

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/3138/2021

DATE: :MONDAY 28TH FEBRUARY, 2022

BETWEEN

D.B MANGAL NIGERIA LIMITED APPLICANT

AND

- 1. THE ATTORNEY GENERAL RESPONDENTS
OF THE FEDERATION**
- 2. THE STATE SECURITY SERVICE**
- 3. INSPECTOR GENERAL OF
POLICE**
- 4. NATIONAL BOARD FOR
TECHNICAL EDUCATION**

JUDGMENT

The Applicant vide Originating Motion dated the 19th day of November, 2021 approached this Honourable court for the following:-

- a. A declaration that the unlawful harassment, intimidation, of the Applicant's staff and business associates by the agents of the Respondents is illegal, unconstitutional, null and void and a fragrant violation of the Applicant's Fundamental Right pursuant to sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- b. A Declaration that the invasion of the Applicant's business premises situate at Plot 1405, Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House), wherein the staff and

business associates of the Applicant were unlawfully ejected by the agents of the 2nd, 3rd and 4th Respondent is illegal, unconstitutional, Null and Void and a flagrant violation of the Applicant's Fundamental Right pursuant to section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- c. A Declaration that the harassment and intimidation of the Applicant's staff and her business associates in Plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House) pursuant to illegal letters of eviction dated 27th day of August, 2021, 2nd September, 2021 and 17th September, 2021 issued to the Applicant by the Respondents is illegal, unconstitutional, and a flagrant violation of the Applicant's Fundamental Right as guaranteed under section

43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- d. A Declaration that the Respondents are not statutorily empowered to harass, intimidate, molest and unlawfully seize the Applicant's property situate at Plot 1405, Maitama Cadastral Zone A05, Abuja – FCT (Murjanatu House) without recourse to due process.
- e. A Declaration that by virtue of Section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicant is statutorily empowered to own property and the Respondents' unlawful seizure of the Applicant's property on the 11th of November, 2021 is illegal, unconstitutional, null and void

and a flagrant violation fo the Applicant's Fundamental Right.

- f. A Declaration that the continued harassment and intimidation of the Applicant's staff, business associates and the forceful invasion and sealing of the Applicant's property located at Plot 1405 Maitama, Cadastral Zone A05, Abuja, particularly on the 11th day of November, 2021 by the agents and thugs of the 4th Respondent is unlawful, illegal, unconstitutional and in breach of the Applicant's Fundamental Rights to acquire and own property guaranteed under the 1999 Constitution (as amended).
- g. An Order of Perpetual Injunction Restraining the Respondents, jointly and severally either by themselves, and/or their agents, privies, servants,

however so called from any further harassment, intimidation, invasion, eviction of the Applicant and/or its business associates from the premises known and described as plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House).

- h. An Order of this Honourable Court mandating the Respondents for the immediate reopening of the Applicant's premises situate at Plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House).
- i. An Order of this Honourable Court compelling the Respondents jointly and/or severally to pay to the Applicant, the sum of N1,000,000,000.00 (One Billion Naira) only, as general/exemplary damages and compensation for the violation of

its Fundamental Rights guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- j. And for such further Order as this Honourable Court may deem fit to make in the circumstance.

The reliefs sought are predicated upon the following grounds:-

- a. The Applicant is entitled to the protection and enjoyment of its Fundamental Right to acquire and own property, privacy, personal liberty, freedom of movement and dignity of human persons guaranteed under the 1999 Constitution as amended.
- b. The Applicant's Fundamental Right has been breached by the Respondents when they unlawfully invaded the Applicant's premises on

the 11th November, 2021. Therefore if this Court does not direct the Respondents to act within the confines of the law the Applicant Fundamental Right will continue to be breached and violated by the Respondents.

- c. The Applicant has been subjected to various forms of humiliation, harassment and intimidation by the Respondents' agents who are in flagrant breach of the Constitutional Rights of the Applicant.
- d. Therefore, the interference of the Applicant's liberty by the Respondents in the manner aforesaid constitutes an infringement of the Applicant's Fundamental Right inter alia to human dignity and own property which is

guaranteed by the Constitution under Sections 34 and 35.

- e. The 4th Respondent's recourse to self-help when its agents and thugs numbering about 20 invaded the Applicant's business premises at Plot 1405 Cadastral Zone A05, Maitama, Abuja also known as (Murjanatu House) without an Order of a competent Court of jurisdiction, constitutes a flagrant violation of the Applicant's Fundamental Rights as provided by Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

In support of the application is an affidavit of 28 paragraphs deposed to by one AlhajiSanni Ibrahim.

It is his deposition that he is a Director of the Applicant and by virtue of his position he is

conversant with the facts and circumstance of this suit.

That the Applicant is the rightful owner of all that parcel of land lying and situate at Plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT.

That sometime in 2006, the 4th Respondent ostensibly instituted an action before this noble court in Suit No. FCT/HC/CV/238/2006, between:

NATIONAL BOARD FOR TECHNICAL EDUCATION & ANOR. VS AFDIN

CONSTRUCTION CO. LTD. & 3ORS., wherein it claimed ownership of Plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT.

That at the conclusion of trial, and in a well – considered judgment delivered on the 2nd day of February, 2012, this Honourable Court, **Coram:**

Hon. Justice Ugochukwu A. Ogakwu, dismissed **suit No. FCT/HC/CV/238/2006** and refused the entirety of the Plaintiff's Claims therein. For the avoidance of doubt, his lordship, U.A Ogakwu J. concluded at Page 25 of the Judgment thus:

“The Plaintiff has failed to establish its case by credible, cogent and compelling evidence. It is not entitled to any of the reliefs claimed. The Plaintiff’s action consequently fails and it is hereby dismissed.”

That the 4th Respondent by letters dated **27th day of August, 2021** and **2nd September, 2021**, sought to forcefully evict the Applicant from Plot 1405 Maitama, Cadastral Zone A05, Abuja which

embodies the 1st Claimant's land (Plot 1405, Maitama, Cadastral Zone A05, Abuja). The copies of the said letters are hereby attached and marked as Exhibits "MAM 2" and "MAM3" respectively.

That despite the valid and subsisting Judgment of this Honourable Court in Suit No. **FCT/HC/CV/238/2006**, Between: **PETROLEUM FINANCIAL CORPORATE LTD. (Suing as Attorney for National Board for Technical Education) VS AFDIN CONSTRUCTION CO. LTD & 3 ORS.**, the Applicant received another letter dated 17th September, 2021 titled: "*Notice to Quit and Deliver Possession of Plot 445 Maitama, Cadastral Zone A05, Abuja – FCT*" directed the Applicant to immediately quit and deliver possession of same to 4th Respondent, **without an Order of any appellate Court setting aside the**

subsisting Judgment in Suit No.

FCT/HC/CV/238/2006 and in a manner clearly

suggestive of self – help. The said letter of 17th September, 2021, which is hereby attached and marked Exhibit “MAM 4”.

That at about 4pm on the 11th day of November, 2021, no fewer than six staff of the 4th Respondent, in company of fierce looking thugs numbering about 20, menacingly and forcibly entered Plot 1405 Maitama, Cadastral Zone A05, Abuja also known as (Murjanatu House), removed “Murjanatu House” on the wall of the Applicant’s building, chased away all occupants including bank staff who has been tenants of the Applicant for over 5 years.

That the Applicant caused its solicitors to write a complaint against the 4th Respondent to the Inspector

General of Police via a letter dated 12th November, 2021 wherein the Applicant notified the Inspector General of Police about the 4th Respondent's resort to self – help and unlawful invasion of its business premises. The said letter is hereby attached and marked as “Exhibit MAM 6.”

That the 4th Respondent had made a complaint against the Applicant to the Senate of the Federal Republic of Nigeria and after the conclusion of the public hearing, the Senate Committee directed the 4th Respondent to desist from interfering with the Applicant's rights to peaceable enjoyment of the property situate at Plot 1405 Cadastral Zone A05, Maitama, Abuja. A copy of the said complaint is hereby attached and marked as Exhibit “MAM 8”.

That since the illegal sealing of the Applicant's property by the 4th Respondent in connivance with the agents of the 2nd and 3rd Respondents, the Applicant has not been able to gain access into its property at Plot 1405 Cadastral Zone A05, Maitama, Abuja and has thereby been denied its Fundamental Rights to acquire and own property.

That the serial intimidation and harassment of the Applicant as well as the sealing of its property at Plot 1405 Cadastral Zone A05, Maitama, Abuja by the 4th Respondent have caused the Applicant monumental loss of goodwill, profits and earnings.

In line with law and procedure, a written address was filed wherein the following were formulated as issues for determination.

- a. Whether this Honourable Court should enforce and/or secure the enforcement of the Applicant's Fundamental Rights as Enshrined in Chapter IV of the 1999 Constitution (As amended) by granting the reliefs sought within application.

