

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA**

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

SUIT NO: FCT/HC/CV/1430/2013

MOTION NO: FCT/HC/M/7399/2025

DELIVERED ON THE 14/10/2025

BETWEEN:

WADA MOHAMMED ALIYU.....CLAIMANT/RESPONDENT
(Suing by his Lawful Attorney Jamilu Wada Aliyu)

AND

1. HONOURABLE MINISTER OF THE FEDERAL
CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. UNKNOWN PERSONS } **.DEFENDANTS/RESPONDENTS**

AND

ENGR. OLAYEMI OFOESI.....INTERESTED PERSON/APPLICANT

RULING

It is necessary to recall the history of the suit that gave rise to the present motion on notice. Briefly stated, suit No. **FCT/HC/CV/1430/2013** between WADA ALIYU MOHAMMED CON V. HON. MINISTER OF FCT & ORS gave rise to a (Judgment Delivered on the 11th day of March 14 by **Hon. Justice Tukur J** (as he then was, now JSC) in favour of the Claimant/Respondent. As a result, the Claimant/Respondents decided to take possession of the said piece of land, the subject of the said judgment but ended up incorporating the properties allegedly belonging to the Applicant. The Applicant challenged the Claimant/Respondent's resulting in a fracas which led him to report of the matter at the office of the Area Commander, Nigeria Police

Force, Kubwa Command. The facts further revealed that while investigation by the Police was going on the Claimant/Respondent on the 27th day of August, 2024 filed suit No. **FCT/HC/CV/3811/2024** between WADA MOHAMMED ALIYU V. HONOURABLE MINISTER OF FCT & ORS asserting ownership over the interested persons/Applicant's properties. It is equally on record that during the pendency of the said suit No. **FCT/HC/CV/3811/2024** the Claimants/Respondents filed motion No. **M/16813/2024** where upon this Honourable court granted the order for a writ of possession to be issued over the disputed properties. Consequent upon the said Order of this Honourable court made on the 3rd day of February, 2025, a writ of possession dated the 18th February, 2025 was issued in favour of the Claimants/Respondents over plot **1408**, Kubwa District, Cadastral Zone **F01**, Abuja. However, in an attempt to execute the said Order and Writ of Possession, the Claimant/Respondent took possession of and commenced developments on plot **400A, 400C, 400D** and **400F** Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja. It is in realisation of the need to resolve the conflicting issues regarding the actual property the Writ of Possession was directed at or made that the Applicant filed the present motion on notice.

Thus, the motion on notice dated the 16th day of May, 2025 and filed on the 27th day of May, 2025 seeks for the following reliefs:

- 1. An Order discharging, setting aside or vacating the order of this Honourable court made on the 03/02/25, together with the writ of possession dated the 13/02/25 issued in favour of the Claimant/Respondent pursuant thereto; the same having been made based on a misrepresentation and/or suppression of material facts as well as in wanton abuse of court and judicial process.*
- 2. An Order of interlocutory injunction restraining the Claimant/Applicant whether by himself, or acting through his agents, servants, privies, howsoever described, from carrying on further developments on plots **400A, 400C, 400D** and **400F** Chikakore (Byazhin) Kubwa, Bwari Area Council, Abuja belonging to the interested Person/Applicant on the basis*

of the writ of possession dated the 13/02/25 issued by this Honourable court, pending the hearing and determination of the instant application.

3. *And for such order(s) as this Honourable court may deem fit to make in the circumstances of this case.*

The aforementioned reliefs are being sought from this court on the grounds that:

1. **On the 3rd day of February 2025, this Hon. Court made an order where upon a writ of possession dated the 18th day of February, 2025 was issued in favour of the Claimant/Respondent over plot 1408, Kubwa District, Cadastral Zone F01, Abuja.**
2. **Pursuant to the said order and/writ of possession, the Claimant/Respondent took possession of and commenced developments on plots 400A, 400C, 400D and 400F Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja.**
3. **The interested person/Applicant is the beneficial owner of the said plots 400A, 400C, 400D and 400F Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja, (the properties).**
4. **Sometimes in 2023, the Claimant/Respondent trespassed on the properties, laying claim to same pursuant to the judgment of this Honourable court Coram Tukur J (as he then was, now JSC) in suit NO.FCT/HC/CV/1430/2013 between WADA ALIYU MOHAMMED CON V. HONOURABLE MINISTER OF FCT & ORS delivered on the 11th day of March, 2014.**
5. **The interested person/Applicant challenged the Claimant/Respondent resulting in a fracas which led him to report the matter at the office of the Area Commander, Nigeria Police Force, Kubwa Command.**
6. **While investigations by the Police was going the Claimant/Respondent on the 27th of August, 2024 filed suit No. FCT/HC/CV/3811/2024 between Wada Aliyu Mohammed V. Honourable Minister of FCT & Ors, asserting ownership over the interested Persons/Applicant's properties.**

