IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WESNESDAY, THE 22ND DAY OF JANUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/515/2022
MOTION NO:M/6692/24

BETWEEN:

1. **MR. AKINNIYI BABATUNDE**
2. **BUILD DIRECT CONSTRUCTION LIMITED** ……**CLAIMANTS/RESPONDENTS**

AND

1. **DCP NENDEL GOMWALK ……………………………….DEFENDANT/APPLICANT**
2. **MR. TIMOTHY JAMBERLAND**
3. **THE INSPECTOR-GENERAL OF POLICE**
4. **THE COMMISSIONER OF POLICE F.C.T**
5. **DAVIES OLABISI (ASSISTANT COMMISSIONER OF POLICE AREA COMMAND HEADQUARTERS LIFE CAMP, ABUJA**
6. **SP HARUNA WAZIMTU**
7. **MR. EMEKA OGE** ..**DEFENDANTS**

RULING

By a Notice of Preliminary Objection dated 12th April, 2024 and filed same date, the 1st Defendant/Applicant prays for the following Reliefs:

1. **An Order of this Honourable Court declining jurisdiction and dismissing this suit in *limine* for incompetence and gross abuse of judicial process.**

2. **An order of this Honourable Court declining jurisdiction to further entertain this suit on ground of subjudice.**

3. **An order of this Honourable Court setting aside the entire proceedings of this Honourable Court for wanting in jurisdiction.**

4. **An order of this Honourable Court declining jurisdiction to entertain this suit on the ground of forum shopping.**

5. **And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.**

The grounds on which the objection is predicated are as follows

1. **That the crux of this present suit No: FCT/HC/CV/515 bothers on the 1st Defendant/Applicant's dwelling House known as Habitation of Rest Houses 3 and 4 Block NG-15 knowledge Court Estate Galadimawa Federal Capital Territory, Abuja.**

2. **That the case was first instituted in Court by the 1st Defendant/Applicant via an application for plaint in CV/02/2022 dated and filed on the 17th day of November, 2022.**

3. **That the Claimants/Respondents who were Defendants in CV/02/2022 in other to frustrate the case approached the High Court sitting in Apo before Honourable Justice F.A Aliyu for Judicial Review in FCT/HC/CV/2415/23.**

4. **That Hon. Justice F.A. Aliyu in her final judgment upheld the Notice of the Preliminary Objection of the 1st Defendant/Applicant who was the 3rd Respondent in the said suit No: FCT/HC/CV/2415/2023 in Motion No: M/6685/2023.**

5. **That while the suit FCT/HC/CV/2415/2023 which bothers on the said subject matter same reliefs and parties was going on, the Claimants/Respondents moved to Federal High Court and filed similar suit No: FHC/ABJ/CS/430/2023.**

6. **That the Claimants/Respondents and 5 others are currently standing trial over case of mischief, theft and cheating committed in the 1st Defendant/Applicant's dwelling house before Upper Area Court sitting in Zuba Federal Capital Territory, Abuja.**

7. **That the Claimants/Respondents filed this present suit No: FCT/HC/CV/515 despite the pendency of the other two cases over the same subject matter and same reliefs and parties all in a bid to reinvent the will (sic) by having his case after the excretion.**

8. **That there is a subsisting two (2) Orders of this Court which the Claimants/Respondents have refused to comply with.**

9. **That this Honourable Court cannot sit on appeal over an Order of this Honourable Court delivered by Hon. Justice N.K Nwosu Iheme.**

10. **That the Order of Court is valid and subsisting until set aside by the same Court or the appellate Court and not by the Claimants/Respondents process alleging that the Order was made without jurisdiction.**

11. **That this Honourable Court lacks the jurisdiction to entertain the instant suit as presently constituted.**

12. **That this Court lack the vires to interfere in the on-going criminal case pending before Upper Area Court, Zuba being prosecuted by the office of Honourable Attorney-General of the Federation wherein the 1st Claimant/Respondent is the 1st Defendant.**

13. **That the condition precedent was not fulfilled by the Claimants/Respondents and the suit is incurably defective.**

14. **That this Honourable Court has the powers to uphold the objection with punitive cost of N5,000,000.00(Five Million Naira) only.**

15. **That the instant suit is not only frivolous, vexatious and it constitutes a reckless use of Judicial Process to harass, annoy and intimidate the 1st Defendant/Applicant.**

The application is supported by a 35 paragraphs affidavit deposed to by the 1st Defendant/Applicant with eight (8) exhibits annexed and marked as **Exhibits A-I**. A brief written address was filed in which one issue was raised as arising for determination:

"Whether the instant suit as constituted is incompetent and robs this Honourable Court of jurisdiction to entertain same?"

