

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7 APO, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**SUIT NO. FCT/HC/CV/168/2021**

**BETWEEN:**

MRS. MOSUNSOLA O. IDONGESIT-NKANGA ..... APPLICANT

**AND**

1. MS. JOANNA MADIAHA ACHIBONG
2. MR. UTIBE ABASI IDONGESIT NKANGA
3. MR. ETIETOP NKANGA
4. MR. LANCE OKON NKANGA
5. MR. INI IDARA NKANGA ..... RESPONDENTS

**JUDGMENT**

**DELIVERED ON 17<sup>TH</sup> MARCH, 2022**

The Applicant approached this Honourable Court by way of Originating Motion on Notice for the enforcement of the Applicant's Fundamental Human Right to dignity of the Human Person, right to acquire and own immovable property anywhere in Nigeria, compulsory acquisition of property and the special jurisdiction of the High Court and legal aid pursuant to our extent laws. The motion was brought pursuant to Section 34(1), 43, 44(1), 46(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Applicant herein prayed the court for the following reliefs: -

1. A DECLARATION that the Respondents' unlawful eviction of the Applicant from her matrimonial home situate at number 3A and B, Mary Slessor close off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja, is a violation of her fundamental human right to own and have interest in a property, as enshrined in sections 43 and 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. A DECLARATION that the Respondents' continuous refusal to allow the Applicant have access to and possession of her matrimonial home situate at number 3A and B. Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road. Asokoro. Abuja. is a violation of her fundamental human rights to own and have interest in a property as enshrined in sections 43 and 44 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
3. A DECLARATION that the Respondents maltreatment of the Applicant, culminating in her unlawful eviction from her matrimonial home situate at number 3A and B, Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja. is a violation of her right not to be subjected to inhuman or degrading treatment. as laid down in section 34(1)(a) of the Constitution.
4. AN ORDER directing the Respondents to immediately grant the Applicant an unconditional access to and possession of her matrimonial home situate at Number 3A and B, Mary Slessor close, off Udo Udoma. off Yakubu Gowon Road, Asokoro. Abuja, pending the issuance of letters of administration or grant of probate over the estate of late Air Commodore Idongesit O. Nkanga.
5. AN ORDER of injunction restraining the Respondents, their agents and privies, from restricting, or otherwise interfering with the Applicant's right to live in or enjoy her matrimonial home situate at number 3A and B, Mary Slessor close, off Udo

Udoma. off Yakubu Gowon Road, Asokoro, Abuja, pending the issuance of letters of administration or grant of probate over the estate of late Air Commodore Idongesit O. Nkanga.

6. AN ORDER directing the Respondents, jointly and severally, to pay the Applicant the sum of N500, 000, 000.00 (Five Hundred Million Naira) only, being exemplary and aggravated damages for the unlawful violation of the Applicant's fundamental rights.
7. Such other orders as this Honourable Court may deem fit to make in the circumstances.

In support of the Application is 21 paragraphed affidavit, 30 paragraphed further affidavit in support both deposed to by Mrs. Mosunsola Nkanga, the Applicant and a further and better affidavit in support of 9 paragraphs deposed to by Dave Ohemu, a lawyer in the law firm of Abacus Law House, counsel to the Applicant. Attached to the Affidavits are annexures marked as Exhibit A, Exhibit FA1 – FA15. In line with the Rules and procedure, statement in support of the application and grounds for the application were equally filed. Also filed in support is a written address dated 28<sup>th</sup> day June, 2021.

In opposing the application Respondents filed a 7 paragraphed joint counter Affidavit and 7 paragraphed further joint counter Affidavit deposed to by one Etietop Nkanga, the 3<sup>rd</sup> Respondent. Annexed to the counter affidavits are annexures marked as Exhibit A and Exhibit FA1 respectively. Also filed in opposition is a written address and a further written address dated 22/7/2021 and 8/11/2021 respectively.

First and foremost, let me consider the notice of preliminary objection filed by the Respondents to the Applicant's motion on notice for the enforcement of his Fundamental Human Rights. In the event the Court does not decline jurisdiction, the Court shall then go ahead to give its Ruling on the substantive application.