Learned counsel avers that Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended guarantees the Fundamental Rights of every Citizen of Nigeria and empowers any person who alleges that any of his Fundamental Rights has been, is being or is likely to be violated to approach a court of law for redress.

Section 46(1) and (2) of the 1999 Constitution as amended were cited. ***EZEADUKWA VS MADUKA (1997) 8 NWLR (Pt. 518) 635 at 660 – 661 paragraph A***, was also cited.

Counsel further urged that the law is settled that, at the point an applicant is able to show that his/its Fundamental Rights have been violated or threatened, the onus automatically shifts to the Respondent to justify the legality of such infraction.

EJEFOR VS OKOKE (2000) 8 NWLR (Pt. 665) 363.

AGBAKOBA VS SSS (1994) 6 NWLR (Pt. 351) 425 were cited.

It is the submission of counsel that the Applicant's rights to acquire and own property, privacy, personal liberty, freedom of movement and dignity of human person have been breached and are also in imminent and threatened danger of being further breached, if the reliefs sought in this application are not granted.

***KADA VS THE STATE (1991) 8 NWLR (Pt. 208)
134 at 155.***

***CHUKWUEMEKA EZEUGO VS THE STATE
(2013) LPELR – 19982 at 116 were cited.***

Learned counsel submits further that the right to property as used in the constitution of the Federal Republic of Nigeria (1999) as amended means right to ownership, and ownership involves a bundle of right to use, sell, pledge and bequeath. Thus, the Fundamental Right of the Applicant to own movable and immovable property in Nigeria is preserved by sections 43 and 44 of the 1999 Constitution as amended.

ASIKA VS ATUANYA (NO. 8) 17 NWLR (Pt. 1117) 484 at 513 paragraph H.

***GOVERNOR OF BORNO VS BUKAR
GADANGARI (2016) 1 NWLR (Pt. 1493) page 396
at 417 paragraphs F-G were cited.***

Learned counsel submits that in face of Fundamental Right abuses perpetrated by the Respondents, particularly the 4th Respondent, the Applicant whose Fundamental Right have been breached is entitled to a fair and adequate compensation *ex debito justitiae*.

OGOR VS KOLAWALE (1985) 6 NCLR 534;

ENWERE VS COP (1993) 6 NWLR (Pt. 299) 333;

***EBUN ADEGBORUWA VS ATTORNEY
GENERAL OF THE FEDERATION (1998) 1
FHCCLR 171, were cited.***

Counsel further submits that “Vindictory damages is akin to punitive or exemplary damages” Thus, where a party’s action is manifestly arbitrary,

oppressive and or unconstitutional, as in the instant case, it is required of the courts to award exemplary damages against it. *LUMBA VS SECRETARY OF STATE for home department (2012) ac 245 paragraph 233;*

Counsel urged the court on the whole to grant the reliefs sought by the Applicant for the reason state above.

Upon service of the originating motion on the Respondents, 1st, 2nd and 4th Respondents filed counter affidavit and written address in opposition to the application of the Applicant for the enforcement of its right.

4th Respondent similarly filed motion **M/8506/2021** challenging the jurisdiction of this court.

The issue of jurisdiction is key in the administration of justice. Jurisdiction as it applies to court can mean one of the following two things:-

1. The abstract right of a court to exercise its power in cases of certain class, or
2. The right of a court of tribunal to exercise its powers with respect to a particular subject matter.

In one sense, the broader sense, jurisdiction refers to the legal authority, the legal capacity, to adjudicate at all, while on the narrower sense it refers to the power of court over the particular subject matter in dispute, over the Res or property in contest.

See ***ONYEMA VS OPUTA (1987) 3 NWLR (Pt. 60) 259 at 293.***

A challenge to jurisdiction could be as a result of incompetent parties or subject matter. Issues of jurisdiction could be procedural or substantive.

A court shall not be jurisdictionally competent to hear and determine a matter once either of the parties has no legal capacity or the subject matter is such that the court cannot determine.

See NEPA VS ADEGBENRO (2002) 12 SC (Pt. 2) page 119.

Above falls within the realm of substantive jurisdiction.

The importance of jurisdiction cannot be overemphasized.. Absence of jurisdiction accentuates the want of legal capacity and competence in the court to hear and determine the subject matter before it. The power vested in court

under section 6(6)(b) of the 1999 Constitution as amended cannot be exercised competently once the court does not have jurisdiction.

Any such exercise of judicial power without jurisdiction amounts to exercise in futility hence a nullity and the proceedings and judgment relating thereto null and void.

See ***DANGOTE VS CIVIL SERVICE COMMISSION, PLATEAU STATE (2001) LPELR – 959 (SC).***

In the said application, learned SAN prays for the following Orders:-

- a. An Order vacating the Interim Order in the matter above with number M/8161/2021 granted on the 25th November, 2021 as same was

obtained based on suppression and misinterpretation of facts,

- b. An Order of this court mandating the Respondent/Applicant to maintain status quo which had existed before the 26th November, 2021 pending the determination of the original motion.
- c. An Order of this court mandating the 3rd Respondent to release the security men of the Respondent/Applicant whom they have arrested and detained since the 26th November, 2021.
- d. An Order of this court abridging the time within which the originating motion would be heard.
- e. An Order of this court granting accelerated hearing of this suit.

Alternatively;

- f. An Order striking out and or dismissing this suit for want of jurisdiction and or having been brought mala fide and for constituting a grouse abuse of judicial process.

The grounds in support of the application are that;

- i. The ex – parte order secured by the Respondent/ Applicant unsealing the premises was based on misinterpretation and suppression of facts.
- ii. That the whole procedure is an abuse of process.
- iii. That there is a pending suit before this court with suit No. CV/3201/2021 by the Applicant/ Respondent.
- iv. That there is equally a motion seeking for an Order of Interlocutory Injunction pending before

the High Court of FCT with number M/8381/2021.

- v. That the land against which the order was secured is plot No. 1045 Cadastral Zone A05 Maitama, Abuja while the land in dispute which is presently under the exclusive possession of the Applicant/Respondent is No. 445, Cadastral Zone A05 Maitama, Abuja.
- vi. That setting aside the Interim Order with the No. M/8161/2021 dated the 25th November, 2021 will serve the interest of justice.
- vii. That there is no originating process served along with the Order on the Applicant/Respondent.
- viii. That the Order dated the 25th November, 2021 will prejudice on the Applicant's right before hearing.

It is the averment of one YahayaDakwu, a litigation secretary in the chamber of 4th Respondent counsel that the 4th Respondent, National Board for Technical Education (NBTE) is the owner of the entire land covered by Certificate of Occupancy No. FCT/ABU/FG 397 signed by then FCT Minister Major General MammanKoutagora, dated the 4th April, 1999 and re – certified in 2004 by Nasiru El-Rifai on the 24th November, 2004 with No. 1932 w-b 7ef2-6273r-9c90u-20 with file No. MISC 50207 covering the area described as plot No. 445, Maitama Cadastral Zone A05, FCT Abuja, and that it has enjoyed exclusive possession of the described land since 1999, but for the enactment by Respondent/Applicant.

It is further the averment of Applicant/Respondent that it conducted a competitive bidding exercise to

develop and manage its property which address is described above and that one Petroleum Financial Corporate Limited won the bidding as a result of which it was issued with power of attorney for a period of 23 years.

It is also the averment of 4th Applicant/Respondent that Petroleum Financial Corporate Limited processed architectural design and approval for the construction of 10 storey building and had commenced building until 2006 when Respondent/Applicant encroached and trespassed on the land on the allegation that the 4th Respondent's title to the land was revoked.

It is further the averment of the Applicant/Respondent that Petroleum Financial Corporate Limited (its attorney) obtained an interlocutory

injunction against D.B Mangal Nigeria Limited i.e the Applicant in the present suit.

It is also the averment of the 4th Respondent that in its detention, it also wrote petitions and complaints against the said D.B Mangal Nigeria Limited i.e Respondent/Applicant, and that the special presidential investigation panel for the recovery of public property looked into the matter, investigated same and found out that the Respondent/Applicant fraudulently collected the said plot which was allocated to the Applicant/Respondent, as a result of which the said panel evicted the Respondent/Applicant and handed over same to Applicant/Respondent, vide letter dated 19th June, 2019 title **“handover plot 445 Maitama Cadastral Zone A05, FCT – Abuja, Nigeria belonging to National Board of Technical Education (NBTE) recovered by the**

special presidential investigation panel for recovery of public property from Mssrs D.B Mangal Nigeria Limited and Afdin Construction Company Limited respectively”.

4th Respondent also averred that Respondent/Applicant obtained the Interim Order against the Applicant/Respondent in respect of a property with plot No. 1045 Cadastral Zone A05 and illegally introduced and mounted the officers of the 3rd Respondent i.e inspector General of Police on plot 445 covered by Certificate of Occupancy No. FCT/ABU/FG 397, that the decision of the special presidential investigation panel was never challenged by D.B Mangal Nigeria Limited i.e the Respondent/Applicant in this suit.