- 7. During the pendency of the aforesaid suit the Claimant/Respondent filed motion No. M/16813/2024 where upon this court granted the order for a writ of possession to be issued over the disputed properties.**
- 8. To the Claimant/Respondent's knowledge, the 2nd Defendant/Respondent had written a letter dated the 4th August, 2024 to the Police disclosing that the interested Person's properties exist on the Chikakore, Byazhin Kubwa axis, while the plot 1408 which this court granted judgment in favour of the Claimant/Respondent exist on the Kubwa solution plan.**
- 9. The import of the proceeding is that the interested Persons/Applicant's properties are different from that over which this Honourable court granted judgment in favour of the Claimant in March, 2024.**
- 10. The Claimant/Respondent was aware of the facts in paragraphs 3 - 9 above but suppressed and/or misrepresented same to this court when obtaining the order for the writ of possession.**
- 11. The said order of 03/02/25 and the writ of possession of 18/02/25 issued pursuant thereto are liable to be set aside in the circumstances.**
- 12. Before the instant application is determined it is necessary to restrain the Claimant/Respondent from continuing his development on the interested Persons/Applicant's properties.**
- 13. This Honourable court has the powers to grant the application.**
- 14. It is, in the interest of Justice to grant the application.**

The motion on notice is supported by a 24-paragraph affidavit deposed to by one OLAYEMI OFOESI, the interested Persons/Applicant in this matter. The affidavit is also accompanied with Exhibits **001** to **010** which are more properly described as follows: Exhibit **001** is a copy of the complaint letter to the Police by the interested Persons/Applicant, Exhibit **002** is a certified true copy of writ of summons and statement of claim in suit No. **FCT/HC/CV/3811/2024**, Exhibit **003** is an application by the interested

Person/Applicant vide a motion No. **M/248/2025** to be joined as an interested party, Exhibit 004 is a certified true copy of the record of proceedings of 23/01/25 in exhibit 2, Exhibit **005, 006, 007** are certified true copies of **M/16813/2024**, this Courts order of 03/02/25 and the writ of possession, of 13th February, 2025, Exhibit **008** are photographs of a Caveat Notice placed on the properties as well as ongoing development thereon by the Claimant/Respondent, Exhibit **009** is a copy of letter written by the Police to the 2nd Defendant dated the 12th April, 2024 while Exhibit **010** is the letter written by the 2nd defendant to the Police dated the 7th August 2024 respectively. The said motion on notice is equally supported by a written address adopted by the learned counsel for the Applicant, ANNONE A. USMAN ESQ as his oral argument in support of this application.

In arguing the application before this court, the learned counsel for the Applicant/interested person formulated a lone issue for determination by this court to wit:

"Having regard to the facts and circumstances of this case, particularly as disclosed in the affidavit in support of this application, whether the Applicant is not entitled to a grant of the reliefs prayed herein"

The learned counsel for the Applicant submitted that where a person misrepresents or suppresses material facts to obtain an Order from a court, the judicial powers of the court will be competently activated for the purpose of discharging same, *ex debito justitiae*. He submitted that the facts of this present application clearly show that the Claimant/Respondent suppressed/misrepresented facts directly leading to the making of this Court's order of 3rd February 2025. He referred this to the content of paragraphs 3 - 20 of the supporting affidavit and called in aid a number of judicial pronouncements to convince this court that the said order of 03/02/25 was made as a result of misrepresentation and suppression of facts in this suit. The learned counsel referred to the cases of **OJUKWU V. GOVERNOR OF LAGOS STATE (1986) 3 NWLR (PT. 26) pg 39, OKECHUKWU V.**

OKECHUKWU (1989) 3 NWLR (Pt. 108) pg 234 at pg 246, AISHA ANIMASHAUN & ORS V. AISHAT ALIU BAKARE & ORS (2010) LPELR - 9029, UTB V. DOLMETSCH PHARM (NIG) LTD (2007) 16 NWLR (Pt. 1061) pg 520 at pg 542, R - BENKAY NIGERIA LTD V. CADBURY NIGERIA LTD (2012) LPELR - 7820 (SC) at pg 38 - 39 and others numerous to mention, all with a view to convince this court that this court has the requisite jurisdiction to set aside its order and writ of possession of 13/02/25 in respect of the subject matter of this suit. The underlying principle in the abovementioned cases referred to by the learned counsel for the Applicant is as stated in the case of **R - BENKAY NIGERIA LTD V. CADBURY NIGERIA LTD** (supra) wherein the Apex court, per PETER - ODILI JSC held thus:

"The point has to be made that where a party seeking and obtaining an injunction including a mareva one as in this instance fails to disclose some facts or had made some misrepresentation in the course of the grant of the injunction, such an injunction on the realization of the non- disclosure or misrepresentation or misrepresentations has to be discharged".

