

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

**BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE, FICMC**

**ON THURSDAY THE 9<sup>TH</sup> DAY OF JANUARY, 2020**

**SUIT NO: FCT/HC/CV/2981/2013**

**MOTION NO: FCT/HC/CV/M/7446/2019**

**BETWEEN:**

UMMAKHALIF LTD.....CLAIMANT/APPLICANT

**AND**

- (1). THE HON. MINISTER FEDERAL CAPITAL TERRITORY
  - (2). FEDERAL CAPITAL DEVELOPMENT AUTHORITY
  - (3). NATIONAL COUNCIL FOR ARTS AND CULTURE
  - (4). THE HON. MINISTER FOR CULTURE AND TOURISM
- .....DEFENDANTS/  
RESPONDENTS

**AND**

OTUNBA OLUSEGUN RUNSEWE....PERSON CITED FOR CONTEMPT

**RULING**

By a Motion on Notice filed on 24<sup>th</sup> June 2019 and predicated on Order 47 Rule 10(1) to (3) of Rules of Court 2018 and inherent jurisdiction of the Court, the Claimant/Applicant ("The Applicant") seeks the following Orders:

- “(1). AN ORDER of Court committing the (sic) Otunba Olusegun Runsewe, the Director General of the 3<sup>rd</sup> Defendant to prison for contempt of the Order of Court made on the 15<sup>th</sup> of December 2017.*
- “(2). Any Order or further Orders the Honourable Court may be disposed to make in the circumstances of this case”.*

The application is supported by a 31-paragraph affidavit deposed to by Mahmoud Mahmoud and Written Address of the Applicant’s Counsel.

In opposition, the Person cited filed a 76-paragraph Counter Affidavit deposed to by him on 7<sup>th</sup> October 2019 along with the Written Address of his Counsel. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file any process in response to the application though served on their Counsel on 24<sup>th</sup> June 2019.

At the hearing on 9<sup>th</sup> October 2019, Counsel for the Applicant and Party cited adopted their Written Addresses as their oral submissions in support of their respective contentions. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were absent and not represented by Counsel. Ruling was then reserved for 25<sup>th</sup> November 2019 but could not be delivered on that day because of the Annual All Nigeria Judges’ Conference commencing that day which the Court attended.

Having read and digested the averments in the affidavits of the contending parties and submissions of their learned Counsel, the cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the Order sought.

In the affidavit in support, it was averred on behalf of the Applicant that it instituted this action vide a Writ of Summons on 2<sup>nd</sup> May 2013 claiming against all the Defendants declaratory and injunctive reliefs as well as damages for breach of contract, trespass and destruction of its property.

The matter concerns the lease for 25 years of the Arts and Crafts village on “Build Operate and Transfer (BOT)” given to the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which the 3<sup>rd</sup> Defendant in disregard of the interest of the Applicant has injuriously overridden by claiming ownership of the village.

The matter was assigned to Hon. Justice A. S. Umar (now JCA) before whom it was part heard.

The status quo as at the time the matter was filed was that the Applicant as well as other traders in the Arts and Crafts village were carrying on commercial activities in the market with their goods and chattel in the stalls assigned to them. The Applicant, on the strength of the terms of the lease given to it by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had built three blocks of seven shops each in respect of which it entered into sub-lease agreement with prospective tenants. It was also in the process of building two other blocks of shops which were at various stages of construction before the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants purporting to allocate the land to the 3<sup>rd</sup> Defendant which gave rise to this cause of action by the Applicant.

During the pending of the matter before Hon. Justice A. S. Umar the Court had reason upon the application of the Applicant to issue two Interlocutory Injunctions dated 6<sup>th</sup> July 2017 and 15<sup>th</sup> December 2017 to the 3<sup>rd</sup> Defendant. Copies of the Orders are attached as Exhibits MM1 and MM2.

The Order of 6<sup>th</sup> July 2017 was issued because the 3<sup>rd</sup> Defendant on 23<sup>rd</sup> June 2017 in disregard to the fact that the matter was in Court went to the village and locked the pedestrian entrance which pursuant to clause 2.04 of the Build, Operate and Transfer Agreement between the Applicant and the 2<sup>nd</sup> Defendant gave access gates at the back of the village pursuant to which the Applicant built a gate with a pedestrian entrance. It had control of it as it had the key to it in its custody as well as stationed security guards thereat. This entrance led into the Applicant's part of the market.

The 3<sup>rd</sup> Defendant locked the pedestrian gate and this necessitated the Applicant applying to the Court for an Injunctive Order which was granted on 6<sup>th</sup> July 2017. The said Order was directed to the 3<sup>rd</sup> Defendant, its Director-General, staff, agents and privies to maintain status quo until determination of this suit.

In spite of the said Order, the 3<sup>rd</sup> Defendant went to the village and closed the back gate.

In continuation of his acts of disobedience, the party cited invited the officials of the Development Control Unit of the 2<sup>nd</sup> Defendant to mark the Applicant's structures for demolition.

On 26<sup>th</sup> July 2017, the 3<sup>rd</sup> Defendant through the Person cited mobilized men and caterpillars and invaded the Arts and Crafts village wherein the Applicant's property was situate by virtue of its subsisting lease agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and destroyed the construction shed and machine shed put on the land by the Applicant.

As a result of the above, the Applicant once again sought for and obtained the mandatory Interlocutory Order of Court dated 15<sup>th</sup> December 2017 compelling the Defendants, particularly the 3<sup>rd</sup> Defendant to return the res of the action to its status quo and remove the chains and padlocks put on the back gate and the pedestrian gate to the village.

