

**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/2014/2020**

**DATE: :FRIDAY 29<sup>TH</sup> APRIL, 2022**

**BETWEEN:**

**CHIGOZIE OTUSIEME  
& 645 ORS.**

**PLAINTIFFS**

**AND**

**1. HON. MINISTER OF FCT.  
2. ABUJA MARKETS  
MANAGEMENT LTD. (AMML)  
3. HON. ATTORNEY GENERAL  
OF THE FEDERATION AND  
MINISTRY OF JUSTICE**

**DEFENDANTS**

# **JUDGMENT**

Plaintiffs commenced this action vide originating summons wherein they have submitted questions for determination.

The following questions and reliefs were sought;

- a. **Whether the 2<sup>nd</sup> Defendant has the power and capacity to assess, determine, demand and legislate on collection or rates, establishment, maintenance and regulation of markets, public convenience, tenement rates, shops, Kiosks, restaurants and laundries without strict compliance and in accordance with provisions of Section 7 of the Constitution of the FRN 1999 (as Amended) and paragraphs 1 (b)(c)(j)(k)(iii), (iv) and (v) of the Fourth Schedule to the said Constitution unless there**

is a Law in place passed by the National Assembly in that behalf.

b. Whether the monthly rate of N2,500.00 imposed on each Shop/Stall Owner/Tenant by the 2<sup>nd</sup> Defendant since the Shop/Stall owners took possessions of their respective Shops/Stalls at Garki Model Market, Garki, Abuja amount to creating a Law to inflict double taxation on the Claimants over their respective shops and stalls at Garki Model Market, Garki – Abuja, FCT.

c. Whether or not by virtue of the true interpretation of Sections 36(1), 43 and 44 (1) (a) and (b) of the 1999 Constitution of Nigeria (as Amended), Section 5(3), Section 7(1), Section 6(1) of the Federal Capital Territory

Act 2004 (as amended). Articles 24, 22, 4, 5 and 14 of the African Charter on Human and Peoples Rights Ratified and domesticated by the Federal Republic of Nigeria, the claimants are entitled to prompt and adequate compensation from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for all the illegal payments they have been making to the 2<sup>nd</sup> Defendant since inception of Garki Model Market till date and for their legitimate shops/stalls and warehouses, restaurants, cold rooms forcefully sealed and locked up by the 2<sup>nd</sup> Defendant since January, 2020 till date under the watch, control and management of the 1<sup>st</sup> Defendant.

In so far as may be necessary that the Honourable Court make the following Orders for the Claimants as per this claims;

- i. A Declaration that by virtue of **Section 7 of the Constitution of the FRN 1999 (as Amended) and paragraphs 1(b), (c), (j), (k), (iii), (iv) and (v) of the Fourth Schedule to the said Constitution** the Compulsory levy of N2,500.00 and N5000.00 respectively imposed on the Claimants individually by the 2<sup>nd</sup> Defendant is unconstitutional, illegal, null and void since the 2<sup>nd</sup> Defendant is not empowered by any known law for collecting such monies from the Claimants.
- ii. An Order setting aside the demand for N2,500.00 or N5000.00 or any amount whatsoever being enforced on the Claimants by the Defendants for payment to the Defendants.

- iii. An Order restraining the Defendants by themselves, agents, officers or privies howsoever called from sealing up, or locking up the respective shops and stalls of the Claimants or their wards or agents from gaining access to the Shops/Stalls of the Claimants for reasons of purported non – payment of N2,500.00 and N5000.00 rates or for any other reason whatsoever without an Order of the Court.
- iv. An Order of Court for Claimants to be paid N5,000,000,000,000.00 for locking up the Claimants; Shops/Stalls from end of January, 2020 till date for their refusal to be paying the new rate of N5,000.00 the 2<sup>nd</sup> Defendant has imposed on them thereby denying them the right of carrying out their legitimate trading in their

respective Shops/Stalls since end of January till date for no just cause.

- v. And such further Order(s) and reliefs as the Honourable Court may deem fit to make in the circumstances of this suit.

