IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA

THIS WEDNESDAY, THE 15TH DAY OF DECEMBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

APPLICATION NO: M/10222/2020

BETWEEN:

1. **ADAMU ISYAKU**
2. **ABDULRAHAMAN SALIHU**
3. **IBRAHIM B. MADALLA**
   (For themselves & on behalf of Zuba, Tunga Maje, Kpakuru and other Communities of Gwagwalada Area Council, FCT-Abuja.)
4. **ADAMU A. GUNIYA**
5. **HARUNA LAUYA**
   (For themselves and on behalf of Iddo Sarki & Gaku Communities Abuja Municipal Area Council FCT-Abuja.)

.... APPLICANTS

AND

1. **NIGERIA ARMY**
2. **CHIEF OF ARMY STAFF**
3. **MINISTER OF FEDERAL CAPITAL TERRITORY ADMINISTRATION**

……. RESPONDENTS

JUDGMENT

This is an application brought pursuant to the Fundamental Rights Enforcement Procedure (FREP) Rules 2009. The application is dated 28th September, 2020 and filed same date at the Court's Registry.

The Reliefs sought as contained in the statement accompanying the application are as follows:

(a) **A declaration that the shooting and killing of Hamza Usman male 18 years of Tungan Maje by 1st – 2nd Respondents' officers and men on 10th April, 2019 during an invasion was a gross violation of his (deceased) fundamental right to life.**

(b) **A declaration that the repeated invasion incessant attacks, brutalization, intimidation, beatings, degrading treatment causing bodily injury and shooting of Applicants by officers and men of Respondents is a gross violation of Applicants' fundamental right to dignity and against degrading treatment.**

(c) **An order affirming Applicants right to the possession occupation and ownership of their ancestral homelands and communities to be their inalienable and fundamental right to private ownership of property.**

(d) **An order nullifying the purported claim to ownership of Applicants' properties by 1st and 2nd Respondents without the prior allocation or grant of right of Occupancy by the 3rd Respondent to be unlawful unconstitutional null and void.**

(e) **An order affirming Applicants' fundamental rights to the prompt payment of compensation (pre and post 4th February, 1976) in the event of compulsory acquisition of their said ancestral homelands and properties.**

(f) **A declaration that the 1st and 2nd Respondents' repeated and perpetuating armed invasion harassment brutalization shooting and causing bodily injury to Applicants and destruction of their properties is aggravating unlawful null and void and same liable to damages.**

(g) **An order of injunction restraining the Respondents by themselves, assigns, officers, privies or whosoever acting on their behalf from threatening or carrying out further threats of armed and forceful invasion takeover demolition destruction and howsoever interfering (including any existing or planned construction/development) with the**

peaceful and legitimate ownership possession and occupation Applicants' ancestral homelands and properties pending such time as the due process for compulsory acquisition and prompt payment of compensation and resettlement is duly complied with.

(h) An order nullifying all purported Quit Notices, Demands for Tenement Rents any other notice or demand howsoever issued by 1st and 2nd Respondents or any of their officers men and agencies the same being unlawful interference with Applicants' aforesaid properties (fundamental) rights.

(i) An order nullifying any purported application consideration and processing of any allocation howsoever or offer of the grant of Right of Occupancy by 3rd Respondent to 1st – 2nd Respondents and where already granted an order nullifying same.

(j) An award of the sum of N100, 000, 000 (One Hundred Million Naira only) in compensation and reparation for the unlawful killing of the said Hamza Usman.

(k) An award of the sum of N20, 000, 000 (Twenty Million naira only) to each of the 22 named communities as compensatory and aggravated damages for gross violation of Applicants' fundamental rights to dignity private ownership of property and prompt payment of compensation.

(l) An award of the sum of N500, 000, 000 (Five Hundred Million Naira only) in exemplary or punitive damages.

(m) An award of the sum of N12, 000, 000 (Twelve Million Naira only) in legal fees.

(n) An order for rendering accounts for all monies or revenue collected by Respondents from daily toll for sand excavation and evacuation and the operations of the Livestock Market.

(o) An order for the immediate forfeiture of the total sum collected as per Relief N above to Applicants.

(p) A letter of public apology by 1st and 2nd Respondents to Applicants the same which shall be published and aired in at least 2 national dailies and 2 broadcast media and upon compliance the filing of requisite affidavit to the court.

(q) Substantial costs.

(r) Any other orders or reliefs as the Honourable Court may deem fit to make in the circumstances.

ANCILLARY CLAIM:

a. An award of the sum of N100, 000, 000 (One Hundred Million naira only) as damages for trespass to land.

CONSEQUENTIAL ORDERS:

a. An order directing the President and Commandant in Chief of Federal Republic of Nigeria to immediately institute a Board of Inquiry (BOI) into the 1st and 2nd Respondents' activities (invasion) of Applicants from the onset (year 2006) to present day in order to identify culpability and punishment of persons (officers and men) responsible and as deterrent to future occurrences.

b. An order directing the President and Commandant in Chief of Federal Republic of Nigeria to order and ensure the immediate shut down of all 1st and 2nd Respondents' operations (particularly, the livestock market, toll and revenue collection, etc) and withdrawal of physical presence within the precincts of Applicants said land ancestral homelands and properties) pending such time as the due process of law pertaining compulsory acquisition and the prior and prompt payment of compensation is dully complied with.

GROUNDS UPON WHICH RELIEFS ARE SOUGHT

1. The 1st and 2nd Respondents are purportedly laying claim to Applicants' land ancestral homelands and properties without any proof of a prior grant or allocation of Right of Occupancy to them by the 3rd Respondent as required by extant laws and practice and thereby in violation of Applicants' fundamental rights to private ownership of property.

2. **The 1st and 2nd Respondents have since 2006 repeatedly invaded attacked harassed intimidated traumatized brutalized injured and even killed Applicants in gross violation of their fundamental right to life, dignity, private ownership of property and prior payment of compensation as provided under Section 33, 34, 43 and 44 of 1999 Constitution and like provisions of African Charter on Human and Peoples Rights (Ratification & Enforcement) Act.**

3. **The Applicants' said properties, farmlands and economic trees have been destroyed by 1st and 2nd Respondents officers and men added with threats, intimidation and use of armed and lethal force and thereby suborning circumstances of extreme hardship, annoyance, trauma and whole scale aggravated suffering.**

4. **The 1st – 2nd Respondents' actions as aforementioned also constitute actionable trespass to land and same liable to the damages so claimed.**

The application is supported by a fifty four (54) paragraphs affidavit with fifteen (15) annexures marked as **Exhibits 1 – 15**.

A written address was filed in compliance with the FREP Rules in which three (3) issues were raised as arising for determination to wit:

a. **Whether 1st – 2nd Respondents' purported claim to the ownership of Applicants' land and ancestral homelands is justiciable in the absence of any formal allocation of same and prior grant of right of occupancy by the 3rd Respondent.**

b. **Whether 1st – 2nd Respondents' repeated acts of invasion attacks intimidation and sheer brutalization shooting and killing of Applicants amount to a gross violation of Applicants' fundamental rights to life, dignity, private ownership of property and prompt payment of compensation.**

c. **Whether the Respondents are liable for damages and if so what type and quantum?**

The address which forms part of the Record of Court is anchored essentially on the fact that the actions of 1st and 2nd Respondents in laying claim to ownership of Applicants land and ancestral home lands and in the process carrying out

wanton acts of intimidation, brutalization, shooting and killing of Applicants constitutes a violation of Applicants Rights to Life, Dignity, Private Ownership of property and prompt payment of compensation.

In opposition, the 1st and 2nd Respondents filed a counter-affidavit dated 4th November, 2020. A written address was filed in compliance with the FREP Rules in which two (2) issues were raised as arising for determination as follows:

a. **Whether the claimants can jointly file an action for the enforcement of their Fundamental Human Rights.**

b. **Whether having regard to the originating motion, supporting affidavit and materials available before this Honourable Court, the Applicants are entitled to the Reliefs sought against the 1st and 2nd Respondents.**

Submissions were equally made on the above issues which forms part of the Record of Court. The summary of the submissions with respect to **issue 1** is to the effect that it is wrong for the claimants to jointly file the extant action for enforcement of their fundamental rights under the FREP Rules making the action incompetent and liable to be struck out. On **issue 2**, the case made out is that the Applicants have not made out a credible case of violation of their fundamental rights on the materials supplied to entitled them to any or all of the reliefs they seek; and that most importantly, a perusal of the materials put forward by Applicants do not disclose a breach of Applicants Fundamental Rights as the main claim and this vitiates the power of the court to even entertain the extant action.

On the part of the 3rd Respondent, they filed the following processes in opposition:

1. Notice of Preliminary objection filed on 8th December, 2020.

2. Counter-Affidavit of 3rd Respondent in opposition to the originating Application.

In the preliminary objection, the 3rd Respondent prayed for the following:

1. **Declaration that this suit is incompetent for not being commenced by due process of law as envisaged by Order 11 Rule 2 of Fundamental**

Right Enforcement Procedure Rules and Order 2 Rule 1 of FCT High Court Civil Procedure Rules and thus robs this Honourable Court of jurisdiction to entertain this suit.