On 10<sup>th</sup> February 2018, the 3<sup>rd</sup> Defendant through the Person cited, still in flagrant disobedience of the Orders of the Court, proceeded to the village after order of 15<sup>th</sup> December 2017 had been served on him and evacuated the traders from the village including the Applicant, put the whole village under his control by placing Policemen at the gate thereof and preventing the Applicant any form of access to its property. It took forceful possession of the village up till date with the goods and chattel of the Applicant locked up and depreciating in the stalls.

On 13<sup>th</sup> February 2018, Counsel for the Applicant O. J. Onoja informed the Court about the event of 10<sup>th</sup> February 2018 with pictures in proof of it. The learned 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Counsel stated he was not aware of the development.

Consequent upon this, the Court stood down the matter and ordered the Registrar of Court Mrs. Ibilola Adeyemo and parties to go to the Arts and Craft village to ascertain the true state of affairs in relation to the res.

The registrar and parties went to the village and found out as the Court was earlier informed, that the village was locked with a banner posted at the front gate stating that the village was locked temporarily by the 3<sup>rd</sup> Defendant.

The registry sought to gain entrance into the village but was hindered by the Policemen and security men thereat from doing so. Upon inquiry by the Registrar at whose instance they were there, the Policemen and security men stated that it was the Director-General of the 3<sup>rd</sup> Defendant. A copy of

the photographs taken at the village on the said 13<sup>th</sup> February 2018 is attached as Exhibit MM3.

The registrar reported back to the Court that the Arts and Crafts village was locked by the Party cited who has taken control of the village. The registrar made a written report of this fact which is in the Court's file.

As a result of the contempt with which the Party cited had continuously disregarded the positive order of the Court as aforementioned, the Applicant initiated contempt proceedings against the 3<sup>rd</sup> Defendant by filing Form 48 on 15<sup>th</sup> February 2018 and served same on the Party cited. A copy of the Form 48 is attached as Exhibit MM4.

The contempt proceedings could not proceed because Hon. Justice Umar was not able to sign the Form 49 before he was elevated to the Court of Appeal and the matter returned to the registry for re-assignment.

The Party cited has boasted to the deponent's hearing that he cannot be deterred by Court's Order whatsoever. In a conversation he had with him on 30<sup>th</sup> June 2018, which he recorded with his mobile phone and caused professional transcriber to transcribe, the Party cited in response to his statement "leave it though, since will go back to Court" said as follows: "...but you come here now and sitting down, and telling me Court. Let the Court come and stop me and review my budget back". A copy of the transcribed conversation is attached as Exhibit MM5.

On 10<sup>th</sup> December 2018, the 3<sup>rd</sup> Defendant again went to the Arts and Crafts village and evacuated chattel from some of the shops thereat. This prompted the Applicant to send a letter through its Solicitors to the 3<sup>rd</sup> Defendant's Solicitor – C. A. Elechukwu drawing his attention to the subsisting Injunctive Order and informing him of the need to call his client to order. A copy of the letter is attached as Exhibit MM6.

On 4<sup>th</sup> February 2019, when he got wind that the 3<sup>rd</sup> Defendant was at the Arts village demolishing structures he, along with the Applicant's Counsel, Oguche Agbonika went to the village where they saw caterpillars carrying on demolition works right inside the village. Their request to be allowed to go inside and ascertain the status of the Applicant's property was stoutly rebuffed by the Policemen and the 3<sup>rd</sup> Defendant's security man who all informed them that they were acting on the instruction of the Party cited not

to let anyone into the village. Even though the Counsel showed them the Court Order, they maintained their stance and could not let them into the village.

Consequently, he got a photographer who took photographs of the giant caterpillars carrying on demolition works and tippers evacuating the rubble on the site. The photographs are attached as Exhibit MM7.

In spite of the service of Form 48 (now Form 99 per FCT High Court Rules 2018), the Party cited has not stopped acting in disobedience of Orders of Court.

The Applicant by a notice filed on 6<sup>th</sup> March 2019, filed Form 100 and same was personally served on the Party cited on 30<sup>th</sup> April 2019.

Sometime between April and May 2019, the Party cited in continuation of his contempt for the Order of this Court, caused the roofs (zinc sheet with thatch on them) of the Applicant's structures to be removed and in replacement put colored aluminum sheets as roofs on them. Realizing that his action was contemptuous, the Party cited caused the aluminum sheets put by him to be removed and put back the original but now damaged zinc sheets of the Applicant without the thatch which zinc sheets having been removed can no longer hold firmly as before. Copies of pictures of the removal and replacements are attached as Exhibits MM8(a) and MM8(b).

The Applicant believes that unless this Court intervenes by granting this application, the Party cited of the 3<sup>rd</sup> Defendant will continue to disobey the orders of this Court. The 3<sup>rd</sup> Defendant as reported by Daily Trust newspaper of 5<sup>th</sup> February 2019 is overhauling and reconstructing the Arts and Crafts village. A copy of page 12 of the newspaper report is attached as Exhibit MM9.

As a law abiding citizen, he believes in the Courts and its powers to do justice. He undertakes to pay damages in the event this Order is not justifiably obtained.

In his Written Address, Oguiche Agbonika Esq of Counsel for the Applicant raised a sole issue for determination thus: -

*“Whether the Applicant has made out a case to warrant the grant of this application”.*

Treating the issue, learned Counsel referred to the originating processes filed by the Applicant and submitted, inter alia, that an application of this nature is an invocation of the powers of the Court to protect itself from the abuse of its Orders. That the Courts of law have inherent power to deal with and punish for contempt of their Orders. He referred to ***FCDA V KORI PAMOAGARY (2010) 14 NWLR (PT. 1213) P. 364.***

He contends that by the deposition in paragraphs 2 to 30 of the affidavit in support, it has been shown by the Applicant that the Director General of the 3<sup>rd</sup> Defendant (Party cited) has serially disobeyed the Order of Court granted on 15<sup>th</sup> December 2018. Even before that, he had acted in disobedience of the Order of Court granted on 6<sup>th</sup> July 2017. He relied on paragraphs 7 to 12 of the affidavit and Exhibits MM1 and MM2.

