

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

**BEFORE HON. JUSTICE J.ENOBIE OBANOR**  
**ON THURSDAY THE 25<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**SUIT NO: FCT/HC/CV/2131/2021**  
**MOTION NO: FCT/HC/M8627/2021**  
**MOTION NO: FCT /HC/CV/M/7513/2021**

**BETWEEN:**

SHUAIBU AHMAD CHINDAYA                      ....CLAIMANT/DEFENDANT/APPLICANT

AND

1. BLACK QORAL CONCEPTS LTD
2. NATHANNEL TOWE                                      ....DEFENDANTS/APPLICANTS/RESPONDENTS

**CONSOLIDATED RULING**

By a Notice of Preliminary Objection filed on 1<sup>st</sup> December, 2021 and predicated on Order 43 Rule 1 of the Rules of Court 2018 and inherent jurisdiction of the Court, the Defendants/Applicants challenged the jurisdiction of this court to entertain this suit by seeking for the following orders:-

“1. AN ORDER of this Honourable Court striking out this suit as presently constituted for want of jurisdiction.

OR IN THE ALTERNATIVE

2. AN ORDER of this Honourable Court directing parties in the suit to file and exchange pleading.

3. ANY FURTHER ORDER that this Honourable Court may deem fit to make in the circumstance.”

The application is predicated on three grounds as set out in the notice of preliminary objection. It is supported by 9-paragraph affidavit deposed to by Nathaniel Towe and Written Address of the learned Defendants/Applicants Counsel.

In reaction to the application, the Claimant/Respondent on 8<sup>th</sup> December 2021 filed 9-paragraph Counter Affidavit deposed to by Shuaibu Ahmad Chindaya along with the Written Address of his Counsel.

Prior to the filling of the Notice of Preliminary objection, the Claimant had on 3<sup>rd</sup> November, 2021 filed a Motion on Notice seeking for the following reliefs:

1. "AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants/Respondents either by themselves, their agents, privies, assigns, servants or any person acting through them from further acts or intent to deliver and or selling or disposing the subject matter to any person(s) or JV Partner's family pending the determination of the substantive suit before this Honourable Court.
2. AND FOR SUCH FURTHER Order or other Orders as this Honourable Court may deem fit to make in the circumstance."

The application is predicated on seven grounds as set out therein. It is supported by a 5-paragraph affidavit deposed to by Beebe Steephania Doowuese and Written Address of his learned Counsel.

In opposition to the application, the Defendants/Respondents on 1<sup>st</sup> December 2021 filed a 29-paragraph Counter Affidavit deposed to by Nathaniel Towe along with the Written Address of their Counsel.

On 8<sup>th</sup> February, 2022, the Court in order to save time and resources, in the exercise of its discretion made an Order for consolidated hearing of both applications.

At the hearing on 8<sup>th</sup> February, 2022, Counsel for the parties adopted their Written Addresses as their oral submissions for and against the two applications. Consolidated Ruling was then reserved for today 25<sup>th</sup> February, 2022.

For the reason that challenge to jurisdiction is a threshold issue which once raised the Court is under a duty to resolve same first, the Court shall proceed to consider the Defendants' Notice of Preliminary objection and thereafter if necessary, consider the Claimant's Motion on Notice for Interlocutory Injunction.

In the affidavit in support of the Defendants/Applicants Notice of Preliminary Objection it was averred inter alia that the Claimant/Respondent(hereinafter referred to as "Respondent") filed the Originating summons and served same on Defendants/Applicants(hereinafter referred to as "Applicants"). Thereafter the Applicants filed their counter affidavit and written address against the suit. The counter affidavit of the Applicants joined issues with Respondent's suit and the issues raised cannot be resolved by the court without witnesses being called to give oral testimony. It is in the interest of justice to grant this application by striking out the suit or to order parties in the suit to file and exchange pleading.

In his counter affidavit it was averred by the Respondent that the issues raised in the counter affidavit to the originating summons are issues to be determined without calling any pleading from both parties. Paragraph 8 of the preliminary objection filed offends the law and the issues raised in the main application calls for determination which the court has jurisdiction. That the deponent to the counter affidavit signed and sworn to the affidavit on the 30<sup>th</sup> day of November 2021 in the absence of the commissioner of oaths because the commissioner of oaths signed his portion on the 1<sup>st</sup> day of December, 2021 and it will be in the interest of justice to dismiss this application.