2. **Declaration that by combined effect of Section 303 of the Constitution and Sections 1 (3) and 6 (3) and (4) of Federal Capital Territory Act 1976, this suit does not disclose reasonable cause of action against the 3rd Defendant.**

3. **And for such further or other Orders as this Honourable Court may deem fit to make in the circumstance.**

The objection is supported by a 10 paragraphs affidavit with two (2) annexures marked as **Exhibits 1** and **2**. The 3rd Respondent then subsequently filed a further affidavit dated 6th October, 2021 in which they indicated that they want the court to Expunge **Exhibit 1** attached to both the extant affidavit and even the counter-affidavit to the substantive motion on the ground that the Applicants have already attached it to the process they filed. A written address was filed in which two (2) issues were raised as arising for determination to wit:

1. **Whether considering Section 1 (3) and 6 (3) and (4) respectively and judicial Authorities on point, the Applicants claim for compensation and or breach of right to Ownership of property raises any reasonable cause of action against the 3rd Respondent/Applicant in the circumstance.**

2. **Whether the Originating process in this Suit does not breach the provision of Order 11 Rule 2 of Fundamental Right Enforcement Procedure Rules and Order 2 Rule 1 of FCT High Court Civil Procedure Rules and thus incompetent to activate the jurisdiction of this Honourable Court in the circumstance.**

The submissions on the address equally forms part of the Record of Court. On issue 1, the case made out is that under extant legislations vide **Sections 1 (3), 6 (3) and (4) of the Federal Capital Territory Act** and **Section 303 of the 1999 Constitution**, all lands comprising the territory of the FCT was acquired by the Federal Government in 1976 and that it is only the 3rd Respondent that is vested with statutory powers to allocate land, and accordingly that there is no factual or legal basis to situate any complaint of violation of the Fundamental Rights of the Applicants by 3rd Respondent in relation to the land subject of this action.

On issue 2, the complaint is that the extant originating application is unknown to law and incapable of activating the jurisdiction of the Court. The court was referred to the provisions of **Order 11 Rule 2 of the FREP Rules** and **Order 2 Rule 1 of the FCT High Court Civil Procedure Rules**.

The Counter-affidavit filed by the 3rd Respondent contains twenty (20) paragraphs with two (2) annexures marked as **Exhibits R1** and **R2**. A written address was filed in which three (3) issues were raised as arising for determination:

1. **Whether it is not unreasonable to join the 3rd Respondent in this Suit for allocating land alleged to belong to the Applicants prior to enactment of Federal Capital Territory Act 1976.**

2. **Whether considering Section 1 (3) and 6 (3) and (4) respectively and judicial authorities on point, the Applicants claim for compensation and or breach of right to Ownership of property raises any reasonable cause of action against the 3rd Respondent/Applicant in the circumstance.**

3. **Whether the originating process in this suit does not breach the provision of Order 11 Rule 2 of Fundamental Right Enforcement Procedure Rules and Order 2 Rule 1 of FCT High Court Civil Procedure Rules and thus incompetent to activate the jurisdiction of this Honourable Court in the circumstance.**

Submissions were made on the above issues which forms part of the Record of Court. The submissions were in substance a repeat or rehash of the submissions already made in respect of the preliminary objection.

The Applicants filed a joint reply to the Respondents counter-affidavit and the preliminary objection dated 17th February, 2021 which forms part of the Record of Court which essentially sought to accentuate the positions earlier canvassed that the application is competent and that the Applicants have proven their entitlement to the remedies sought arising from a breach of the Applicants Fundamental Rights.

Guided as I am by the provision of **Order VIII, Rule 4 of the FREP Rules**, which prescribed that the preliminary objection shall be heard with the substantive application clearly to save precious judicial time, the court directed that the objection and the substantive application be taken together.

Counsel on both sides then moved and adopted the processes filed as identified above and each side equally responded. The Applicants urged on court to dismiss the preliminary objection and grant the Reliefs sought by Applicants. The 1st and 2nd Respondents on their part urged the court to dismiss the application as completely un-established. The 3rd Respondent urged the court to sustain the preliminary objection but where it is not availing that the court should dismiss the substantive action as wholly lacking in merit.

It is also important to add that in the course of the adoption of addresses, I called on counsel to make submissions on the following point to wit:

"Whether an application filed by more than one person to enforce a right under the Fundamental Rights Enforcement Rules is competent?"

The 1st and 2nd Respondents streamlined the above in their address as a defined issue as already highlighted and answered or stated that a joint action or application is incompetent. The 3rd Respondent in their address on the issue sided with the view of 1st and 2nd Respondents while the Applicants in their own address submitted to the contrary and contended that a joint application for enforcement of Fundamental Right is competent.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification and it seems to that notwithstanding how each party framed the issues as arising for determination, the material issue that really calls for the most circumspect of this courts consideration is simply **whether on the facts and materials before court, the applicants have proved that their fundamental rights were infringed by 1st to 3rd Respondents to entitle them to all or any of the reliefs sought**.

This umbrella issue raised by court conveniently accommodates all the issues raised by parties and has succinctly and with sufficient clarity brought out the pith of the contest subject of the present enquiry and it is on the basis of the said issue that I shall proceed to presently decide this matter.

Before I do so, let me address these threshold issues raised by Respondents in the processes filed as follows:

1. **That the extant application is incompetent having not been commenced by due process of law.**

2. **Whether an application filed by more than one person to enforce a right under the Fundamental Rights Enforcement Procedure Rules is competent and;**

3. **Whether the violation of Fundamental Rights sought to be enforced by the Applicants is the principal relief. Put another way, that the principal Reliefs Applicants seek relates to declaration of title, damages for trespass, injunction and compensation and not enforcement of Fundamental Right and that the jurisdiction of court cannot be properly invoked in such circumstances**.

On the first point, the provision of **Order 11 Rule 2 of the FREP Rules** provides or streamlines the mode of application as follows:

"An Application for the enforcement of the Fundamental Right may be made by any originating process accepted by the court which shall, subject to the provisions of these Rules, lie without leave of Court."

The above provision is clear and unambiguous. An Applicant seeking to enforce a provision under **Chapter IV of the 1999 Constitution** or the provisions of the **African Charter on Human and Peoples Rights** has the option to either proceed by way of motion or originating summons or any originating process accepted by the court and to use Form No.1 in the appendix as appropriate.

I have here carefully perused the extant application used to commence this action and it is exactly the format as provided under **Form No.1** in the appendix to the Rules and as such, I find it difficult to situate the legal basis of this particular complaint. Reliance on the provision of **Order 2 Rule 1 of the High Court of FCT Civil Procedure Rules** as a basis for the present objection will not fly in the circumstances. The **FREP Rules** is the specific and applicable procedural legislation governing enforcement of Fundamental Rights matters and recourse to the Civil Procedure Rules can only have resonance under the provision of **Order XV Rule 4** where in the course of any Human Rights proceedings, any situation arises for which there appears to be no adequate provision in these Rules, then the Civil Procedure Rules of the Court for the time being in force shall apply. No such situation arises here.

The applicants have, as demonstrated above complied with the **FREP Rules**, as to the mode of commencing an action to enforce their Fundamental Rights; the complaint of 3rd Respondent accordingly lacks merit and is unavailing.

The **second issue** relates to the competence of a joint application to enforce a Fundamental Rights action. The jurisprudence on this issue is not settled and is rather fluid, particularly in the context of the cases projected by the Superior Court of Appeal. I shall refer to a few of the authorities and be brief and essentially allow the decisions speak to the issue.

In the cases of **Udo V Robson & ors (2018) LPELR – 45183 (CA), Kporharor & Anor V Yedi & ors (2017) LPELR – 42418 (CA)** and some other decisions of the Superior Court of Appeal have donated the position that two or more persons cannot jointly sue for enforcement of their fundamental rights.

The decision of the same Superior Court of Appeal, Kano Division in **Suit No. CA/KN/289/2019** between **Alhaji Ali Ahmad Maitagaran & Anor V Hajiya Rakiya Saidu Dankoli** delivered on 27th October, 2020 appeared to have altered the existing narrative and now positing that two or more persons can jointly sue for enforcement of their fundamental human rights.

Because of the rather still evolving and fluid nature of the jurisprudence on this point at the moment, let me at some length produce some portions of the unanimous decision of the court per **Habeeb Adewale Olumuyiwa Abiru** J.C.A thus:

"The records show that one of the contentions of the second Appellant on his preliminary objection before the court was that the action, being a joint one by the Respondents, was incompetent as two Respondents cannot jointly file an application for the enforcement of their fundamental rights and he cited the case of Kporharor V Yedi (2017) LPELR 42418 (CA) in support of his position. The records show that the lower court considered the provisions of Section 46 of the 1999 Constitution and the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 and the lower court stated that it painstakingly read the decision of the Court of Appeal in Kporharor V Yedi and that it noted that the decision was based on the Fundamental Rights (Enforcement Procedure) Rules 1999 which was different from Fundamental Rights (Enforcement Procedure) Rules 2009 applicable in the present case.