The learned counsel therefore submitted that having misrepresented and suppressed material facts from the court leading to the grant of the orders of 03/02/25 the said orders are liable to be set aside and urged this court to set same aside. He further submitted that the action of the Claimant/Respondent constitute an abuse of court process being aware that he had pending before Hon. Justice Oriji, a writ of summons and statement of claim with which he asserts ownership of the land in dispute. According to the learned counsel, it was an abuse of court process arising from multiplicity of cases on the same subject matter, same parties and on the same issue. He therefore referred to the case of **FASAKAN FOODS (NIG) LTD V. SHOSANYA (2003) 17 NWLR (Pt. 849) pg 237** where the court of Appeal held thus:

"Abuse of court process is a term generally applied to proceedings which are wanting in bona fide in the sense that they are brought

mainly to annoy, irritate or harass the opponent or are aimed at impending due administration of justice. The abuse lies in the inconvenience and inequalities subsumed in the aim and purpose of the action".

He therefore prayed this Honourable court to in the interest of Justice and the foregoing judicial authorities set aside its order of writ of possession obtained on the 03/2/25 by the Claimant/Respondents.

On the second reliefs sought from this court by the interested party/Applicant the learned counsel submitted that certain conditions must exist before an Applicant can enjoy a favourable exercise of a court's discretion in the form of an injunction. He referred to the case of **OBEYA MEMORIAL SPECIALIST HOSPITAL V. ATTORNEY GENERAL OF THE FEDERATION (1987) 3 NWLR (pt. 60) pg 325** where the Supreme Court listed the conditions to be fulfilled to include:

- 1. The Applicant must have legal right worthy of protection.**
- 2. There must be substantial/triable issue at the substantive suit.**
- 3. The balance of convenience must tilt in favour of the Applicant.**
- 4. Whether the Applicant will suffer irreparable damages if the application is not granted.**
- 5. The Applicant must undertake to pay damages in case the application turns out to be frivolous.**
- 6. The conduct of the parties must be taken into consideration before granting same.**

According to the learned counsel for the Applicant, the content of the affidavit in support of this application particularly paragraph 3 of the supporting affidavit clearly shows that the Applicant has made a case for the grant of the injunctive reliefs sought from this court. He submitted that the interested persons/Applicant's assertion of the ownership of plots **400A, 400C, 400D** and **400F**, Chikakore (Byazhin) Kubwa is a legal right which he has submitted to this court for protection. He also submitted that the fact that the Claimant/Respondent are now developing plots **400A, 400C, the 400D** and

400F instead of plot No. **1408**, Kubwa solution plan based on the writ of possession granted by this Honourable court on the 03/02/25 requires the immediate intervention of this Honourable court to forestall continuation of development on the said plots. The learned counsel further referred to the case of **AKAPO V. HAKEEM HABEEB (1992) 6 NWLR (pt. 247) pg 266 at pg 291** where it was held thus:

"the claim for injunction is won and lost on the basis of the existence of competing legal right".

He further submitted that the Applicant's application for the status quo to be maintained stemmed from the fact that there is a serious issue to be determined by this court. He referred to the case of **I.F.C V. D.S.N.L OFFSHORE LTD (2008) 9 NWLR (pt. 1093) pg 606 at pg 636** where it was held that:

"The motion on notice for injunctive reliefs is aimed at preserving the status quo pending the determination of the substantive claim or suit. But for a claim to injunctive relief to succeed, there must be an arguable claim or the Applicant must show that there is a serious issue to be tried".

The learned counsel further submitted that the issue as to whether infact, the property in issue is the same as that awarded to the Claimant/Respondent as far back as 2014 or not is a serious issue to be determined by this court.

It was also the submission of the learned counsel that the balance of convenience in the present suit tilts in favour of the Interested Person/Applicant whose interest have been and will be irreparably affected if the application is not granted as the Claimant/Respondent will be at liberty to develop the Applicant's properties. The learned counsel again referred to the case of **AKAPO V. HAKEEM HABIB (supra) at pgs 293 - 294** where it was held that:

"In the particular circumstance, the balance of convenience lies in favour of the Appellant who would lose beneficially and financially if he was deprived of the exercise of his constitutional right".

The learned counsel finally submitted that the interested Person/Applicant having undertaken to compensate the Claimant/Respondent in the event this application turns out to be frivolous he urged this court to grant this application.

On the other hand, the Claimant/Respondent filed a counter affidavit of 28 paragraphs deposed to by JAMILU WADA ALIYU, the Claimant/Respondent in this suit. It is supported by Exhibit **A**, **B**, and **C** respectively as well as a written address adopted by the learned counsel for the Claimant/Respondent as his oral argument in opposition to this application. The Exhibits attached thereto include a letter dated the 21st August, 2015 addressed to the Claimant's father, a copy of the letter dated the 2nd November, 2015 from the department of Urban and Regional Planning and a letter of conveyance of building plan approval dated the 29th April, 2016 respectively. In arguing his position in this application the learned counsel for the Claimant/Respondent formulated three issues for determination by this court, to wit:

- 1. Whether or not this court has the jurisdiction to hear and entertain the application of the interested party/Applicant.**
- 2. Whether or not the interested party/Applicant has any title or interest in the subject matter of this application.**
- 3. Whether or not the Claimant/Respondent motion with motion number M/16813/2024 is an abuse of court process.**