Applicant/Respondent exhibited the said Certificate of Occupancy, Power of Attorney between it and Petroleum Financial Corporate Limited, special presidential investigation panel letter, petition to Attorney General of the Federation against the 4th Respondent amongst other documents.

In its, a page written address in support of the objection under consideration, a lone issue, to wit;

“Whether or not this Honourable Court has the jurisdiction to set aside the exparte order dated the 25th day of November, 2021 with the No. M/8161/2021.”

Learned senior counsel, Abdul, SAN relied on Order 60 Rule 8(1) of the Rules of this Court 2018 in urging the court to set aside the Interim Order earlier made. The case of ***ORIGIN OIL AND GAS LTD.***

&ANOR VS NEPAL & OIL AND GAS SERVICES LTD. & ORS. (2018) LPELR 45318 (CA) in urging the court to set aside order obtained by misinterpretation of facts.

Learned counsel equally made heavy weather on the issue of non – service of motion on notice along with the Interim Order and the substantive originating process, as a matter of practice and law.

I shall deal with the issue before I proceed from this point.. This is a Fundamental Human Right (FHR) action and the originating motion contains the claim of Applicant. It is akin to statement of claim in a writ of summon or reliefs contained in an originating summons, as the case may be.

An Interim Order which is usually short – lived, is not expect to be accompanied with motion no notice

in this case. This is an exception to the General Rule. Fundamental Human Right action is sui generic.

I overrule Abdul Ibrahim, SAN, on this score.

It is further the argument of SAN that Respondent/Applicant has no legal right worthy of any protection as stated in *KOTOYE VS CBN (1989) 1 NWLR (Pt. 419)*;

OBEYA MEMORIAL SPECIALIST HOSPITAL VS A.G FEDERATION (1987) 3 NWLR (Pt. 60) 325, to have been granted the initial ex-parte order.

On the effect of a court making an Order without jurisdiction, the cases of *MADUKALU VS NKEMDILIM (1962) 1 ALL NLR (Pt. 4) 587*;

SKENCONSULT NIGERIA LTD VS UKEY (1981)

1 SC 6 were cited in urging the court to set aside the initial order ex- parte so made.

Abdul Ibrahim, SAN, on the course of arguing the said application, contended on the issue of jurisdiction that D.B Mangal Nigeria Limited not being a natural person, through juristic personnel, cannot maintain the instant application for enforcement of Fundamental Human Right under the FHR Enforcement Rules.

Learned counsel contended that only natural person could be averted. Learned counsel relied under paragraphs 5(2) and (3) of Order 2 of FHR Rules.

It is the averment of learned counsel, Abdul SAN that only nature human beings and not companies which are through juristic, can maintain

Fundamental Human Rights Action under the FHR Enforcement Rules.

It is the averment of learned counsel that this court cannot be competent to hear the said cause of the Respondent/Applicant because the Applicant is not competent in the eyes of the law to have brought the instant application of its right.

Learned counsel on the whole urge the court grant its application, set aside the order so made and strike – out/dismiss this suit of the Applicant.

Issue on the cause of this ruling.

On their part, D.B Mangal Nigeria Limited i.e the Respondent/Applicant, filed an 11 paragraph counter affidavit with documents exhibited and marked Exhibits “A” – “K” respectively. Written legal

argument as address was equally filed in support of the counter affidavit.

OpeyemiAjekigbe who introduced himself as the manager of the Respondent/Applicant, deposed to the counter affidavit in opposition to the application of 4th Applicant/Respondent.

Respondent/Applicant denied the most of the averments contained in the Applicant/Respondent application challenging the jurisdiction of this court to determine the instant fundamental right action of the Respondent/Applicant.

It is the averment of Respondent/Applicant that it is the rightful owner of all that parcel of land lying and situate at plot 1405 which is within plot 445 Maitama, Cadastral Zone A05, Abuja which is better described and delineated in the survey plan with file

No. 81863 covered by Certificate of Occupancy No.1951w-143fc-64cbr-10220-20 dated 31st October, 2006 and registered in the Certificate of Occupancy register in the land Registry Office, Abuja on the 31st October, 2006 together with all the improvement and appurtenance therein; and that it paid all fees and obtained all approvals from appropriate authorities for the development of plot 1405 within Plot 445 Maitama, Cadastral Zone A05, Abuja.

It is further the averment of respondent/Applicant that prior to its grant of Right of Occupancy, that the right of occupancy over the said plot 445 which embodies plot 1405 Maitama, Cadastral Zone A05, Abuja, was validly revoked vide letter dated the 18th October, 2005 titled, **“notice of revocation of undeveloped plots within Federal Capital City”**;

and that 4th Respondent instituted an action in court in suit No. FCT/HC/CV/238/2006; which it later applied to have its name struck –out allowing only Financial Corporate Limited, its attorney, as Plaintiff in the said action.

FCT High Court, per Ogakwu J., now JCA, handed down judgment in favour of the Respondent/Applicant, D.B Mangal Nigeria limited in 2012, dismissing the claim and suit of the Plaintiff;

It is also the averment of the Respondent/Applicant that despite the said judgment of this court, Applicant/Respondent relying on a letter it was given by the disbanded special presidential investigation panel for recovery of public property, unlawfully sealed the Respondent/Applicant's property which was at the exclusive possession of

the Respondent/Applicant and never in possession of the Applicant/Respondent having had its right revoked since the 18th October, 2005, and that it will serve the interest of justice to refuse the present application.

I have considered the affidavit, exhibits and written address in support of the extant application, on the one hand, and the counter affidavit, exhibits and written address on the other hand.

Reliefs '1', '2', '3', '4, and '5' which have been mentioned and re-produced in the preceeding part of this ruling have clearly been over-taken by events. The only reliefs left is the alternative relief which is for an Order striking out or dismissing the suit for want of jurisdiction and or having been

brought mala fide; and for constituting a gross abuse of judicial process.

I say this because, the action is a FHR Action which usually is meant to be dealt with expeditiously.

I am very certain, were it not for the delay in filing response to the originating motion by the 1st and 2nd Respondents, this cause would have been determined by now.

I have observed the fact that Applicant and 4th Respondent have argued extensively on very important issues meant to be considered in the main application at this stage of objection. It is allowed. I am however not allowed in law to deal with the substantive application at this preliminary state.

I shall refrain from that, as much as possible. I am to determine whether I have jurisdiction arising from the issue before me or not, at this stage.

Now, arising from all that parties i.e Applicant and the 4th Respondent have stated, this Court has decided to formulate the following questions for determination, to-wit;

**Whether a juristic person can maintain a
Fundamental Human Right Action!**

I shall however pause at this juncture to ask learned senior counsel, Abdul Ibrahim, SAN, for the 4th Applicant/Respondent the following two questions, to-wit:-

1. Is the interlocutory injunction mentioned by 4th Applicant/Respondent in paragraph 3(L) of the affidavit in support of this application, which

was earlier granted by Bage, J. (as he then was) who rose to the bench of Supreme Court (now retired), still subsisting!

If the answer to above poser is yes;

2. What then is the status of the said suit since we all are aware that an interlocutory injunction could not have been granted without a subsisting action before a Court of law!

I make bold to ask the said questions because learned SAN for the 4th Applicant/Respondent did not say anything with respect to the said suit.

I shall come back to the issue in the cause of this ruling.

I now shall proceed to juxtapose the respective affidavit evidence vis-à-vis the documents

exhibited by both parties in the affidavit in support and in opposition to the application to determine whether or not, the initial INTERIM ORDER made ought to be set aside for want of jurisdiction in view of the argument of learned counsel for the 4th Applicant/Respondent.

It is important to mention here that both parties, i.e Applicant and 4th Respondent have exhibited Certificates of Occupancy duly issued them by the authority concerned under the hand of the FCT Minister.

Whereas, it is the argument of 4th Applicant/ Respondent that it has been enjoying quite possession over the said Plot 445 covered by Certificate of Occupancy No. **1951w-143fc-64cbr-10220-20**, Respondent/Applicant contended that the

right of the 4th Applicant/Respondent over plot 445 was revoked vide letter dated 18th October, 2005 and it has been allocated the said plot after the said revocation.

It is also on record that 4th Applicant/Respondent instituted an action in the FCT High Court with Suit No. FCT/HC/CV/238/2006 about ten (10) years ago.

It is also in evidence that the 4th Applicant/Respondent later applied to have its name struck-out as Co-Plaintiff vide a Motion on Notice which was granted and 4th Applicant/Respondent's name was eventually removed from the said Suit leaving only her Attorney i.e **PETROLEUM FINANCIAL CORPORATE LIMITED** as the sole Plaintiff.

It is instructive to observe and also state here that the said Petroleum Financial Corporate Limited sued as Attorney to National Board for Technical Education (NBTE), in the said Suit aforementioned.

The said suit was what gave rise to the injunctive Order which 4th Applicant/Respondent, failed to disclose in its affidavit in support of the instant application.

