (PT. 253) PG 258 AT PG 297 PARA B - C.** He equally referred to the paragraphs of the affidavit in support of this case and submitted that the case of the Applicants is based on the demolition carried out in the community known as Kpaduma and submitted that the issues raised by the Applicants are best handled via section 40(1) and (2) of the **Nigerian Urban and Regional Planning Act, 1992** and the establishment of the **Federal Urban and Regional Tribunal** by the same Act at section 86. The learned counsel however reproduced section 46(1) and (2) instead of section 40(1) and (2) of the law he referred to. He equally referred to sections 86, 87 and 89 of the same law wherein professionals were made as members of the Tribunal set up under section 40(1) & (2) who, according to him, are the ones capable of interpreting the various documents attached to the Applicants' affidavit. He therefore urged this Honourable court to hold that the filing of this suit before this

Honourable court under the **Fundamental Rights (enforcement procedure) Rules, 2009** is a violation of section 40 of the **Urban and Regional Planning Act, 1992**.

The learned counsel submitted on the issue of abuse of court process that the entire gamut of the affidavit evidence before this Honourable court discloses no reasonable cause of action or any cause of action at all against the Respondents particularly the 1st to 5th Respondents. On this premise he referred to the cases of **ADEPOJU V. AFONJA (1994) 8 NWLR (PT. 363) PG 437 AT PG 452 PARAS D - E**, where it was held that:

"Now, an allegation that a plaintiff's claim disclosed no cause of action is a serious one. It goes to a challenge to the locus Standi of the plaintiff to institute the action. Why? Because the trial court would not be disposed to exercise its judicial powers under section 6(6)(b) of the Constitution in his favour unless the plaintiff before it has "locus standi". The challenge equally touches on the competence of the court of trial, its jurisdiction to entertain the action. Again, because where there is no cause of action disclosed the court will decline to exercise its jurisdiction in the matter. An action which does not disclose a cause of action may even be considered an abuse of the court's process".

He further submitted that the depositions in paragraphs 7, 8, 9 and 10 of the affidavit in support of the application shows that a pending case exist on the same subject matter between same parties which make the present suit an abuse of court process. In support of this submission he referred to the case **OF LABARAN V. KALSHINGI (2006) ALL FWLR (PT. 292) PG 65 AT PG 76 PARAS D – H** where the circumstances in which abuse of court process may arise were itemized by the Court of Appeal to include:

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of same parties even where there exists a right to begin that action.**
- (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds amongst others.**

He further submitted that the Applicants should have approached the court for contempt proceedings against the Respondents instead of filling a Fundamental Rights proceedings against them. He finally submitted that the incompetence of the court to entertain and determine the principal question is enough to nullify the whole process as there is no room for half judgment in any matter brought before the court especially where the houses in question were demolished by the Department of Development Control under the supervision of the 4th Respondent due to their closeness to the water front in the area and the buildings were without permission from the 4th Respondent. The learned counsel therefore urged this court to dismiss this suit for want of jurisdiction and absence of cause of action.

In opposition to the preliminary objection, the learned counsel for the Applicants formulated three (3) issues for determination by this Honourable court, namely:

- 1. Whether or not this Honourable court has the jurisdiction to entertain this action.**
- 2. Whether or not the FCT High Court is the proper court to determine this action.**
- 3. Whether or not this suit is an abuse of court process.**

In arguing the above issues, the learned counsel for the Applicants referred to sections 255(1) and 270(1) of the 1999 constitution of the Federal Republic of Nigeria as amended which creates both the Federal

Capital Territory and the state High Courts respectively. He submitted that the present suit is for the Enforcement of Fundamental Rights and it is within the jurisdiction of the High Court of the Federal Capital Territory, Abuja. He referred to the case of **STANDARD CHARTERED BANK V. ADEGBITE (2019) 1 NWLR (PT. 1653) PH 348 AT PG 354 PARA 6** where the Court of Appeal held thus:

"By virtue of section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), any person who alleges that any of the provisions of chapter iv of the Constitution has been, is being or likely to be contravened in any state in relation to him may apply to a high court in that state for redress. In this case, the Respondent's complaint was that the Appellant discriminated against her because of her sex and because she was a nursing mother. In the circumstance, the Respondent rightly filled her suit at the High Court under section 272 of the Constitution by virtue of section 46(1) of the Constitution".