Dwelling further, Counsel submitted that the rationale of the Court to punish for contempt is the need to vindicate the dignity of the Court as an institution and thereby protect it from denigration and ensure due administration of justice. Reference was made to ***FRN V AKUBUEZE (2010) 17 NWLR (PT. 1223) P. 525.***

Counsel referred to paragraphs 2 to 30 of the affidavit in support and submitted that they prove without doubt the alleged contemnor has acted in flagrant disobedience of the Order of Court and therefore needs to be sanctioned. That after the order was made on 15<sup>th</sup> December 2017, the alleged contemnor disobeyed the Court order by evacuating the Applicant from the village, demolished the machine and construction shed as well as took control of the village in disobedience of the Order of Court.

He canvassed that these facts were confirmed by the Registrar of Court upon her visit to the village pursuant to the directive of Court on 13<sup>th</sup> February 2019. The Report of the Registrar is in the file of the Court and it is relied on.

It was also canvassed that even after Exhibit MM4 and Form 100 were served on the alleged contemnor, he did not cure himself of contempt but continued to act in flagrant disobedience of the Court Order as can be seen when he caused the roofing sheets of the Applicant to be removed and replaced and put back again. These show he has no regard for this Court

and the Court is accordingly prayed to order that he be imprisoned for treating this Court with contempt.

He urged the Court to grant this application.

In his Counter Affidavit, the Party cited averred inter alia, that he is the Director General of the 3<sup>rd</sup> Defendant/Respondent and conversant with the circumstances leading to this case.

That he is not in disobedience of the Orders of this Court made on 6<sup>th</sup> July 2017 and 15<sup>th</sup> December 2017 or at any other time to warrant issuance of Forms 48 and 49 at the instance of the Applicant.

The 3<sup>rd</sup> Defendant is the owner of the Arts and Crafts village having been issued Certificate of Occupancy in respect of the 3.24 hectares of land known as Plot 1519 at Cadastral Zone AOO by the 1<sup>st</sup> Defendant attached as Exhibit A.

The purported Lease of 25 years of the Applicant allegedly given to the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is not in respect of the entire Arts and Crafts village but in respect of small portion of 4mitrs x 21.6 mitrs as contained in the Applicant's Statement of Claim.

The entire Arts and Crafts village measures 3.24 hectares and was granted to the 3<sup>rd</sup> Respondent by the 1<sup>st</sup> Respondent as shown in Exhibit A whereas the area in dispute which is specified in Clause 3 of the purported Lease Agreement dated 15<sup>th</sup> September 2009 with Social Development Secretariat is a small portion measuring 86.4sq. See: Exhibits B and C and portion marked UU in the sketch of the village.

Apart from the portion marked UU in Exhibit C, the remaining large portion of the Arts and Crafts village with over 100 crafts shops, office block of 15 rooms 3 big traditional huts and exhibition indicated on Exhibit C are not part of the res in dispute before the Court as the 3<sup>rd</sup> Defendant has always been in undisputed possession of the these areas.

The 3<sup>rd</sup> Defendant as owner of the Arts and Crafts village and on behalf of the Federal Government manages the village as Federal Cultural huts and event centre for exhibition and marketing of Nigeria's rich cultural heritage.



As at 2013 when the Applicant instituted this action against the 3<sup>rd</sup> Respondent, three out of five blocks of shops had been completed while one was at lintel level and the other at foundation stage as contained in the Applicant's Statement of Claim.

At this very moment, the structures which constitute the res of this case are still intact as they were in 2013 when the Applicant brought this suit against the 3<sup>rd</sup> Respondent.

Neither the 3<sup>rd</sup> Respondent nor himself destroyed or tampered with structures located on the small portion marked UU in Exhibit C granted to the Applicant under the purported 25 years lease by the Social Development Secretariat except the slight error and misrepresentation of instruction that occurred regarding the roof which is explained in detail in this Counter Affidavit.

Paragraph 5 of the Applicant's affidavit that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents granted the purported lease of 25 years to the Applicant on which the Applicant built its shops is denied as false as the former never granted nor authorized the Social Development Secretariat to grant the said Lease or any other portion of the Arts and Crafts to the Applicant.

Neither he nor the 3<sup>rd</sup> Respondent on 23<sup>rd</sup> June 2017 while this suit was pending locked the pedestrian entrance to the premises where the subject matter of this suit situates.

It is a known facts to the Nigerian Police and occupants of the village including the staff and officers of the Applicant that a lot of criminal activities occur in and around the Arts and Crafts village.

Due to these, the Nigeria Police on 23<sup>rd</sup> June 2017 in exercise of its constitutional duty to maintain law and safeguard lives of the people, took over the Arts and Crafts village security wise and has been providing security and surveillance in and around the village.

For effective and proper checks of movement in and out of the village, the Police decided that only the front main entrance to the village facing Sheraton Hotel should be opened to both the occupants and visitors. The Police locked all the back gates entrances into the village including the back pedestrian gate which the Applicant built.

The big entrance gate at the rear near the pedestrian gate built by the Applicant was actually locked with key by the Applicant the day the Police locked the pedestrian gate.

Both the staff and tenants of the Applicant had free access to its alleged shops through the front main gate manned by the Police.