I need also further state that the said action filed by the 4th Applicant/Respondent, was considered against the said Petroleum Financial Corporate Limited (suing as Attorney for National Board for Technical Education) the 4th Respondent in the present suit, and eventually dismissed.

The law is already settled, per adventure that it is the claim of a Plaintiff that shall be considered to

determine jurisdiction and not the statement of defence.

See the case of ***OGUNBADEJO VS. ADEBOWALE (2008) ALL FWLR (Pt. 405) 1707 at 1717 Paras C – D (CA).***

I have seen copies of Certificate of Occupancy and other relevant approvals for building from the FCT Minister and other relevant Departments under the Control of the FCT Minister which were all granted in favour of the Respondent/Applicant, D.B Mangal Nigeria Limited over Plot 1405, Cadastral Zone A05, Maitama, Abuja.

The FCT Minister, by law is the only authority with Power to allocate land on behalf of the President of the Federal Republic of Nigeria to any interested person/persons in the FCT.

See Section 18 of the FCT Act and 297(2) of the 1999 Constitution of Federal Republic of Nigeria (as amended).

See *MADU VS. MADU (2008) 2 – 3 S.C (Pt. 11) 109.*

The fact that Respondent/Applicant exhibited Certificate of Occupancy, which in law is presumed regular, hence clothed with the desired legal right which is worthy for protection, was very right in law to have filed the instant action which gave him the impetus legal speaking to apply and obtain the said Interim Order for Injunction pending the consideration of its Suit.

The latin maxim on presumption of regularity is *Omnia praesumuntur rite essaacta.*

See *NDUKWE VS. L.P.D.C (2007)5 NWLR (1026)1 at 56 Paras C – D (SC)*.

The argument of Abdul, SAN on the issue of legal right of Respondent/Applicant, is misplaced, refused and dismissed.

The argument of learned counsel for the 4th Applicant/Respondent on this score is refused and dismissed.

I shall now gravitate to the issue formulated which on whether a juristic personality can maintain a Fundamental RightAction.

I shall pause here briefly, and speak on Fundamental Rights.

Fundamental Right have been said to be primordial; some say it is natural or God given rights. Text book

writers like our own Prof. Ben Nwabueze (SAN) have opined that there rights are already possessed and enjoyed by individuals and that the Bills of Rights as we all know them today created no Rights de-novo but declared and preserved already existing rights, which they extended against the legislative.

It is instructive to note that magna carta 1215 otherwise called “Great charter” came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke’s concept of “due process of law” was also a product of similar conflicts and dissensions between the king and parliament.. nor was the Bill of Rights 1689 handed down on a “platter of Gold”.. that bill drawn by a young barrister John Somers in the form of declaration of

right, and assented to by king Williams, secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written constitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated..

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American people took the glorious path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights

which is said to be fashioned after the English Bill of Rights.

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

“We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness.”

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and fairness is not peculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the “tyrranny” of the majority ethnic groups in the regions.

The commission that investigate their fears went out of its way to recommend the entrenchment of Fundamenatl Human Right in the Constitution as a

palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

It can safely be gleaned from the history afore-stated, that Fundamental Rights Action meant to be maintained by Natural human beings and not artificial persons.

The argument of Abdul of Counsel, SAN, that an artificial person i.e company cannot be arrested and or imprisoned and therefore cannot bring an action for enforcement of its right and claim damages is true to the extent that it remains the situation.

It is most instructive to state at this juncture that, a juristic personality is a legal fiction with the capacity to sue and be sued in its name. See ***SALOMON VS. SALOMON & CO. LTD. (1897) AC 22.***

A company can own property under Section 43 of the Constitution of Federal Republic of Nigeria, 1999 as amended and no such property shall be compulsorily taken over arbitrarily from such an owner other than as provided for under Section 44 of the 1999 Constitution, of Federal Republic of Nigeria, as amended.

See ***ONYUIKE VS. THE PEOPLE OF LAGOS STATE (2013) LPELR – 24809 (CA)***.

Above position underscore the fact that a non-natural person i.e company can own property hence shall be able to maintain an action for the enforcement of its Fundamental Right under the Fundamental Rights Enforcement Rules 2009 and the Constitution of the Federal Republic of Nigeria as amended.

See ***ONYEKALAYE VS. BENUE STATE GOVT.***
(2005)8 NWLR (Pt. 928) 458 – 673;

DAWAN VS. EFCC (2020) 5 NWLR (Pt. 1717).

Peter Odili, JSC, at Page 170 Para Cin *FBN PLC.*
VS. A.G FEDERATION (2018) 7 NWLR (Pt. 1617)
121 stated that an artificial person is known to law
and can sue and be sued.

The learned jurist however maintained that such
juristic personality cannot sue for unlawful detention
and or arrest.

It is the claims of a Claimant that the Court shall
consider in determining its jurisdiction and not
statement of defence.

See ***UZANGILA VS. JAGABA (2018) LPELR***
43981 (CA).

I have considered the claim of Respondent/Applicant as contained in the said Originating Motion for enforcement of its Fundamental Right. Respondent/Applicant is not complaining of any arrest and or detention, but for invasion of its property aforementioned and harassment of its staff, business associates, and padlocking the gate of the said premises without any lawful Order and or justification.

For emphasis, the Constitution of the Federal Republic of Nigeria empowers the Applicant to own property and by extension has given it the authority to bring the instant action.

I will pause here to reject with respect, the legal submission made by Abdul Ibrahim, SAN, that only natural persons can maintain Fundamental Right

Action under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended.

D.B Mangal Nigeria Limited who exhibited a Certificate of Occupancy in its name, can maintain the present action in its name and speak through its Directors and Agents i.e natural human beings, which was what it has done. This argument is refused for being most preposterous and unmeriterously made. On the whole, application No. **M/8506/2021** is refused and accordingly dismissed.

I shall now proceed to consider the respective counter affidavits filed by 1st, 2nd and 4th Respondents in opposition to the Originating Motion for enforcement of Applicant's Fundamental Right.

It is the deposition of the 1st Respondent that the activities of the state security services and the

Nigeria Police Force does not fall within the purview of the 1st Respondent as the chief law officer of the Federation and that the 1st Respondent does not interfere with the activities of the 2nd, 3rd and 4th Respondents.

That the 1st Respondent is not aware of the forceful eviction of the Applicant staffs and business associate. That the Applicant has not stated any nexus between the facts in issue and the 1st Respondent.

That the circumstances of the Applicant case revealed that there is no specific claim against the 1st Respondent.

In line with law and procedure, a lone issue was filed for determination to wit:-

Whether from the fact of the case and affidavit evidence, placed before this court, the Applicant is entitled to the reliefs sought against the Respondents in this suit?

It is the submission of the learned counsel that the Applicant is required by law to prove his allegations against the 1st Respondent by adducing cogent and reliable evidence that the 1st Respondent committed such offences. It is obvious that the 1st Respondent is not aware or privy to the fact in issue. The 1st Respondent was not involved and is not aware of suit

No.FCT/HC/CV/238/2006*between*
NATIONAL BOARD FOR TECHNICAL
EDUCATION & ANOR VS AFDIN
CONSTRUCTION CO. LTD. & 3ORS.

ISIAKA VS STATE (2010) LPELR – 11864 (CA) was cited.

Learned counsel further argued that as it is in the instant case, the 1st Respondent as the chief law officer of the Federation is not aware of the land in dispute between the Applicant and the 4th Respondent until the receipt of the Applicant process. The 4th Respondent can sue and be sued in their respective capacity. Therefore, the 1st Respondent is not a necessary party to this action and removing or strike out his name will not prejudice the Applicant's action. ***POROYE VS MAKARFI (2018) 1 NWLR (Pt. 1599) at Page 91 – 101;***

GREEN VS GREEN (1987) 3 NWLR (Pt. 61) 480, Ratio 14;

DAN FODIO UNIVERSITY, SOKOTO VS BALOGUN (2006) 9 NWLR (Pt. 984) 124 were cited.

Counsel submits that;

- i. No cause of action was disclosed against the 1st Respondent.
- ii. That the Applicant has failed in its entirety to proof her case beyond reasonable doubt.
- iii. That the Applicant is not entitled to any of the declaratory relief sought from this court.
- iv. The prayers of the Applicant if found to be worthy of grant can be implemented without the 1st Respondent being joined in this suit.

Counsel urged the court to dismiss this suit or on the alternative dismiss the Applicant action against the 1st Respondent.

On their part, Applicant filed a further affidavit in response to the 1st Respondent's counter filed on 23rd day of December, 2021 deposed to by Mary Adewole.

In the 8th paragraph affidavit, it is the deposition of the Applicant that being the chief law officer of the Federation, the 1st Respondent has the powers to advice and guide the 2nd and 3rd Respondents on the exercise of their powers and discharge of their duties within the ambit of the law.