The lower Court expounded on the provisions of 46 (1) of the Constitution, Section 14 of the Interpretation Act and of the Fundamental Rights (Enforcement Procedure) Rules 2009 and it relied on the decision of this Court in Dilly Vs IGP (2016) LPELR – 41452 (CA) and of the Supreme Court in the case of Amalgamated Trustees Limited Vs Associated Discount House Limited (2007) 15 NWLR (Pt.1059) 118 in coming to the conclusion that the decision of this Court in Kporharor Vs Yedi was not applicable to the facts and circumstances of this case. The lower court was of the view that multiple parties can file one action for the enforcement of their fundamental rights under the Fundamental Rights (Enforcement Procedure) Rules 2009…

The above said, the complaint of the Appellants before the lower court was that the action filed before the lower court was bad for joinder of the causes of action of the Respondents for the breach of their fundamental rights. The action was commenced under the Fundamental Rights (Enforcement Procedure) Rules 2009. There is no express provision in the Fundamental Rights (Enforcement Procedure) Rules 2009 permitting or forbidding such joinder of causes of action. Order XV Rule 4 of the Rules provides that where in the course of any Fundamental Rights proceedings, any situation arises for which there is or appears to be no adequate provision in the Rules, the Civil Procedure Rules of the Court for the time being in force shall apply. The lower court here is the Federal High Court.

Now, Order 9 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009 provides that "All persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such plaintiffs as may be found to be entitled to relief and for such relief as he or they may be entitled to without any amendment." The Courts have interpreted this provision as permitting persons who have rights arising from one common cause to file a joint action as co-claimants to ventilate the rights – Hyson (Nigeria) Limited Vs Ijeoma (2008) 11 NWLR (Pt.1097) 18, Fode Drilling (Nig.) Ltd Vs Fabby (2017) LPELR 42822 (CA), AbdulRaheem Vs Oduleye (2019) LPELR – 48892 (SC). Dovetailing from the above position of the law, it has been held that a joint action filed by more than one person to ventilate breach of their fundamental rights arising from one and same action of a defendant or defendants is competent – Uzoukwu Vs Ezeonu II (1991) 6 NWLR (Pt.200)

708 at 761, Ihejiobi Vs Ihejiobi (2013) LPELR 21957 (CA), Ubochi Vs Ekpo (2014) LPELR 23523 (CA), Orkater Vs Ekpo (2014) LPELR 23525 (CA). A read through of the case of the Respondents on the affidavit in support of their application shows that the rights they sought to ventilate arose from a common cause. The finding of the lower court that the action of the Respondents was competent cannot thus be faulted. The second issue for determination is resolved in favour of the Respondents."

The provision of **Order 9 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009** construed by the learned jurist is in *pari materia* with **Order 13 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedures) 2018**. This decision therefore clearly donates the position as captured by the court that a **"joint action filed by more than one person to ventilate breach of their fundamental rights arising from one and same action of a defendant or defendants is competent."**

Shortly after this decision, the Court of Appeal, Makurdi Division in **Abuja Electricity Distribution Company Plc & Ors V Akaliro (2021) LPELR – 84212 (CA)** delivered on 31st March, 2021 gave another decision contrary to the decision earlier highlighted in the Kano Division and maintaining the position that it is incompetent for a joint application to be filed to enforce a right under the Fundamental Rights Enforcement Procedure Rules. What is interesting in this decision is that the noble law lords perhaps recognizing the vexed and controversial nature of issue having found the action to be incompetent been a joint application still went ahead to determine the appeal on the merit. In the lead judgment per **Aguba JCA**, he retorted thus:

"Normally, having dismissed this appeal and struck out the suit, this ought to be the end of this Appeal. But in the event the apex court holds that my view on the joint application for the enforcement of Fundamental Rights is wrong, I will proceed to resolve the appeal o the merit."

Finally on the cases, the Court of Appeal, Ibadan Division in **Incorporated Trustees of Digital Rights Lawyers Initiative & 2 ors V National Identity Management Commission (2021) LPELR – 55623 (CA)** delivered on 24th September, 2021 a fairly recent decision pitched its hallowed tent on the side of the argument that a joint application to enforce Fundamental Right is competent.

I have above situated some of the decisions of our Superior Courts to underscore the still evolving jurisprudence on the point. In the circumstances, it appears to me reasonable that lower courts such as mine thread with caution until perhaps there is a clear judicial pathway through a pronouncement by Apex Court on the vexed question of whether multiple parties can file a joint action for the enforcement of their fundamental rights under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

This court on the basis of the most recent decision of the **Court of Appeal** will accordingly hold advisedly that the extant action is competent.

This then leads to the last **threshold point** raised by the 1st, 2nd and 3rd Respondents as to whether the action is cognizable under the Fundamental Rights Enforcement Procedure. The 3rd Respondent in its process specifically alluded to the fact that this is a land dispute between Applicants and 1st and 2nd Respondents and not an issue of breach of Fundamental Right to ownership of property. The crux of the complaint here is that the action is essentially one for declaration of title, damages for trespass, injunction and compensation which are not matters that fall within the purview of Fundamental Rights Enforcement. The Applicants on the other side of the aisle argued to the contrary.

Now it is a fundamental principle of law and of general application that the jurisdiction of the court is generally determined by the reliefs sought by the plaintiff or in this case, the Applicants. See **Abubakar V Akor (2006) All FWLR (pt.321) 1204**. In other words, it is the claim before the court that has to be carefully examined to ascertain whether or not the action or case filed comes within the jurisdictional sphere conferred on that court. The Relief which may be sought by an Applicant under the FREP Rules are however specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the 1999 Constitution. See **Fajemirokun V C.B.C.I (Nig.) (2002) 10 NWLR (pt.774) 94**.

In law, the breach of a fundamental right alleged by an applicant must be the **main plank** in the application for enforcement. On the authorities, where the violation of a fundamental right is merely incidental or ancillary to the principal claim or relief, it is improper to constitute the action as one for enforcement of a fundamental right. This law traces its pedigree to the *latin maxim*: "*Accessorium non-ducit, sed sequitur suum principale*" – meaning that which is incidental does not lead, but follows its principal. See **Raymond Dnogtoe V**

Civil Service Commission of Plateau State (2001) 19 WRN 125 at 147; Basil Egbuonu V Borno Radio Television Corporation (1993) 4 NWLR (pt.285) 13.

The duty of court now is to carefully examine the reliefs claimed to situate their justiciability within the frame work of enforcement of Fundamental Rights. The court is here not concerned with the manner in which the claim is couched or the categorization given by parties; the claim or reliefs must indeed speak of enforcement of these streamlined rights under Chapter IV of the Constitution. See **N.A.E.C V Akinkunmi (2008) 9 NWLR (pt.109) SC 151.**

I have at the beginning of this Judgment stated the **Reliefs** of Applicant. I need not repeat myself. Let me now situate the facts as disclosed in the affidavit which obviously are the materials to support the **Reliefs** sought. As already alluded to, it is these **facts** that must be examined, analysed and evaluated with utmost circumspection to see, firstly, that the breach of Fundamental Right is the main plank of the case for enforcement and if this issue is answered in the positive, then secondly if a case has been made out that an applicant's Fundamental Rights have been infringed as claimed or otherwise dealt with in a manner not countenanced by the constitution.

In this case, I prefer to allow the applicants affidavit speak for itself. The following paragraphs are relevant:

"4. That the said 22 Affected Communities consists of 4 indigenous tribes of; Gbagyi, Gbari, Koro and Bassa and collectively possessing occupying and living on contiguous ancestral homelands on an expansive land situate on the right side of Airport to Giri Road commencing from a few meters from Airport Junction along Airport to Giri overhead bridge continuing on the same right side of Gwagwalada – Zuba Road extending to Tungan Maje and continuing to College of Education Zuba and passing on to Zuba-Dei-Dei Road upto the vicinity of the Nnamdi Azikiwe International Airport and continuing on a straight trajectory to Airport-Giri Road all within Abuja Gwagwalada and Abuja Municipal Area Councils – herein referred to as the Land or ancestral homelands.

5. That the communities' existence predates the creation of Abuja-Federal Capital Territory on 3rd February, 1976.

6. That the land devolved and remains devolving from our ancestral forebears and progenitors to several generations upto present day and we remain in physical possession and occupation of same thereof.

7. That our said communities are amongst the several indigenous communities and habitations yet to be compensated (or resettled) pursuant to the said creation of FCT; not prior to 1976 and never up yo present day.

8. That the inhabitants are predominantly farmers engaged in sustenance agriculture and whose very existence is on our ancestral homelands.

9. That by virtue of paragraphs 4-6 above, we are 'Deemed Owners of Right of Occupancy' issued by 3rd Respondent.

10. That we have remained in the peaceable occupation and possession of our said ancestral homelands, habitations communities up until sometime in the summer of 2006 when soldiers of the Nigeria Army (1st and 2nd Respondents) came and started erecting or fixing signboards along the parameters of the land, from around the Airport Road Junction all the way to Giri junction/overhead bridge and passed Tungan Maje upto College of Education Zuba (COE) permanent site in Zuba. See attached Exhibit 1.