Following the locking of the pedestrian gate by the Police, the Applicant on 6<sup>th</sup> July 2017 when the case came up for hearing falsely reported to the Court that the 3<sup>rd</sup> Respondent through him locked the pedestrian gate and applied that the Court should order the 3<sup>rd</sup> Respondent to open the pedestrian gate. Counsel to the 3<sup>rd</sup> Respondent informed the Court that it was the Police that locked the gate in the conduct of its duties,

After hearing Counsel for the parties, the Court ruled that “All parties in this matter are ordered to maintain status quo as at today pending the hearing and determination of this suit”. The status quo as at the said 6<sup>th</sup> July 2017 is that the back gates ie both the pedestrian and big gate should remain locked to ensure security of the village. The Court never ordered that the back gates build by the Applicant should be opened.

Neither the 3<sup>rd</sup> Respondent nor its Director General or staff had anything to do with the locking of both gates built by the Applicant or in any way disobeyed the order of Court of 6<sup>th</sup> July 2017. Rather it is the Applicant and its Managing Director who disobeyed the Courts Order.

Both the pedestrian and big gates are locked up till date as ordered by the Court on 6<sup>th</sup> July 2017.

On 6<sup>th</sup> July 2017, the Court also directed that the FCT Police Command be served hearing notice to appear before the Court on the next date to explain its involvement in the locking of these gates.

The Police did request for time to file an affidavit in response to the Court’s directive. The Police later filed an affidavit dated 7<sup>th</sup> August 2017 which was served on all parties.

Contrary to paragraphs 11 and 12 of the Applicant’s affidavit, neither the 3<sup>rd</sup> Defendant’s staff nor agent nor himself invited the officials of Department of Development Control of the 2<sup>nd</sup> Respondent to mark the Applicant’s

structures nor demolished any of them on the land, subject matter of this suit.

The Department of Development Control of the 2<sup>nd</sup> Respondent in the discharge of its duties visited the Arts and Crafts village and marked for demolition and demolished all temporary and illegal zinc structures in the village that served as hideouts and sleeping places for criminals that operated in and around the village. None of the temporary structures that were marked and demolished by Department of Development Control is located on the space of land in dispute in this case. They were located on the 3<sup>rd</sup> Respondent's land clearly cut of the res of this case.

Contrary to paragraph 13 of the Applicant's affidavit, the Applicant never obtained any mandatory Interlocutory Order on 15<sup>th</sup> December 2017 against the 3<sup>rd</sup> Respondent to return the res of the action to, its status quo or remove the chains and padlocks on the back gate and pedestrian gate of the village. The order of the Court dated 15<sup>th</sup> December 2017 is self explanatory. Paragraph 2 of the order states that "the Interlocutory Injunction earlier on granted states that status quo be maintained by the parties pending the determination of this suit except in pursuance of the outcome of the meeting between the parties and the Police with view to securing the said premises".

Up till date, the Police and parties have not been able to draw up any modalities for securing the village as stated in the Interlocutory Injunction granted on 15<sup>th</sup> December 2017.

Paragraph 14 of the Applicant's affidavit is also false as neither 3<sup>rd</sup> Respondent nor he in any way or at any time disobeyed the Order of Court dated 6<sup>th</sup> July 2017 and 15<sup>th</sup> December 2017.

Since the Orders were made, the 3<sup>rd</sup> Respondent ensured that the front main gate was opened during working hours from 6am to 7pm to both the 3<sup>rd</sup> Defendant's tenants, staff and Applicant's tenants to carry on their businesses until the Police on 11<sup>th</sup> February 2018 evacuated everyone and sealed off the village for security reasons explained in paragraph 51 below.

On 15<sup>th</sup> December 2017 the day the Court order was given, he, at about 8.45pm received a call that there was a fire outbreak in the village. He quickly instructed the manager of the village, Mr. Suleiman Yahaya to call

the Police and Fire Service and he immediately reported the incident as instructed. While the Fire Service men swung into action and extinguished the fire, the Police provided security for the lives and properties therein.

Unfortunately, before the fire was put off, about 18 traditional thatched roofed huts belonging to the 3<sup>rd</sup> Respondent were burnt down. The thatched roofs, wooden doors, windows, arts and crafts of the 3<sup>rd</sup> Respondent tenants worth more than N400, 000 were destroyed. The shops erected by the Applicant were not affected by the fire outbreak even though they were also of thatched roof, they were located a bit farther off the 3<sup>rd</sup> Respondent's traditional huts that were burnt.

The 3<sup>rd</sup> Respondent never took forceful possession of the village nor locked up the goods and chattel of the Applicants or their tenants. As a result of the Nigeria Police sealing up the village, the 3<sup>rd</sup> Respondent quickly put up the banner to encourage tourists that the place would soon be re-opened while discussion was ongoing with the Police on how best to re-open the village and secure lives and properties.

Paragraphs 15 to 17 of the Applicant's affidavit are true only to the extent that the Court had sent the Registrar of the Court and parties with their Counsel to visit the village to ascertain if it was sealed off or not and the Police officers whom the Registrar met at the main entrance of the village never told the Registrar that they were acting on the instruction of the party cited as the Police officers are not under his authority and will not take instructions from him. On the contrary, the Police refused to yield to the intimidation of the Applicant's Counsel's bid and insisted they sealed up the village based on the security reports received from various individuals.

Contrary to paragraph 19 of the Applicant's affidavit, the registrar did not report to the Court that he locked the village.

Contrary to paragraph 22 of the Applicant's affidavit, he never had any telephone conversation with the Applicant and never made any boasts. He never said nor did anything to disrespect the Court or its orders in the case.

Contrary to paragraph 23, the 3<sup>rd</sup> Respondent never evacuated chattel belonging to the Applicant. Its tenants came and carried away all their belongings in their shops. So also the 3<sup>rd</sup> Respondent's tenants – all with the permission of the Police.