By a notice of preliminary objection dated 10/9/2021, brought pursuant to Order VIII Rules 1, Order XV Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009: Order 49 Rule 4 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018: Section 6 (6) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of the Honourable court, the Respondents raised an objection to the jurisdiction of this Honourable Court to entertain the said application praying for the following;

1. AN ORDER striking out this suit for want of subject matter jurisdiction.
2. AND FOR SUCH FURTHER OR OTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances.

The grounds for the application are as follows:

1. The Fundamental Rights (Enforcement Procedure) Rules is not available for the enforcement of private property rights.
2. The reliefs sought by the Respondent in the instant suit are far reaching and robs this Honourable Court of her jurisdiction to entertain this suit.
3. The subject matter of the suit is contentious and laden with controversy and the reliefs sought raise the issue of possessory title and right to the land in dispute known as No. 3, Mary Slessor Street, Asokoro, Abuja; such reliefs are by their very nature steeped in controversy and thus it is inappropriate to initiate this action under the Fundamental Rights (Enforcement Procedure) Rules.
4. Any pronouncement made by this Honourable Court in the instant suit will destroy and vitiate the legal validity of the last Will and testament of late Air Commodore Idongesit Okon Nkanga (Rtd).

Filed in support of the Notice of preliminary objection is an 11 paragraphed affidavit deposed to by Etietop Nkanga, the 3<sup>rd</sup>

Respondent in this Suit. In the said affidavit deponent averred that the Fundamental Rights (Enforcement Procedure) Rules is not available for the enforcement of private property rights. That the nature and subject matter of the Applicant's application is for contentious action laden with controversy and the reliefs sought raise the issue of possessory title and right to the land in dispute known as No. 3, Mary Slessor Street, Asokoro, Abuja; such reliefs are by their very nature steep in controversy and in the circumstances inappropriate to initiate the action under the Fundamental Rights (Enforcement Procedure) Rules. That any pronouncement made by this Honourable Court in the instant suit will destroy and vitiate the legal validity of the last will and testament of their late father. That the suit is an abuse of process of court and the Respondent will not be prejudiced if this Honourable Court grant this application.

Attached also is a written address wherein learned counsel to the Respondents formulated a sole issue for determination to wit;

*“Whether this Honourable Court has the requisite jurisdiction to entertain this suit”.*

Learned counsel submitting summarily that the prescribed mode of commencement of an action must be strictly adhered to. That where the rules of court prescribe one for bringing an action, using another mode is fatal and renders the action incompetent. That the Respondent did not follow the right mode of commencement of action. Thus, only by virtue of Order 2 Rule 6, Order 2 Rule 2, and Order 60 Rule 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 can the Respondent be heard. And then urged this Honourable court to strike out the Respondent's suit for want of subject matter jurisdiction. Counsel relied on the following authorities amongst others;

**Okafor v Lagos State Govt. (2017) 4 NWLR (Pt. 1556) 404 at 425, paras. B-C; Chime v. Chime (1995) 6 NWLR (Pt. 404); Olaniyi v Aroyehun (1991) 5 NWLR (Pt. 194) 652 SC;**

**FBN v A. G. Federation (2014) 12 NWLR (Pt. 1422) CA and Practical approach of law of real property in Nigeria, by I. O. Smith, 2nd Edition, page 611.**

On the other hand, the Applicant/Respondent filed a counter affidavit of 16 paragraphs deposed to by Dave Ohemu, Esq, a counsel in the law firm of Abacus Law House, the law firm representing the Applicant in this suit. Wherein he deposed that the interpretation of the last Will and Testament of late Air Commodore Nkanga is not part of the reliefs sought by the Applicant in this suit. That this suit is not an abuse of court process. That this suit was filed before late Air Commodore Nkanga's last Will and Testament was read. That the Applicant had no prior knowledge of late Air Commodore Nkanga's last Will and Testament. That the reliefs in the Applicant's application borders on the indiscriminate way the Respondents broke into the Applicant's matrimonial home shortly after late Air Commodore Nkanga passed on. and several months before the testator's Will was read. That the Applicant's application does not touch on the ownership of No. 3A and B Mary Slessor Street, Asokoro, Abuja. That the Applicant only seeks the right to access and live in her matrimonial home situate at No. 3A and B, Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja, pending the issuance of letters of administration or grant of probate over late Air Commodore Nkanga's Estate. That the interpretation of Late Air Commodore Nkanga's last Will and Testament was raised, for the first time, by the Respondents in their joint affidavit, dated July 22, 2021, to the Applicant's originating motion. That the Validity or otherwise of late Air Commodore Nkanga's last Will and Testament is not a relief in the Applicant's originating motion. That the Respondents breached the Applicant's fundamental human right by denying her access to her matrimonial home situate at No. 3A and B, Mary Slessor Street, Asokoro, Abuja, several months before late Air Commodore Nkanga's last Will and Testament was read. That the Respondents

have refused to obey the orders of this Honourable Court made in this suit on the 5<sup>th</sup> day of July 2021. This Honourable Court has jurisdiction to entertain this suit. That the Applicant will be greatly prejudiced if this application is granted.