Submissions were then made on the above issue which forms part of the Record of Court. I will situate in summary the kernel of the submissions made. The case made out is that this suit is incompetent and constitutes an abuse of the process of

court. It was submitted that from the processes filed, that there are three (3) pending suits over the same subject matter, same reliefs and parties before Hon. Justice F.A. Aliyu. That the court on 14th July, 2023 made an order over the same parties and subject matter.

Further that, Hon. Justice N.K. Nwosu-Iheme also made two(2) orders which are still subsisting and that accordingly this court lacks jurisdiction to entertain the present action. The cases of **NDIC V CBN (2082)7 NWLR (pt.766)272, Davies V. Mendes (2007)ALL FWLR (pt.348)883** were cited.

The question of what jurisdiction entails and its importance was then addressed with reference to decided cases of **Okafor-Onyiko V. NYSC & Ors (2020)LPELR 51827; Ogbuji & Anor V. Amade(2022)LPELR 56591.**

It was submitted that it is the claim of the Claimant that determines jurisdiction and when viewed in the light of the other processes identified, this court will lack the jurisdiction to entertain the suit. The Applicant finally submits that orders of court have been made which have not been complied with by Claimant and that accordingly they cannot be heard until they purge themselves of the disobedience of court orders. The case of **Rt Hon. Michael Balonwu & Ors V. Gov. Anambra State & Ors (2001)5 NWLR (pt.1028)488 of 564** was cited**.**

At the hearing, Counsel to the 1st Defendant/Applicant relied on the supporting affidavit and annexures and adopted the contents of the written address in urging the court to grant the application.

In opposition, the Claimants/Respondents filed a 35 paragraphs counter-affidavit with four(4) annexures marked as **Exhibits A-D.**

A written address was filed in compliance with the rules of court in which one issue was raised as arising for determination:

"Whether suit No: CV/515/22 as presently constituted is an abuse of process?"

Submissions were made on the above issue which equally forms part of the Records of Court. I shall highlight in summary the key submissions. The answer given to the issue raised was in the negative and it was contended that this extant action does not in any manner or form constitute an abuse of process and so does not impact the jurisdiction of the court to entertain the case.

The address dealt at length with what constitutes an abuse of process of court with reference to decided cases to wit: **Ogar & Ors V. Igbe & Ors (2019)LPELR-**

48998(SC); Makin & Ors V. Plateau State University Bokkos & Ors (2017)LPELR-47128.

It was contended that the Applicant has not on the materials situated any case filed before the extant action which is still pending and having the same subject matter, the same issues for determination and accordingly it was submitted on the basis of the aforementioned authorities, no case of abuse of process was made out by Applicant.

It was submitted that the case is properly constituted and the court has the requisite jurisdiction to entertain the extant action.

I have carefully considered the processes filed and submissions made on both sides of the aisle. The key fundamental contested point on the processes filed is simply whether the present action constitutes an abuse of the process of court impacting on the jurisdictional capacity of the court to entertain the case. Other peripheral issues have also been raised by Applicant which I will equally address.

Let me however start by making some important prefatory remarks. It is trite principle of general application that the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

"A court is competent to adjudicate when:

a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and

b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.

c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication".

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

The question of jurisdiction on the authorities is a threshold issue and the very basis or lifeline on which a court tries or decides any dispute in court. Where an action is not competent or properly constituted, it robs the court of jurisdiction to entertain same and must be dealt with first. See **Ofia V Ejem (2006) 11 NWLR (pt.992) 652 at 663.** Because of its importance, it can be raised at any stage of the proceedings and even on appeal and in any manner. Lending enormous judicial weight to this position, the Supreme Court in **Nuhu V. Ogele (2003)18 N.W.L.R (pt.852)231 at 279** per Edozie J.S.C stated as follows:

"It has long been settled that where an objection to the jurisdiction of an inferior court appears on the face of the proceedings and I will add, manifested in the uncontroverted affidavit evidence of the parties, it is immaterial by what means or by whom the court is in formed of such objection.... The issue of jurisdiction being fundamental to the existence of the writ or claim, the form, nature or procedure of how it is raised is not strictly material. Where a challenge to the decision of a court is founded on lack of jurisdiction, the court is bound to consider such challenge. A party to a litigation cannot be shut out and the court inhibited from entertaining a matter on technical ground particularly where the issue of jurisdiction is concerned."