The learned counsel urged this Honourable court to hold that the present suit by way of Originating motion was duly filed before this court. He also urged this Honourable court to hold that the demolition of the Applicants houses by the Respondents is a contravention of sections 43 and 44 of the 1999 Constitution which constitute an abuse of the fundamental rights of the Applicants that can be remedied by virtue of section 46(1) of 1999 constitution of the Federal Republic of Nigeria (as amended). According to the learned counsel for the Applicants, Nigerian citizens are entitled to the right to own property whether tangible or intangible, subject only to the exceptions under the constitution and that these Constitutionally guaranteed rights to own property is readily enforced and protected by the courts. He referred to a number of judicial authorities where our courts have stood firmly in the enforcement and protection of these rights, such as **MARWA V. NYAKO (2012) 6**

NWLR (PT. 1226) PG 199 AT PG 337, ATTORNEY GENERAL OF BENDEL STATE V. AIDEYAN (1989) 4 NWLR (PT. 118) PG 646 AT PG 667, MEMORIAL HOSPITAL V. ATTORNEY- GENERAL OF THE FEDERATION (1986) 1 NSCC VOL. 17 (PT. I) PG 304 AT PGS 313 - 314 THE CASE OF BELLO V. DIOCESAN SYNOD OF LAGOS & ORS (1973) LPELR- 768(SC) respectively. He again referred to the case of ATTORNEY GENERAL, BENDEL STATE V. AIDEYAN (supra) where Nnaemeka - Agu (JSC of the blessed memory) had stated that before a person's property could be acquired compulsorily for public purpose the procedures to comply with are as follows:

- (a) A notice of intention to do so must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land, failing both, affixed conspicuously on the property, (b) the notice must be by personal service or by being left at his last known place of abode or business, and (c) the notice served on him must be published once in the state Gazette, and at least two National daily Newspapers circulating in the state. His lordship held further. "The law insists upon actual notice of the intention to acquire. So, anything short of that amounts to non - compliance with the express provisions of the law. I therefore find no difficulty in agreeing with the two lower courts that, even if I assume that the property in dispute could have been validly acquired compulsorily by the appellants, it was, in any event, not acquired according to law".**

In the same vein, counsel referred to the case **LAGOS STATE & ORS V. OJUKWU & ANOR (1986) 1 NSCC VOL. 17 (PT. 1) PG 304** where Eso JSC (of blessed memory) held that:

"To use force to effect an act and while under the Marshall of that force seek the court's equity is an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law. A party has resort to self - help in these circumstances at its peril".

The learned counsel therefore submitted that the Respondents are in breach of section 44 of the Constitution as no authority can take over by force or compulsorily acquire another person's property without following the due process of the law. He submitted that a fundamental right suit against illegal demolition is appropriate as in the present circumstances which infringes upon the Applicants' Fundamental rights as provided under the Nigeria constitution and the African Charter on Human and People's Rights (Ratification and Enforcement) Act. The learned counsel referred to the case of **GOV'T OF ENUGU STATE OF NIGERIA & ORS V. ONYA & ORS (2021) LPELR- 52688 (CA)** and particularly the case of **ENAKARHERE & ORS V. ODUDURU & ORE (2022) LPELR- 58310 (CA)** where the court of Appeal held the actions of the authorities that forcefully expelled the citizens from their residence and demolished their houses as a punishment for crime or disagreement as amounting to a breach of their fundamental rights.

The learned counsel also referred this Honourable court to section 85(1) of the Nigerian Urban and Regional Planning Act which mandates that before any demolition order is executed, the authority must provide alternative accommodation or financial assistance to those likely to be displaced, but that this provision was never followed as seen in the present suit. He urged this Honourable court to be persuaded by the decision of Hon. Justice S. A. Amobeda of the Federal High Court Kano in case No. **FHC/KN/CS/208/2p23** delivered on the 29th day of September 2023 when he awarded the sum of thirty billion naira in

favour of the 56 Applicants who enforced their right to own property that was illegally demolished by the Kano state government.

The learned counsel urged this Honourable court to discountenance with some of the judicial authorities cited by the Respondents in support of their argument as the said cases are irrelevant and not helpful to the present suit. He therefore submitted finally on the first issue for determination that the present suit is properly filed before this court in accordance with section 46(1) of the 1999 constitution of the Federal Republic of Nigeria (as amended for the purpose of enforcing the fundamental rights of the Applicants as it regards to sections 34, 36, 43 and 44 of the constitution that were violated against the Applicants by the Respondents. He therefore adopted his arguments in paragraphs 8.0 - 13.0 in support of the second issue as to whether or not the FCT High court is the proper court to determine this action.

On the submission by the Respondents regarding section 40 of the Urban and Regional Planning Act, the learned counsel for the Applicants submitted that it was wrong application of the law by the Respondents. According to him section 40 of the said law which refers to a Tribunal only relate to a situation where the developers permit is revoked by the Development Control Department by a written notice. That the Developers then have a right to appeal against that decision and this involves submitting a formal complaint to the designated planning tribunal, presenting arguments against the notice of revocation, where the issue will be reviewed. However, he submitted, the situation is not the same in the present case where no such notice was issued or served on the Applicants and infact, none has been attached to the counter affidavit or the preliminary objection by the Respondents. He finally submitted on this issue that the said tribunal is not for the purpose of enforcement of fundamental right but for receiving and treating complaint when a notice is served which unfortunately was never served in this case.