12. That in response to the said invasion Applicants formally petitioned 3rd Respondent, National Assembly-NASS and others, copies of which are attached as Exhibits 2.

13. That things went into abeyance up until April 17th 2016 when a detachment of armed men and officers of 1st and 2nd Respondents showed up with earth moving equipments and commenced digging a parameter fence from Iddo Sarki axis upto Giri and Anagada, Tungan Maje.

20. That no long after that, 1st and 2nd Respondents' bulldozers returned and several farmlands, shops were torn down. We were prohibited from our farms and all cultivation frustrated.

32.That sometime in February, 2019 following a petition of 1st and 2nd Respondents to the FCT Police Command alleging Applicants to be illegal occupants of its purported land as well as being purported agents of insecurity and tagging Agora of Zuba to be the mastermind, the FCT COMPOL organised a parley between Respondents and us (Applicants) and other relevant security and land administration stakeholders. See attached Exhibit 11.

33.That during the said meeting (which I attended) the Director of Lands FTA, Mr. Adamu Yakubu did report (the same I verily believe to be true and correct) equivocally 1st and 2nd Respondents' claims to the Applicants' Land was not substantiated as there existed no record of any such grant or formal allocation by 3rd Respondent.

34.That the said Director further stated (the same which believed to be true and correct) that they only record of grant or allocation to Respondents was in Kwali Area Council; and that Applicants' land was as earmarked on Abuka Master Planb was a "land bank" reserved for future expansion needs of Nnnamdi Azikway International Airport and connecting roads.

35.That the final outcome of the parley was the directives by the FCT COMPOL for 1st and 2nd Respondents to stay clear of the Applicants' land until the final outcome of the Presidential Committee earlier referred to (supra).

36.That the 1st and 2nd Respondents in their characteristically manner, responded with further pernicious defiance by issuing fresh purported 'Quit Notices' as reflected by attached Exhibit 12.

37.That as recent as last month of August 2020, about 2 days to Sallah, the sleepy community of Kpakuru awoken to the presence of armed military condone of the entire community and thereby effecting a complete blockade with no ingress or egress from about 6am.

38.That during this time, the soldiers commenced excavation of an access road a point along Airport Giri road towards Kpakuru; they have thus far bulldozed several cultivated farmland whilst several homes, houses,

mosque, primary school situate along the road's corridor have been marked for demolition. See attached pictures of Exhibit 13 a – b.

39. **That sometime back in early January 2019, 1st and 2nd Respondents established a so called 'international Livestock Market and stable in Applicants' Anagada community and audaciously invited one of Applicants' paramount Chief, the Agora of Zuba. See attached Exhibit 14.**

40. **That not only has the said Market become fully operational, it is now bustling with heavy activities and patronage and from which 1st and 2nd Respondents are now generating serious revenue at the expense of Applicants subsistence farmlands.**

41. **That since that April, 2019, 1st and 2nd Respondents forcefully took over Tungan Maje community's sand merchandizing trade toll collection of N500 daily per truck (Tipper) per trip.**

42. **That Applicants' farmlands have been confiscated by 1st and 2nd Respondents men and who have now resorted to cultivating and leasing out our said confiscated farms for themselves."**

I have deliberately and at some length provided above the basis or the foundational premise of Applicants case. Indeed I would have preferred to have repeated the entire Applicants affidavit but that would have cluttered this Judgment unnecessarily. The affidavit here has clearly set up facts which unequivocally conveys the case the Applicants have set up and which they rely on for the reliefs sought.

The case from the above is rooted wholly on a foundation situated under paragraph 4 (supra) which perhaps need be repeated thus:

"That the said 22 Affected Communities consists of 4 indigenous tribes of; Gbagyi, Gbari, Koro and Bassa and collectively possessing occupying and living on contiguous ancestral homelands on an expansive land situate on the right side of Airport to Giri Road commencing from a few meters from Airport Junction along Airport to Giri overhead bridge continuing on the same right side of Gwagwalada – Zuba Road extending to Tungan Maje and continuing to College of Education Zuba and passing on to

Zuba-Dei-Dei Road upto the vicinity of the Nnamdi Azikiwe International Airport and continuing on a straight trajectory to Airport-Giri Road all within Abuja Gwagwalada and Abuja Municipal Area Councils – herein referred to as the Land or ancestral homelands."

The Applicants here claim to be the owners of the **"land"** or their **"ancestral homelands"** as described above. Indeed they traced how these lands devolved to them and that they have been in physical possession and occupation from time immemorial until sometime in 2006 when the 1st and 2nd Respondents trespassed on the land and began to **lay claim to same** vide paragraph 10 of the affidavit. The subsequent complaints of alleged beatings, attacks, brutalisation, killings and violations of the Fundamental Rights of Applicants clearly on the affidavit of applicants is situated or arises over and from the **contested** assertion of ownership.

I have perused the Exhibits attached by Applicants and all pointedly project a dispute or conflict clearly with respect to ownership and the alleged attempt by the 1st and 2nd Respondents to forcefully acquire the "ancestral lands" of Applicants. I shall refer to a few of the Exhibits attached to the affidavit of Applicants. **Exhibit 1** is a signboard fixed by 1st and 2nd Respondents on the land and on it they indicated that the **"land belongs to the Nigerian Army-Keep Off"**. It is this same land Applicants claim. The documents attached as **Exhibit 2** to the Senate President, Speaker of the House of Representatives, the Vice President of Nigeria and **Exhibit 3**, the letter by traditional head of Zuba; **Exhibit 4**, the Quit Notice issued by 1st and 2nd Respondents wherein they claimed ownership, again all situates the conflict or dispute over ownership of land. Even another **Exhibit 4** written by the Minister FCT to the President of Nigeria alludes in paragraph 6 of the letter to the claim and counter-claim over the land along Giri-Zuba Axis between Applicants and the 1st and 2nd Respondents. **Exhibits 10** and **11** are again Quit Notices by the 1st and 2nd Respondents to **"illegal occupants of Nigeria Army Land."**

I have deliberately and carefully examined the facts as donated by Applicants themselves above and it is difficult to situate how the breach of fundamental rights alleged by the Applicants is the main plank of the extant application. The Reliefs sought for example vide **Reliefs C, D, E, F, G, H, I,** the ancillary claim for **damages for trespass** all unquestionably put the issue of **TITLE** as the fulcrum of the extant action. The law is settled beyond any argument that

where an action situates or incorporates Reliefs for title, trespass, injunction and damages for trespass as done by Applicants in this case, the implication of these set of Reliefs as presented is to put the title of the subject of dispute at the fulcrum of the Courts inquiry. See **Odunze V Nwosu (2007) 13 NWLR (pt.1050) 1 at 53; Mafindi V Gendo (2006) All FWLR (pt.292) 157 at 165 F-G**.

Grounds 1 and 4 upon which the application is predicated underscores the crux of this dispute or action thus:

"(1) The 1st and 2nd Respondents are purportedly laying claim to Applicants' land, ancestral homelands and properties without any proof of a prior grant or allocation of Right of Occupancy to them by the 3rd Respondent as required by extant laws and practice and thereby in violation of Applicants' fundamental rights to private ownership of property.

(4) The 1st – 2nd Respondents' actions as aforementioned also constitute actionable trespass to land and same liable to the damages so claimed."

The above for me is clear, self explanatory and perhaps even inculpatory with respect to the real grievance of Applicants.

Learned counsel to the Applicants may have adroitly sought to frame the case as one of violation of Applicants Fundamental Rights simpliciter but the facts in the affidavit and the Application itself does not bear this out or support such simplistic colouration. As decisively pointed out by counsel to the Applicants himself in ground (1) above **"the 1st and 2nd Respondents are laying claim to Applicants land, ancestral homelands and properties, without any proof of a prior grant or allocation of Right of Occupancy to them by the 3rd Respondent as required by extant laws..."**

If that is the poser as framed or formulated by counsel, would this then not logically translate to who has better title as between Applicants and 1st and 2nd Respondents with respect to the disputed land? If this is a **defined issue of title** as indeed it is, then it clearly cannot be litigated within the specific legal framework or remit of Enforcement of Fundamental Human Rights. Same goes for the complaints of alleged encroachment or trespass, annexation of their land, injunction and damages for trespass. The course of action or complaints of

Applicants are unquestionably **rooted** more in an action for declaration of title, trespass, damages for trespass and injunction to protect their legal rights over the lands they claim than any violation of Fundamental Rights. It will be really difficult to attempt any meaningful exercise in resolving the critical question of ownership and granting the **Reliefs** Applicant seek under the present circumstances.

Any alleged breach of Applicants Fundamental Rights from the entire processes filed appear to fundamentally be merely accessory to the fundamental complaint of **declaration of title and trespass** over the said **plot of land and or "ancestral homelands"**. I am in no doubt that the remit of the principal complaints in this case certainly have nothing to do with enforcement or securing of the Fundamental Rights of Applicants.