Attached also is a written address dated and filed 15/9/2021 wherein learned counsel to the Applicant formulated a lone issue for determination which is;

*“Whether this Honourable Court has jurisdiction to entertain the reliefs contained on the face of the Applicant's originating application”.*

Counsel submitted that this Honourable Court has jurisdiction to entertain the reliefs contained on the face of the Applicant's originating application. As it must be stated firmly that it is a party's reliefs and not the averments in the affidavit that determines whether a court can assume jurisdiction. That the ownership of the properties is not in issue in this present application. That where a case is laden with controversy, the court is enjoined to call for oral evidence to resolve the conflicting affidavit. That the Applicant need not be the owner of a property before she can enforce her right to the occupation of that property. Counsel further submitted that whether the Respondents or the Applicants are the owners of the property in question is irrelevant to the determination of this case. That what is relevant is whether the Applicant was in occupation of the properties, and if yes, whether the Respondents unjustly chased her out of the properties and urged the court to uphold its jurisdiction to entertain this suit. He relied on these authorities: **Sea Truck Nigeria Ltd v Panpa Anigboro (2001) LPELR-3025 (SC); University Press Ltd v I.K Martins (Nig) Ltd (2000) LPELR-3421 (SC) and Govt. of Enugu State of Nig v. Onya (2021) LPELR-52688 (CA).**

I have considered the arguments of learned counsel on both sides. The issue before this court is whether this Honourable court has

subject matter jurisdiction to entertain this matter. While the Respondents/Applicants argues that his court has no jurisdiction, the Applicant/Respondent submits that it has jurisdiction.

The law is trite that it is the Claimant's claim that determines the jurisdiction of the court. See **JEV & ANOR V IYORTYOM & ORS (2012) LPELR – 9291 (CA)**. Jurisdiction is determined by reference to the plaintiff's claim and not the defendant's answer which merely disputes the existence of the claim but does not alter or affect its nature.

Having carefully and insightfully considered the Applicant's originating motion on notice before this court the reliefs sought by the Applicant are hinged on the provisions of **Sections 34(1), 43, 44(1), 46(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** which are the Fundamental Rights provision for every citizen.

The Supreme Court in **ODOGU V. A.G OF THE FEDERATION (1999)6 NWLR (Pt. 456) Pg. 508 (a) 552**, defined Fundamental Rights as follows:

*“Fundamental Rights is a right guaranteed in the Nigerian Constitution and can be found entrenched in a particular chapter there in i.e. chapter IV. It follows therefore that for an applicant to successfully institute an action under the Fundamental Rights (Enforcement Procedure) Rules, the claim must fall within sections 33-44 of the 1999 constitution being the sections under chapter IV of the said 1999 Constitution.”*

Also, **Order I Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009** provides for Fundamental Rights that may now be enforced under the procedure. It provides thus;



*“Fundamental Right means any of the rights provided for in chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.”*

Thus, infringement of the Fundamental Rights embodied in **Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended** as well as those spelt out in **Chapter 1 of the African Charter on Human and Peoples’ Rights**, in so far as they are not similar to those listed under Chapter II of the 1999 Constitution which has been declared non-justiciable, are enforceable under the 2009 Rules. And also, by the provisions of **Order II Rule 1 Fundamental Rights (Enforcement Procedure) Rules, 2009** any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or likely to occur, for redress. This therefore confers this court with subject matter jurisdiction to entertain this suit which is based on fundamental right. The court cannot at this stage go into the substance of the case by determining whether the act alleged affected the Applicant’s fundamental right as that would amount to determining the substantive suit at the preliminary stage. The application of the Respondents to strike out this suit therefore lacks merit and same is hereby dismissed.