Affidavit and Written Address were also filed in support of the Originating Summons.. Claimants averred as follows;

That the 1<sup>st</sup> Defendant is the Hon. Minister in charge of the Federal Capital Territory Administration and he is also responsible for the allocation of land for personal and commercial use within Federal Capital Territory and also oversees the general affairs of the 2<sup>nd</sup> Defendant.

That the 2<sup>nd</sup> Defendant is a Company registered and Incorporated in Nigeria under the Companies and

Allied Matters Act, 1990, whereas 3<sup>rd</sup> Defendant is the Chief Law Officer of the Federation and the Chief Legal Adviser to the Government of the Federal Republic of Nigeria who oversees the affairs of the 2<sup>nd</sup> Defendant.

It is further the averment of Claimants that they are all Shops/Stalls owners and tenants and have their respective payment receipts of N2,500.00 and N5000.00 of monthly rates individual traders have been paying to the 2<sup>nd</sup> Defendant forcefully since the inception of the Garki Model Market sometime in 2006 till date.

It is equally the averment of Claimants that they usually pay N2,500.00 (Two Thousand Five Hundred Naira) individually to the 2<sup>nd</sup> Defendant



and have been paying from 2006 till December, 2019.

Claimants averred also that they were being forced, harassed and threatened to be paying to the 2<sup>nd</sup> Defendant the amount of money demanded by the 2<sup>nd</sup> Defendant monthly, N2,500.00 (Two Thousand Five Hundred Naira) from 2006 till December, 2019 and N5000.00 (Five Thousand Naira) monthly from January, 2020 till date, when there is no agreement of such between the Claimants and the 2<sup>nd</sup> Defendant.

That all the years that the 2<sup>nd</sup> Defendant has been enforcing payments of illegal rates of N2,500.00 monthly from individual Claimants, the Claimants have been making it known to the 2<sup>nd</sup> Defendant that the Federal Capital Territory Administration (FCTA)

has been making it clear to the residents and (traders in market inclusive) of Federal Capital that the 2<sup>nd</sup> Defendant is not permitted or allowed to demand for rates since it would amount to double taxation on Residents of FCT and Claimants inclusive if paid by the Claimants.

That the former FCT Minister, Senator Bala Mohammed even issued a directive to the authorities of agencies under his command and the 2<sup>nd</sup> Defendant to stop illegal collection of rates or any other such taxes in order to ensure that the Residents of FCT (Claimants inclusive) are not subjected to double taxation. This was reported in the Daily Trust Newspaper on Monday, September, 29, 2014 which confirmed such directive.

Claimants exhibited the said publication to the affidavit in support of the Originating Summons and marked same as Exhibit “C”.

Claimants further averred that they are of the view that the 2<sup>nd</sup> Defendant has not complied with the extant laws which will have given it the rights to levy such tax of N2,500.00 and N5000.00 respectively on the individual Claimants monthly.

That the 2<sup>nd</sup> Defendant has not at any time rendered any type of service at all to the Claimants to such undue monthly payments imposed on the Claimants.

That it is the Federal Capital Territory Administration through its Agency, Abuja Environmental Protection Board that renders tenement services to the Claimants, and that it is the Abuja Environmental Protection Agency that is

responsible for the clearing and removing of both liquid and solid waste being generated by the Claimants in the Garki Model Markets, on regular basis of which Claimants pay for regularly.

That the Abuja Environmental Protection Board (AEPB) provided for the Iron waste receptacle which is located at strategic place within the market premises where the Claimants deposit their waste for onward collection by the Abuja Environmental Protection Board (AEPB) workers, and that they pay for their utilities individually, they pay individually for water and using of the conveniences provided in the market despite the monthly individual payment of N2,500.00 (Two Thousand Five Hundred Naira) and N5000.00 (Five Thousand Naira) respectively to the 2<sup>nd</sup> Defendant.

That the 2<sup>nd</sup> Defendant is just extorting payment of money monthly from the Claimants without providing or rendering any tenement services to the Claimants.