The two Court Orders of 6<sup>th</sup> July 2017 and 15<sup>th</sup> December 2017 relate only to the portion of the Arts and Crafts village in dispute which the Applicant alleged was leased to it by the Social Development Secretariat of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents under build, Operate and Transfer for 25 years. None of the two Court Orders relate to the entire 3.24 hectares of the Arts and Crafts village or the other over 100 Traditional huts and other buildings in the village belonging to and managed by the 3<sup>rd</sup> Respondent.

The 3<sup>rd</sup> Respondent is in full possession and control of the entire Arts and Crafts village except the small area measuring 86.4sq metres and the structures thereon the subject matter of this suit before the Nigeria Police took over the village for security reason.

The Applicant has no right to question the 3<sup>rd</sup> Respondent's action or control as regards the greater portion of the village which does not form part of the subject matter of this case.

The averments in paragraphs 24 to 26 of the Applicant's affidavit are baseless and irrelevant as the demolition complained of has nothing to do with the res of this suit. After much appeal, the Nigeria Police permitted the 3<sup>rd</sup> Respondent to renovate the other part of the village which is not in dispute before this Court. The area the caterpillar worked on is far away from the location of the subject matter of this case and thus the Party cited never disobeyed any Court Order. The repairs and renovation were on the Exhibition Ground marked NCEG on Exhibit C. Within the village, the 3<sup>rd</sup> Respondent has Big Exhibition Ground marked NCEG on Exhibit C where it hosts annual International Arts and Crafts Expo involving different countries. With the permission of the Police, the 3<sup>rd</sup> Respondent carried out some reconstruction work on the arena which necessitated the use of caterpillars. This should not concern the Applicant as that arena is not a subject matter of dispute with the Applicant. The Court may wish to visit the village as was done by the previous Court for a better understanding of the issues.

Paragraph 28 of the Applicant's affidavit is not true to the extent that the Party cited did not deliberately and contemptuously cause to be removed the zinc roof of the Applicant's structures and replaced same with aluminum sheets. He never caused the zinc roof of the Applicant's

structures to be removed. It was done in error by a contractor without his instruction or knowledge.

After the fire outbreak of 15<sup>th</sup> December 2017, the Nigeria Police carried out investigation as to the cause of the fire and in its report attached as Exhibit I, stated that the thatched roof contributed to the spillover of the fire resulting to the destruction of property. It recommended that the shops should be roofed with modern fire proof material.

Sometime in March 2019, after several appeal, the Police granted the 3<sup>rd</sup> Respondent access into the village to effect repairs of the burnt traditional huts and damaged structures in the exhibition Ground in line with the Fire incident report.

The 3<sup>rd</sup> Respondent engaged a contractor to effect the repairs and while the work was going on, he travelled to Dubai in April 2019 on official assignment and in return discovered, to his surprise, that the contractor had also removed the roof of the shops erected by the Applicant, the subject matter of this suit and replaced same with aluminum sheets used for all the round huts belonging to the 3<sup>rd</sup> Respondent.

When he confronted the contractor, he explained that he thought he was to change the thatched roof of all the shops/houses to aluminum in line with the Police report. That it was an honest mistake on his part. He seriously rebuked him, informing him that there is a subsisting Court Order regarding those block of shops that he should not have gone near them or worked on them.

He then directed the contractor to immediately remove the aluminum sheets and put back the old roof as it was which he did save for the thatched sheets that were weak and incapable of being fixed back.

He would not intentionally disregard or disobey the Courts Order and he sincerely apologizes for the honest mistakes of the contractor which he has remedied by returning the res back to status quo.

In his Written Address, C. A. Elechukwu Esq of Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents raised a sole issue for determination thus: -

*“Whether the Director-General of the 3<sup>rd</sup> Defendant is in breach of any Court Order”.*

Treating the issue, the learned Counsel submitted that no person shall be liable to be tried for an offence not committed by him. He relied on Section 35(1) of the 1999 Constitution of Nigeria and submitted that the Director General of the 3<sup>rd</sup> Respondent is not in any way in breach of the Court’s order and needs not be committed to prison for an offence not committed by him. He referred to **SAIDU V THE STATE (1982) 4 SC** and contended that the Applicant has not proved in any way that the Party cited intentionally violated the Order of this Court and to that extent the Court is required by law to dismiss this application. He refer to Section 25 of the Criminal Code to contend that a person who does or omits to do an act under an honest and reasonable but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission. He canvassed that for a defence of mistake of fact to avail a person, the mistake must be a mistaken belief in the existence of any state of things. He relied on **AIGUOKHIAN V STATE (2004) 7 NWLR (PT. 873) P. 565** and contended that in the case at hand, the Contractor employed by the 3<sup>rd</sup> Respondent at the material time in issue mistakenly trespassed into the res which the 3<sup>rd</sup> Respondent upon discovery ordered that it be returned as it was when the order was made. That the res has been returned to its former state as at the day the order was made by the Court, save the thatched sheets that are weak and incapable of being fixed back.

Counsel further submitted that the Applicant’s contention that the Party cited ordered the removal of the zinc roofs and upon realization that he was in breach of a Court Order instructed that the old zinc sheets be placed back is misconceived and not true. The Party cited did not make such order and is not in breach of any Court Order as alleged.

Counsel further submitted that the purpose of the banner kept at the entrance of the village was to encourage and notify the tourist, public that the village will soon be re-opened.

It was also contended by the learned Counsel that under our criminal justice system, where an offence is not defined to be a strict liability case, for a crime to be said to have been committed, the elements of *mens rea* (intention) and *actus reus* (act) must be established. No one should be convicted of a crime unless some measure of subjective fault is attributable

to him. He referred to **ABEKE V STATE (2007) 9 NWLR (PT. 1040) P. 411** on the meaning of mens rea which is guilty mind. That it is the state of mind that the accused person must possess at the time of performing whatever conduct.