At the risk of sounding prolix, the main principal complaints of Applicants, stripped of the colouration or designation of the Reliefs in the guise of enforcement of Fundamental Rights is simply whether the 1st and 2nd Respondents can allegedly use the marshal of force to encroach and seize the lands Applicants claim is theirs without any allocation or grant from the issuing authority in the FCT. This again raises unquestionably the issue of ownership of land. The question of ownership of land in the FCT are determined on a set of fairly well settled principles. Same goes for the questions of trespass and injunction. A claim rooted in these clear defined causes of action cannot constitute the principal reliefs under the Fundamental Right Enforcement Procedure Rules. The writ of summons and pleadings would have been better utilised to ventilate this type of grievance.

The point to underscore and judicial authorities are clear on the position of the law in relation to a claim for enforcement of Fundamental Right. It is to the effect that Enforcement of Fundamental Right(s) or securing the enforcement thereof must form the basis of the Applicant's claim as presented to the court and not merely an accessory claim as the extant case. In other words where the main claim or principal claim is not enforcement or securing of Fundamental Rights, the jurisdiction of the court cannot be properly exercised because it will then be incompetent. See **Tukur V Govt. of Taraba State (1997) 6 NWLR (Pt.510) 549 at 574 – 575; UniIlorin & Anor V Oluwadare (2006) LPELR – 3417 (SC); WAEC V Akin Kunmi (2008) LPELR – 3408 (SC).**

The competence of this action raised by 1st and 2nd Respondents with the support of 3rd Respondent clearly has considerable merit and this case is incompetent and liable to be struck out but in the event I am wrong in so holding, let me now go to the merits and substance of the case and determine the issue earlier raised by court as arising for determination in the substantive application. As I consider the merits, the obvious flaws in bringing the present action under this rather faulty legal conduit will become more obvious and palpable.

ISSUE 1

Whether on the facts and materials before court, the Applicants have established that their Fundamental Human Rights were infringed by Respondents to entitle them to any or all of the Reliefs sought.

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **Section 46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009. In Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751, the Court of Appeal** in construing **Section 42 of the 1979 Constitution** which is in *pari materia* **with Section 46 of the 1999 Constitution** stated as follows:

"The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

a. Must allege that any provision of the fundamental rights under chapter IV has been contravened, or
b. Is likely to be contravened, and
c. The contravention is in relation to him''.

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongtoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412.**

I had earlier at the beginning set out the claims of the Applicants. In the objection resolved above, I had found that a careful consideration of the reliefs clearly do not reveal or show that the main plank of the application is one of the breach of Fundamental Right(s). The breaches appear to be incidental or accessory claims and as a result, I found that the action is incompetent. I had also indicated that out of abundance of caution and in the event I am wrong, I will still consider the action on the merits.

It may be apposite to also add that the substance of **Reliefs 1** and **2** sought by Applicants and on which some of the other Reliefs are predicated are declaratory in nature. That being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings or processes filed particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point to underscore is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of the adversary in the process he filed or his failure to call evidence of file any process or even defend the action. The court must be put in a commanding position by credible and convincing evidence at the hearing of the Applicants entitlement to the Reliefs sought as in this case.

The law is settled that the burden was on Applicants alleging that their fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95.**

In resolving this dispute, it is central to interrogate and or scrutinize the facts precisely streamlined on the materials supplied and in doing so to determine whether the Applicants have put the court in a commanding height to grant the Reliefs sought. The Respondents as stated earlier challenged the depositions of Applicants so the contested assertions must then be creditably established on clear legal and factual threshold.

Again at the risk of prolixity and in resolving this dispute, I prefer to take my bearing from the affidavit of Applicants. I had earlier in this judgment referred to salient averments in the affidavit of Applicants. I need not repeat the averments but **paragraph 4** appears to be the basis of the case and it bears repeating:

"That the said 22 Affected Communities consists of 4 indigenous tribes of; Gbagyi, Gbari, Koro and Bassa and collectively possessing occupying and living on contiguous ancestral homelands on an expansive land situate on the right side of Airport to Giri Road commencing from a few meters from Airport Junction along Airport to Giri overhead bridge continuing on the same right side of Gwagwalada – Zuba Road extending to Tungan Maje and continuing to College of Education Zuba and passing on to Zuba-Dei-Dei Road upto the vicinity of the Nnamdi Azikiwe International Airport and continuing on a straight trajectory to Airport-Giri Road all within Abuja Gwagwalada and Abuja Municipal Area Councils – herein referred to as the Land or ancestral homelands."

The Applicants situate their right to own property within the confines of this paragraph. Both Respondents contested or challenged the above assertion. In the counter-affidavit of 1st and 2nd Respondents they averred as follows:

"5. That the 1st and 2nd Respondents in response to paragraph 9 of the Applicants' supporting affidavit, states that the Applicants are not deemed owners of Right of Occupancy of any land in Federal Capital Territory, Abuja since all lands in the Federal Capital Territory belongs to the Minister of the Federal Capital Territory, Abuja.

6. That the 1st and 2nd Respondents, in response to paragraph 11 of the Applicants' supporting affidavit, state that the act of the 1st and 2nd Respondents did not instill fear or create any form of discomfort to the Applicants rather the 1st and 2nd Respondents only took steps to mark the allocated and for construction and development.

7. That the 1st and 2nd Respondents in response to paragraph 13 of the Applicants' supporting affidavit state that their presence on the land in question was to commence the fencing of the allocated land for construction to begin with full effect.

22. That the 1st and 2nd Respondents' interest in the land is only to develop the allocated land belonging to them in the aforesaid community."

The 3rd Respondent on the other hand in its counter-affidavit stated as follows:

"5. That paragraphs 4, 5, 6, 7, 8 and 10 of affidavit in support of this suit is false and 3rd Respondent state in the contrary that the Applicants are merely in adverse possession and occupation of the land subject of this suit as same was acquired and compensation paid for it by the Federal Government of Nigeria since 1976.

6. That paragraph 9 of the affidavit in support of this suit is false and the 3rd Respondent state to the contrary that deemed owners of Right of Occupancy does not obtain in Federal Capital Territory Abuja.

7. That in further response to paragraphs 10 and 11 of the affidavit in support of this suit the 3rd Respondent state to the contrary that the said plot of land is allocated to the 1st Respondent but subsequently sub-divided and reallocated to other individual by the 3rd Respondent. The letter written by 3rd Respondent to the President of Nigeria dated 2nd November, 2016 is attached as Exhibit R1."

The substance of the case of Respondents above is clear and the effect is to deny the claim of ownership made by Applicants. Indeed it is obvious even at this early stage that by the assertions of Respondents particularly the 3rd Respondent (and the issuing authority of lands in the FCT as we will soon demonstrate) donating the clear and contrary position of adverse allocations made to 1st Respondent and other individuals of the disputed land claimed by Applicants situates clearly that this dispute is one substantially of title and not enforcement of Fundamental Human Rights and this then exposes the grave limitation of Applicants case in utilizing this medium to present their grievance.

The obvious limitations notwithstanding, let me however still situate whether the infractions alleged have been creditably established. The fact that the allegations were challenged meant that the issues raised by Applicants became a matter for proof by credible evidence. The burden of proof is on him who asserts. See **Section 131 (1)** and **(2) of the Evidence Act**.

Now it is not in doubt that the provisions of **Section 43** provides for the Right to acquire and own movable property while **Section 44** makes provision against compulsory acquisition of property. Let me here reproduce the provision of **Section 43 of the 1999 Constitution** thus:

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

The above provision is clear. It is to the effect that every citizen shall have the right to own property in Nigeria. Compulsory acquisition purports that, save for certain circumstances, there shall be no compulsory acquisition of moveable or immovable property. In **Lakanmi V A.G. Western State (1971) U.I.L.R 201**, immovable property was defined as one that cannot be moved such as houses and other fixed property. Every citizen of Nigeria has the right to acquire and own property anywhere in Nigeria, whether movable or immovable.

Section 44 of the 1999 Constitution provides that government shall not compulsorily acquire the movable or immovable property of any person for public purposes or public use in any part of Nigeria, except in the manner and for the purposes prescribed by law. Therefore, confiscating property from one private individual and granting it to another individual is not acquisition for public purposes under the provisions of the Nigerian Constitution.

However, any law that empowers the state to acquire private property for public purposes must also provide for the prompt payment of adequate compensation. It must also give to any person claiming such compensation right of access to a court of law or tribunal or body having jurisdiction over such matter in that part of Nigeria for the determination of his interest in the property and the amount of compensation.

The instances and exceptions where interest in or right to property may be temporarily interfered with or lost under general law are listed in sub-section 2 of this section. Some of the instances include imposition of penalty relating to execution of judgments where such relates to enemy property or where compulsory acquisition is subject to prompt payment of compensation. In essence any acquisition which does not fall within the ambit of this provision is unconstitutional.