That the 2nd and 3rd Respondents are not empowered to play any role in purely civil matters devoid of any element of crime.

That reliefs (a), (d), (e), (g), (h) and (i) of the originating motion are specific claims against the 1st Respondent and other Respondents in this suit.

A written address was filed on point of law wherein counsel argued that the deposition contained in paragraphs 4 (k),(i),(m),(p) and (2) of the 1st Respondent's counter – affidavit clearly contain extraneous matters by way of laws, legal arguments and conclusions, contrary to and in violation of the mandatory provision of section 115 of the Evidence Act, 2011.

Counsel submits that the aforementioned paragraphs of the 1st Respondent's counter affidavit are liable to be struck out and discountenanced by this noble court.

BAMIYI VS STATE (2001) 8 NWLR (Pt. 270);

JOSIEN HOLDINGS LTD. VS LORNAMEAD LTD. (1995) 1 NWLR (Pt. 371) Page 254 at Page 265;

AHMED VS CBN (2013) 2 NWLR (Pt. 1339) 524 were cited.

I shall frontally deal with the offensive paragraphs contained in the counter affidavit of the 1st Respondent.

I have considered the said paragraphs 4(k)(i)(m)(p) and (2) of the said counter affidavit. They are argumentative in nature and legal conclusion contrary to Section 115 Evidence Act, 2011. I agree with Applicant's Counsel. They are hereby struck-out.

Counsel further submits that the Attorney General is not only a necessary party but also a proper party in

this suit. The Attorney General is the Chief of Law Officer of the Federation and sued in a representative capacity as a nominal party for the Federal Government, which is vested with the duty of ensuring the protection of the rights of person within the nation, more so as the 4th Respondent is an agency of the Federal Government of Nigeria.

Counsel urged the court to grant the reliefs sought in the originating motion.

On their part, 2nd Respondent filed their counter affidavit to the originating motion deposed to by AbdulsalamAbdullahi in 9 paragraph.

It is the deposition of the 2nd Respondent that all the operation of the 2nd Respondent are carried out by the office of Director Operations (DO).

That there was no directive by the management of the 2nd Respondent to connive with the 3rd Respondent and sealed the Applicant's property.

That the Directorate of operations, SSS, National Headquarters has contacted Federal Capital Territory Abuja Command of the SSS and other formations in Abuja and they all confirmed that the 2nd Respondent and any of its Agents did not connive with the 3rd Respondent to seal the Applicant's property.

That the Applicant did not disclose any form of cause of action against the 2nd Respondent.

In line with the law, a written address was filed wherein two issues were raised for determination to wit;

- a. “Whether the Applicant have shown that the 2nd Respondent has violated its fundamental rights, having regards to the fact that the 2nd Respondent neither harassed, intimidated, the Applicants nor connived with the 3rd Respondent to sealed its property.”
- b. “Whether from the totality of the facts of the case, the Applicant has disclosed any cause of action against the 2nd Respondent.”

On issue 1, “Whether the Applicant have shown that the 2nd Respondent has violated its fundamental rights, having regards to the fact that the 2nd Respondent neither harassed, intimidated, the Applicants nor connived with the 3rd Respondent to sealed its property.”

It is the submission of learned counsel that a careful perusal of Applicant's 28 paragraph affidavit, there was no iota of evidence found to show that the 2nd Respondent harassed, intimidated or connived with the 3rd Respondent to seal the property of the Applicant.

He who alleges has the duty to prove same. Thus, the burden of proof has not been discharged by the Applicant.

ONAH VS OKENWA (2010) 7 NWLR (Pt. 194) 512 at 535 – 536 paragraph H – A;

FAJEMIROKUN VS C.B (CI) NIGERIA LTD. (2002) 10 NWLR (Pt. 774) 95 at Page 112 Paragraph E – F.

Counsel urged the court to resolve issue one in favour of the 2nd Respondent.

On issue 2, *“Whether from the totality of the facts of the case, the Applicant has disclosed any cause of action against the 2nd Respondent.”*

Counsel submits that when an Applicant fails to disclose that he has reasonable cause of action, a court of law has no business deciding the matter.

ADETONA VS EDET (2001) 3 NWLR (Pt. 699) Page 186 at Page 190 paragraphs E – F was cited.

Counsel contended on this score that Applicant has no cause of action against the 2nd Respondent and on the basis of the foregoing, urged the court to strike out the name of the 2nd Respondent from this suit.

Applicant filed further affidavit in support of the originating motion and in response to the 2nd Respondent's counter affidavit which was deposed to by Mary Adewole.

It is the deposition of the Applicant that the facts deposed to in paragraph 23 of the affidavit in support of the originating motion are true and correct.

That the 2nd Respondent will not be prejudiced in any way or manner whatsoever, by the grant of the reliefs sought in the originating motion.

Applicant filed reply written address on point of law to the new issue of law arising from the said 2nd Respondent's counter affidavit and written address.

Learned counsel argued that, vide Exhibit "F2", attached to the further affidavit in support of the originating motion filed on 6th December, 2021, it was shown that officers of the 2nd and 3rd Respondents provided cover, security and connived with the 4th Respondent to invade and seal the

Applicant's property located at plot 1405 within plot 445 Maitama.

RINCO CONSTRUCTION CO. VS VEEPER INDUSTRIES LTD. (2005) 9 NWLR (Pt. 929) 85 at 96, Paragraph D;

AKIBU VS ODUNTAN (2000) 13 NWLR (Pt. 685) Page 446 at Page 1463, Paragraphs C- E were cited.

Counsel urged the court to discountenance the submission of the 2nd Respondent and hold that the substantive originating motion disclosed a reasonable cause of action against the 2nd Respondent and that the Applicant has adduced cogent, credible and sufficient evidence to entitle it to the grant of the reliefs sought. Counsel urge the court to so hold.

On their part, the 4th Respondent filed their counter affidavit of 37 paragraphs deposed to by one Bashir AbubakarAlhaji a staff of the 4th Respondent.

It is the deposition of the 4th Respondent that paragraph 8 of the Applicant's affidavit is not true but filled up with falsehood and misleading depositions. The correct position is that the 4th Respondent is the rightful owner of the plot/land lying and situate at plot No. 445, Cadastral Zone.

That paragraphs 9, 10, 11 and 12 of the Applicant's affidavit are false and misleading as the 4th Respondent never instituted any action in respect of plot No. 1405 against the Applicant but the action was between ***PETROLEUM FINANCIAL CORPORATE LTD VS. AFDIN CONSTRUCTION LTD & 3ORS.***

That the correct position of the fact is that; Petroleum Financial Corporate Ltd instituted an action and joined the 4th Respondent as Plaintiff against **AFDIN Construction Ltd.& 3Ors** in the year 2006 but in the year 2007, the name of the 4th Respondent was struck out entirely from the suit.

That paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Applicant's affidavit are false and misleading.

That the 4th Respondent is the owner of the entire land covered by certificate of occupancy with the **No. FCT/ABU/FG 397** signed by the then Federal Capital Territory Minister, Major General MammanKontagora dated the 4th April, 1999. The Plot was re-certified in 2004 by the then FCT Minister, NasiruElrufa'i dated November 24th, 2004

with the No. **1932 w-b7efz – 6273r – 9c 90u – 20** with the file No: **MISC 50207** covering the area described as Plot No. 445, Maitama Cadastral Zone A05, Federal Capital Territory, Abuja.

That sometimes in the year 2003, the 4th Respondent conducted a competitive bidding exercise to develop and manage its property which address is described at paragraph (17) and Petroleum Financial Corporate Limited won the bidding exercise and as result of that, was issued with a limited power of attorney for a period of 23 years.

That Petroleum Financial Corporate Limited (PFC) actually started developing the said plot of land not until the year 2006 when the Applicant encroached and trespassed on the 4th Respondent's piece of land

on the allegation and unfounded assertion that the 4th Respondent's title to the land was revoked.

That 4th Respondent continued struggling to retain back what rightfully belongs to her by writing petition and complaints against the Applicant not it was when the special presidential investigation panel for the recovery of public property intervened into the matter, investigated same and found out that the Respondent/Applicant converted the said plot which was allocated to the Applicant/Respondent.

That the Defendant has never intimidated the applicant and rather it is the Applicant that has encroached on the Respondent's plot of land, hastily developed same and now using every strategy to vest herself with possession.

That he also know that Applicant did not state any person harassed, intimidated and the time and manner of harassment to enable the 4th Respondent react to the allegation appropriately.

A written address was filed along with the counter affidavit to wit a sole issue was raised for determination “*Whether or not considering the surrounding facts and circumstances of this matter, the Applicant is entitled to the reliefs sought.*”

Learned counsel argued that in Order for the cause of action to be justifiable under the Fundamental Right Enforcement Procedure Rules, the cause of action must fall within the ambit of the enforcement of Fundamental Right contained in the chapter IV of the 1999 Constitution of the Federal Republic of

Nigeria (as Amended) and the African charter on Human and People's Rights (Enforcement and Ratification) Act in the sense that the Applicant alleges that any of the provisions of these law has been, is being or is likely to be contravened in relation to him or her. Counsel further argued that a party who alleges it must prove it. In this case, the Applicant has the onus of proving by credible affidavit evidence that her Fundamental Rights were breached.