As a logical corollary and in the clear context of the fundamental pivot jurisdiction plays in every case, the relationship between jurisdiction and demurrer must not be confused as they are distinct legal processes. Proceedings by way of demurrer may have been abolished under extant Rules of Court but it is imperative to understand the difference between jurisdiction and demurrer since proceedings in lieu of demurrer are still available. The Supreme Court in **NDIC V CBN (2002) 7 NWLR (pt.766) 272 at 296 – 297** instructively brought out the dichotomy between the two concepts thus:

"The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or, where appropriate, no locus standi.... But as already shown, the issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that and does not, entirely depend as such on what a plaintiff may plead as facts to prove the reliefs he seeks. What it involves is

what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise the issue of Jurisdiction."

Therefore in demurrer, now branded application in lieu of demurrer, parties to an action must file their pleadings, the statement of claim and defence. Then the defendant is entitled to raise his point of law, which may include but not limited to the issue of jurisdiction as a preliminary issue in his statement of defence. Whereas if the important issue of jurisdiction is raised, the parties need not plead nor the defendant peremptorily required to raise the jurisdictional issue in his statement of defence; such a defendant is free to file a preliminary objection to the jurisdiction of the court with the writ of summons as the only process before it, that is without pleadings. See **Elabanjo V Dawodu (2006) 15 NWLR (pt.1001) 76; Akintaro V Egungbohum (2007) 9 NWLR (pt.1038) 103.**

The bottom line is that the important jurisdictional issue raised is not predicated on the filing of pleadings. I am therefore unable to agree that the application is incompetent.

This then leads to the question of whether the present action is an abuse of process which as situated earlier appears to be the pivot of the objection of Applicant. The Claimants however argue to the contrary.

A fair take off point is to situate what abuse of process entails. Parties on both sides of the aisle have highlighted what the phrase means by reference to several authorities of our Superior Courts. There is really no dispute as to what the concept entails. Let me also add that, as with most legal concepts, abuse of process is a term which is not capable of precise definition and may be more easily recognised than defined. But it is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. It means the abuse of legal procedure or the improper use or misuse of the legal process (to vex or oppress the adverse party). See **Amaefule V. The State (1988)2 N.W.L.R (pt.75)156 at 177 (**per Oputa, JSC); **Arubo V. Aiyeleru (1993)3 N.W.L.R (pt.280)126 at 142.** The court has the duty under its inherent jurisdiction to ensure that the machinery of justice is duly lubricated and that it is not abused. In **Saraki V. Kotoye (1992)9 N.W.L.R (pt.264)156 at 188 E-G** the Supreme Court (per Karibi-Whyte, JSC) opined that:

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one

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

See also the cases of **Akinnole V. Vice Chancellor University of Ilorin (2004)35 WRN 79; Agwasim V. Ojichie (2004)10 N.W.L.R (pt.882)613 at 624-625; Kolawole V. A.G. of Oyo State (2006)3 N.W.L.R (pt.966)50 at 76; Usman V Baba (2004)48 WRN 47.**

Whilst the categories of abuse of process are not closed and there is an infinite variety of circumstances that could give rise to abuse of process, the Apex Court in **R-Benkay Nig Ltd V. Cadbury Nig Ltd (2012) LPELR 7820** Per Adekeye J.S.C have instructively and precisely situated or streamlined various ways that abuse of judicial process may occur; these include:

1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue; or
2. Instituting a multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

3. Instituting different actions between the same parties simultaneously in different courts even though on different grounds; or

4. Where two similar processes are used in respect of the exercise of the same right such as a cross-appeal and a respondents notice.

5. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by the lower court.

6. Where there is no law supporting a court process or where it is premised on frivolity or recklessness.

7. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

8. It is an abuse of process for an appellant to file an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent in the Court of Appeal, when the appellant's application has the effect of overreaching the respondent's application.

9. Where two actions are commenced, the second asking for a relief which may have been obtained in the first, the second action is prima facie vexatious and an abuse of process.

See also **Agwasim V. Ojichie (supra) at 622-623**

Now the law is settled that in the determination of whether there has been an abuse of process, the court will carefully consider the contents of processes subject of the complaint or allegation of abuse to see or situate whether they are essentially aimed at achieving the same purpose. See **Agwasim V Ojichie (supra) at 624.**

I have above and at some length streamlined the applicable principles on abuse of court process. The task now is to apply these principles to the factual scenario presented by Applicant and then on the basis of the contested assertions and the applicable principles situate whether a case of abuse was made out.

On the materials, the Applicant to further his contention of abuse of process has identified and delineated three (3) cases and of course the present one and these cases deserve attention and careful judicial scrutiny. I will start with the present action and its contents and then compare with the actions Applicant has identified.