He opined that the contractor never intended to disobey a subsisting Court Order. That irrespective of the fact that the Contractor is an agent of the 3<sup>rd</sup> Respondent, his innocent mistake was remedied by the 3<sup>rd</sup> Respondent on becoming aware of it. This buttresses the fact that the Party cited is a law abiding citizen and has respect for this Court.

Dwelling further, learned Counsel contended that the Applicant has not been able to establish how the Party cited violated the Order of Court. He referred to Sections 131 to 132 of the Evidence Act 2011 on the duty of a party who asserts a state of affairs to prove its existence. In a criminal or quasi criminal trial as this, the law requires proof beyond every reasonable doubt. Referring to **MUFUTAU BAKARE V STATE (1987) 3 SC P1** on the meaning of the phrase “proof beyond reasonable doubt. Counsel submitted it does not imply proof beyond the shadow of any doubt.

It was equally canvassed that in this case, the burden of proof is on the Applicant to prove that the Party cited is actually in breach of the said Court Order. **JOSEPH A. AGBACHIM V STATE (1970) LPELR – 223 SC** was referred to. He urged the Court to discountenance the Applicant’s Forms 48 and 49.

Concluding, Counsel urged the Court to, with reference to the averments in the Respondent’s affidavit to visit the locus in quo of the res to obtain first hand evidence of the state of the res. He further urged the Court to discountenance the Applicant’s affidavit even as he also prayed the Court to invite the Police to state the reason why they should continue to lock the Arts and Crafts village.

I have carefully considered the averments in the affidavit of the parties and submissions of their Counsel. The cardinal issues that calls for determination in this matter is whether or not there is evidence showing the Party cited is in disobedience of the Order of the Court made on 15<sup>th</sup> December 2017 which is the subject matter of this contempt proceeding. The said Order is attached to this application as Exhibit MM2 by the



Applicant. The Order which was made after an earlier one dated 6<sup>th</sup> July 2017, reads thus: -

*“IT IS HEREBY ORDERED AS FOLLOWS: -*

*The Inspector General of Police FCT Command in collaboration with the Plaintiff/Applicant and the Respondent should draw up the modality with the view of securing the premises known as Arts and Craft village located behind Yar’adua Centre pending the determination of this suit.*

2. *The Interlocutory Injunction earlier on granted stands that status quo be maintained by parties pending the determination of this suit except in pursuance of the outcome of the meeting between the parties and the Police with a view to securing the said premises”.*

By paragraph 2 of the order, the earlier Interlocutory Order made by the Court by which the parties were directed to maintain the status quo as at the date it was made being 6<sup>th</sup> July 2017 was reiterated by the Court. The said Order of 6<sup>th</sup> July 2017 was attached by the Applicant as Exhibit MM1.

The implication of this is that both parties are directed to maintain the status quo as at 6<sup>th</sup> July 2017 (when the first Order was granted) and up till and including 15<sup>th</sup> December 2017 when the second order was made except in pursuance of the outcome of the meeting between the parties and the Police with a view to securing the premises in issue.

The Order of 15<sup>th</sup> December 2017 came in the wake of the Applicant’s complaint to the Court (as averred in their processes) that the 3<sup>rd</sup> Respondent (of which the Party cited is the Director General) locked the pedestrian gate of the Arts and Craft village contrary to the Court’s Order of 6<sup>th</sup> July 2017 directing the parties to maintain the status quo in relation to the village.

This said, an examination of the Applicant’s affidavit reveals that, that it complains of a number of conducts by the Party cited which were in violation of the Court’s Order of 15<sup>th</sup> December 2017 which led to this application. These include:

- (1). The latter inviting of the officials of Department of Development Control of the 2<sup>nd</sup> Respondent to mark the Applicant's structures for demolition.
- (2). The latter mobilizing the men and caterpillars of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 26<sup>th</sup> July 2018 to invade the Arts and Craft village wherein the Applicant's property situated by virtue of a subsisting lease agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants leading to the destruction of their construction shed and machine therein;
- (3). The Party cited on 10<sup>th</sup> February 2018 evacuating the traders in the village (including the Applicant) and putting same under his control by putting in place Police personnel who prevented the Applicant from gaining access into the market;
- (4). The 3<sup>rd</sup> Respondent installing a banner in front of the village gate proclaiming that it was temporarily locked.
- (5). The 3<sup>rd</sup> Respondent through the Police officers refusing the Applicant's solicitors access into the village on 4<sup>th</sup> February 2019 when they came in response to the information that the 3<sup>rd</sup> Respondent's agents were demolishing the Applicant's properties in the village.
- (6). After service of Form 48 (Now Form 99 Per FCT High Court Rules 2018) on him, the Party cited having between April and May 2019 caused the roofs (zinc sheets with thatch on them) of the Applicant's structures to be removed and replaced with coloured aluminum sheets which he later (on realizing the conduct was contemptuous), he caused the aluminum sheets to be removed and the original but damaged zinc sheets put back in place.

These were the alleged conducts of the Party cited which gave rise to the Applicant bringing this committal proceeding against him. A close reading of the Counter Affidavit of the Party cited shows he joined issues with the Applicant on these matters by denying them in points of substance except the issue of removal and replacement of the Applicant's thatch zinc roof. I will come to this issue of removal and replacement of the Applicant's thatch zinc roof.