Now, I have carefully perused the entire affidavit of Applicants and there is nothing to situate their **title or any clear allocation to any plot of land or the lands described in paragraph 4 of their affidavit**. I have equally perused the entire affidavit of 1st and 2nd respondents and there is equally nothing to situate any allocation to any land to them. The 3rd Respondent may have alluded to an allocation to 1st and 2nd Respondents, but no copy of any allocation was attached or identified. Now the **communities** may have been described in paragraph 4 as indigenous tribes within the FCT but whether these indigenous communities own any land within the FCT is an issue that, I must confess, generates profound debate in legal circles, particularly in the light of extant laws applicable in the FCT. This explains the apprehension I adverted earlier on as to whether this medium, used by Applicants to ventilate this dispute is the right one in view of the discourse it entails. The court must however do its job. I shall refer to some of the relevant laws on the subject and judicial authorities.

By the provision of **Section 297 (2) of the 1999 Constitution**, the ownership of all lands comprised in the F.C.T shall vest in the Government of the Federal Republic of Nigeria. It is also not contestable that the Government of the Federal Republic of Nigeria exercises executive powers over the F.C.T by virtue of **Sections 299 and 301 of the Constitution** by a Minister appointed by the President by virtue of **Section 302 of the Constitution.**

The provision of **Section 297 (2) (supra)** by the use of the embracing word **"all"** clearly extends its application to all lands within the F.C.T inclusive of all the lands described in **paragraph 4 of Applicants affidavit** including the disputed plots. This position is further accentuated by the clear provisions of **Sections 1 (1), (2) and (3) of the Federal Capital Territory Act (cap503) LFN (Abuja) 1990 now cap F6, LFN, 2004.** Indeed **Section 1 (3) of the F.C.T Act** provides in trenchant terms as follows:

"The area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a portion of the States concerned and shall thenceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation."

The word used above is **"shall"** which is a word of command. This provision makes it clear that the area comprised in the F.C.T shall be governed and administered by or under the control of the Government of the Federation to the exclusion of any person or authority whatsoever and the ownership of lands comprised in the F.C.T shall likewise vest absolutely in the Government of the Federation. The word used is **"absolutely"** which connotes that the ownership is total and complete. See **Oxford Advanced Learners Dictionary by A.S Hornby at page 5.**

The simple implication of this latter part of the provision with the use of the word **"and"** which imports that the provision be read as conjunctive is to the effect that administration of these lands whose ownership vest absolutely in the Federal Government is equally the exclusive preserve of the Government to the exclusion of any person or authority.

Having provided the above legal template which provides clarity to the ownership of all lands within the F.C.T as exclusively belonging to the Federal Government, including its governance and administration, we now address the central question as to the legitimacy of the claim of ownership by indigenous owners or natives.

Now by virtue of **Section 5 (1) of the Land Use Act (LUA) cap. 202, LFN 1990,** it shall be lawful for the Governor in respect of land, whether or not in an Urban Area to grant **statutory rights of occupancy** to any person. **Section 6 (1) of the Land Use Act** provides that it shall be lawful for a local government in respect of land not in an Urban Area to grant **customary rights of occupancy** to any person.

The designation of land as Urban and non-urban area is a creation of **Section 3 of the Land Use Act**. The section confers on the Governor of each state the power to **"designate the points of the area of the state constituting land in an Urban Area."**

These provisions clearly create a precisely defined delineation between urban and non-urban areas and also the grant of statutory rights of occupancy and a customary right of occupancy. A customary allocation can only properly issue in a local government in a state and within its sphere or area of jurisdiction

subject to the provisions of **Sections 5 (1) and Section 6 (3) (a) – (d) and (4) of the Land Use Act.**

Yes there are Area Councils within F.C.T but there is nothing presented before court to establish the fact that either the President or the Minister of the F.C.T has pursuant to **Section 3 of the Land Use Act** designated any part of the F.C.T as constituting urban or non-urban area to provide basis to support the incidence of customary allocation. To the clear extent that there is, as yet, no such designation, the right of occupancy being granted by the Honourable Minister F.C.T, is the Statutory Right of Occupancy and no other.

It is obvious that in the light of the constitutional provisions referred to, the provisions of the F.C.T Act and the Land Use Act, that this demarcation between statutory and customary allocations with respect to urban and non-urban Areas has no application within the F.C.T.

Now by virtue of **Section 51 (2) of the Land Use Act**, the powers of a governor under the Land Use Act shall in respect of land comprised in the F.C.T Abuja or any land held or vested in the Federal Government in any state be exercisable by the president or any Minister designated by him in that behalf. The word **"shall"** is used again which I earlier said is a word of command or that a thing must be done. On the authorities, the word **"shall"** is not permissive and neither is there a discretion to be exercised in the matter. It is mandatory denoting an obligation. See **Nwankwo & ors V Yaradua & ors (2010) 12 NWLR (pt.1209) 518.**

The allocation of land within the entirety of the area known as the F.C.T can only legally and properly be exercised by the President or any Minister designated by him in that behalf. The Minister by virtue of **Section 302 of the 1999 Constitution** earlier referred to shall exercise such powers and functions as may be delegated to him by the president from time to time.

These legislations appear to underscore the paramountcy of the minister to make these statutory allocations over lands comprised in the F.C.T except perhaps where a case is properly made out that he delegated such powers which is a different matter altogether.

Indeed **Section 18** of the F.C.T Act further accentuates the powers of the minister as follows:

"As from the 28th May, 1984, the President has delegated to the Minister F.C.T, the following functions, that is to say-

a. **Any function or power conferred on the Chairman of the Federal Capital Development Authority under this Act.**

b. **Any executive power of the Federal Government vested in the President pursuant to Section 263(a) or any other section of the constitution of the Federal Republic of Nigeria and exercisable within the Federal Capital Territory.**

c. **Any function or power conferred by any law set out in the Second Schedule to this Act vested in the Governor or Military Governor of a state.**

d. **The Powers vested in the President by Section 1 (1)(d)(i) of the Public Officers (Special Provisions) Act; and**

e. **Such other functions as the President may from time to time confer on the Minister."**

When the correct import of all these provisions referred to above are properly appreciated and applied, it is difficult to situate the legitimacy of any claim to ancestral home or land in the FCT. These provisions clearly show that such claims would lack validity. Any claim of ownership of land in the FCT not proceeding from appropriate authority vested with such powers, which in this case is the Minister FCT would not fly. The Land Use Act, the FCT Act and relevant constitutional provisions above clearly do not provide any basis for claim of ownership predicated on solely been a native of the FCT. **Section 26 of the Land Use Act**, provides thus:

"Any transaction or any instrument which purports to confer or vest in any person any interest or right over land than in accordance with the provisions of this Act shall be null and void."

Most importantly there is really nothing before me on the basis of these legislations supporting that Applicants have acquired or have been properly allocated any property to provide basis to situate possible contravention of **Section 43** of the Constitution. Without a precise identifiable allocation to any plot of land, how can one logically complain of contravention of his right to own immovable property? That is the huge conundrum the Applicants face here with respect to proof of violations of **Sections 43** and **44 of the 1999 Constitution**.

It may be relevant here to call attention to the case of **Ona V Atanda (2000) 7 WRN 1 at17** where the Court of Appeal sitting as a full court comprehensively resolved the question whether incidence of customary right of occupancy exist in the FCT. The court unanimously answered and stated that it has been abolished under statutory and constitutional provisions considered by the court.

Under the principle of stare decisis, this decision is obviously binding and should have provided clear answers to some of the questions posed by the extant dispute. The only snag is the absence of clarity in legal circles as to the real fate of the decision. There is no clear consensus as to whether it was over turned and thus we must thread carefully. What however is certain is that there is as yet to be a pronouncement on the merits by the Apex Court on the issues raised in **Ona V Atanda** and which remains till today.

This is underscored by the fact that in the decision of the Apex Court in **Madu V Madu (2008) 6 NWLR (pt.1083) 324 at 325 H-C,** the Supreme Court referred to the same **Ona V Atanda (supra) and Onu J.S.C (of blessed memory**) clearly appeared to support the position taken in **Ona V Atanda** when he stated as follows:

"Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide Ona V Atanda (2000)5 N.W.L.R (pt.656) page 244 at page 267 paragraphs C-D. see also Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap.503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law,

ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. <u>Thus without an allocation or grant by the Honourable Minister of the F.C.T, there is no way any person including the respondent could acquire land in the F.C.T.”</u>(Underlining supplied)

This clear postulation by the eminent jurist further impugns the contention of incidence of ownership by natives or chiefs or indeed of customary allocations in the F.C.T. It has been argued in legal circles that the decision of **Onu J.S.C** is a supporting judgment and not the lead judgment and thus can be over looked.

Now it is true or correct that in reading the said decision, no issue was precisely raised on the question of allocations by Area Councils or the propriety of customary allocations and claim of ownership by indigenes within the F.C.T. The fact that the contribution of **Onu JSC** may be termed an **obiter** and thus not binding does not derogate from its importance and relevance to the question which continuous to agitate legal minds particularly in the F.C.T. Whatever the validity of the arguments against its application, it cannot ignore the clear imperative that it is a pronouncement by a revered legal jurist from the Apex Court. It is a pronouncement that cannot be simply ignored or treated with disdain particularly since it has clear legal and or statutory support from the various provisions of the law and the constitution that we have so far analysed in this judgment.