Now the present action, suit CV/515/2022 was filed on 21st January, 2022 involving the following parties:

1. Mr. Akinniyi Babatunde }

2. Build Direct Construction Ltd

AND

1. DCP NENDEL GOMWALK ……………………………….DEFENDANT/APPLICANT

2. MR. TIMOTHY JAMBERLAND
3. THE INSPECTOR-GENERAL OF POLICE
4. THE COMMISSIONER OF POLICE F.C.T
5. DAVIES OLABISI (ASSISTANT COMMISSIONER OF POLICE AREA COMMAND HEADQUARTERS LIFE CAMP, ABUJA ..**DEFENDANTS**
6. SP HARUNA WAZIMTU
7. MR. EMEKA OGE

The Reliefs sought are as follows:

a. AN ORDER of perpetual injunction restraining the 1st and 2nd Defendants, acting either by themselves, their agents, privies and/or any person or persons acting on their behalf from trespassing on the property of the 1st and 2nd Claimant properly described as Houses 3 and 4 Block NG-15, knowledge Court Estate Galadimawa FCT Abuja, as the full purchase price is yet to be paid.

b. AN ORDER directing the 1st and 2nd Defendants to pay either jointly or severally to the Claimants the sum of N4,000,000(Four Million Naira) being the balance purchase price for house 4 Block NG-15 knowledge Court Estate, Galadimawwa FCT Abuja.

c. AN ORDER directing the 1st and 2nd Defendants to pay either jointly or severally to the Claimants the sum of N3,390,300(Three Million, Three Hundred and Ninety Thousand, Three Hundred Naira) being the cost of extending House 4 Block NG-15 knowledge Court Estate, Galadimawa FCT Abuja by 2 Meters from the original building plan as requested by the 1st and 2nd Defendants at the beginning of the transaction.

d. AN ORDER of perpetual injunction restraining the Defendants, their agents, servants, or privies form asserting any ownership rights and interests or contesting in any manner whatsoever, the Claimant's rights and interests of ownership of the said Block NG15, Houses 3, knowledge Court Estate Galadimawa Abuja FCT.

e. **AN ORDER of perpetual injunction restraining the 3rd to 9th Defendants from harassing, arresting, intimidating or threatening the Claimants with respect to the subject matter of this case.**

f. **AN ORDER of mandatory injunction restraining the Defendants from interfering with the quiet enjoyment of the 1st Claimant's property properly described as House 4 Block NG-15, knowledge Court Estate Galadimawa FCT Abuja, till the full purchase price of N30,000,000(Thirty Million Naira) and payment of building extension cost of N3,390,300(Three Million Three Hundred and Ninety Thousand Three Hundred Naira) is fully paid by the 1st and 2nd Defendants OR IN THE ALTERNATIVE AN ORDER directing the 1st and 2nd Claimants to refund the part payment of N26,000.000(Twenty Six Million Naira) paid by the 2nd Defendant on behalf of the 1st Defendant for House 4 NG15, knowledge Court Estate Galadimawa and nullifying the contract for breach of contract on the part of the Defendants.**

g. **AN AWARD of N50,000,000(Fifty Million Naira) as General Damages against the Defendants jointly and severally for the physical, Mental and Psychological torture suffered by the 1st Claimant due to the intimidation, harassment and undue arrest suffered in the hands of the Defendants.**

h. **AN AWARD of the sum of N2,000,000.00(Two Million Naira) only, as cost of instituting this action.**

i. **And any other Order or orders the court may deem fit to make in the circumstances.**

I have deliberately stated the reliefs above and they are clear and self explanatory. The facts or combination of facts on which Claimants have premised their right to sue is as pleaded in the 33 paragraphs Statement of Claim. The case projected is essentially with respect to ownership rights and interest over Houses 3 and 4 Block NG-15, Knowledge Court Estate Galadimawa. The Claimants situate that the full purchase price is yet to be paid and accordingly that they still own the properties and that the 1st and 2nd Defendants cannot assert any ownership rights or interest over the properties. There were Reliefs of trespass, injunction, general damages claimed in addition to other ancillary Reliefs.

In law, the implication of these type of Reliefs as delineated by Claimants is to put the issue of title and or ownership as the fulcrum of the Courts inquiry. Let us now do a comparative analysis of the case as defined above and the cases highlighted by Applicant as situating the abuse. The first case is the plaint filed by the Applicant at the Upper Area Court holden at Bwari in suit CV/02/2022. It is dated 17th November, 2022 vide **Exhibit A** attached to the objection but there is no clarity on the face of this document when it was filed. The parties involved are:

NENDEL Joseph Gonwalk…………………Plaintiff

And

1. **Akinniyi Babatunde**
2. **Lauretta Afure**
3. **John Ada Idoko** …………………**Defendants**
4. **Edward Baton**
5. **Totimi Ayinde**
6. **Segun Omotoso**

The Relief sought are as follows:

(a) AN ORDER of this Honourable Court directing the 1st Defendant to deliver the allocation documents of the Plaintiff's properties being House No.3 and House No.4 Block NG15, knowledge Court Estate, Galadimawa forthwith.