The Applicants also submitted that a cause of action has been disclosed in this suit since in fundamental right action it is the affidavit in support that the court will consider to determine whether a reasonable cause of action has been disclosed. He urged this Honourable court to consider the response of the Respondents in their counter affidavit that only eight houses were demolished as against 50 houses that the Applicants alleged to have been demolished by the Respondents. The learned counsel referred to the case of **ATTORNEY GENERAL OF THE FEDERATION V. ATTORNEY- GENERAL OF 36 STATES NSCQR VOL. 7 (2001) PG 458 or ELC (2001) 3703 SC, OGAR & ORS V. IGBE & ORS (2019), NWOBASI V. FEDWIN ELC (2023) 7795 PG 1** in support of his submission that a cause of action has been disclosed through their affidavit in support of Originating motion.

As to whether or not the present suit amount to an abuse of court process the learned counsel referred to the case of **AJALI & ANOR V. OKURI - FEZE & ORS (2013) LPELR- 22492 (CA)** where it was held that:

"It is beyond argument that the determination of an allegation of abuse of process by multiplicity of suits must start with a consideration of whether the suits are similar in terms of parties, subject matter and issues....." He submitted that the present suit and suit No. **FCT/HC/CV/5222/2011** cannot be said to constitute an abuse of court process because the parties, subject matter and issues are not the same. He therefore urged this Honourable court to discountenance the submission of the Respondents in its entirety".

In addition to the above submissions of the Applicants, they also filed further affidavit in support of the Fundamental Right Application consisting of 26 paragraphs accompanied with a written address adopted by the learned counsel for the Applicants. The said further affidavit dated the 24th day of February, 2025 was filed on the same date. It is

also supported with three (3) Exhibits described as Exhibits **1, 2A & 2B** and **3** respectively.

The crux of the submission of the learned counsel for the Applicants is that the Respondent counsel in his written address has misrepresented the issues before this Honourable court. He submitted that the Respondents have wrongly relied on section 47, 48, 61 and 62 of the Urban and Regional Planning Act in justifying the demolition carried out on the face of a subsisting order of court restraining them from doing so. He submitted that the combined effect of section 49, 56, 61 and 62 is that the developer who was issued with a notice is to be re - allocated, must be given reasonable time, a demolition notice to be served not later than 21 days before any step can be taken by the control department otherwise any action contrary to the above-mentioned sections will be contrary to the due process of the law. According to the learned counsel, issuing a form as required by section 50 of the Act which must be served on the Applicant is not the same as marking the houses on the 4th of September, 2024 only for the demolition to be carried out on the following day being the 5th day of September, 2024. He submitted that the Respondents did not follow due process of law in the demolition carried out on the houses of the Applicants. He equally submitted that it is not for the Respondents to suggest to the Applicants that they should have filed a contempt proceeding against the Respondents instead of the present suit. He submitted that the action of the Respondents amount to a constitutional violation of the Fundamental rights of the Applicants and the suit is properly before the court.

In responding to the arguments of the Respondents the learned counsel submitted that the present suit is properly constituted and brought under the right procedure. He referred to order 11 rules 2 and 3 of the Fundamental Right Enforcement Procedure Rules by which the application can be made by way a statement setting out the name and description of the Applicants the reliefs sought, the grounds upon which

the reliefs are sought and supported by an affidavit setting out facts upon which the application is made. He equally referred to **Order 43 rule 1** of the Rules of this Honourable Court, **FCT High Court Civil Procedure Rules (2018)** which provides thus:

"Whereby in this rule any application is authorised to be made to the court it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought".

He referred to the case of **ONAH V. OKENWA (2010) 7 NWLR (PT. 1194) PG 512 AT PG 513 RATIO 3** in support of the fact that once an applicant has filed his motion on notice he has complied with the requirements of the Fundamental Right Enforcement Procedure Rules and the court has jurisdiction to entertain same.

He further submitted that the 7th Respondent is jointly liable for the breach of the fundamental right of the Applicants and as such they should be liable as well as the other Respondents.