***FAJEMIROKUN VS C.B (C.L) NIG. LTD (2002)
10 NWLR (Pt. 774) page 95 at 112;***

***JACK VS UNIVERSITY OF AGRICULTURE
MARKURDI (2004) LPELR – 1587 (SC);***

***I.G.O & ORS VS EZE (2017) LPELR – 42923
(CA) were cited.***

Counsel submits that the claim of the Applicant is directly related to title over land and the Fundamental Right is ancillary to the main claim. Thus the case ought to be commenced by writ of summons and not under the Fundamental Right Enforcement Procedure (F.R.E.P) Rules.

WAEC VS AKINKUNMI (2008) 9 NWLR (Pt. 1091) Page 151;

TUKUR VS GOVERNOR OF TARABA STATE (1997) 6 NWLR (Pt. 510) 549 were cited.

Counsel further submits that the issue in contention is that the jurisdiction of the court is affected because the claim of the Applicant does not fall under the Fundamental Human Right. The court attention is drawn to relief D, g and H of the originating motion.

It is further the argument of counsel that property is the fulcrum of this Suit, and cannot be resolved under the contention on who owns Fundamental Right Enforcement Procedure (F.R.E.P) Rules.

Learned counsel maintained that the instant action is highly contentious and was commenced by a wrong approach. *USUAMA VS EBONYI STATE (2006) 6 NWLR (Pt. 975) page 184.*

Counsel argued that the reliance by the Applicant that suit **No. FCT/HC/CV/238/2006** is a subsisting judgment is not in doubt. However the judgment is subsisting between **Petroleum Financial Corporate Ltd and AFDIN Construction Company Limited and 3Ors.** There is no order in that suit against the 4th Respondent herein. PFC is not a hair successor in title or assignee of the 4th Respondent.

Learned counsel avers that from the affidavit evidence placed before this court, the Applicant has not shown sufficient facts or evidence to warrant the grant of the Applicant's prayers by this court.

CENTRAL BANK OF NIGERIA VS JACOB OLADELE AMAO & 2ORS (2012) 2 NWLR (Pt. 1219) 271 at 280 was cited.

Counsel submits that the application for damages is erroneous in law as fundamental right action cannot be maintained by an artificial person in respect of violation of right.

HERITAGE BANK VS S & S WIRELESS LTD & 1OR (2012) LPELR – 46571 (CA);

FIRST BANK PLC. VS A.G FEDERATION (2012) 7 NWLR (Pt. 1617) page 127.

It is the conclusion of the counsel that a calm view of the affidavit of Alhaji Sani Ibrahim which is the evidence in this case has not disclosed who was harassed and the manner of harassment. No lawful occupant's name was supplied and the agent of the 4th Respondent that allegedly sealed the property with padlocks were also not supplied. Further, the case is about title to land and has nothing to do with Fundamental Human Right. The court was urged to hold that the Applicant has not condensed fact or made out a prima facie case, that any of her rights (if any) has been violated. The court is bereft of jurisdiction to entertain the matter and the suit is an abuse of court process.

Upon service, Applicant filed a further affidavit deposed to by one Opeyemi Ajekigbe.

It is the deposition of the Applicant that the due process of law leading to the valid and subsisting title of the Applicant over Plot 1405 which is within Plot 445 Maitama, Cadastral Zone A05, Abuja and is evidenced by an Offer of Statutory Right of Occupancy made on the 13th day of August, 2006, wherein the Hon. Minister of the Federal Capital Territory approved the grant of a Statutory Right of Occupancy to the Applicant in respect of all that parcel of land lying and situate at Plot 1405 within Plot 445 Maitama, Cadastral Zone A05, Abuja. The Applicant shall, at the hearing, rely on the Offer of Statutory Right of occupancy dated 13th day of August, 2006, and marked Exhibit “A”.

That the Applicant duly paid all fees, obtained all requisite permits and approvals from the appropriate authorities, including Abuja Metropolitan

Management Agency, Department of Development Control and Abuja Geographic Information Systems (AGIS) for the development of Plot 1405 within Plot 445 Maitama, Cadastral Zone A05, Abuja. The Applicant shall, at the hearing, rely on copies of cheques, bank tellers, receipts and letters showing the said payments, applications, approvals and permits as aforesaid, which are marked Exhibit “B”.

That consequent upon the approval of the aforesaid grant to the Applicant, the Hon. Minister of the F.C.T duly issued to the Applicant the Certificate of Occupancy No. 1951w-143fc-64cbr-10220-20 dated the 31st day of October, 2006 and registered in the Certificate of Occupancy Register in the Land Registry Office, Abuja on 31st October, 2006 as evidence of its title over all that parcel of land lying

and situate at Plot 1405 within Plot 445 Maitama, Cadastral Zone A05, Abuja, more particularly described and delineated in the Survey Plan with File No. 81863.

Rely on Certificate of Occupancy issued by the Hon. Minister of the Federal Capital Territory on the 31st day of October, 2006, which is marked Exhibit “C”.

That prior to the grant of the statutory right of occupancy to the Applicant as aforesaid, by virtue of the letter dated 18th day of October, 2005 and titled: “*Notice of Revocation of undeveloped Plots within Federal Capital City*”, the rights, interests and/or title of the 4th Respondent over all that parcel of land lying and situate at Plot 445 which embodies Plot 1405 Maitama, Cadastral Zone A05, Abuja *was*

**validly Revoked and lawfully extinguished by the
Hon. Minister of the FCT.**

The Applicant shall, at the hearing, rely on the said letter/notice of Revocation of 18th October, 2005, which is marked Exhibit “D”.

That contrary to paragraphs 6 and 7 of the Counter Affidavit, the 4th Respondent’s address is not and does not include Plot 445, Cadastral Zone, Abuja or Cadastral Zone A05, Maitama, Abuja and the 4th Respondent is not the owner or rightful owner of the land/plot lying and situate at Plot 445, Cadastral Zone A05, Maitama, Abuja.

That further to Paragraphs 13, 14, 15 and 16 of the Affidavit in support of the Originating Motion deposed to on the 19th day of November, 2021, attached herewith are the documents marked

Exhibits “MAM2” and “MAM 3”, “MAM 4” and “MAM 5” as well as the letter dated 28th day of October, 2021 which were exhibited in the above enumerated paragraphs of the Applicant’s said Affidavit of 19th November, 2021.

That it will serve the interest of justice to grant the reliefs sought in the Originating Motion.

Written address was filed on point of law to the 4th Respondent’s written address in opposition to the Originating Motion.

Learned counsel argued that the contention of the 4th Respondent, founded on the depositions in paragraphs 8 to 11 of its Counter Affidavit that the subsisting judgment of this Honourable Court in *Suit No. FCT/HC/CV/238/2006*, *BETWEEN: PETROLEUM FINANCIAL CORPORATE LTD.*

(Suing as Attorney for National Board for Technical Education) VS AFDIN CONSTRUCTION CO. LTD. & 3ORS. is not against It, but against Petroleum Financial Corporate Ltd. Is a feeble and manifestly unconvincing argument. This is because the 4th Respondent unequivocally admittedvide Paragraphs 19 to 22 of its said Counter Affidavit in opposition to the Originating Motion as well as paragraphs 3(e) to (I) of the Affidavit in support of its Motion on Notice seeking to set aside the interim Orders of this noble Courtthat Petroleum Financial Corporate Ltd...is its (the 4th Respondent's) Attorney which, for all intents and purposes, acted for and on behalf of the 4th Respondent, including the institution of the aforesaid Suit No. **FCT/HC/CV/238/2006** for and on behalf of the 4th Respondent.

It is therefore submitted that the depositions contained in paragraphs 19 to 22 of the 4th Respondent's counsel affidavit in opposition to the Originating Motion as well as paragraphs 3(e) to (I) of the Affidavit in support of its Motion on Notice seeking to set aside the interim orders of this noble court constitute a clear admission against interest that the judgment of this Honourable Court in Suit No. FCT/HC/CV/238/2006, BETWEEN: **PETROLEUM FINANCIAL CORPORATE LTD.** (*suing as Attorney for National Board for Technical Education*) VS **AFDIN CONSTRUCTION CO. LTD. & 3ORS** is a valid and subsisting judgment against the 4th Respondent. It is trite that facts admitted need no further proof. See section 123 of the Evidence Act, 2011. See also

***UWEGBA VS A-G, BENDEL STATE (1986) 1
NWLR (Pt. 16) 303;***

***EDOKPOLO & CO. VS OHENHEN (1994) 7
NWLR (Pt. 358) 511;***

***OSANI VS BAJULU (2010) ALL FWLR (Pt. 511)
813, per Fabiyi, J.S.C, at Pages 831 – 832,
paragraphs E-B;***

***OFFODILE VS OFFODILE (2019) LPELR –
47851 (SC), per Eko, J.S.C, at pages 6 -14,
paragraphs D – E.***

Ahmed Raji, SAN, for Applicant maintained that the situation is indeed awkward of the nature highlighted above that informed the decision of the Supreme Court in ***ODUTOLA VS PAPERSACK (NIG). LTD.(2006) NWLR (Pt. 1012) 470 that “an***

admission by a party against his interest is the best evidence in favour of his adversary in the suit.”