Back to the substantive suit, Pleadings have been filed and exchanged. The Applicant in her affidavits (affidavit in support, further affidavit and further and better affidavit) before this court averred that she got married under the Act to the late Air Commodore Idongesit Nkanga (Rtd) on 2/08/2007 at the marriage registry situate at Agege Local Government Area, Lagos State. That

the marriage produced two children. That prior to their marriage, late Air Commodore Idongesit O. Nkanga (Rtd), was married to the 1st Respondent, but the marriage was dissolved in the year 2004, pursuant to a Judgment of the High Court of the Federal Capital Territory in suit no: HC/CU/568/2002. That the 2nd to 5th Respondents are children from the marriage between the 1st Respondent and my late husband. That the custody of the 2nd to 5th Respondents was granted to my late husband. That she and her late husband jointly trained the 2<sup>nd</sup> to 5<sup>th</sup> Respondents in their matrimonial home situate at number 3A and B, Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja. That her husband Air Commodore Idongesit O. Nkanga (Rtd) died 24/12/2020. That on 5/2/2021, while she and her children were performing her husband's funeral rights in Akwa Ibom state, the 1<sup>st</sup> Respondent who has been divorced from her husband since 2004, in collusion with the 2<sup>nd</sup> to 5<sup>th</sup> Respondents, broke into her matrimonial home situate at number 3A and B, Mary Slessor close, off Udo Udoma and is presently living there. That all her personal belongings consisting of academic credentials, cherished family mementos, clothes, golds, etc. are in the property and she have not been able to gain access to them. That she has been subjected to the degrading and inhuman treatment of living with friends or moving from hotel to hotel while the Respondents persist in denying her access to the property that she have occupied as her matrimonial home since August 2, 2007, which she is entitled to live in and have access to the property pending when letters of administration or probate are issued over her late husband's estate. That she has interest in the property and the Respondents' refusal to allow her have access to same, is a breach of her fundamental human rights. That her personal belongings in the property are presently being dissipated by the Respondents and unless she is granted immediate and unconditional access to the property, the Respondents will totally dissipate her belongings. That during her occupation at her matrimonial home she took several pictures with her late Husband and even the 2<sup>nd</sup> to 5<sup>th</sup> Respondents, to mark

notable events or just to keep memories of their growing up in 2007 and 2009. That other pictures of herself individually and with her husband and their daughter was also taken in the property in 2010, 2012, 201, 2014 to 2020. That she celebrated her 40<sup>th</sup> birthday at the property in July, 2008. That while it is true that she worked in Lagos at some point in her life, she, however retained the property as her matrimonial home at all times, and lived there whenever she is in Abuja. That in December 18, 2007, her employer, the Lagos State Government transferred her to its liaison office in Abuja, from where she carried out her services until her husband's demise during which period she lived permanently at her matrimonial home. That her late husband bequeathed No. 3B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja to all his children (including her two daughters), as licensees, to use as family property, under the supervision of his trustees, until the 5<sup>th</sup> Respondent clocks the age of 30 and never bequeathed to the Respondents as their exclusive property and residence. Also that her late husband did not bequeath any right (whether possessory, license or howsoever described) over No. 3B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja or any of his other properties, to the 1<sup>st</sup> Respondent as the 1<sup>st</sup> Respondent is not a member of her late husband's family, having been divorced from him by virtue of the Judgment of the High Court of F.C.T in suit No: HC/CU/568/2002. That by virtue of her late husband's will dated the 1<sup>st</sup> day of August 2018 and read on the 7<sup>th</sup> day of July, 2021, she owns all that property known as No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja and is entitled to access and live in her matrimonial home in her capacity as the owner of the property and as a member of her late husband's family, having been his lawfully wedded wife until his demise on December 24, 2020. That they broke into her matrimonial home while she was burying her late husband at his home town, changed the locks, and took possession of same. That the old keys to the property are still with her. That the Respondents could not have gotten access to the property without the keys in her

possession and she never gave the keys to the Respondents. That the 1<sup>st</sup> Respondent is illegally and unjustly occupying her matrimonial home, and has vowed that she will never take possession of same as long as she is there. That she has a reversionary right of ownership over wing B of the property, and absolute right of ownership over wing A of the property and a right to access and live in her matrimonial home, particularly No 3B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja. That despite the service on the Respondents, of the clear and positive orders made by this Honourable Court on the 5<sup>th</sup> day of July, 2021, the Respondents have persisted in denying her access to her matrimonial home situate at No 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja.