The 1st to 5th Respondent also filed a reply on point of law to the applicant's reply address dated the 25th day of February, 2025. The learned counsel for the Respondents, IDRIS SULEIMAN Esq submitted that the written address of the learned counsel for the Applicants contained in paragraph 8.0. to 34.0 shows that the issue involved in this suit are contentious and urged this Honourable court to so hold. He submitted that the issue of demolition is the main claim while the issue of the fundamental Rights is ancillary to the main issue before the court, and that this makes the suit filed under the Fundamental Rights incompetent. He referred to the case of **AMALE V. SOKOTO LOCAL GOVERNMENT (2012) 5 NWLR (Pt. 1292) pg 181 SC** where the Supreme court per Fabiyi JSC held thus:

"In this appeal, it is clear that the principal issues involved are (1) declaration of title to land, and (2) compensation for unexhausted development on the land..... it is trite law that the Appellant's claim should determine the nature of this suit, and afortiori, its competence... the claim of the Appellant as disclosed in his suit and the affidavit in support did not relate to one breaching his fundamental right. It is a claim for declaration of title to his statutory right of Occupancy and for compensation for un exhausted development on the land which should not be brought under the Fundamental Rights (Enforcement Procedure) Rules. I agree that for this reason, the Appellant's suit is incompetent....."

The learned counsel for the Respondents further submitted that the entire suit does not fall within the purview of section 44 of the 1999 constitution of the Federal Republic of Nigeria to warrant filing same under the Fundamental Rights Procedure. He once again referred to the case of **SEATRUCKS (NIG) LTD V. ANIGBORO** (supra) on the need for the court to consider the reliefs sought as well as the grounds upon which the reliefs are sought. He further submitted that allowing this suit as presently constituted will simply connote that the 1st to 5th Respondents have been found wanting or has dishonestly demolished 8 of the applicant's houses which is clearly a question of facts determinable only under the procedure of filing pleadings. He equally urged this Honourable court to hold that this suit cannot be determined without a visit to locus in quo which is not obtainable under the Enforcement of Fundamental Rights proceedings. He referred to paragraph 12 of the affidavit in support of this application to the effect that the deposition that the houses were marked for demolition amount to an admission that the Applicants were served by the Respondents. He, again referred to **S.22 of the Evidence Act**, urging this court to take judicial notice of its record and that the Applicants could provide any

proof that the houses were constructed without any approval. He finally urged this Honourable court to hold that the present suit constitute an abuse of court process and should be dismissed.

Above is the Summary of the various processes and written addresses of the learned counsel for the parties. It is trite that in commenced by way of Originating motion, any challenge to the jurisdiction of the court to entertain the matter is taken together with the substantive matter. After which the court has a duty to first decide the issue of jurisdiction raised by way of preliminary objection before delving into the substantive matter. In the case of **GOVERNOR OF KOGI STATE & 3 ORS V. ALHAJI NUHU AHMED & 5 ORS (2019) 3 Abuja Appeals quarterly Reports pg1 at pages 6 and 8** it was held that:

Ratio 5:

"The procedure to adopt where an objection is raised to the jurisdiction of the court in a matter commenced by Originating motion is to consider the objection together with the substantive matter. Invariably, this would involve the consideration of not only the reliefs being claimed against the background of the facts deposed to in the affidavit in support of the Originating motion but the totality of available evidence, including the facts contained in the counter affidavit (s) in opposition to the Originating motion...."

It simply means that where there is a challenge to jurisdiction the court must first assume jurisdiction to consider if it has or lacks jurisdiction because it is impossible to put something on nothing.

It is equally the position of the law that in this type of suit, it is totally governed by affidavit evidence, as held in the case of **GOVERNOR OF KOGI STATE & 3 ORS V. ALHAJI NUHU AHMED & 5 ORS** (supra) at page 8, Ratio 9 that:

"Ordinarily, proceedings may commence by Originating motion where the main issue is or likely to be one of construction of a written law or an instrument made under any written law or of any deed, will, contract, or other document or some other question of law or there is unlikely to be a substantial dispute of law....the established judicial principle is to allow its use in cases where the substantial disputes of facts can be resolved on the affidavits and the accompanying exhibits without the need to recourse to oral evidence to resolve them".

Infact, in an Originating motion proceeding, affidavits serve as statement of claim and defence. Thus, in the case of **OWURU V. ADIGWU (2018) 1 NWLR (pt. 1599) at pg 27** it was held thus:

"When the Originating process is an Originating motion, the affidavits filed in support serve as the statement of claim while the counter affidavits 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".

In determining the fundamental question raised in the preliminary objection and the substantive suit some of the following issues distilled by the parties are hereby adopted, namely:

- 1. Whether from the evidence before the court the Applicants are entitled to the order sought having brought the issue of the demolition of their houses by the Respondents under the Enforcement of fundamental Rights Procedure having disclosed no cause of action.**
- 2. Whether or not this Honourable court has the jurisdiction to entertain this action.**