(b) AN ORDER of this Honourable Court directing the Defendants to refund the Plaintiff all monies expended towards the completion of the external and internal works abandoned by the Defendant.

(c) AN ORDER of this Honourable Court for perpetual injunction restraining the Defendants their preview, agents, representatives or whosoever acting on their behalf from the interfering with the Plaintiffs property.

(d) ₦10,000,000 as specific damages.

(e) ₦100,000,000 as general damages.

(f) ₦5,000,000 as solicitors fee

It is obvious that the parties in this suit are different from those in this case at the Area Court but the cause of action as encapsulated above clearly projects the question of ownership or title similarly raised in the extant case before me.

Now the 1st Claimant/Respondent with the benefit of the final Judgment of Hon. Justice F. Aliyu delivered on 16th April, 2024 rightly challenged by way of **judicial review** attached as **Exhibit B** to the objection in suit FCT/CV/2415/23 the **jurisdictional competence of the Area Court to determine the question of matters touching on title to land** in the F.C.T in an urban area covered by a **statutory right of occupancy** and the court rightly in my opinion found that the Area Court was **particularly ambitious in assuming jurisdiction to try such matters.** I will shortly return to this decision, but I must note with concern that counsel to the Applicant elected or chose not to properly situate the decision of my noble lord in CV/2415/23 or address it and how it impacts on the extant case and the plaint he filed at the Area Court and whether it can be said to be pending or in existence. Rather than address this critical point, he chose to essentially seek to direct the attention of court on irrelevant issues that have nothing to do with the substance of her decision and how it, as is where, drained **"life"** and **validity** completely out of the plaint CV/02/2022.

I find it a matter of concern that counsel to the Applicant here essentially attempted to mislead this court when he sought to create the erroneous impression on ground 4 of the objection when he stated that **"Hon. Justice F.A Aliyu in her final judgment upheld the Notice of Preliminary Objection of 1st Defendant/Applicant who was the 3rd Respondent in the said suit No: FCT/HC/CV/2415/2023 in motion No: M/6685/2023"** when he fully knew that the said ruling was not a **final judgment** and in any event the said court ultimately relisted the suit and heard the action and she delivered her decision on **16th April, 2024** vide **Exhibit B** attached to the counter-affidavit of Claimants/Respondents. Interestingly the present Applicant was a party to the said case, so counsel cannot feign ignorance of the reality that the substantive application for judicial review was heard culminating in the final orders made that the Upper Area Court cannot hear and determine the plaint **No: CV/02/2022**. Indeed in the decision of 15th April, 2024, the **learned judge** herself captured the true position in the following terms at pages 3-4 of her judgment thus:

"Similarly, the 3rd Respondent had earlier filed a Notice of Preliminary Objection dated the 27th day of March, 2023 wherein he challenged the jurisdiction of this Court to hear the originating application of the Applicants. Like the 1st and 2nd Respondents, the 3rd Respondent did not file a Counter-

Affidavit to the originating application of the Applicants. Though this Court discountenanced the fourteen grounds of the Notice of Preliminary Objection of the 3rd Respondent, it however, upheld the ground that bordered on lack of proper service of the originating processes on the 3rd Respondent. Accordingly, this Court, in its Ruling delivered on the 14th day of July, 2023, struck out the suit on that sole ground.

By a Motion on Notice with Motion Number M/11911/2023 dated the 14th day of July, 2023 but filed on the 17th day of July, 2023, the Applicants brought an application seeking an order of this Court relisting the suit that was struck out by the Order of this Court contained in its Ruling of 14th day of July, 2023. The 3rd Respondent vide a Counter-Affidavit filed on the 10th of August, 2023 challenged the competency of the application. In response, the Applicants filed a Reply Affidavit on the 7th of September, 2023. The 1st and 2nd Respondents, however, did not file any process challenging the application for relisting. This Court heard arguments for and against the application on the 18th day of September, 2023 and adjourned for Ruling. On the 16th day of October, 2023, this Court delivered its Ruling wherein it relisted the suit that was struck out on the 14th of July, 2023.

The above is clear. I need not add to it. After granting the order of relisting, she then went ahead to hear the substantive application.