In their further and better affidavit counsel for the Applicant Dave Ohemu averred that the Applicant's matrimonial home which the Respondents have continued to deny her access to and for which she has approached this Honourable Court to enforce her fundamental human rights, is situate at No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja. That there is no part of the purported letter of administration where the property situate at No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja, was mentioned. That letter of administration has not been issued over No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja. That she has a right to access her matrimonial home until a letter of administration is granted over the property. That the purported letter of administration allegedly issued on October 6, 2021, has no bearing on this fundamental human right proceedings before this Honourable Court. That the Respondents will not be prejudiced by the grant of the Applicant's originating motion.

In their written address, the Applicant's counsel identified a sole issue for determination to wit:-

*“Whether the Applicant has laid enough facts before this Honourable Court to warrant the grant of this application.*

Summarily, learned counsel submitted that the Applicant, being the deceased's widow, is entitled to have her right to access the property she has called home since 2007, enforced by this Honourable Court and that any attempt to deprive her of access to the property as the Respondents have done in the instant case, is an attempt to perpetuate the unwholesome widowhood practices, in clear contravention of the Constitution. Counsel submitted that there is no justification whatsoever for the Respondents' action herein. That it is cruel, devilish, inhuman and ought to be set aside by this Honourable Court. Counsel further submitted that the totality of the Respondents' action in this case has subjected the Applicant to degrading and inhuman treatment, contrary to section 34 (1)(a) of the Constitution. In conclusion counsel submitted that the Applicant's eviction and denial of access to and possession of her matrimonial home is unlawful and a breach of her fundamental human rights for which she is entitled to damages and urged the court to hold so and grant the Applicant's reliefs.

In the Applicant's reply on points of law Counsel submitted that the Respondents argument is clearly misconceived and ultimately flawed as the issues for which the Applicant sought the protection of this Honourable Court by way of an application for the enforcement of her fundamental human rights started before the last Will and testament of Air Commodore Idongesit Okon Nkanga (Rtd) was read. Hence it is mischievous for the Respondents to rely on any purported right arising from the Will, as the basis of their action. Counsel submitted that in a fundamental human rights application like the instant case, it is the Applicant's originating application and not the Respondents' counter affidavit that determines the issues before the Court. That whatever rights the Respondent claims subsequently accrued to them over the property from July 7, 2021 when the Will was read, cannot extinguish their

flagrant breach of the Applicant's fundamental human rights to access and live in her matrimonial home situate at No. 3A and B Mary Slessor close, off Udo Udoma. off Yakubu Gowon Road, Asokoro, Abuja, prior to when the Will was read. Counsel further submitted that the Respondents' averments at paragraph 5(vii) of their counter affidavit, to the effect that the Applicant has no scintilla of right over the wing B of the duplex occupied by the Respondents, exposes their underbelly and clearly shows that contrary to their bareface denial, they actually denied the Applicant access to her matrimonial home and continue to deny her access to her matrimonial home. Learned Counsel in both addresses cited the cases of **Faith Okafor v Lagos State Government Anor (20/6) LPELR. 410066 Page 28-29, Para F-C; Nzekwu v Nzekwu (1989) LPELR-2139 (SC), page 29, paras C-F; Ogedegge v Ogedegge (1964) LLR, 209; Aqua v Ekanem (2008) LPELR-8545 (CA), page 40-41, paras E-A; Adenuga v Odumeru (2001) LPELR 130 (SC). page 14. paras C-F and Abuhakar v Bebeji Oil and Allied Products Ltd (2007) LPELR-55 (SC)page 35-36: paras F-A.**

The Respondents filed a joint counter affidavit and a further joint counter affidavit both of 7 paragraphs deposed to by Etietop Nkanga the 3<sup>rd</sup> Respondent. He averred that the Respondents never barred the Applicant from accessing any of the wings of the said duplex at all material times before the Will was opened and read at the High Court of the Federal Capital Territory, Abuja on the 7<sup>th</sup> day of July, 2021. That the property known as No. 3, Mary Slessor Street, Asokoro, Abuja comprised of two (2) wings duplex which was demarcated as No. 3A and 3B Mary Slessor Street, Asokoro, Abuja respectively. That the Applicant never lived at No. 3, Mary Slessor Street, Asokoro, Abuja. That prior to the death of their late father, the Applicant resided in Lagos before she was transferred to Akwa Ibom State where she lived with their late father before his death. That it was after the burial rites of their late father that she moved to Abuja. That the 2<sup>nd</sup> to 5<sup>th</sup> Respondents as children of late Air Commodore Idongesit Okon Nkanga (rtd) are entitled to one (1)