In their written address, the applicants submitted through their learned counsel that when issues are contentious in a suit, the proper mode to commence the action is by filing a writ of summons as this will enable parties to join issues, file and exchange pleadings and as well call oral testimony. They submitted further that a perusal at the reliefs as well as the averments in the affidavit in support of the originating summons filed by the Claimant shows that the suit ought to have been commenced by way of writ of summons. The applicants commended to the court the cases of ***OLLEY V. TUNJI (2016) 10 NWLR (PT. 1362) 275 and ATAKO V. NWUCHE (2016) 3 NWLR (PT. 1341) 337 at 355***

On the other hand, the Respondent argued that the applicants' entire argument is misconceived because where a sole or principal question in issue is likely to be for construction of a written law, or of any instrument made under a written law or deed, will, contract or other question of law, then the mode of bringing the suit will be by Originating Summons. Counsel referred the court to the cases of **KEHINDE V. CAN & ORS (2012) LPELR-14821 (CA); JACK V. UNIVERSITY OF AGRICULTURE, MAKURDI (2004) ALL FWLR (PT. 200) 1506 at 1512.**

The learned counsel for the Respondent finally urged the court to dismiss this application as there is no competent affidavit in support of the preliminary objection. He submitted that the affidavit is incurably defective and shall by nature of the attendant substantial defect be declared incompetent and invalid. On this score he relied on the cases of **ONUJABE & ORS V. IDRIS (2011) LPELR 4059(CA) and MODIBBO V. HAMMANJODA (2014) LPELR 24184 (CA).**

As aforesaid, Counsel for the parties filed and exchanged Written Addresses in support of their respective contentions. The Court has given due consideration to the averments in the affidavits of the parties as well as their respective submissions. The cardinal issue that calls for determination is whether or not the Defendants/Applicants have made out a case to justify a grant of an order of this court striking out this suit for want of jurisdiction or directing parties in this suit to file and exchange pleadings.

I shall first of all deal with the issue of the alleged defects in the affidavit in support of the Preliminary objection before proceeding to the merit or otherwise of this application.

**Section 117 (4) of the Evidence Act 2011** is quite instructive and it provides as follows:-

***"An affidavit when sworn shall be signed by the deponent or if he cannot write or is blind, marked by him personally with his mark, in the presence of the person before whom it is taken"***

It is the law that When a deponent swears to an oath, he signs in the presence of the Commissioner for Oaths who endorses the document authenticating the signature of the deponent. Signatures signed outside the

presence of the Commissioner for Oaths fall short of the requirement of the statute and such document purported to be sworn before Commissioner for Oaths is not legally acceptable in Court. See the case of **CHIDUBEM V. EKENNA & AMP; 12 ORS (2008) LPELR-3913,(2009) ALL FWLR (PT. 455) 1692.**

Having carefully examined the affidavit in support of the preliminary objection, the record shows that the deponent signed same on the 30<sup>th</sup> day of November, 2021 in the absence of Commissioner for Oaths and was later taken before the Commissioner for Oaths who signed on the 1<sup>st</sup> December, 2021. The Applicants did not file any further affidavit to contradict this assertion. It is elementary law that any unchallenged and uncontradicted fact in an affidavit remains undisputed and is deemed admitted by the adversary. See **ALAGBE V. ABIMBOLA 1978 2 SC P.39.** This defect is a fundamental and statutory error that cannot be waived. Therefore the affidavit in support of the Preliminary Objection dated 30/11/2021 is incompetent and I so hold.

However, having decided on that, the question remains; can the preliminary objection still be sustained in the absence of the affidavit in support of same? A Preliminary Objection may or may not be supported by affidavit. It all depends on what is being objected to. Where the objection is based on law, an affidavit may not be necessary, but if it is based on facts, an affidavit is mandatory. In other words, where the preliminary Objection deals strictly with issues of law, there is no need for any supporting affidavit, but only the grounds for the objection need be clearly stated. However, when the objection leaves the province of law and dwells on facts of the case, the party relying on such Preliminary Objection must support same by filing an affidavit. In that respect, where a preliminary objection is raised on point of law, and relevant facts upon which the objection is based are before the Court, there is no need for additional affidavit evidence to be filed. The grounds upon which this preliminary objection is brought is in my view on points of law as same is challenging the jurisdiction of this Honourable Court based on wrong mode of commencing the substantive suit and therefore it is sustainable even in the absence of the supporting affidavit. See the case of **ARAOYE & ANOR v. ADETOLAJU (2020) LPELR-51106(CA).**