It only suffices to say that the value of such pronouncement such as made by **Onu J.S.C** however is that it sometimes gives an indication as to how the Apex Court may approach the issue where it to properly come before it. I leave it at that.

I am therefore not too sure there is liberty to dance around the clear provisions of the F.C.T Act and other relevant applicable enactments. The duty of court is constrained when it comes to the application of the relevant legislations and the constitution we have severally referred to in this judgment. There is this rather attractive sentimental appeal to ignore clear provisions of the law and protect and or side with these claims of ownership by natives and or indigenous people. Unfortunately sentiments has no role in the delicate task of adjudication. The court has no jurisdiction to lessen the threshold of these enactments or as earlier stated dance around its clear provisions or attempt any interpolations. The

approach of courts to interpretation of clear provisions of a statute is now settled beyond argument. Where the words use therein are clear and unambiguous, the court's legitimate duty is to give them their ordinary and plain meaning and construe them without any glosses unless its employment will lead to apparent absurdity and inconsistency with the provisions of the statute as a whole, which is not the case here. See **Kalu V Odili (1992) 5 N.W.L.R (pt.240) 130 at 193-194; Fawehinmi V IGP (2002) 7 N.W.L.R (pt.767) 606 at 678; Adewumi V A.G Ekiti (2002) 17 N.W.L.R (pt.743)706.**

The bottom line and as I have sought to demonstrate, in the absence of an **allocation** or **right of occupancy** by the 3rd Respondent to the Applicants, it is difficult to legally situate any infraction of the provisions of **Sections 43** and **44 of the Constitution.**

As stated earlier, and that is the challenge faced by the Applicants in this case, they may have claimed to be in possession but the 1st and 2nd respondents have contested that they have Superior title. The 3rd Respondent stated clearly that they have allocated the disputed plots to 1st Respondent and other individuals. As stated severally, with the Reliefs sought by Applicants including Reliefs for declaration of title, damages for trespass and injunction e.t.c., they have put the issue of title squarely as the crux of this dispute. This issue as stated earlier can however only be properly resolved through a full trial on streamlined facts on the pleadings. The issue of title will then be determined on fairly settled principles. See **Idundun V Okumagba (1976) 10 NSCC 445; Ilona V Idakwo (2003) 11 NWLR (pt.830) 53**.

This then leads me to the question of the alleged violations of the Right to Life of one **Hamza Yunus** and the alleged violation of Applicants Fundamental Right to dignity and against degrading treatment by the 1st and 2nd Respondents. The 1st and 2nd Respondents wholly denied these allegations.

Now it is not in doubt that the Fundamental Rights to life, dignity of the human person, are enshrined in **Sections 33 (1) & (2) and 34 (1) of the 1999 Constitution.**

The provisions of **Section 33 (1)** provides that ***"Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a count in respect of a criminal offence of which he has been found guilty in Nigeria.***

33. (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary –

(a) for the defence of any person from unlawful violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny"

The above provision situates that everyone is entitled to respect for his or her life and safety; life is self evidently sacrosanct and deliberate killing is abhorred in all decent and civilized societies worldwide. Security agents or officers may not willy nilly resort to lethal force and any deprivation of life clearly must be as allowed or countenanced by law.

Section 34 (1) provides thus:

"Every individual is entitled to respect for the dignity of his person and accordingly –

(a) no person shall be subjected to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour."

The provision emphasis treatment of the human person with respect and therefore any inhuman and degrading act(s) which makes people lose their sence of self respect, value or worth would amount to degrading treatment.

The provisions of the constitution as highlighted above are clear and unambiguous. The narrow issue here is whether on the materials supplied, the Applicants have sufficiently adduced cogent evidence to situate infraction(s) of these constitutional provisions by Respondents. On the authorities as earlier alluded to, for an application for infringement of fundamental right to succeed, the applicant must place before the court all vital evidence regarding the

infringement of or breach of such rights. It is only after that threshold is crossed, that the burden shifts to the Respondent; where that has not been done or where scanty evidence was put in by the Applicant, the application will be compromised. See **Fajemirokun V C.B. (CL) (Nig.) Ltd & Anor (2002) 10 NWLR (pt.144) 95 at 110.**

I start with the complaint relating to the killing of one Hamza Usman allegedly by 1st – 2nd Respondents officers and men on 10th April, 2019. The Applicants vide paragraphs 21 – 25 of the affidavit stated as follows:

"21.That specifically on 10th April, 2019 we were again provoked to a massive protest and blockade of the Zuba-Lokoja Road from 6am – 6pm during which period travelers were completely stranded. It took the intervention of the Zuba DPO for a single lane to be opened for stranded innocent travelers.

22. That whilst this was ongoing, men of Respondents cashed in the opportunity for a massive assault with beatings and shooting which led to the instant killing one Hamza Usman an 18 years young man and student. Attached are photos of his person alive, bloody corpse and death certificate as Exhibits 6 A-C.

23.That several other inhabitants were equally injured and requiring medical treatment and hospitalization. See attached photos of Exhibit 7 A-E.

24.That when the assault finally died down, bullet casings were re covered as well as an ID and Voter Cards of a soldier which items were later surrendered to FCT Police Command. See attached Exhibit 8 A-C.

25.That later, when confronted with the exhibits by FCT Police, the 1st and 2nd Respondents denied knowing of or having such a person in their records. "

As stated earlier, the Respondents denied these allegations. Now the allegation of homicide is a very serious allegation and notwithstanding this is essentially not a criminal trial, the burden of proof of such allegation is one of proof beyond reasonable doubt. See **Section 135 (1) of the Evidence Act**.

I have carefully gone through the affidavit of Applicants and there is nothing to situate whether any investigations was conducted by law enforcement agencies and whether any charge was filed against anybody by the prosecutorial agencies and indeed if anybody was found culpable. This process appears to me critical because, the necessary ingredients that must be established to situate a case of murder are:

1. The deceased died
2. The death of the deceased was caused by the accused and;
3. The act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was the probable consequence.

Exhibit 6a the photograph attached to Applicants Affidavit situates the corpse of the said deceased Hamza Usman. **Exhibit 6c** is the medical certificate of cause of death which links the death to **"single gunshot injury to the chest"**. **Exhibits 8 a – c** are empty bullet casings and an I.D Card and voters card of one Bukar Abubakar said to be a military personnel.

Now these challenged averments, clearly do not provide a credible verifiable basis that the 1st and 2nd Respondents caused the death of the deceased and in circumstances to situate homicide or murder. The medical report is silent as to type of Gunshot injury and the potential caliber of the ammunition used and whether it can be localized to the Nigerian Army. There is equally no forensics carried out on the empty bullet casings found and whether they can be localized or traced to the Nigerian Army. The type of casing was not even identified and the Gun that could have fired same was equally not identified. There is a critical missing insight here as to whether the gun that could have fired the bullet is one exclusively to be situated within the Nigerian Army.

Furthermore there is even nothing in the entirety of Applicants Affidavit wherein they stated that the person on the ID and voters card was the person who shot the late Hamza Usman. It is to be noted that the 1st and 2nd Respondents have even denied that he is their staff and this Applicants alluded to even in their affidavit.

On the basis of the materials supplied by Applicants, it is clear that the necessary constituent elements to prove the elements of murder has clearly not been established. The bottom line is that the Applicants have not established

the existence of any state of believable facts connecting the Respondents with the unfortunate **killing** or **death of Hamza Usman**. Culpable homicide no doubt is a serious allegation but in the circumstances, it is not enough to merely assert that someone died; the Applicants have a duty to link the death of the deceased to the 1st and 2nd Respondents with credible evidence, a basic threshold which they have unfortunately not met in this case.

The further complaints of repeated invasion, incessant attacks, intimidation, beatings and degrading treatment, causing bodily injury and shooting of Applicants by officers of 1st and 2nd Respondents were again all comprehensively denied by the 1st and 2nd Respondents in their counter-affidavit and it thus became clearly a matter of proof by credible and cogent evidence.

Now on the processes filed on both sides of the aisle, there is no doubt that there are obvious almost palpable tensions between the Applicants and the 1st and 2nd Respondents with respect to ownership of the land in dispute. By the Exhibits attached, particularly **Exhibits 1 – 5** and **9 – 10** shows that the matter has dragged on for years and has led to intervention at different levels of both the legislative and executive arms of Government. **Exhibits 3** and **10** for example situates the notices to Quit given by the 1st and 2nd Respondents at different times. **Paragraphs 18 and 21** of the Applicants affidavit situates that they also at different times have expressed their frustration at the actions of 1st and 2nd Respondents by staging a protest and blockade of Zuba-Lokoja road.

What the above facts donate is the tense and difficult atmosphere between Applicants and 1st and 2nd Respondents. The question is whether this translates to credible proof of the degrading acts of inhuman and degrading treatment.

Now on the materials supplied, apart from the complaints laid, nothing was attached to substantiate the allegations of extreme degrading treatment allegedly meted out on Applicants.