Now in her illuminating decision delivered on **16th April, 2024,** the learned judge held in her decision and I will quote her *in extenso*, and deliberately too. The learned jurist started her decision thus:

"By an Originating Motion on Notice dated and filed on the 22nd day of March, 2023, the Applicants, represented by the 1st Applicant, Mr. Akinniyi Babatunde, vide an Order of this Honourable Court made on the 9th day of March, 2023 instituted this action for judicial review seeking the following reliefs as set out on the face of the Motion papers:

1. **An order of Certiorari against the 1st Respondent removing all proceedings, summons, warrants, processes, orders or decrees issued or made in Suit No: CV/02/2022 before the Upper Area Court 2 Bwari presided over by the 1st Respondent, for the purpose of quashing same for want of jurisdiction.**

2. **AN ORDR of prohibition restraining the 1st and 2nd Respondents from continuing with, commencing, or recommencing with proceedings in Suit**

No: CV/02/2022, or commencing any other suit with respect of (sic) the subject matter of the suit having no statutory authority to so act.

3. **And for such orders or further orders as this Honourable Court deem (sic) fit to grant in the circumstances.**

The application for judicial review is founded on two grounds which I shall proceed to reproduce verbatim:

a. **Pursuant to Section39(1) of the Land Use Act 1978, the High Court of the FCT has original exclusive jurisdiction with respect to matters touching on title to land in the FCT in an urban area covered by a statutory right of occupancy.**

b. **Pursuant to the provisions of Section 11(1) (a) and (b) of the FCT Area Courts (Repeal and Enactment) Act, 2010 only persons who are Muslims or consent to the jurisdiction of Area Court are subject to the jurisdiction of the Area Court. The Area Courts within the Federal Capital Territory Abuja have no jurisdiction in civil matters wherein one of the parties is a Christian and do not expressly consent to the jurisdiction of the court.**

After an impressive analysis of the law and the facts, she concluded as follows:

"The application of the Applicant is proper before this Honourable Court, same having been brought in compliance with the provisions of Order 44 Rule 3 of the High Court of the Federal Capital territory, Abuja (Civil Procedure) Rules, 2018, Sections 11 and 12 of the Federal Capital Territory, Abuja Area Courts (Repeal and Enactment) Act, 2010, Sections 39 and 41 of the Land Use Act, 1978 and Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999.

Having found that the Upper Area Court *coram* the 1st Respondent lacks the requisite jurisdiction to hear and determine the claims contained in the Plaint attached to the affidavit in support of the Originating Motion on Notice as Exhibit B, I therefore hold that the entire proceedings of the Upper Area Court *coram* His Honour Hon. Ismail Abdullahi Jibril were conducted without jurisdiction and all the decisions and orders made thereby arrived at without jurisdiction. Since it is impossible to place something on nothing, the proceedings and the orders of the Upper Area Court coram His Honour Hon. Ismail Abdullahi Jibril were conducted without jurisdiction and all the decisions and orders made thereby arrived at without jurisdiction. Since it is

impossible to place something on nothing, the proceedings and the orders of the Upper Area Court coram His Honour Hon. Ismail Abdullahi Jibril cannot stand. This Honourable Court therefore finds the Applicant's application meritorious. Accordingly, the reliefs sought by the Applicant are granted as follows:

1. **That an Order of Certiorari is hereby made against the 1st Respondent His Honour Hon. Ismail Abdullahi Jibril sitting at Upper Area Court 2 Bwari removing all proceedings, summons, warrants, processes, orders or decrees by whatever name made or known in Suit Number CV/02/2022 before the Upper Area Court 2 Bwari presided over by His Honour Hon. Ismail Abdullahi Jibril, that is, the 1st Respondent, for the purpose of quashing same for want of jurisdiction.**

2. **That all proceedings, summons, warrants, processes, orders or decrees by whatever name made or known in Suit Number CV/02/2022 before the Upper Area Court 2 Bwari presided over by His Honour Hon. Ismail Abdullahi Jibril, that is, the 1st Respondent, are hereby set aside.**

3. **That an Order of Prohibition is hereby made restraining all the Respondents, that is, the 1st, 2nd and 3rd Respondents from continuing with, commencing, or in any way initiating any proceedings in Suit Number CV/02/2022 or in any other suit in relation to the subject matter of the disputation for want of jurisdiction of the Upper Area Court or any other Area Court created or established under the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010.**

This is the Judgment of this Court."

The above judgment is again clear in its import and effect. Any pretention therefore to the existence of the **plaint**, particularly suit **CV/02/2022** at the Upper Area Court has been completely neutralized by this decision. This is a decision delivered on 16th April, 2024, and there is nothing to situate a challenge or appeal on the records. Thus the decision is binding and remains binding on all parties including Applicant. Indeed in **paragraph 5 of the counter-affidavit**, the Claimants/Respondents averred as follows:

"That in response to averments made in paragraphs 6 and 7 of the said affidavit, the suit mentioned as CV/02/22 which was filed before the Upper Area Court Bwari Coram Hon. Ismail Abdullahi Jibril has been rendered a

nullity and the proceedings of that court quashed and the FCT Area Courts in general prohibited from re-hearing any suit having the same subject matter which is House 3 and 4, Block NG-15 knowledge Court Estate Galadimawa by the final judgment of the High Court presided over by Justice F.A. Aliyu which judgment was delivered on the 16th of April, 2024."