3. Whether or not the FCT High court is the proper court to determine this action.

4. Whether or not this suit is an abuse of court process.

The crux of the objection by the Respondents lies on the grounds that the allegation of demolition of houses of the Applicants does not fall within the province of chapter iv of the 1999 constitution of the Federal Republic of Nigeria (as amended) and the Enforcement of Fundamental Rights Procedure Rules 2009 and therefore not within the jurisdiction of this court. That the demolition of houses falls within the province of the Department of Development control under the supervision of the 4th Respondent and any complaint in that respect goes to Tribunal setup in that regard and not the FCT High court. It is also the contention of the Objectors that the suit constitutes an abuse of court process in view of the pendency of suit No. **FCT/HC/CV/5222/2011**. They also contended that there is no cause of action while the issue of Fundamental Rights of the Applicants is only ancillary to the demolition of houses. Conversely, the fundamental reliefs and grounds for this suit as claimed by the Applicants include a declaration that the demolition of the Applicants' houses by the agents and officers of the Respondents on the 5th day of September 2024 is illegal and unconstitutional in that the demolition is a gross violation of fundamental right of the Applicants as guaranteed under sections 43 and 44 of the 1999 constitution of the Federal Republic of Nigeria (as amended). The Applicants equally urged this court to declare that the humiliation, harassment and embarrassment of the Applicants on the 5th day of September, 2024 by the Respondents is illegal, unconstitutional and a violation of the fundamental rights of the Applicants as guaranteed under sections 34 and 36 of the 1999 constitution of the Federal Republic of Nigeria (as amended). They also applied for a perpetual injunction, apology and the sum of Five Billion Naira (**₦5,000,000,000.00**) only as compensation from the Respondents. This court has thus recognised the fact that the main claim of the

Applicants is the enforcement of their Fundamental Rights against the alleged illegal and unconstitutional demolition of their houses which resulted in the humiliation, harassment and embarrassment of the Applicants on the 5th day of September, 2024. The application of the Applicants is supported by a 39-paragraph affidavit as well as Exhibits **A1 to A20, B, C, and D1 to D15** respectively. It is important to observe that Exhibits **A1 to A20** show that all the Applicants are indigenes of Kpaduma II village, Abuja while exhibit **D1 to D15** are pictures of the scene of demolition respectively. The Applicants equally deposed to very vital facts in their further and better affidavit in support of the Fundamental Right Application deposed to by the 11th Applicant, Abaki Tanko and attached Exhibits **1, 2A, 2B, and 3** respectively. It will be in the interest of Justice to specifically refer to paragraphs **5, 6, 7, 8, 9, 10, 13, 16, 17 and 20** respectively. It is not in doubt that para 8 has never been controverted. The paragraph states that in 1980 Honourable. Senator Alh. A. D. Rufai headed a Committee to determine amongst others the resettlement of indigenes/inhabitants at the expense of the Federal Government and the report of the Committee was submitted on the 31st day of January, 1981. It is on record that the existence of Exhibit **1** has never been contested or challenged. The Applicants in paragraph 11 challenged the Respondents to produce evidence if they were ever compensated or relocated. This was never done. Similarly, Exhibits **2A and 2B and 3** which are samples of the letters and form given in commencement of enumeration of the applicants' community for possible Integration or relocation was never denied or challenged by the Respondents in any way. Most importantly too, paragraph 16 of the further affidavit in support of the application which deals with the issuance of any notice to the Applicants by the Respondents was never controverted in any way. The provisions of section 85(1) of the Nigerian Urban and Regional Planning Act, 1992 which mandates that before any demolition order is executed the authority must provide alternative accommodation or a financial assistance to those likely to be displaced

was never followed in the present suit. It cannot be assumed that the marking of the Applicants' houses on the 4th day of September, 2024 amounted to the notice that led to the demolition of their houses on the following day, being the 5th day of September, 2024 as required by section 85(1) of the Urban and Regional Planning Act of 1992. This, and other similar averments contained in the Applicants affidavits were never controverted by the Respondents. The law requires that depositions be specifically controverted by the opposing party as was held in the case of **O.S.S.I.E V. N.C.P (2013) 9 NWLR (pt. 1360) pg 451** that *"where a party chooses not to file a counter affidavit, he is deemed to admit the facts averred in the affidavit of his adversary"*. Similarly in the case of **FIRST BANK OF NIGERIA PLC & 1 OR V. NDARAKE & SONS NIG, LTD & 1 OR (2009) 15 NWLR (PT. 1164) pg 406 at pg 408 Ratio 1** it was held that:

"If a party deposes to certain facts in an affidavit his adversary who wishes to dispute the facts so stated, has a duty to swear to an affidavit to the contrary, otherwise the facts deposed to shall be regarded as duly established".

It is equally important to observe that most of responses by the Respondents to the averments of the Applicants were done through the brilliant written addresses of their counsel. Unfortunately, address of a counsel, no matter how brilliant does not serve as evidence on behalf of the parties. In the case of **UNIVERSITY OF LAGOS & 3 ORS V. DR. FIDELIS NWOKEDI AMATOKWU (2005) 13 WRN pg 176 at pg 181 Ratio 8**, it was held that:*"Addresses of counsel are designed to assist the court and trial Judge would certainly be free to dispense with the final address"*.