It is also noteworthy that, learned counsel argued, while the 4th Respondent purports to dissociate itself from Petroleum Financial Corporate Limited and the extant judgment of this noble Court in Suit No. FCT/HC/CV/238/2006 vide Paragraphs 8 to 13 of its Counter Affidavit in opposition to the Originating Motion, the same 4th Respondent turned summersault vide Paragraph 19 to 22 of its said counter affidavit and paragraphs 3 (e) to (I) of the Affidavit in support of its Motion on Notice seeking to set aside the interim Orders of this noble court, wherein it copiously deposed that Petroleum Financial Corporate Ltd. Is its (4th Respondent's) lawful Attorney which acted for and on behalf of the 4th Respondent.

We submit that this is a manifest inconsistency in the presentation of the 4th Respondent's case. It is thus trite that blowing hot and cold in the presentation of a party's case is forbidden in litigation. The law does not allow the 4th Respondent to so do, but to be consistent in presenting its case. This, the 4th Respondent has failed to do, in consequence of which the Applicant is entitled to the grant of the reliefs sought in the Originating Motion. See *AJIDE VS KELANI (1985) 3 NWLR (Pt. 12) 248 at 269, paragraphs C – D.*

Learned counsel concludes by urging the court to hold that the Applicant has discharged the burden of proof on it, and is therefore entitled to both the declaratory and other reliefs sought in the Originating Motion.

COURT:-

From the averments contained in the counter affidavit of the 1st and 2nd Respondents i.e the Attorney General of the Federation (AGF) and the State Security Services (SSS), they clearly have distanced themselves from the said invasion of Applicant's building and the subsequent harassment of its staff and business associates.

I shall beam my searchlight on the affidavit in support of the originating motion and the counter affidavit of the 4th Respondent more in view of the fact that both parties are laying claims to a Common Plot. Whereas Applicant claims Plot 1405 within Plot 445, 4th Respondent denies the claim and maintained that it is the owner of Plot No. 445.4th Respondent also denied the fact that it instituted any

such action in Court with respect to Plot 1405 but that it was ***PETROLEUM FINANCIAL CORPORATE LIMITED VS. AFDIN CONSTRUCTION COMPANY. NIG. LTD.&3ORS***, and that there was no Judgment or Order against the 4th Respondent in respect of Plot No. 445 Cadastral Zone A05, Maitama, Abuja. 4th Respondent averred in paragraph 10 of counter affidavit in opposition to the originating motion that Petroleum Financial Corporate Limited instituted action and made it a Plaintiff but that the name of the 4th Respondent was struck-out.

I will pause here and ask..at who's instance was the name of the 4th Respondent struck-out?

Was it not 4th Respondent who applied for its name to be struck-out! Who is Petroleum Financial Corporate Limited to the 4th Respondent!

I shall return to this questions in the course of this Judgment.

In Paragraph 3(1) of the Motion on Notice filed by 4th Respondent which was considered and dismissed in the earlier part of this Judgment and 19 to 22 of affidavit in opposition to the Originating Motion, 4th Respondent averred that it obtained an Order for Interlocutory Injunction against Applicant in the present suit, appointed the said Petroleum Financial Corporate Limited and gave it limited Power of Attorney for 23 years after a competitive bidding, to build, operate and transfer.

The said Petroleum Financial Corporate Limited was similarly given other Powers as contained in the Power of Attorney.

The suit upon which 4th Respondent obtained the said Interlocutory Order is the same Suit maintained by Petroleum Financial Corporate Limited which instituted action against Applicant and 2Ors in Suit No. **FCT/HC/CV/238/2006**. If 4th Respondent relying on the said Suit obtained an Interlocutory Injunction, why then is 4th Respondent stating in Paragraph 8 of its affidavit in opposition to the Originating Motion that it did not institute any action and that no Judgment was entered against the 4th Respondent. The said Suit was instituted by 4th Respondent's Attorney to the knowledge of 4th Respondent. This is admission against interest pursuant to Section 24 Evidence Act, 2011.

Admission against interest will arise where evidence is given in favour of the adverse party against the interest of a party giving such evidence.

See the case of ***ORAKWE VS. ORAKWE & ORS (2018) LPELR 44763 CA.***

I have seen Exhibit “MAM1” attached to the affidavit in support of the Originating Motion of Applicant. It is the Judgment of the FCT High Court delivered on the 2nd February, 2012 by Ugochukwu A. Ogakwu, J. now JCA.

One Petroleum Financial Corporate Limited (suing as Attorney for Natural Board for Technical Education) sued AFDIN Construction Coy. Ltd., FCT Minister, FCDA and D.B Mangal Nigeria Ltd. As Defendants.

The subject matter is still the same Certificate of Occupancy No. 1932w-67efz-627r-9c90u-20 issued to National Board of Technical Education (NBTE) which Plaintiff sought declaration of Court that it was still valid and subsisting and that any other Certificate of Occupancy issued to the 1st Defendant or any other person in the same property was null and void and of no effect whatsoever.

The said suit was instituted after the 2nd Defendant in the Suit had allocated to the 4th Defendant, D.B Mangal Nigeria Limited the said Plot 1405 within Plot 445 after revocation of same vide letter dated the 18th October, 2006 which was titled, **“Notice of Revocation of Undeveloped Plots within Federal Capital City.”**

After a careful determination of the relief sought, the trial Judge refused the claims of the Plaintiff and dismissed the said suit.

4th Respondent was and is still aware of the outcome of the decision but are clearly living in denial when they averred in their counter affidavit that they did not maintain any such action. Is it not true that the said Petroleum Financial Corporate Limited acted as Attorney for National Board for Technical Education (NBTE) (4th Respondent)!

There is no gain saying that 4th Respondent which appointed the Petroleum Financial Corporate Limited as Attorney, knew when they said Suit was instituted.

Clearly, the outcome of the decision of the FCT High Court Abuja which is on the same Certificate

of Occupancy covering Plot 445 which houses Plot 1405 is binding on the 4th Respondent as same is a Judgment in REMand notPERSONAM.

Judgment in ‘Rem’ is that Judgment of a Court of competent jurisdiction determining the status of a person or thing as distinct from the particular interest of a party to the litigation..the Judgment must affect the ‘Res’ in the way of determination, declaration or title.

The feature of Judgment in ‘Rem’ is that it binds all person whether a party to the proceedings or not.Itestops any person from raising the issue of the title again.

See ***OGBURU & ANOR VS. ODUAGHAM & ORS (2011) LPELR – 8236 (SC).***

4th Respondent is for all intents and purposes bond, hands and legs by the outcome of the decision in Suit No. **FCT/HC/CV/238/2006** which was instituted by her Attorney (Petroleum Financial Corporate Limited) appointed under the said limited Power of Attorney.

I need to further state that, the only option left for the 4th Respondent was to have appealed against the said Judgment as any step other than appellate step, shall not just be in frontal violation of the subsisting Court Judgment, hence breach of the right of the Applicant, but would also amount to an affront on the collective authority and sanctity of the power of Court under Section 6(6)(b) of the 1999 Constitution as amended and Judiciary as whole. The conduct of the 4th Respondent who is living in denial portrays above scenario. Land in the FCT belongs to the

Federal Government of Nigeria and the Minister of FCT who enjoys the delegated powers of Mr. President under Section 18 of FCT Act is the only authority with power to allocate and revoke land in the FCT.

Once an individual or company as in this case, is allocated land, such becomes its property under Section 43 of the 1999 Constitution and only a legal step or FCT Minister can takeaway such land through due process of the land from such an allottee.

By letter dated the 18th October, 2006 the right of the 4th Respondent over the said Plot 445 Cadastral Zone A05Maitama, Abuja has been revoked by the same authority which allocated it to them for the reason that it was left undeveloped.

Did Applicant allocate the said Plot 1405 within Plot 445 to itself!

The approach of 4th Respondent in the situation is ambitiously audacious.

4th Respondent brandished a letter given to it by Special Presidential Investigating Panel for Recovery of public property, now disbanded, wherein it was purportedly handed over the said Plot 445 Maitama Cadastral Zone A05.

This conduct is most laughable and insulting... why is 4th Respondent using the disbanded panel as short-cut to chase out Applicant from its lawfully allocated land after it failed to get Judgment in Court.. Is the disbanded Presidential Panel Court of Appeal?