The Applicant did not file a **Reply** to **counter or challenge** these clear and positive assertions with respect to the effect of the Judgment of **justice F.A Aliyu** and the court is bound to accept those facts as established and as facts deemed admitted. See **Onagoruwa V. Adeniji (1993)5 NWLR (293)317 at 339F.** indeed in law an adversary has a duty to controvert facts in an affidavit, otherwise it is regarded as established. See **Long John V. Blakk (1998)6 NWLR (pt.555)524 at 547H.**

On the whole, it is clear that however the imagination is stretched, the non-existent **plaint** filed at the Upper Area Court cannot have any relevance or validity in relation to the question of abuse of process.

The next case **delineated** by Applicant is an action for enforcement of Fundamental Rights filed by the 1st Claimant/Respondent in Suit FHC/ABU/CS/430/2023. This suit is dated 29th March, 2023 and filed on that date.

Again I don't really know of any template to situate this case in a legal discourse to do with abuse of process. A Fundamental Human Right proceedings is indeed a *sui generis* proceedings in a class of its own. In that respect, it is difficult to situate how the present action on **title** can be equated or be said to fall in the same class of actions as that of enforcement of fundamental human rights.

An action rooted in claim for title to land or property cannot be brought under enforcement of fundamental human rights. There is no legal or factual equivalence in the two causes of action at the FHC and in this court. The causes of action in the two cases are distinct and separate. Most importantly, it is clear that the said action at the Federal High Court was filed in March, 2023, months after the action before this court was filed. If at all, the call or complaint of abuse of process has any traction, (and it does not have at all), it is only the later case (at the FHC) and not the earlier case (in this court) that can be said to be an abuse. Here too, no case of abuse of process has been made out.

The final contention of Applicant to situate abuse is that covered in ground 6 of the application that the **"Claimants/Respondents and 5 offers are currently standing trial over case of mischief, theft and cheating committed in the 1st**

Defendants/Applicants dwelling house before Upper Area Court sitting in Zuba Capital Territory."

It is strange that no **charge** properly marked and delineated as an **Exhibit** was attached to the affidavit in support of the application to enable the court situate the nature of the charge *vis-à-vis* the extant case. Even if the charge was properly delineated, it is difficult to situate how this criminal action can be used as a conduit to legally determine the fundamental issue of title that the extant case deals with in this court.

In any event, decisions of the High Court FCT abound making it abundantly clear that the Upper Area Court/Area Courts have no jurisdiction to entertain and determine criminal cases/matters. See (1) APPEAL NO: FCT/HC/CRA/38/18; SUIT NO: CR/481/2015: Yusuf Mohammed V Commissioner of Police delivered on 5th July, 2019;

(2) SUIT NO: CV/2107/14. Barrister Anugom Ifeanyi Chukwu V The Grand Khadi Sharia Court Of Appeal and 2 Ors.

This clear jurisdictional point as decided by the High Court F.C.T except of course, the Superior Court of Appeal decides otherwise is that all Area Courts in the FCT lack the competence to entertain criminal actions. These decisions thus remain binding. It is therefore clear that this complaint of a criminal action at the Upper Area Court similarly has nothing in real terms to do with the complaint of abuse of process.

This court also takes judicial notice of the fact that the Grand Khandi of the Sharia Court of Appeal has made it clear through a circular issued that all Area Courts in the F.C.T should desist from hearing criminal matters. That directive is equally still extant.

As a logically corollary, it is clear no case of abuse of process has been made out on the basis of the said criminal action at the Area Court.

On the whole, the inevitable conclusion is that the Applicant has failed to creditably situate a case of abuse on the basis of the cases he has identified. Now as stated earlier, the Applicant also raised issues that are largely of peripheral significance to the fundamental question of jurisdiction, but I indicated that I will still address the issues to determine its validity.

Applicant has contended that this court lacks jurisdiction to hear the present case because of an earlier order made by my learned and noble sister Hon. Justice Njideka Nwosu-Iheme wherein she granted an order striking out the names of two

parties (5th and 6th Defendants) and that because the Claimants did not make consequential amendments, to the originating processes, the suit will be incompetent.