Claimants equally stated that 2<sup>nd</sup> Defendant has locked-up their Shops/Stalls for their refusal to pay the new rate of N5000.00 (Five Thousand Naira) monthly and that individual Claimants were expected to start paying N5,000.00 (Five Thousand Naira) from January, 2020 as against N2,500.00 (Two Thousand Five Hundred Naira) the Claimants were paying individually on monthly basis to evade their Shops from being locked up since 2006 till December of 2019.

That as a result of the locking up of the Shops/Stalls of the Claimants for over (four) 4 months now, the

Claimants have lost sales of goods worth N5,000,000,000.00 of which the Claimants should be compensated by the Defendants.

Claimants averred that they have suffered untold hardship from the Defendants for locking-up their Shops/Stalls and refusing them to carry out their trade for means of livelihood, and that their economic and social survival have been denied them completely since when their Shops/Stalls were locked up by the Defendants since the end of January, 2020.

That their former Solicitors Ndarani & Co. as per their mandate wrote a letter to the 1<sup>st</sup> Defendant on February, 28<sup>th</sup>, 2020 and the said letter was received by the 1<sup>st</sup> Defendant on 3<sup>rd</sup> March, 2020 seriously laying down their complaint of the locking up of

their stores and harassment and intimidation by the 2<sup>nd</sup> Defendant. The said letter aforesaid was attached and marked as Exhibit “D”.

That the 2<sup>nd</sup> Defendant never followed the required and necessary procedure as far as assessment of rates or any charge imposed on the Claimants are concerned and that they have no legal right to have even imposed any rate or charge upon the Claimants since by law it is the Area Council under which the Claimants are traders, that is constitutionally empowered to collect rated or charges from the Claimants as prescribed and regulated by Law of Nigeria.

That the 2<sup>nd</sup> Defendant on its own chose to saddle the Claimants with rates and charges of which such is not within its jurisdiction since a private liability

company as the 2<sup>nd</sup> Defendant is not empowered by law to be imposing and enforcing rates on Claimants since the 2<sup>nd</sup> Defendant is not permitted by the extant Laws of the Country to render or carry out such enforcement on the Claimants.

That the Defendants should be restrained from levying any criminal execution on the Claimants who are before this Honourable Court for proper interpretation of the law guiding the charges against them.

That instead for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to have acted on our said letter of 28<sup>th</sup> February, 2020 what we experienced was that the 2<sup>nd</sup> Defendant by a purported Ex- parte Order claimed to have been obtained from an Upper Area Court Gudu brought a welder to the market and welded/sealed up



their respective shops in the market. The said Court Order from Upper Area Court Gudu is here attached and marked as Exhibit “E”.

That despite all the atrocities of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against them, they have refused to use self – help that might have resulted in chaos and destruction in the market to solve the problem, and that since they wanted a peaceful resolution of the disagreement between them and the 2<sup>nd</sup> Defendant, they again mandated their Solicitors, Ndarani & Co. to write a reminder letter to the 1<sup>st</sup> Defendant. The said reminder letter dated 20<sup>th</sup> March, 2020 was attached and Marked Exhibit “F”.

That despite all these efforts from them for peaceful resolution of this matter, till date the 1<sup>st</sup> and

2<sup>nd</sup> Defendants have refused to open their shops to enable them earn their livings.

That the goods in their stores have been spoiled and destroyed due to the action of the Defendants, and that they and their Dependents have suffered untold hardships in this global pandemic period since the 1<sup>st</sup> and 2<sup>nd</sup> Defendants locked-up their shops/stalls and have refused and denied them from carrying out their trades and businesses which is their only means of livelihood.

That the locking-up of their Shops/Stalls in Garki Model Market was done illegally and the shops and stalls should therefore be opened by the order of this Honorable Court.

That the 2<sup>nd</sup> Defendant has overreached its power in locking up the Shops and Stalls of the Applicants

with padlocks as the Order of Court which the 2<sup>nd</sup> Defendants have been relying on in locking up the said shops and stalls does not in any way authorize the 2<sup>nd</sup> Defendant to do/act so.