Isn't this clear self-help in law!

It is a basic principle of our law that however clear or well founded a party may consider his legal right, it will be unconscionable and absurd for him to take the law into his hand by engaging in an act of self-help to assert such a perceived right. Such actions have been described as uncivilized and barbaric. No court should aid assist illegality no matter whose ox is gored.

See ***OMOYEMI VS. CBN & ORS (2015) LPELR – 25789 (CA);***

SC, IN GOVERNOR OF LAGOS STATE VS. OJUKWU (1986)1 NWLR (Pt. 18) 621,condemned self-help, and said such has no place in our civilized world as it is against the observance of Rule of Law in a democratic society.

To use force to effect an act and while under the Marshal of that force, seek the Court's equity, is an attempt to infuse timidity into Court and operate a sabotage of the cherished rule of law.

I have seen Exhibit "4A" annexed to the counter affidavit of 4th Respondent to the originating motion.

It is a response letter written to the Executive Secretary, National Board for Technical Education (NBTE), Plot B, Bida Road, Kaduna, dated 2nd September, 2021 titled,

“Re-request for Permission to liaise with Security Agencies to re-execute Order of Special Presidential Investigative Panel for Recovery of Public Property against Occupants of the Federal Government Land at Plot 445 Maitama Cadastral Zone A05 Abuja.”

In the said letter, the Executive Secretary of National Board of Technical Education (NBTE) was requested to liaise with Security Agencies to take professional actions that will facilitate ejection of illegal tenants from the Federal Government Land at Plot 445, Maitama, Abuja.

Now I proceed to ask the following question:-

1. Who sealed the said Plot 1405, Cadastral Zone A05, i.e Murjanatu House?
2. Who removed the inscription of the name, “Murjanatu House” from the said building and affixed National Board of Technical Education (NBTE) 4th Respondent on the wall of the building on Plot 1405 belonging to Applicant?
3. Was the said act of chasing out the occupants of the building, changing padlocks, replacing the

name of 'Murjanatu House' with that of 'National Board of Technical Education' (NBTE) not self-help! Certainly it is.

Was the steps taken by 4th Respondent professional and lawful?

No..theywere not.

The conduct of 4th Respondent smacks of crass disobedience and disrespect for the Judgment and Orders of the FCT High Court. We practice a Constitutional Democracy where the law is Supreme.

The averments contained in the further and better affidavit where pictures depicting removal of the name 'Murjanatu House' and replacing same with that of the National Board for Technical Education (NBTE), was not contradicted. The picture of

padlocked gate of the said Murjanatu House which 4th Respondent caused to be illegally, arbitrarily and capriciously locked has compromised and also betrayed the innocence of the 4th Respondent, as claimed.

The right to own this property reside in the Applicant. The action of the 4th Respondent violates Sections 43 and 44 of the 1999 Constitution of Federal Republic of Nigeria as amended, and constitute a brazing disregard of the authority of the Judgment of this Court.

The interest and demands of justice will certainly be dictated by the peculiar facts and the surrounding circumstances of each case.

I have a duty to investigate and discover from the evidence what will satisfy the interest and demands of justice..that is what I have just done.

I need to make it clear that Applicant is not a tenant of the 4th Respondent and can therefore not be served any such notices or letter of eviction, nor is Applicant occupying any land belonging to the 4th Respondent illegally hence the said letter from the disbanded Presidential Panel.

There is no gain saying that Applicant has been able to place before this Court relevant documents to entitle them to the declaratory reliefs sought since same ought to be granted based on the available evidence and not weak defence, or admission.

I have come to the conclusion that 3rd Respondent who did not file any counter affidavit acted very

illegally with 4th Respondent who are its co-travelers in sin at the prompting of the 4th Respondent.

1st and 2nd Respondents have proffered explanation which has left the court in no doubt that 4th Respondent acted illegally without carrying Courts and or Security Agencies along.

4th Respondent shall carry its cross all alone.

Reliefs “A”, “B”, “C”, “D”, “E”, “F” and “G” affecting 4th Respondent only are hereby granted.

Accordingly, the following Declaratory Orders are made, to-wit;

- a. That the unlawful harassment, intimidation, of the Applicant’s staff and business associates by the agents of the Respondents is illegal, unconstitutional, null and void and a fragrant

violation of the Applicant's Fundamental Right pursuant to sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- b. That the invasion of the Applicant's business premises situate at Plot 1405, Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House), wherein the staff and business associates of the Applicant were unlawfully ejected by the agents of the 2nd, 3rd and 4th Respondent is illegal, unconstitutional, Null and Void and a flagrant violation of the Applicant's Fundamental Right pursuant to section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- c. That the harassment and intimidation of the Applicant's staff and her business associates in Plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House) pursuant to illegal letters of eviction dated 27th day of August, 2021, 2nd September, 2021 and 17th September, 2021 issued to the Applicant by the Respondents is illegal, unconstitutional, and a flagrant violation of the Applicant's Fundamental Right as guaranteed under section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- d. That the Respondents are not statutorily empowered to harass, intimidate, molest and unlawfully seize the Applicant's property situate at Plot 1405, Maitama Cadastral Zone A05,

Abuja – FCT (Murjanatu House) without recourse to due process.

- e. That by virtue of Section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicant is statutorily empowered to own property and the Respondents' unlawful seizure of the Applicant's property on the 11th of November, 2021 is illegal, unconstitutional, null and void and a flagrant violation fo the Applicant's Fundamental Right.
- f. That the continued harassment and intimidation of the Applicant's staff, business associates and the forceful invasion and sealing of the Applicant's property located at Plot 1405 Maitama, Cadastral Zone A05, Abuja,

particularly on the 11th day of November, 2021 by the agents and thugs of the 4th Respondent is unlawful, illegal, unconstitutional and in breach of the Applicant's Fundamental Rights to acquire and own property guaranteed under the 1999 Constitution (as amended).

- g. An Order of Perpetual Injunction Restraining the Respondents, jointly and severally either by themselves, and/or their agents, privies, servants, however so called from any further harassment, intimidation, invasion, eviction of the Applicant and/or its business associates from the premises known and described as plot 1405 Cadastral Zone A05, Maitama, Abuja – FCT (Murjanatu House), is also hereby granted.

Relief “H” has been overtaken by event since the said Murjanatu House is opened.

Next in line of the reliefs sought is Relief I, which is for exemplary/general damages.

The primary object of an award of damages is to compensate the Applicant for the harm done to him.

A possible secondary object is to punish the Respondent for the conduct in inflicting that harm..such a secondary object can be achieved by awarding in addition to the normal compensatory damages, damages which go by various names to-wit; exemplary damages, punitive damages, even retributory damages into play whenever a party’s conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud,

cruelty, insolence, flagrant disregard for the rule of law and the like.

Above adjectives best described the present situation and conduct of the 4th Respondent.

Lord DENNING, M.R in PACKER VS PACKER (1954) Page 15 at Page 22, stated, as follows;

“What is the argument on the other side? Only this that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything, which has never been done before, we shall never get anywhere. The law will not stand still whilst the rest of the world goes on and that will be bad for both. The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is a basic

and elementary principle of common law that wherever there is a wrong, legal or injuria that is, there ought to be a remedy to redress that wrong. Ubiusibiremedium is the common law principle”.

4th Respondent who violated the rights of Applicant by trespassing and violently chasing its Staff, Business Associates, Bank Staff and padlocking the said Plot 1405 Cadastral Zone A05,i.eMurjanatu House,Maitama, Abuja, has clearly injured Applicant in law.

See ***EZE & ORS VS. GOVERNOR OF ABIA STATE & ORS (2014) LPELR 23276 (SC).***

This is a compelling situation for me to award exemplary damages against the 4th Respondent which I hope shall serve as deterrent to such brazing

and outright transgression of Applicant's Fundamental Rights and desecration of the Judgment of this Court.

I hereby award the sum of N300,000,000 (Three Hundred Million Naira) only, as exemplary damages, which is punitive, against the 4th Respondent. Upon further consideration of the entire circumstances, I also hereby award N200,000,000 (Two Hundred Million Naira) as general damages against the 4th Respondent.

Before I put a full stop, I will like to state that an Occupant of the office of Executive Secretary of the National Board of Technical Education (NBTE) must be a fit and proper person with the credibility and will of respecting the rule of law. Anything

short of that, makes such a person a liability to the nation... I say no more.

Above is my Judgment.

May God help us.

Justice Y. Halilu
Hon. Judge
28th February, 2022

APPEARANCES

Peter Nwatu, Esq. with Deborah O., Esq., OlonadeAlliu, Esq., M.O. Adewole Esq. and AbdulaheemSalihu, Esq. – for the Applicant.

AliyuAbdukadir, Esq. – for the 1st Respondent.

A.M Danlami, Esq. – for the 2nd Respondent.

F.O. Imafidon, Esq. with C.A Ucha, Esq. – for the 4th Respondent.