It is the submission of the learned counsel for the Claimant/Respondent that this court delivered its judgment on the 11th March, 2014 affirming the title of the Claimant/Respondent over the entirety of plot **1**, Kubwa District, Abuja also known as plot **1408**, Kubwa District Cadastral Zone **F01**, Abuja including the subject matter of this application. He submitted that the 3rd defendant/Respondent were dully served with all the processes in this matter being designated as "unknown persons" which amounts to a suit against the entire world and is binding on all and sundry. The learned counsel referred this court to section 142 of the constitution of the Federal Republic of Nigeria (as amended) to show that this court is functus officio in this suit and its decision is only subject to appeal to the court of Appeal. He also referred to the cases of

MANSON V. HALLIBURTON ENERGY SERVICE LIMITED (2007) 2 NWLR (pt. 1018) pg 211 and **NKEMDILIM V. MADUKOLU (1962) 2 NSCC 374** in support of the competency of a court to adjudicate on a matter. On the issue of this court being *functus officio*, the learned counsel referred to the case of **PETER CHIESHE & ANOR V. NICON HOTELS LIMITED & ANOR (2007) ALL FWLR (Pt. 388) pg 1152 at pg 1163** where it was held that:

"It is now trite law that after delivering judgment/ruling in a matter, the court becomes functus officio and it cannot revisit the judgment or ruling by giving a second judgment. The only remedy available to an aggrieved party is to Appeal".

The learned counsel also referred to the following judicial authorities on the same principle stated above, and these are the cases of **OYELAKIN BALOGUN V. ADEDOSU (1995) 2 NWLR (pt. 376) pg 131** and **DIM. V. ENEMOU (2009) 42 WRN pg 1 at pgs 7 - 8** respectively.

He therefore urged this court to decline jurisdiction to set aside its earlier order as it will amount to sitting on appeal over its own decision.

According to the learned counsel for the Claimant/Respondent, even if this court has the requisite jurisdiction to entertain this application, the interested party/Applicant has no title or any right in the subject matter of this application entitling the locus to file this application. He submitted that contrary to the belief of the interested party/Applicant the so - called plots **400A, 400C, 400D** and **400F** Chikakore (Byazhin) Bwari Area Council, Abuja, subject matter of the Applicant's motion on notice is part and parcel of the entire plot 1, Kubwa District, Abuja also known as plot **1408**, Kubwa District, Cadastral Zone **F01**, Abuja including the subject matter of this application being the subject matter of the judgment of this court.

It is also the contention of the learned counsel for the Claimant/Respondent that the Applicant has never Exhibited any title documents in spite of the bulk of the exhibits attached to the motion on notice. He referred to a number of

judicial pronouncements the need by the Applicant to show evidence of allocation of the said property in issue emanating from the 1st Defendant who has the sole authority to allocate land in the Federal Capital Territory Abuja. He referred to the cases of **ONAN V. ATENDA (2000) 5 NWLR (Pt. 244)**, **EKPO V. KANU (2012) 12 WRN** and **SANUSI V. AMEYOGUN (1992) 4 NWLR (Pt. 237) pg 527** respectively on the necessity for the court to determine whether the plaintiff has led credible evidence which is satisfactory to the court or not.

On the third issue raised for determination by this court the learned counsel submitted that the existence of both motion number **M/16813/2024** and Case No. **FCT/HC/CV/3811/2024** cannot be said to amount to an abuse of court process both cases having been filed by different counsel without each knowing what the other counsel has filed. He referred to the case of **ISITOR V. FAKOREDE (2018) 5 NWLR (PT. 1612) pg 328** where it was held that:

"The rule that the error of counsel should not be visited on his client, the litigant is informed by the court's desire to do substantial Justice by considering the case on its merits rather than sticking to unnecessary technicality and the court's leaning towards accommodating the parties interest without allowing mere procedural irregularities brought about by counsel to preclude the determination of a case on its merits".

He therefore urged this court to refuse this application for reasons of being functus officio and the application lacking in merits.

In considering the present application this court hereby adopt the lone issue distilled by the Applicant/interested party for determination by this Honourable court, to wit:

"Having regard to the facts and circumstances of this case, particularly as disclosed in the affidavit in support of this application, whether the Applicant is not entitled to a grant of the reliefs prayed herein?".

In considering this application in the context of the above distilled issue it will be in the interest of Justice to peruse the content of paragraphs 3, 8, 9, 11, 12, 14, 15 and 16 of the affidavit in support of this application along with Exhibits **003, 005, 006, 007** and **010** respectively attached thereto. Similarly, paragraphs 4, 10, 12, 13, 14, 15, 17, 19, 21, 24 and 25 respectively as well as the content of Exhibits A to C attached herein. It will equally be necessary to peruse the content of the judgment of this court delivered on the 11th March, 2014 in suit **NO.FCT/HC/CV/1430/2013** as well the content of the order of writ of possession granted by this court dated the 03/02/25 and the writ of possession dated the 13th day of February, 2025.