I really fail to situate the legal basis of this submission. These orders were made before the transfer of the suit to this court. The clear implication is that those two parties struck out are no more parties on record. The failure to file consequential amendments to the processes, though tidier and neater does not in any manner change the structure of the case or the fact that there are now only seven Defendants or that those two parties whose names were struck out are still parties to the case.

Again the fact that the processes have not been amended does not confer jurisdiction on the court to make any orders against these two (2) parties whose names have been struck out.

I think this complaint is simply clutching at straws as is said in popular parlance. The Applicant is not either of the two parties struck out and does not represent them or have any mandate to talk on their behalf. As stated earlier, when the matter was transferred to this court, the court can only legally and properly deal with the matter in controversy so far as regards the rights and interest of the parties actually before it.

It is really difficult to fathom the fixation by Applicant on parties whose names have been struck out. One would have thought that the interest of Applicant should be on the case as constituted and between the parties or record and not those that have been struck out. In any event since hearing has not even started, the processes can still be amended to reflect the remaining parties on record. There is however nothing in the complaint situating any vitiating element preventing the court from having jurisdiction to entertain this action.

Flowing from the above, Applicant has equally made heavy weather at the fact that before the transfer, the learned trial judge has referred the matter to the Multi-door Court House and that until the order is complied with, this court is robbed of jurisdiction.

I will be brief here. Firstly, there is a pending application which seeks an order of court to set aside this order by the former presiding judge for reasons situated in the application. That application is yet to be heard. It is therefore curious and strange that in the light of this pending application, the subject of that application is now made a basis to situate want of competence. I say no more.

Secondly, this submission with respect seems to ignore the legal effect of the order of transfer of the case made by the Hon. Chief Judge re-assigning the case to my court. The prerogative to transfer a case from courts of coordinate jurisdiction is exclusively that of the Honourable, the Chief Judge. Happily the exercise of that power has not been questioned or challenged here.

The principle now of general application is that once the Hon. Chief Judge exercises his powers in re-assigning a suit, the suit commences de novo before the new judge. All orders which have not been wholly performed are deemed to have elapsed or become nugatory and/or spent. This was the decision of the Court of Appeal in the case of **Chiwobi V. FRN (2019)LPELR-47239(CA),** where the court held as follows:

"It is trite law that where a matter or case is transferred to another Judge of Coordinate or within the same jurisdiction, the proceedings has to start anew or afresh. In other words, proceedings have to start de novo. It therefore means that, where a case is transferred to another Judge, the Judge to whom the matter is transferred has to start the case de novo or afresh irrespective of the previous orders made by his predecessor. See Omisore V. The State (2005)12 NWLR (pt.940)59 and Bamaiyi V. The State (2006)12 NWLR (pt.994)221. Thus, in the case of Babatunde V. P.A.S & T (2007)LPELR 698(SC) the Supreme Court held that:"…a trial de novo could mean nothing more than a new trial. This further means that the Plaintiff is given another chance to re-litigate the same matter or rather in a more general sense, the parties are at liberty, once more to reframe their cases and restructure it as each may deem it appropriate." The legal consequence is that, all pending proceedings including orders made previously by the former Judge are regarded as having abated or having been spent. They are rendered nugatory. All previous proceedings and orders having been rendered nugatory, it means that there is no valid and existing proceeding howbeit order which can be said to have been reviewed by the Judge to whom the matter was transferred…" Per Haruna Simon Tsammani, JCA (pp23-26 Paras B-C)(underlining mine)."

I leave it at that.

On the whole, the Applicant has abysmally failed it situating any feauture that impacts negatively or prevents the court from exercising jurisdiction to entertain this action.

Before I round up, I call on counsel to all now act post haste and ensure that this matter is now determined without any further delay. So much valuable time and resources has been spent on unnecessary interlocutory applications leaving the substance of the grievance submitted for adjudication unattended. It cannot be right or fair that nearly three (3) years after this case was filed and a matter to be determined or fairly settled principles, absolutely no progress has been made. It is difficult to see how confidence will be engendered and reposed by citizens in the justice system if cases of this nature drags interminably. I leave it at that.

On the whole, this application by Applicant completely lacks merit and is dismissed. I award cost assessed in the sum of ₦50,000 payable by Applicant to the Claimants/Respondents

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Hon. Justice A.I. Kutigi

Appearances:

1. ***Ovie Oyaigbevwen, Esq., for the Claimants/Respondents.***

2. ***Sir Marcel C. Dim-Udebuani, Esq., for the 1st Defendant/Applicant.***

3. ***F.O.C Uzoegwu, Esq., for the 2nd and 7th Defendants.***

4. ***A.A. Egwu, Esq., for the 3rd, 4th 5th and 6th Defendants***