As for these other issues which the Party cited joined issues with the Applicant, the Court is guided by the state of the law that our legal system is adversarial with the effect that where a party asserts a state of affair and desires the Court's favourable finding or Order on same, the burden of proof first lies on him to lead preponderance of evidence in proof of it lest he fails. The burden of proof is however not static as it shifts from party to party until the issue in contention is resolved. Evidential burden is however always on the party who will fail where further or rebuttal evidence (where necessary) is not adduced. See: Sections 131 to 133 of the Evidence Act 2011.

In a criminal matter, as this, in which a party is alleged to have committed a criminal offence, Section 35 (1) and (2) of the Evidence Act 2011 requires proof beyond reasonable doubt and places burden of proof on the party who asserts. For clarity Section 135(1) provides: -

- "1. If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.*
- (2). The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it whether the commission of such act is or is not directly in issue in the action".*

In this case, the Applicant as the Party who alleges criminal wrong doing against the Party cited in relation to the conducts listed out above, is under a duty to lead evidence in proof of each of them beyond reasonable doubt. In our criminal jurisprudence, any doubt raised as to culpability of the Defendant in relation to the commission of the alleged offence is resolved in favour of the Defendant. See: **BARAWA V STATE (1996) 7 NWLR (PT. 460) P. 306 and ONUOHA V STATE (1998) 5 NWLR (PT. 548) P. 118.**

In this matter, as aforesaid, the Party cited joined issues with the Applicant with respect to the matters listed out above which form part of the subject matter of this contempt proceeding. Particular reference to the issue of pedestrian.

Beyond this however, it is the settled law that a party can only be validly proceeded against in a contempt of Court proceeding for offensive acts

done in defiance after he was duly served with Forms 48 and 49. See: ***OPUBIYI V MUNIRU (2008) ALL FWLR (PT. 408) and A-G ANAMBRA STATE V OKEKE (2002) FWLR (PT. 112) P. 175 (2002 5 SCNJ P. 340).***

In this case, it is settled in the records that the acts of locking the pedestrian entrance of the village, inviting the officials of the Department of Development Control to mark the Applicant's structures for demolition, evacuation of traders as well as putting policemen which denied the Applicant and others entrance into the village and the use of caterpillars to demolish the shops of the Applicant and their tenants were acts done by the Party Cited before the filing and service of Form 48 on him on 15<sup>th</sup> Febr 2018. As condemnable as the acts are, the Court in a contempt application as this is under a duty to focus its attention on those acts done by the Party Cited out of defiance after he/she was duly served with Form 48 which reminds him/her of the fact that he/she is coming in conflict with the Order of the Court. To the extent that these above mentioned acts were done by the Party cited before he was served with the Form 48 on 15<sup>th</sup> February 2018, the Court is constrained to ignore those acts and focus its attention on the alleged offensive acts done after Form 48 was served on him on 15<sup>th</sup> August 2018.

In this wise, it is the case of the Applicant that after service of Form 48 (attached as Exhibit MM4) on him, the Party cited through the 3<sup>rd</sup> Respondent on 10<sup>th</sup> December 2018 again went to the Arts and Crafts village and evacuated chattels from some of the shops. The attention of the Respondents' Solicitors Mr. C. A. Elechukwu of Ministry of Justice was "as shown on the face of the letter dated 13<sup>th</sup> December 2018) (attached as Exhibit MM6) and received by his office on 14<sup>th</sup> December 2018 drawn to the Respondent's conduct with a request on him to call it to order but it was ignored.

It is also contended by the Applicant that when their Solicitors got wind that the 3<sup>rd</sup> Respondent was carrying on further demolition in the village on 4<sup>th</sup> February 2019 and pursuant to this the Solicitors went to the village and requested to go in to ascertain the status of their property, they were rebuffed by Policemen the 3<sup>rd</sup> Respondent placed at the entrance, despite being shown the Courts Order directing the parties to maintain the status quo. Photographs of the caterpillars carrying out the demolition was attached as Exhibit 7 to the Applicant's affidavit in support.

The Applicant further averred that after service of Form 49 (now Form 100 Per FCT High Court Rules 2018) on him on 6<sup>th</sup> March 2019, sometime between April and May 2019, the Party cited caused the roofs (zinc sheets with thatch on them) of the Applicant's structures in the village to be removed and in their place put aluminum coloured sheet. He subsequently, upon realization that this action was contemptuous caused the aluminum sheets to be removed and then put back the original but now damaged zinc sheets which could no longer firmly hold in place. Photographs showing the removal and replacements were attached as Exhibits MM8(a) and MM8(b) to the Applicant's affidavit in support. Likewise, newspaper report of the overhauling and reconstruction of the village was attached as Exhibit MM9.

It is the Applicant's contention that these acts of the Party cited done after service of Form 100 on him constitutes contempt of Court for which he should be imprisoned.

A look at the Respondent's Counter Affidavit shows it joined issues with the Applicant's averments that it evacuated chattels from the village on 10<sup>th</sup> December 2018 and that their solicitors were denied access into the village when they went to ascertain the state of their client's properties by denying the averments. The denials by the Party cited, as they are, given that the instant proceeding is in a quasi criminal trial, raises some doubts as to whether or not the Party cited did the acts. The Court is minded in the circumstances to give the Party cited benefit of the doubt, particularly as the Applicant did not place before the Court any evidence in rebuttal of the denial. Those matters are therefore resolved in favour of the Party cited against the Applicant.

This said, there is the issue of removal of the Applicant's thatched roofing sheets, replacement of them with aluminum roofing sheets and subsequent replacement of the aluminum roofing sheets with the thatched roofs.

The Party Cited did admit in connection with this that he did not deliberately cause the zinc roof of the Applicant's structures to be removed and replaced with aluminum sheets. That it was only done in error by a contractor without his knowledge. He further contended that while the work was on going, he was away in Dubai on official assignment. That on his return he confronted Contractor who explained that he thought he was to change the thatched roof of all shops/houses to aluminum. He rebuked him

and directed him to remove the aluminum sheets and put back the old roof as it was, which he did.