It is important to observe at this stage that the genesis of the present application lies in the judgment of this court delivered on the 11th March 2014 in Suit **NO.FCT/HC/CV/1430/2013** consequent upon which this court granted an order of possession dated the 13/02/2025. It is this very order of writ of possession that this present motion on notice seeks to be set aside same having been obtained through misrepresentation. A closer perusal of the content of the said judgment delivered on the 11th March, 2014 would reveal that it was delivered in respect of property described therein as "a farmland measuring about **80.17** hectares located along River Karadua, North of Srapeye village, close to Kubwa Resettlement Town Abuja covered by Certificate of Occupancy, No. **FCT/ABU/MISC/11860(KN 10685)**. The said judgment declared the plaintiff in that suit as the rightful owner of the said property described above. Similarly, it will be in the interest of Justice to peruse the content of the order of this court granting the order of writ of possession on the 03/02/2025. The content of the order of this court granting an order of writ of possession referred to the property in question as "plot **1**, Kubwa District Abuja also known as plot **1408**, Kubwa District Cadastral Zone FCT, Abuja subject matter of the judgment of this court in this matter". In the same vein, the writ of possession dated the 13th February, 2025 describes the property in question as being located along River Karadua, north or Srapaye village, close to Kubwa Resettlement Town, Abuja covered by Certificate of Occupancy No. **FCT/ABU/MISC/11860 (KN 10685)**.

Furthermore, a critical perusal of the content of paragraphs 3, 12, 15 and 16 of the affidavit in support of this application would reveal that:

Para 3: That I am the beneficial owner of plots **400A, 400C, 400D** and **400F** Chikakore (Byazhin) Kubwa, Bwari Area Council, Abuja.

Para 12: "Pursuant to Exhibit **006** and **007** (the order and/writ of possession) the Claimant/Respondent took possession of and commenced development on plots **400A, 400C, 400D** and **400F** Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja belonging to the interested Person/Applicant. Herewith attached and marked as Exhibit **008** are photograph of a Caveat Notice placed on the properties as well as ongoing development thereon by the Claimant/Respondent.

Paragraph 15:

"I believe that the above statement by the 2nd Defendant means that the land over which this court gave judgment to the Claimant in 2014 is different or distinct from my lands".

Paragraph 16:

"Further to the preceding the respective lands in issue are in two different layouts within Kubwa, Abuja.

Conversely, the content of the paragraphs 8, 20 and 21 which states as follows:

Paragraph 8:

"That paragraph 3 of the affidavit of the interested party/Applicant's affidavit in support of his motion on notice is false and that the interested party/Applicant has no legal title whatsoever over the subject matter.

Paragraph 20:

That this Honourable court per Honourable Justice Jamilu Tukur on the 11th March, 2014 delivered judgment in my favour clearly

affirming my father's title over plot 1, Kubwa District, Abuja measuring approximately 80.17 hectares.

Paragraph 21:

"That sometime subsequent to the judgment of this Honourable court that 1st and Defendants re - designed and re-labelled the subject matter of this application and the judgment of this Honourable court as plot 1408, Kubwa District, Cadastral Zone F01, Abuja.

Curiously enough, the content of Exhibit **010** which emanated from the 2nd defendant dated the 12th April 2024 party reads:

2: "Please be informed that plot Nos. 400A, 400C and 400D and 400F measuring about 2516sqm 9172sqm, 1917sqm and 2971sqm respectively exist on the Kubwa Chikakore (Byazhin) layout and are all designated for Residential purpose. On the other hand, plot No. 14018 exists on the Kubwa solution plan for District 4 & 5 layout and is a statutory allocation".

It is therefore clear from the foregoing analysis of the various exhibits and the content of the respective affidavits and counter affidavit of the parties to this application that there are two different properties involved in, the present application. The question at this stage is, which of the two was the order of writ of possession granted by this court. The clear words of the order of writ of possession by this court relate to plot **1**, Kubwa District, Abuja also known as plot 1408, Kubwa District, Cadastral Zone **F01**, Abuja, subject matter of the judgment of this court in this matter.

On the other hand, the Applicant is not claiming plot No. **1408**, Kubwa District, Cadastral Zone **F01**, Abuja but plot **400A**, **400C**, **400D** and **400F**, Chikakore (Byazhin) Kubwa, Bwari Area Council, Abuja. However, by the content of paragraphs 14 of the counter affidavit it would appear that the Claimant/Respondent took possession of both the two properties described as plot Nos. **400A**, **400C**, **400D** and **400F** measuring about **2516 sqm**, **9182sqm**, **1918sqm** and **2971sqm** respectively existing on the Kubwa Chikakore

Byazhin) layout and plot No. **1408** which exists on the Kubwa solution plan for Districts 4 and 5 layout, a statutory allocation respectively.

This is because, para 14 of the counter affidavit which is hereby reproduced verbatim reads:

"That the deposition of the interested party/Applicant in paragraph 12 of his affidavit is correct only to the extent that subsequent to the order of this Honourable court granted on 3rd February, 2025, a writ of possession was effected on a portion of my father's property including the subject matter of this application and that the interested party/Applicant has no interest or legal title over the subject matter of this application".