It is therefore the affidavits and counter affidavits of the parties that constitute the statement of claim and statement of defence while the statement of facts constitutes the statement of witnesses on oath in a suit

initiated by way of Originating motion as in the present suit. It is the court's finding here that the Originating motion is duly filed and it is properly before this Honourable court. This court is therefore competent to hear and determine this suit as it is presently constituted. This is the position under section 46(1) of the 1999 constitution of Nigeria (as amended) which provides thus:

"Any person who alleges that any of the provisions of chapter iv of the 1999 constitution has been, is being or likely to be contravened in any state in relation to him may apply to a High court in that state for redress".

On the issue of whether the suit is an abuse of court process for reason that another case with suit **NO.FCT/HC/CV/5222/2011** is still pending, the authority in the case of **AJALI V. OKURI - EZE & ORS (2013) LPELR- 22492 (CA)** is quite instructive. The court held that:

"It is beyond argument that the determination of an allegation of abuse of process by multiplicity of suits must start with a consideration of whether the suits are similar in terms of parties, subject matter and issue.....Therefore, in my respectful view the defendant has not proved that the two suits filed by the claimant tantamount to multiplicity of suits, or that there are similarities of the parties, subject matter and issues in suit NO. NICN/AWK/07/2017 and suit No. NICN/AWK/31/2018 and I so find and hold".

In the same vein, it has not been proved by the Respondents that the present suit having twenty (20) Applicants is the same with suit **NO.FCT/HC/CV/5222/2011**. This Honourable court therefore also find and hold that there is no abuse of court process in the present suit.

The Respondent's contention that there is no reasonable cause of action disclosed in the suit cannot be true. This is because the affidavit and

further affidavit in support of this application has disclosed the fact that their houses were demolished by the Respondents without due process of the law and that the action of the Respondents has seriously contravened their constitutional rights guaranteed under section 34, 36, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria. By this, a cause of action has been disclosed particularly that the Applicants whose houses were demolished have the locus standi to initiate this suit in defence of their fundamental Rights. I also restate the fact that a cause of action is derived from the statement of claim of the plaintiff or the affidavit in support of an Originating motion filed by the applicants. This was the position held in the case of **CHUKWUEMEZIE EMMANUEL C. FEDERAL REPUBLIC OF NIGERIA (2019) 3 Abuja Appeal Quarterly Reports pg 70 at pgs 74 - 75 Ratio 5** where it was held that:

"A plaintiff satisfies the court that he has locus standi if he is able to show that his Civil rights and obligations have been or is in danger of being infringed. There must be a nexus between the claimant and the disclosed cause of action concerning his rights or obligations and locus standi is determined by examining only the statement of claim".

The same court further observed that:

"In order to decipher whether the plaintiff has locus standi, the court will examine or scrutinise the facts pleaded in the statement of claim where the action is commenced by writ of summons but in case of Originating motion action, it behooves the court to examine the affidavit in support of the Originating motion".

The Respondents argued that the Applicants are not entitled to the reliefs sought particularly the financial claim of five Billion Naira. However, from the totality of the evidence before this Honourable court

particularly having overruled the preliminary objection, it can conveniently be concluded that the Applicants are entitled to redress as required by the Law.

In the case **OF IGWE V. EZEANOCHIE (2010) 7 NWLR (PT. 1192) PG 61 AT PG 94 PARAS D - E** it was held that:

"I make bold to say that it is the duty of the court to grant redress to any person who has successfully proved that any of his fundamental right has been, is being or is likely to be contravened or infringed. The Applicants through their affidavit and exhibits have proved the infringement against the Respondents".

In view of the foregoing judicial authorities this Honourable court is convinced that the allegation by the Applicants that their houses were illegally and unconstitutionally demolished resulting into humiliation, harassment and embarrassment of the Applicants on the 5th day of September, 2024 constitute a reasonable cause of action as it raises some questions fit to be decided by this court under the fundamental rights enforcement procedure. This Honourable court is also of the view that this present suit cannot be said to constitute an abuse of court process because this present suit has not been proved to be the same with suit No. **FCT/HC/CV/5222/2011** as the parties, subject matter and issues are not the same. This Honourable court equally has the requisite jurisdiction to hear and determine this suit as it is presently constituted. Consequently, the Preliminary Objection raised by the Respondents is hereby overruled.