Photographs of some of the Shops/Stalls of the Applicants locked up with padlocks of the 2<sup>nd</sup> Defendant/Respondent with AMML visibly engraved on them were attached and marked as Exhibit “G” (a), (b), (c),(d) and (e) respectively.

That to the best of their knowledge, granting the Claimants reliefs sought will better serve the interest of justice and the Defendants will not be prejudiced, but the interest of Justice and the rules of law will well be served.

Claimant also filed written address in support of their originating summons wherein a lone issue was formulated, to – wit:-

**Whether by virtue of provisions of sections 36 (1) 43, 44(1)(a) and (b) and section 7 of the Constitution of the FRN 1999 (as amended) and paragraph 1 (b)(c)(j)(k)(iii), (iv) and (v) of the Fourth Schedule to the said constitution, section 5 (3), section 7(1) section 6(1) of the Federal Capital Territory Act 2004 (as amended), Articles 24, 22, 4, 5, and 14 of the African Charter on Human and People’s Rights ratified and domesticated by the Federal Republic of Nigeria, the Claimants are entitled to all the reliefs sought in the Originating Summons.**

It is the submission of learned counsel that, section 7 of the Constitution of the FRN 1999 (as Amended) and paragraph 1 (b) (c) (j) (k) (iii), (iv) and (v) of the fourth Schedule to the said Constitution are reproduced verbatim below thus;

- b. Collection of rates, radio and television licenses.
- e. Establishment, maintenance and regulations of slaughter houses, slaughter slabs, markets, motor parks and public conveniences.
- h. Provision and maintenance of public conveniences, sewage and refuse disposal;
- j. Assessment of privately owned house or tenement for the purpose of levying such rates as may be prescribed by the House of Assembly of a state:

k.(iii)Shops and Kiosks

iv. Restaurants, Bakeries and other place for sale of food to the public.

v. Laundries.

Counsel argue that, from the foregoing it is very clear that the collection of rates, rateable hereditaments and the assessment of rates in Garki Model Market on the Claimants are subjects within the responsibilities of Local Government Councils and Area Councils in the case of Federal Capital Territory respectively.

It is further the argument of Counsel that enforcing collection of rates of N2,500.00 (Two Thousand Five Hundred Naira) and N5000.00 (Five Thousand Naira) monthly from the Claimants individually is not within the responsibilities of the 2<sup>nd</sup> Defendant.

That 2<sup>nd</sup> Defendant which is just an incorporated company is not statutorily empowered to be enforcing payments of rates which are within jurisdictional authority of the Abuja Municipal Area Council on the Claimants.

Counsel submits that it is on record that, the former FCT Minister Senator Bala Mohammed sometime in 2014 issued a directive especially to agencies established by statute under the Federal Capital Development Administration and even the 2<sup>nd</sup> Defendant jointly incorporated by some of the Agencies of the 1<sup>st</sup> Defendant to stop illegal collection of tenement rates or any such taxes as the 2<sup>nd</sup> Defendant has been imposing on the Claimants in order to ensure that residents of FCT are not paying double taxation.

It the argument of Claimants' Counsel that in all ramifications, the 2<sup>nd</sup> Defendant which is not established by statute but only incorporated for commercial concern is not permitted by law to be enforcing payments of rates in whatever name it is termed by it on the Claimants.

Counsel submits that, the implication of the locking up of the Shops/Stalls of the Claimants by the 2<sup>nd</sup> Defendant is denying the Claimants the opportunities of carrying out their legitimate businesses and trades which is therefore unconstitutional, illegal and a violation of the Claimants rights.

**Sections 36 (1), 43 and 44 (1)(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Articles 24, 22, 4, 5 and 14 of**



African Charter on Human and People Right; and the case of *ELFPET (NIG). LTD. VS. UMAH (2007) 1 NWLR (Pt. 1014)* were both cited in aid of this argument.