Again, as earlier stated in this ruling the content of paragraph 21 of the counter affidavit is in contrast with the content of Exhibit **010** which emanated from the 2nd Defendant who supposedly re-designated and re-labelled the subject matter of this application and the judgment of this court as plot **1408** Kubwa District, Cadastral Zone **F01**, Abuja. It is the finding of this court that even if the 2nd Defendant could redesign and re-label the plot, the subject of the judgment, it cannot redesign and re-label the judgment of this court of 11th March, 2014. It is equally not in doubt that all the relevant documents exhibited before this court referred to the property of the Claimant/Respondent as plot 1 Cadastral Zone (**F01**) Kubwa and not Chikakore (Byazhin) layout especially Exhibits A and B attached to the counter affidavit of the Claimant/Respondents. It is equally on record that the order of writ of possession and the writ of possession, both dated the 03/02/25 and 13/02/25 relate to plot **1408** Kubwa District, Cadastral Zone **F01**, Abuja which is the same as the content of the judgment of this Honourable court delivered on the 11th March, 2014. The point being made at this stage is that neither the judgment of this Honourable court which an order of was made nor writ of possession relate to plots **400A**, **400C**, **400D** and **400F** Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja, yet the Claimant/Respondent admitted having taken possession of the said plots mentioned above on the basis of the

judgment of this court and the order of writ of possession also made by this Honourable court.

In addition to the foregoing analysis, it will equally be necessary to peruse the content of Exhibit **005** "wherein the Claimant/Respondent applied for an order of writ of possession. The said motion specifically apply for an order of this Honourable court to issue a writ of possession in favour of the Plaintiff/Applicant over the remaining portion of plot **1**, Kubwa District, Abuja also known as plot **1408**, Kubwa District, Cadastral Zone **F01**, Abuja. The Claimant/Respondent did not apply for a writ of possession in respect of plots **400A**, **400c**, **400D** and **400F** existing on the Kubwa Chikakore (Byazhin) layout. It is therefore not in doubt that if the writ of possession that was applied for and granted by this Honourable was not made in respect of plots **400A**, **400C**, **400D** and **400F** Kubwa Chikakore (Byazhin) layout, then the only conclusion to be drawn from the present development being carried by the Claimant/Respondent on the said plots is that this Honourable court was misrepresented into giving the said order of writ of possession wrongly. The court was made to believe that it was making an order in accordance with the judgment of this Honourable court of 11th March, 2014 while it was being used to occupy a different property not included in the judgment of this court.

Infact, the Claimant/Respondent in paragraph 19 of their counter affidavit deposed to the facts is as follows:

"That all that parcel of land marked and designated as plot 1, Kubwa District, Abuja measuring approximately 80.17 hectares subject matter of the judgment of this Honourable court including the subject matter of the application of the Interested party/Applicant belongs to my aged father and that we have been in possession since the delivery of the judgment of this Honourable court and have built a housing estate on about 74 hectares of the same".

The obvious interpretation of the above averment is to the effect that both properties that is, plot 1, Kubwa District Abuja (plot **1**, **1408**) and plots **400A**, **400C**, **400D** and **400F** Chikakore, Byazhin, Kubwa, Bwari Area Council,

Abuja are being claimed by the Claimant/Respondent, yet this is not the content of both the judgment of this Honourable court delivered on the 11th March, 2014 and the order of writ of possession dated the 9th February, 2025.

Thus, it can rightly be concluded that this Honourable court granted an order of writ of possession for plot **1, 1408** Kubwa District, Abuja without knowing that the said writ was intended to be used to incorporate plots **400A, 400C, 400D** and **400F** Chikakore, Byazhin, Kubwa, Bwari Area Council, Abuja contrary to the judgment of this Honourable court. At this stage, let me refer to the case of **MALLAM SAIDU AMORI V. YAKUBU IYANDA (2018) NWLR (Pt. 1074) pg 250 ratio 3** where grounds upon which a court can set aside its own judgment or order were laid down, namely:

- 1. Where it was obtained by fraud**
- 2. Where it was obtained by misrepresentation or non - disclosure of a material fact which there was an obligation to disclose.**
- 3. Where it was obtained by duress.**
- 4. Where it was concluded under a mutual mistake of fact and**
- 5. Where it was obtained without proper authority.**

There is no doubt that the content of paragraphs 19 and 21 of the counter affidavit read together with Exhibit **010** (Letter from the 2nd Defendant to the Area Commander, Kubwa Abuja) clearly showed that the Order for writ of possession granted by this Honourable court relate only to plot No. **1408** Kunwa District, Abuja and not in respect of plots **400A, 400C, 400D** and **400F**, Kubwa Chikakore (Byazhin) as the Claimant/Respondent want this Honourable court to believe. It can therefore be concluded that this Honourable court was misrepresented and in fact granted the said order of writ of possession on the basis of non - disclosure of material facts which there was an obligation to have disclosed by the Claimant/Respondent. The fact that plots **400A, 400C, 400D** and **400F**, Kubwa Chikakore (Byazhin) was not part of their motion before the court obtaining the said order of writ of possession.