The next issue to be decided by this court is whether or not the affidavit and the exhibits placed before this Honourable court have raised issues rendering the suit hostile and that pleadings should be ordered. However, a suit can only be said to be hostile where evidence adduced by way of exhibits and averments are countered by a counter affidavit and/or exhibits challenging the evidence in the supporting affidavit in a

manner that leaves the court unable to resolve the conflict or issue before it. As earlier stated in this judgment, originating motion proceeding is decided on the basis of the affidavits and counter affidavits along with the various exhibits attached thereto. Unfortunately, while the Applicants attached relevant exhibits to their affidavit and further affidavit in support of this application, the Respondents failed or refused to attach a single document to their counter affidavit. Infact, the counter affidavit of the 1st to 5th Respondents and that of the 7th Respondents are so porous that there is nothing to be compared with those of the Applicants to render them hostile. An instance of this could be elicited from the content of paragraphs 6 to 20 of the further affidavit in support of the Fundamental Right Application which were never adequately contradicted or controverted to warrant rendering same contentious. The content of paragraphs 8, 10, 13 and 16 of the further affidavit in support of the fundamental rights application are very crucial to this application more so that the Applicants attached respective exhibits to their affidavit. Apart from deposing to the fact that they were not given any compensation or relocated despite the setting up of a Committee headed by one Hon. Senator Alh. A. D. Rufai whose committee submitted its report on the 31st day of January 1981, they also stated that recently emuneration of their community has just begun for possible Integration and relocation. These assertion were backed up with exhibits, 1, 2A, 2B and 3 respectively but were never responded with equal documentary evidence or even adequately challenged by the Respondents.

The Applicants stated in paragraph 16 that:

"No notice was served on us except the marking on few houses on the 4th day of September, 2024 and the brutal demolition of the houses and those not marked carried out on the 5th day of September, 2024".

Unfortunately, the above statement of fact was never adequately responded to by the Respondents apart from admitting that the marking

of the houses was to inform the Applicants of their intention to demolish their houses. The Respondents never denied having demolished the applicant's houses but that it was because they were built on water front, yet no tangible Procedure was shown to have been followed in accordance with the law before the demolition was carried out. Thus, exhibits 1, 2A, 2B and 3 attached to the Applicant's further affidavit to Fundamental Rights Application were never controverted.

Furthermore, the provisions of sections 47, 48, 61 and 62 of the Urban and Regional Planning Act 1992 were never complied with before the demolition was carried out. These sections deal with the Applicants being given reasonable time by way of Notice, adequate compensation must have been paid and they ought to have been relocated to another site before demolition respectively.

Infact section 61(1) of the Urban and Regional Planning Act provides that:

"The control department shall have the power to serve on a developer a demolition notice if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the occupier and the public ".

Similarly, section 50 of the same law provides that:

"An enforcement notice served under section 48 of this act, by the control department shall (a) be in writing and communicated to the developer (b) state the reasons for the proposed action of the control department. and (c) consider any representation made by a developer or on behalf of a developer".

The Applicants in paragraph 11 of their further affidavit stated that:

11. That only the Wuse and Maitama communities were compensated and relocated to Kubwa Abuja and we challenge the

Respondents to produce evidence of our compensation or relocation".

Unfortunately, none of the above content of the applicant's averments were controverted by the Respondents. The Respondents did not attach any exhibit to show that the Applicants were given notice in writing or ever compensated. The question of hostile affidavits could have arisen on the face of conflicting documentary evidence if any has been attached by the Respondents to warrant calling for oral evidence to prove same. Thus, in the case of **ETIM V. OBOT (2010) 12 NWLR (pt. 1207) pg 108 at pgs 156 - 157 paras H - D** it was held that:

"The mere filling of a counter affidavit in response to the supporting affidavit of an Originating motion does not automatically make the matter one in which oral evidence must be adduced and thereby necessitating the ordering of pleadings where the conflicts in the affidavit evidence of the parties there in are in admissible, the court is not saddled with the responsibility of calling oral evidence. Where the areas of conflicts are so narrow and insignificant, the need to call oral evidence and thereby necessitating the ordering of pleadings will not arise. Also where the conflict in the affidavit evidence can be resolved on available documentary evidence before the court, oral evidence need not be called and afortiori pleadings need not be ordered in favour of the documents, moreso, documents are the hangers of oral evidence".

I should also reaffirm the fact that present suit is proper before this court as it affects the Fundamental rights of the Applicants whose houses were demolished by the Respondents.

The Supreme court in the case of **NKIRUKA OKANU V. COMMISSIONER OF POLICE, IMO STATE & ANOR (2001)**

CHR pg 407 while overruling the decision of the court of Appeal held thus:

It is our submission that the court of Appeal grossly erred in law in affirming the decision of the lower court. The fact that the detention of the Appellant and her car was tortious does not justify the finding that her fundamental rights to personal liberty and private property were not involved in the matter. No doubt, their lordships would have come to a different conclusion if they had advertised their minds to the case of AFRICAN CONTINENTAL BANK V. MRS. MARY OKONKWO (1997) 1 NWLR (pt. 480) ph 194 where EJIWUNMI JCA (as he then was) had held that:

"That in the instant case, the 1st Respondent's right was undoubtedly involved when the Appellant caused her properties to be detained, was not shown that she was in any way involved with the criminal activities of her son, Kenneth Okonkwo who was an employee of the Appellant. The conduct of the Appellant is clearly reprehensible. It followed from all I have said that the question as to whether the 1st Respondent was right to have commenced against the Appellant under the Fundamental Rights (Enforcement Procedure) Rules must be resolved against the Appellant".