It is trite law that Originating summons is resorted to in commencing or initiating a suit when the law so provides or when the sole or principal question in issue is likely to be one of the construction of a written law or any instrument or of any deed, will, contract or other document or other questions of law in circumstances where there is not likely to be any dispute as to facts. See the case of **NDIC V. BAYERO & ORS (2020) LPLER-50736(CA)**

In **HON. MUYIWA INAJOKU & ORS V. HON. ABRAHAM ADEOLU ADELEKE & ORS (2007) LPELR-1510(SC)**, the Supreme Court while pronouncing on nature of Originating Summons held inter alia thus:

*“Originating Summons is a procedure which is used in cases where the facts are not in dispute. Originating Summons is also reserved for issues like the determination of questions of construction and not matters of such controversy that the justice of the case could demand the settling of pleadings...”*

See also the cases of **FAMFA OIL LTD V. ATTORNEY GENERAL OF THE FEDERATION (2003) 18 NWLR (PT.852) 453; OMOLADA V. MUSTAPHA & ORS (2019) LPELR-46438(SC); and OBA ADEGBOYEGA OSUNBADE & ORS V. OBA JIMOH OLADUNNI OYEWUNMI & ORS (2007) 4-5 SC 98.**

For proceedings that may be begun by Originating Summons **ORDER 2 RULE 3(1)** of the Civil Procedure Rules 2018 of this court provides as follows:

**“(1)** Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by Originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested.”

The duty of the Court in interpreting or applying a statute where the words are clear and unambiguous is to give them their natural, literal and ordinary meaning (without reading words or meanings not used therein into them). It stands to reason that this Court is under a duty to give ordinary

and literal interpretation to the words of **Order 2 Rule 3(1) of the Rules of this Court 2018.**

Based on the above Rules of Court can it be said this case involves determination of any question of construction arising under any instrument for declaration of rights of the Claimant.

In this case as could be gleaned from the Originating Summons, the Claimant has called upon the court for the determination of a written instrument (particularly exhibit SAC 1) in answering the following questions:

1. Whether the Defendants have the right to breach the contractual obligation made in writing by relocating the plaintiff from the house he purchased from them to another house/unit which was never mentioned by the parties in their agreement.
2. Whether the demise of one JV partners who is not a party in the contractual relationship with the plaintiff will affect and or invalidate the signed contractual agreement dated the 6<sup>th</sup> day of August, 2018.
3. Assuming the said JV Partners was a party in the agreement reached before he died, then upon his death, whether his heirs were not bound by the said agreement.
4. Whether the plaintiff by virtue of the letter of offer dated 6<sup>th</sup> day of August, 2018 and the payment made on 9<sup>th</sup> day of August, he is the rightful owner of the property No. R1 Three bedrooms Terraced Apartment lying and situate at QORAL GROVE ESTATE. KARMO DISRICT, ABUJA having purchased same from the Defendants.

It is settled law that where right of a party depends on a written instrument, same can be effectively determined vide Originating Summons. In the words of **Belgore, JSC**, (as he then was) in **FAMFA OIL LTD V. ATTORNEY GENERAL OF THE FEDERATION (2003) 18 NWLR (PT.852) 453;**

*"The very nature of an Originating Summons is to make things simpler for hearing. It is available to any person claiming interest under a deed, will or other written instrument whereby he will apply by Originating Summons for the determination of any question of construction arising under the instrument for a declaration of his interest..."*

Flowing from the above and having gone through the Originating summons and other processes in this case, I have no difficulty in resolving the sole issue raised above in favour of the Claimant/Respondent against the Defendant/Applicant in holding that the questions raised for determination in the Originating summons are within the jurisdiction of this court. Accordingly, this preliminary objection is hereby dismissed.

With regards to the Claimant/Applicant's application for Interlocutory Injunction. I have carefully considered the averments in the affidavits of the parties and submissions of their learned counsel. The crucial issue for determination is whether or not the Claimant/Applicant has made out a case to justify a grant of the application.

It is settled in our adversarial legal system that the grant or otherwise of the equitable remedy of Interlocutory Injunction pending determination of the substantive suit involves an exercise of the Court's discretion which discretion is exercised judicially and judiciously based on the reason given, materials placed before the Court and peculiar circumstances of the case.