Thus, on the face of the foregoing circumstances, can this Honourable court set aside its earlier order of writ of possession. The answer has been provided in

the Supreme court case of **REV (DR) C. J UWEMEDIMO & INV. MOBIL PRODUCING (NIG) UNLIMITED (2019) 5 SCNJ pg 133 at pg 146** where it was held that:

"The only other situation the court can stay aside its decision or order is when the decision or order was rendered ex-debitojustitae. That is, when judgment was obtained by fraud; or the judgment is a nullty and the judgment was incompetent having been given without jurisdiction".

In the present application, it can be rightly observed that this Honourable court has no jurisdiction to grant an order of writ of possession to include plots that were not part of the original judgment of the court delivered on the 11th March, 2014.

Similarly, in the case of **NDUBISI DIKE V. THE STATE (2018) 2 SCNJ pg 82 at pg 85** conditions under which a court may set aside its decision of order were spelt out to include:

"The supreme court or even any court of law has inherent power and jurisdiction to set aside it's own judgment or decision in appropriate cases or circumstance where (a) the judgment was obtained by fraud or deceit either in the court or if one or more of the parties and in such case an application in that regard can be brought before the court without leave. (b) when the judgment is a nullity in such case a person affected by such order is entitled ex - debitojustitae to have it set aside (c) when it is obvious that the court was misled into giving such judgment under a mistaken belief that the parties consented to it. (d) where in a cross - appeal, the Respondents cross appeal was not considered in the judgment. (e) when judgment was given in the absence of jurisdiction and (f) where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication".

This Honourable court is therefore convinced that this is an appropriate application before it that warrants being given a favourable consideration.

Consequently, an order of this Honourable court is hereby made discharging, setting aside and vacating its order made on the 03/02/25 together with the writ of possession dated the 13/02/25 issued in favour of the Claimant/Respondent pursuant thereto, same having been made based on a misrepresentation and/or suppression of material facts as well as in wanton abuse of court and judicial process.

This is moreso that the Claimant/Respondent filed motion No. **M/16813/2024** while being aware of the pendency of Exhibit **002** (writ of summons and statement of claim) before Hon. Justice Oriji and there upon obtained an order of writ of possession from this Honourable court in respect of plot **1**, Kubwa District also known as plot 1408) Kubwa District Cadastral Zone **F01**, Abuja as a result of which the Claimant/Respondent on their own incorporated plots **400A, 400C, 400D** and **400F** Kubwa Chikakore (Byazhin) contrary to the Order of this Honourable court. There is no doubt that this constitutes an abuse of court process which has been seriously frowned at by our superior courts. Thus, in the case of **AJAO KUTA STEEL COMPANY LTD V. GREEN BAY INVESTMENT & SECURITIES LTD & 3 ORS (2019) 8 NWLR (pt. 1674) pg 213 at pg 218 Ratio 7** it was held that:

"The common features of abuse of court process is the improper use of judicial process by a party in litigation. The most common one is multiplicity of actions on the same issues between the same parties in different courts. Abuse of the process of the court may also occur where two similar processes are deployed in the exercise of the same right as in the instant case. Abuse of the process of the court, where it occurs, constitutes a fundamental defect, the effect of which results in the dismissal of the abusive process".

This Honourable court is therefore convinced that the motion No. **M/16813/2024** which gave rise to an order of this Honourable court obtained on the 03/02/25 amount to an abuse of court process as it was in flagrant disregard of the pendency of **M/248/2025** for joinder of the interested party/Applicant.

On the second leg of the interested party/Applicant prayers, it is the submission of the learned counsel for the Applicant that unless the status quo is maintained between the parties the Claimant/Respondent will continue carrying out development on plots **400A, 400C, 400D** and **400F** Kubwa Chikakore (Byazhin) Abuja instead of concentrating on the plot 1408 which is the subject of the writ of possession granted to them by this Honourable court. This is supported by Exhibit **010** which are the photographs of a Caveat Notice placed on the properties as well as ongoing development there on by the Claimant/Respondent.

Furthermore, in an application of this nature, the Applicant is expected to show that there are serious issues to be determined by the court, that he undertakes to indemnify the Respondent in case his application becomes frivolous and most importantly too that the balance of convenience tilts in favour of the grant of this application. These facts are contained in paragraphs 22(a-f) and 23 which are vital deposition that were never contradicted by the Claimant/Respondent in their counter affidavit. In the same vein, paragraphs 3 - 15 of the supporting affidavit as well as Exhibit 010 attached thereto has never been contradicted or controverted by the Claimant/Respondent. Thus, in the case of **OGEDENGBE SURAJUDEEN OLA V. UNIVERSITY OF ILORIN & 2 ORS (2014) 15 NWLR (pt. 1431) pg 463 at pg 457 and 459 Ratio 3**, it was held that:

"By virtue of section 124(1) of the E - A 2011, the unchallenged deposition of facts in an affidavit are deemed admitted by the opposing party. Such facts would require no further proof and the court is enjoined to accept, consider and act on them as correct, true and established".