wing duplex known as No. 3B, Mary Slessor Street, Asokoro, Abuja to jointly use in common as their exclusive property and residence until the last of the Respondents clocks the age of 30 (thirty) by virtue of their late father's Will. That the duplex in question belonged to their late father of blessed memory and never to the Applicant who has no right Over the one (1) wing of the said duplex known as No. 3B Mary Slessor Street, Asokoro, Abuja occupied by the Respondents. That the Respondents have no interest in the other wing of the said duplex known as No. 3A Mary Slessor Street, Asokoro, Abuja which rightfully belongs to the Applicant according to the Will. That the Applicant's grouse is that the 1<sup>st</sup> Respondent visits the 2<sup>nd</sup> to 5<sup>th</sup> Respondents who are all her children. That the Applicant only has reversionary right as to the one (1) wing of the said duplex currently occupied by the Respondents and the A wing of the same twin duplex was willed to her absolutely and with immediate effect. That the Respondents will be prejudiced if this Honourable Court grant this application as same is in bad faith and without foundation. That on the 7<sup>th</sup> day of July, 2021 the Will of late Air Commodore Idongesit Okon Nkanga (Rtd) was opened and read at the High Court of the Federal Capital Territory, Abuja and probate of the said Will was granted on 6<sup>th</sup> October, 2021 by the High Court of the Federal Capital Territory.

Learned counsel to the Respondents attached a written address titled "written address in support of the 1<sup>st</sup> to 5<sup>th</sup> Respondents joint counter affidavit in opposition to Applicant's application for interlocutory injunction dated and filed on 28/06/2021" to their joint counter affidavit. The written address does not address the originating motion on notice before the court and same shall therefore be discountenance.

I have carefully read through the processes filed by the respective parties, equally seen the exhibits annexed and have given deep and thoughtful consideration to all issues raised. The simple issue calling for determination is:

*“Whether the Applicant, in the circumstances of this case is entitled to the reliefs sought”.*

The infringement of a fundamental right is largely a question of fact and an applicant alleging that her fundamental right has been, is being or is likely to be contravened must present facts which eloquently disclose the alleged infringement. It is the facts as presented that will disclose if the Applicant’s fundamental rights have been contravened or otherwise dealt with in a manner inconsistent with constitutional guarantees as held in **OYEWOLE SUNDAY v. ADAMU SHEHU [1995] 8 NWLR (PT. 414) 484 and DONGTOE v CIVIL SERVICE COMMISSION, PLATEAU STATE [2001] 9 NWLR (PT. 717) 132.**

The Applicant’s grouse [as can be gleaned from the Statement and the supporting and further affidavits] is that the 1<sup>st</sup> Respondent who has been divorced from her late husband since 2004, in collusion with the 2<sup>nd</sup> to 5<sup>th</sup> Respondents broke into the Applicant’s matrimonial home at No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja changed the locks, took possession of same and has denied the Applicant access to the property despite all entreaties to that effect. That the Applicant has been subjected to degrading and inhuman treatment of living with friends or moving from hotel to hotel while the Respondents persist in denying her access to her matrimonial home she has occupied since August 2, 2007. The Respondents essentially denying the averments and insisting that the Applicant was never barred from accessing any of the wings of the said duplex at all material times before the Will was opened and read at the High Court of the Federal Capital Territory, Abuja on the 7<sup>th</sup> of July, 2021. The Applicant maintains on the other hand that the breach of her rights was in December, 2020 prior to the reading of the last Will and Testament of her late husband.