I have given due consideration to the foregoing averments of the Party cited. Undoubtedly, he admits having had the thatched roofing sheets of the Applicant's shops in the village removed albeit through a contractor engaged by him. By the records of Court, the removal of the thatched roofs and replacement of same with aluminum roofing sheets were done by the alleged contractor after the Applicant had served the Party cited with Form 48 on 25<sup>th</sup> February 2018. It is the view of the Court that the Party cited having been duly served with Form 48 with regard to the Court's Order of 15<sup>th</sup> December 2017 for parties to maintain the status quo and the attention of the 3<sup>rd</sup> Respondent's Counsel (who, as shown on the face of the letter is of the office of the Hon. Attorney General) having also been drawn to the Respondents act of evacuating chattel from some of the shops even with the pendency of the Courts Order and Form 48, that both the Party cited and the said Counsel (Mr. C. A. Elechukwu) would have take steps to stop further violation of the Court's Order. There is nothing on record showing that the Party cited in the light of both the Courts Order of 15<sup>th</sup> December 2017 and Form 48 which were duly served on him retraced his step. The damages done to the Applicant's roofing sheets are clearly shown in Exhibits MM7, MM8(a) and MM8(b) attached to the Applicant's affidavit without any evidence by the Party cited showing the contrary. Although the Party cited claimed he got the Contractor to put back the thatched roof removed in error, there is no evidence placed before the Court showing the roof sheets in a remedied state as claimed by the Party cited.

It needs be pointed out that following the state of the law that the burden of proof is not static but shifts from party, that, on this issue of removal and replacement of roofing sheets, the Applicant having shown vide Exhibit MM7 and MM8 series of the roofs in their removed state, the Party cited who asserts that the roofs were removed in error but replaced by him, bear the evidential burden to show in proof of that which he asserts, evidence of the replaced thatched roofs. There is no such evidence before the Court with the result that there is no basis for the Court to believe his assertion.

Assuming but without so holding, that evidence of the replaced roof is difficult or impossible to be placed before the Court, given the very heavy evidential burden which the law places on him, and the serious nature of this proceeding the Party cited would have called the Contractor to testify

vide an affidavit of how he removed the thatched roof in error and subsequently at the instance of the Party cited, replaced it. Again, there is no such evidence before the Court thus rendering the Party's assertion that the thatched roofs were removed in error and later replaced not proved.

By reasons of the foregoing, the Court holds that the Party cited failed to establish that which he asserts in defence ie that the thatched roofs of the Applicant were removed in error by his agent (the Contractor) and subsequently replaced. This means the Party cited in flagrant violation of the Courts Order of 15<sup>th</sup> December 2017 and after Form 48 (now Form 99 Per FCT High Court Rules 2018) was served on him reminding him of the need to obey the Courts Order continued in his disobedience of Court Order. In the circumstances, the sole issue raised above is resolved in favour of the Applicant. The application therefore succeeds.

In ***ODU V JOLA OSO (2005) ALL FWLR (PT. 262) P. 428***, the Supreme Court defined contempt of Court as "being made of such invidious acts as insults or unsavoury comments with very sinister motives against a Court with a view to denigrating the Court and smear or besmirch its nobility, majesty, its aura, its responsibility or indulging in expressive sinister and offensive acts or words that would lower the esteem of the Court in the eyes of the public",

In ***ATTORNEY GENERAL OF EKITI STATE V DARAMOLA (2003) FWLR (PT. 169) P. 1121***, the Supreme Court reiterated the point that the main reason the Court invokes its cohesive powers through committal for contempt is the need to enthrone the rule of law rather than acquiescing to parties taking resort to self-help.

The Party cited conducts in this matter are not only invidious but also are aimed at denigrating this Court and besmirching its nobility, majesty, aura and responsibility. They smack of abusive of office, unbridled arrogance and utter disrespect for the law and the institution of the Court. Stern measures as provided by the law ought to be taken against persons with this kind of disposition to serve as a deterrent to future occurrence or perpetration, not only by him but also like minded deviants. The Party Cited had ample opportunity to retrace his steps and abide by the law but he chose otherwise. The dignity and honour of the Court cannot be maintained if its Orders are treated disdainfully and scornfully without due respect, as has been the case here.

I find the Party cited guilty of contemptuous disobedience of Order of this Court as handed down by His Lordship A. S. Umar (as he then was, now of Court of Appeal) on 15<sup>th</sup> December 2017. The right and power of Court to punish or pronounce sanction on whoever disobeys its Order is inherent and legitimate right of every Court. Disobedience of a Court's Order is a serious contempt and Courts of law must protect themselves from being maligned or ridiculed. See: **AFRIBANK (NIG) PLC V YELWA (2011) 12 NWLR (PT. 286).**

By reasons for the foregoing and taken into consideration the unrepentant conduct of the Party Cited, the Court in the exercise of its inherent powers convicts and sentences the Party Cited Otunba Olusegun Runsewe (the Director General of National Council for Arts and Culture) to prison (ie Kuje Correctional Centre, Abuja) until he purges himself of the Contempt of the Order of the Court made on 15<sup>th</sup> December, 2017 by returning the roofs of the Applicant's structures in the Arts and Craft village, Abuja to their previous state of repair.

The Inspector General of Police is hereby directed to give effect to the Order of the Court.

**Signed**  
**Hon. Judge**  
**9/1/2020.**

**LEGAL REPRESENTATIONS:**

- (1). Chief Ogwu James Onoja SAN with O. Agbonika for the Claimant/ Applicant.
- (2). E. A. Elechukwu Esq for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents and Party cited.
- (3). No legal representation for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.