As stated earlier, the allegation of illegal and forceful acquisition of Applicants lands and farm lands clearly is not within the remit of the extant action particularly in this case where the 1st and 2nd Respondents lay adverse claim to the said land. Again even if houses, farm crops/produce were destroyed, there is nothing in evidence situating these alleged destructions.

The lack of credible evidence also affects the alleged brutal violations, threats, beatings, killings and abuse with impunity of the Fundamental Rights of Applicants. These are serious allegations that cannot be left to bare assertions. **Exhibits 7 a – e** may have situated pictures of some persons allegedly wounded by actions of 1st and 2nd Respondents but there is really nothing in the pictorial representation projecting that the said injuries were actually caused by operatives of 1st and 2nd Respondents. There is equally no date or anything on the pictures to show when they were taken and where. Again no medical report was attached to show the type of injuries; when the injuries happened and what could have possibly caused the injuries. No nexus was established between these pictures and the 1st and 2nd Respondents beyond challenged averments.

Now what is interesting in this case is that by **Exhibit 9** attached to the affidavit of Applicants dated 25th April, 2019, the Senate set up an adhoc committee to investigate the invasion of the Federal Capital Territory indigenes land around the Nnamdi Azikiwe Airport by the Nigerian Army. The **Senate Committee** fixed a public hearing for 29th April, 2019 and invited the Applicants through **coalition of FCT indigenous groups** to submit a written memorandum to the committee and substantiating the following claims:

"i. Illegal and forceful acquisition of lands comprised within Iddo-Sarki, Giri (along Abuja Airport Road), Tunga Maje Kpakuru, Gaku, Angwan Gwari, Angwan Samu, Yelwan Zuba, Angwan Nasara, Tungan Kwaso, Anagada Zuba among others by Nigerian Military;

ii. Wanton Destruction of Houses, farm crops/produce of the FCT natives by Nigerian Military;

iii. Brutal infringement, violation and abuse with impunity of the fundamental human rights of the original inhabitants of the land;

iv. Gruesome extra judicial killing of Hamza Usman, (a native of Tunga Maje, FCT) and infliction of serious degrees of injury of 28 others by Nigerian Army consequent upon the forceful acquisition of the land."

The above terms of reference and the issues raised forms part of the present action or grievance and the Senate looked into matter more than a year before this action was filed.

Now on the materials supplied by applicants, there is a conspicuous silence as to what the outcome of the adhoc committee into these complaints arrived at. Did they (Applicants) substantiate their claims as demanded by the committee? Was there a report by the committee? What were their findings? A report from the committee may perhaps give some insight as to what happened with respect to the complaints of Applicants. Any report from the committee may perhaps also give some insight as to what happened with respect to the complaints of Applicants. The present action did not address these issues so the court will keep its peace and not speculate.

The bottom line here is that the allegations of belligerent and continuous attack, unleashing of terror, constant threats of assault, harassment and attacks have not been creditably proven. The entire case of applicants unfortunately is not supported by facts or very low on facts but high on unproven allegations. As courts of law are not established to adjudicate on speculations but on established facts, such action, as this one is undermined ***abinitio***.

The very serious allegations raised by Applicants cannot be a matter of guesswork, conjecture or speculation in proof of infractions of Fundamental Human Rights as alleged. It is not a matter for sentiments and it is equally not a matter for address of counsel however well written or articulated. The entire trial process including the extant proceedings is entirely **evidence driven**. Cases fall or rise on the quality of evidence put forward to support a particular cause. It is therefore a matter of clear, cogent evidence being proffered putting the court in a commanding height showing or proving that there were indeed infractions. Nothing was established here.

As stated earlier, the Applicants only made unsubstantiated allegations which cannot secure a decision on infractions of Human Rights. I only need to underscore again, the point that the business of court does not include that of speculating. A court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditability proved. I must also add that bare averments of infractions in an affidavit as in this case cannot suffice especially where they are seriously controverted or challenged. I do not think that the assertions of applicants can stand or be accepted as correct without proof. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same. In as much as the assertion does

not relate to any fact which the court can take judicial notice, it behoves applicants to substantiate same with proof.

The point therefore is that in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an applicant's right(s) to be infringed simply because he says so and in the absence of credible evidence or proof. The materials also supplied by applicant in the circumstances must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. See **Neka B.B.B Manufacturing Co Ltd. V. ACB Ltd. (2004)2 N.W.L.R (pt.858) 521 at 550 – 551.**

I have here carefully considered the materials before me and I cannot locate any violation of the relevant constitutional provisions. There is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicants rights were violated as asserted by them and the conclusion I reach is that the Applicant's narrative lacks credibility and value. I so hold.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff or an Applicant whose affidavit does not prove the reliefs he seeks must fail. See **A.G. of Anambra State V. AG of Fed. (2005) AII F.W.L.R (pt.268)1557 at 1611; 1607 G-H.**

Before I round up, it is imperative that I call on the **1st and 2nd Respondents** like all progressive institutions and notwithstanding the challenges they face in these difficult times must keep strict fidelity to the rule of law in all their actions. There is no room for highhandedness or arbitrariness in the discharge of their responsibilities and in their relation with Applicants who are Nigerian Citizens. The facts on the materials supplied on both sides of the divide show or situate a conflict of claims over some parcels of land. This is a matter that can and must be handled in a civilized matter without resort to use of the marshal of force. The **3rd Respondent**, as the constitutionally recognized issuing authority of land in the FCT must intervene and settle this rather protracted land conflict once and for all times. In the mean time, the **Nigerian Army** must ensure that their actions at all times serve only to enhance the quality of the liberty and dignity of the person as enshrined in the 1999 Constitution. I leave it at that.

In the final analysis and even on the merit, the case of Applicants would have not been availing. Let me for purposes of clarity and for avoidance of doubt streamline in summary why the reliefs are not availing.

Relief (a) in the absence of evidence linking the death of Hamza Usman to the officers of 1st and 2nd Respondents fails. **Relief (b)** equally fails for want of evidence.

Relief (c) on the state of the provisions of the constitution and the FCT Act also is not availing. **Relief (d)** in the absence of the legal proof of ownership of the disputed plot will not be availing. **Relief (e)** appears to be a relief in the realm of speculation. The case of Applicants is one for positive confirmation of ownership of the disputed plot and not for compensation arising from compulsory acquisition.

The Applicants must be consistent in the case they present and cannot blow hot and cold at the same time. If the land they claimed has been compulsory acquired they cannot claim ownership but compensation. The apparent joint claim for ownership and compensation is a contradiction in terms of the extreme type. **Relief (e)** fails.

Relief (f) fails for want of credible evidence. With the failure of **Relief (c)** for ownership, the **Relief (g)** for injunction and **Relief (h)** for nullification of Quit Notices and all other notices and demand have no leg to stand and fails.

Relief (i) similarly fails. There is no evidence before court of any allocation to 1st – 2nd Respondents and how the allocation, if any violated extant laws governing grant of land allocations in the FCT. **Reliefs (j), (k), (l), (m)** for damages equally fails with the failure of the substantive relief of ownership. **Reliefs (n)** and **(o)** similarly fails for want of evidence. No evidence was streamlined as to the toll revenue allegedly collected by 1st and 2nd Respondents.

In any event, in the absence of proof that Applicants own this plot of land, any claim for account has no foundation.

Reliefs (p), (q) and **(r)** again must fail with the failure of the substantive Reliefs.

The **ancillary claim for damages for trespass** to land again is not a claim that can be determined under the present remit for enforcement of fundamental human rights.

The final consequential orders sought cannot be availing for obvious reasons. The **President and Commander in Chief** is no party to this proceedings. The Attorney General of the Federation was equally not made a party to this proceedings. It is really difficult to situate any basis to make any order(s) on someone who is not party to the proceedings. It is a well settled law and practice that the court cannot give judgment against a person who will be affected by its decision if such a person is not made a party or has no opportunity of defending the suit. The court has no jurisdiction to decide the fate of a person or a matter concerning him when such person is not made a party to the action. See **Babatunde V Aladejana (2001) 12 NWLR (pt.728) 597 at 615 C-D.**

As stated earlier, I considered the action on the merits out of abundance of caution. Having already found that none of the principal claims which Applicants seeks to enforce can be brought within the provisions of Chapter IV, it meant that the procedure was not available as a proper conduit to ventilate the present grievance, and accordingly this court will have no vires to exercise jurisdiction.

On the authorities, the principle is settled that where a court finds that an action as constituted is incompetent for one reason or the other, the proper order to make is not one of dismissal but striking out. See **Adetunji V Adesokan (1994) 4 NWLR (pt. 346) 540; Okolo V UBN (2004) 13 WRN 62 at 76-77**.

Accordingly, I will and do hereby record an order striking out this suit/action. No order as to cost.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Baba-Panya Musa, Esq., for the Applicants.**

2. **Lukman O. Fagbemi, Esq., for the 1st and 2nd Respondents.**

3. **Haruna Sadiq A., Esq., for the 3rd Respondent/Applicant.**