An understanding of paragraph 5(iv) of the Joint Counter Affidavit of the 1<sup>st</sup> to 5<sup>th</sup> Respondent is an admission of denial of access to



the property by the Respondents but on the defence that it was done after the reading of the Will. The said paragraph reads thus;

*“The Respondents never barred the Applicant from accessing any of the wings of the said duplex at all material times before the Will was opened and read at the High Court of the Federal Capital Territory, Abuja on the 7<sup>th</sup> day of July, 2021”.*

This is an admission by the Respondents it goes without saying that the evidential burden lies on the Respondents to show when the Applicant was denied access and the legal basis for such action. In this connection the Respondent has produced the Last Will and Testament of Air Cdre Idongesit Okon Nkanga (RTD) to buttress their assertion that it was in compliance with the Will. The said Will is not subject of interpretation before this court. However, the document constitutes an integral part of the defence of the Respondents and the court has a duty to carefully consider it. Per Galumje JSC, in **Eromosele v. FRN (2018) LPELR-43851 (SC)** held thus;

*“The lower Court was entitled to look into any document in its record and make use of it in order to arrive at a just decision. When a document is in the record of the Court, it cannot be a new issue on which a judge is precluded from looking at. This Court has in a number of decided cases held that a Court of law is entitled to look into its record and make use of any document it considers relevant in determining issues before it”.*

Therefore, this document on which the Respondents relied so heavily on should be given the due consideration. On a cursory look at the Will there is no paragraph which authorizes the act of the Respondents either prior or after the reading of the Will. The

defence of the Respondents are based on paragraph F titled **"SPECIFIC DEVICES AND BEQUEST OF LANDED PROPERTY"** sub 2(a) of the Last Will and Testament of Air Cdre Idongesit Okon Nkanga (RTD) which states as follows;

*"I give one (1) wing of the said duplex (where I am currently residing) together with other appurtenances thereto and including all such furniture, fittings, appliances and other items of property (motorized vehicle and dressing apparels excepted) as I may own therein at time of my death, to my children jointly to use in common as family property under the care of my trustees as Family Residence and when my last son clocks the age of 30 (thirty), the property should revert to my beloved wife, MRS MOSUN NKANGA".*

From the above, there is no disputation that the Will does not in any way authorize the Respondents to denied the Applicant access into No. 3B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja as a matter of fact. The wordings of the Will are plain and simple and must be given its ordinary meaning. The words "Family Residence" is bolden in the said Will and it is not in dispute that the Applicant is a family member without going into interpreting the said paragraph further. I take the considered view that the Respondents having admitted that the Applicant was restricted into the property without just cause, I cannot but find and hold that it is in violation of the Applicants fundamental human right to own and have interest in a property as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

The Applicant claims exemplary and aggravated damages for her unlawful eviction from her matrimonial home. I have already held that the eviction of the Applicant by the Respondents is unlawful and unconstitutional and constitutes a violation of her fundamental right to own interest in a property. The Applicant ought therefore to be adjudged entitled to relief, for where there is a wrong, there is a remedy: ubi jus ibi remedium. **See ODOGU v A-G, FEDERATION [1996] 6 NWLR (PT. 456) 508.** In **JIM-JAJA v COMMISSIONER OF POLICE, RIVERS STATE [2013] 6 NWLR (PT. 1350) 225 at 254 (SC)**, the Supreme Court held that a person who establishes unlawful arrest and detention is automatically entitled to compensation by operation of law without any necessity to specifically seek compensation before it can be awarded by the court.

Accordingly, it is hereby declared thus;

1. The unlawful eviction of the Applicant by the Respondent and continuous refusal to allow the Applicant access to possession of her matrimonial home situate at No. 3A and B Mary Slessor close, off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja is a violation of her fundamental human rights to own and have interest in a property as enshrined in section 34(1) (a), 43 and 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. The Respondents, jointly and severally, whether acting by themselves or through their agents and privies are restrained from restraining or interfering with the Applicant's right to live in or enjoy her matrimonial home situate at No. 3A and B Mary Slessor close,

off Udo Udoma, off Yakubu Gowon Road, Asokoro, Abuja pending the issuance of letters of administration or grant of probate over the estate of late Air Commodore Idongesit O. Nkanga.

3. The Respondents, jointly and severally, shall forthwith pay to the Applicant the sum of N1, 000,000.00 (One Million Naira) only as compensation for the violation of her fundamental right to personal liberty.

4. I assess the costs of this application at N100, 000.00 (One Hundred Thousand Naira) only in favour of the Applicant against the Respondents jointly and severally.

**APPEARANCE:**

Marvin Omoregbe, Esq. with Ojonia Omale, Esq. for the Applicant

The Respondents counsel not in court.

Signed  
Hon. Judge  
17/03/2022