In the exercise of the discretion, the Court is guided by the existence or otherwise of the following factors:-

- (1) *The existence or otherwise of a recognizable legal right or interest of the Applicant in the subjectmatter in dispute which the Court ought to protect.*
- (2) *Threat to or actual violation of the legal right or interest.*



- (3) *The existence of a triable issue between the Parties.*
- (4) *Where the balance of convenience lies.*
- (5) *The irreparable injury the Applicant will suffer if the application is not granted.*
- (6) *Conduct of the parties.*
- (7) *Undertaking as to damages.*

**See: -AKPO V. HAKEEM-HABEEB (1992) 6 NWLR (Pt.247) p.206; OBEYA MEMORIAL HOSPITAL V. A-G OF FEDERATION (1987) 3 NWLR (Pt.238) p.325; ODUMERU V. ADENUGA (2000) 4 NWLR (Pt.852) p.224; EZEBILO V. CHINUBA (1997) 7 NWLR (Pt.511) p.108.**

In an application of this nature which touches on interest in property, an Applicant is not under a duty to prove his title over the property in dispute to the hilt. All that is expected of him is to show prima facie interest or right in the property in dispute which is threatened or violated which the Court ought to protect. Where therefore an Applicant discloses his legal right or interest in the property in dispute and same is threatened or actually violated by the conduct of the adversary, there is in existence a recognizable legal right or interest which the Court can protect. In that circumstance there is a triable issue between the parties: - See: - **ADENUGA V. ODUMERU** supra.; **REGISTERED TRUSTEES OF PEOPLE'S CLUB OF NIGERIA V. REGISTERED TRUSTEES OF ANSAR-UD-DEEN SOCIETY OF NIGERIA (2000) 5 NWLR (Pt.657) p.368.**

In this case, the parties are in agreement that by way of letter of offer dated 6<sup>th</sup> August, 2018 (EXHIBIT SAC1) a three (3) bed room terraced house No.1 R1 at the Defendants' estate known as QORAL GROVE ESTATE located at Karmo district, Abuja was allocated to the Claimant at the sum of Twenty Seven Million Naira (N27,000,000.00) subject to payment of an

initial deposit of Twenty Million Naira (N20, 000,000.00) into the 1<sup>st</sup> Defendant's bank account leaving the balance of Seven Million Naira (N7,000,000.00) to be paid Ninety days after the date of initial deposit; it is also not in contention by either parties that the Claimant made the initial deposit of the Twenty Million Naira (N20,000,000.00) and both parties are also at idem about the extension of duration for the payment of the remaining balance of seven Million Naira (N7,000,000.00) from 90 days to 180 days, it is also not disputed by either party that the subject matter has not been delivered to the Claimant. The Claimant entertains the fear that the said property is about to be delivered to the family of the JV partners whereas the Defendants alleged that they could not deliver the property to the Claimant because the Claimant failed to live to the terms of his bargain of making payment of the balance within the stipulated time.

In this case it is the view of this court that although the Defendants/Respondents considers the completion and handover of the property to the claimant as subject to the payment of remaining balance of Seven Million Naira yet the initial payment of N20,000.000.00 for the property by the Applicant has created in the Applicant an interest in the property which the Court ought to protect. The Applicant does not need to establish his title over the property at this stage to be entitled to protection of the Court vide an order of Interlocutory Injunction. There is no gainsaying that by the claims of the Claimant/Applicant vis-à-vis the Respondents with respect to the outstanding sum of N7,000.000.00 ( Seven Million Naira) as to the proper interpretation of the terms of their contract has raised a controversy over the remaining balance for the property. Therefore, the terms of making payment of the balance within the stipulated time and hand over of the property raises triable issues between the parties.

The Court is minded, in order to maintain the status quo as well as preserve the property subjectmatter pending determination of the suit to direct the parties in this suit in clear terms not to take any step which will interfere with the property.

By reasons of the foregoing; (particularly as the balance of convenience lies in favour of the Applicant by virtue of an attempt being made to transfer the property to another person while he continues paying for rent elsewhere), the Court resolves the sole issue raised above in favour of the Claimant/Applicant.

In the light of this, the application succeeds and is hereby granted. An order of Interlocutory Injunction is granted restraining all parties in this case by themselves, agents, assigns servants and or privies from further acts or intent of delivering and or selling or disposing the subject matter of this suit to any person(s) or JV Partner's family pending the determination of the substantive suit.

I make no order as to costs.

**SIGNED.**  
**HON. JUDGE**  
**25/2/2022**

### **LEGAL REPRESENTATIONS**

- (1) Abubakar A.Isah Esq for the Claimant/Defendant/Applicant.
- (2) A.M. Doma Esq for the Defendants/Applicants/Respondents.