This Honourable court is of the humble view that the content of the counter affidavit has not satisfactorily responded to the averments contained in the affidavit in support of this application. There is no new issues raised that were never treated or explained in the affidavit in support. There was therefore no need for further affidavit on the part of the Applicant. This was the decision in

the above cited case of **OGEDENGBE V. UNILORIN** (supra) Ratio 5 where it was held thus:

"A further affidavit is only necessary where a counter - affidavit it filed has actually pointedly denied or refuted weighty and substantial facts deposed to in an affidavit and such a counter affidavit goes further, to raise new facts by setting out a credible story line of the Respondent".

Unfortunately, contrary is the case of the Claimant/Respondent who went on a white goose chase for reasons for acting outside the content of the writ of possession which was granted in respect of plot No. **1408** Kubwa Cadastral Zone **F01** instead of plots **400A, 400C, 400D** and **400F**, Chikakore (Byazhin) Kubwa, Bwari Area Council, Abuja. This being the case there is a need to preserve the res from being destroyed or tempered with by any of the parties. This, is moreso that an equitable interest is recognized in law as being worthy of protection as is the case with a legal right which if threatened must be protected by the courts.

In an application for injunction, the Applicant must establish his right to the property concerned. Thus, an interlocutory application injunction can be granted to support a known right in law or equity as was held in the case of **NNADI V. AMADI (2011) 4 NWLR (pt. 1238) pg 553**. Similarly, in the case of **OSHIOMHOLE V. SALIHU (NO. 2) (2021) 8 NWLR (pt. 1778) pg 387** it was held that the Applicant must prove that the balance of convenience is on his side. Above all, the Applicant must make an undertaking to pay damages in the event of a wrongful exercise of the Courts discretion in granting the injunction. We refer to the cases of **BUHARI V. OBASANJO (2003) 17 NWLR (pt. 850) pg 587** and **KOTOYE V. CBN (1999) 1 NWLR (pt. 98) pg 419**.

It is not in doubt that the essence of an order of interlocutory injunction is to maintain the status quo and preserve the res. Thus, in the case of **OBIOHA V. MILITARY ADMINISTRATOR OF IMO STATE (1998) 10 NWLR (pt. 569) pg 205**, the court held that:

"The purpose of an interlocutory injunction is to maintain the status quo and thereby preserve the res the subject matter of litigation from being wasted, damaged or frittered away, the result is that if the appeal succeeds the result would be nugatory in that the successful Applicant would only reap an empty judgment".

In view of the foregoing circumstances, this Honourable court is of the humble view that the second leg of the reliefs being sought by the Applicant ought to be granted and it is accordingly granted. An order of interlocutory injunction is hereby made restraining the Claimant/Respondent whether by himself or acting through his agents, servants, privies, howsoever described from carrying on further development on plots **400A, 400C, 400D** and **400F** Chikakore (Byazhin), Kubwa, Bwari Area Council, Abuja on the basis of the writ of possession dated the 13/02/25 issued by this Honourable court, pending the hearing and determination of the instant application.

Finally, by virtue of paragraphs 3,6,8,9 and 10 as well as Exhibits **002, 003, 004** and **009** respectively it is clear that the interested party/Applicant is desirous of being joined as a party to this case particularly suit No. **FCT/HC/CV/3811/2024** between Wada Mohammed Aliyu V. Honourable Minister of FCT &ors filed on the 28th of August, 2024 by the Claimant/Respondent. The said writ of summons seeks for a declaration that any purported reallocation of any part of the Claimant's land to anybody or authority whosoever is disobedient to the judgment of this Honourable court in suit No. **FCT/HC/CV/1413/2013**. This clearly requires this Honourable court to determine which part of the land, the subject of the judgment was reallocated to another person which warrants the interested party/Applicant applying to be joined as a party in the said suit. This is because the term necessary joinder of a party means the joinder of a party if in the absence of that party, those already involved in the suit cannot receive complete relief or the absence of that party might either impair the protection of that interest or leave some other party subject to multiple or inconsistent obligations. We refer to the case of **FALEKE V. INEC (2016) 18 NWLR (pt. 1543) pg 61**.

On the whole, this court holds the firm view that it will be in the interest of Justice to set aside its order of 03/02/25 granting the order of writ of possession dated the 13/02/25. It is equally important to grant an order or injunction against the Claimant/Respondent so as to maintain the status quo and preserve the res in this case. In the circumstances therefore, the application of the interested Persons/Applicant is hereby granted.

SIGNED:
HON.JUDGE
14/10/2025

APPEARANCE:

A. A. Usman, Esq, with O. O. Agbaje, Esq, A. Abdulrazak, Esq, and C. I. Ikonne, Esq, for the Interested Person/Applicant

A. A. Ejumejowo, Esq, with Agbaragu Efezino, Esq, for the Claimant/Respondent