In the same vein, this Honourable court is convinced that the Applicants' suit via Fundamental Rights Procedure (Rules) is proper and this Honourable court has the requisite jurisdiction to hear and determine same.

Furthermore, the Respondents never denied having demolished the houses of the Applicants. They have not adduced any reasonable evidence of having done so in accordance with the due process of the law. What this court is saying is that, documents or evidence of the

notice of the intention of the Respondents to carry out the demolition is not shown in any way by way of either counter affidavit or documentary evidence. There is also no evidence of compensation having been paid or the Applicants having been relocated to somewhere else as required by the law.

These unchallenged evidence ate away the areas where dispute would have arisen to render the suit hostile. In the absence of reasonable evidence to that effect, it is hereby concluded that the suit is not hostile and as a result, pleadings would not be rightly ordered by this court. Most importantly too, the Respondents only attempted to lean on technicalities rather than leaning on substantial Justice. However, the Supreme court has frowned at this when it held in the case of **OLABANJI V. AJIBOYE (1992) 1 NWLR (pt. 218) ph 473 at pg 485** that:

"It seems to me that in the matter of enforcement of the fundamental rights, courts are less slavish to the rules of court rather they use them as hand maiden to do substantial justice. The reason is not unconnected with the fact that the issue fundamental as or involves life and liberty of a citizen".

It will therefore amount to an injustice to refuse the reliefs sought by the Applicants on the face of the uncontroverted affidavit evidence and documentary evidence placed before this Honourable court. This is particularly so that as in the case of **OBEYA MEMORIAL HOSPITAL V. A. G. FEDERATION & ORS (1987) 3 NWLR (pt. 60) pg 325** SC KAZEEM JSC stated that:

"A Nigerian citizen and indeed any Nigerian Company as a corporate body in lawful possession of their properties are entitled to protection of those properties under our Constitution, until proved not to be entitled, the courts as guardians of the Rule of Law will frown at any unlawful

invasion of such properties by anyone no matter how highly placed. That point was made clear in the case of Military Governor of Lagos State &ors V. Chief Emelda O. Ojukwu& anor (1986) 1 NWLR (pt. 18) pg 621 SC".

Finally, on the issue of damages it has been held on a number of cases that any person whose fundamental rights, is violated is entitled to damages. see the cases of **RANSOM KUTI & ORS V. ATTORNEY GENERAL OF THE FEDERATION (1985) 6 SC PG 245** and **MINISTRY OF INTERNAL AFGAORS V. SHUGABA ABDULRAHMAN (1982) 3 NCLR PG 915** amongst others.

On the whole, I am satisfied that there is overwhelming affidavit evidence and various exhibits presented by the Applicants to prove that the act of demolition of the Applicants' houses situated at Kpaduma community was illegal, and unconstitutional and against the guaranteed rights of the Applicants under sections 34, 36, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria. It is also clear from the evidence before the court that there is merit in this case and Applicants are entitled to judgment. Judgment is hereby entered in favour of the Applicants against the Respondents and I make the following orders and declarations.

1. It is hereby declared that the demolition of the houses of the Applicants by the Respondents in total disregard to the due process of the law is a violation of the applicant's fundamental rights guaranteed and protected under sections 34, 36, 43 and 44 of the 1999 constitution of the Federal Republic of Nigeria (as amended).
2. It is also declared that the humiliation, harassment and embarrassment of the Applicants is illegal, unconstitutional and a violation of the Fundamental Rights of the Applicants as guaranteed under section 34 and 36 of the 1999 constitution of the Federal Republic of Nigeria (as amended).

3. The Respondents are hereby restrained from further harassing the Applicants or invading Kpaduma community of the Applicants for the purpose of demolition except in accordance with an order of court or provision of the law.
4. The sum of **₦200,000,000** Million only against the Respondents jointly and severally as compensation for the breach of the fundamental rights of the applicants.
5. It is further ordered that the Respondents should relocate the Applicants to any other place as it was done for the people of WUSE and MAITAMA who were relocated to Kubwa, Abuja.

SIGNED:
HON. JUDGE
16/06/2025.

APPEARANCE:

Sylvester Ogbelu, Esq, with Uzoma Elochukwuka, Esq, for the Applicants
Joanne Oji-Chukwu (Mrs) for the 7th Respondent
No Appearance for the 1st – 6th Respondents