Counsel submits that, in the light of the provisions of Section 7 of the Constitution of the FRN 1999 (as Amended) and paragraph 1(b) (c) (j) (k) (iii), (iv) and (v) of the Fourth Schedule to the said Constitution and Articles 24, 22, 4, 5 and 14 of the African Charter on Human and Peoples Rights, vis-à-vis the exhibits attached to the Claimants claims, it was clear beyond shadow of doubt that the 2<sup>nd</sup> Defendant's actions as alleged by the Claimants are true and Claimants should be entitled to their reliefs sought accordingly.

2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed counter affidavit and written address. 2<sup>nd</sup> Defendant similarly filed further and better affidavit in support of their counter affidavit to the originating summons.

Claimants similarly filed further and better affidavit in response to the counter affidavit of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants counter affidavit to their originating summons.

2<sup>nd</sup> Defendant on their part had this to say in their counter affidavit to the originating summons; as follows:-

That they are Facilities Managers of the Market which includes, but not limited to both liquid and solid waste disposal, security, water supply, fire service providers, incurring large unexpected expenses on the Covid-19 protocols, among others.

That some of this service providers are Abuja Environmental Protection Board (AEPB), which is a Statutorily established body saddled with the responsibility of evacuation of both liquid and solid waste from the Market, the Abuja Electricity Distribution Company (AEDC), also a statutorily established body, saddled with the responsibility of making power supply available to the market, Target Security Company Ltd, among others, which are privately established companies responsible for providing security to the market as a whole and also for the provision of cleaning services in the Garki Model Market.

That the various rates charged as fees for the services rendered by the several service providers as well as the cost of the 2<sup>nd</sup> Defendant's personnel overhead among other expenses determine the rate

payable as facility fee by each stall operator in the Market which include the Plaintiffs.

That in denial of paragraph 10, the 2<sup>nd</sup> Defendant has never levied any form of tax on the shop owners/tenants, nor has the Federal Capital Development Administration had any cause to warn the 2<sup>nd</sup> Defendant from collecting the facility fees from the Plaintiffs or any other shop owner/tenant at any point in time. The collection of these facility fees is not any way illegal, nor does it amount to double taxation of any sort as same is quite different from statutorily collectible tax.

That the 2<sup>nd</sup> Respondent was rather allocated the portion containing the entire Garki Model Market with Certificate of occupancy issued to her by the

Hon. Minister of Federal Capital Territory accordingly.

That in denial of paragraph 11, the 2<sup>nd</sup> Defendant was never included in any directive of the former FCT Minister, directing authorities of the agencies of government under his command from collecting illegal rates or any such taxes to avoid subjecting the FCT residents to double taxation.

It is the averment of 2<sup>nd</sup> Defendant that Plaintiffs as well as other shop owners/tenants not listed as such, do not pay any levy directly to the other service providers, be it government or private concerns, except the AEDC, as the 2<sup>nd</sup> Defendant pays the levies collectively on behalf of the Plaintiffs and other shop owners/tenants, with such collective

levies subsequently distributed to them individually while factoring in same administrative costs.

Letters of demand for payments with same containing upward review, bill and evidence of payment to service providers were attached as Exhibit “AMML C”.

It is also the averment of 2<sup>nd</sup> Defendant that it has been rendering very vital facility management service to the Plaintiffs as well as other shop owners/tenants for as long as she has been in operation in the Garki Model Market, with such management been within her legal objects as an incorporated entity geared towards having a modest, clean, operators customer and citizens friendly market environment which accords with the aspiration of the regulatory agencies of government,

the shop owners/tenants citizens, the FCT and Nigeria as a whole.

That the Claimants who have refused to pay for almost three years before the order was handed down, further mobilized the other traders that have been paying, with some not parties in this suit, to refuse to pay the monthly service charge, which made the total rate collected progressively decline with collection for the month of November, dropping drastically as captured in the data analysis document attached herein as Exhibit “AMML K”.

That the darkened names in Exhibits “AMML” and “AMML I”, is the current list of defaulters and those who have been paying, with the names of sponsors of this present suit reflecting as defaulters with some haven stopped paying service charge for almost

three years, while still enjoying the services being provided by the 2<sup>nd</sup> Respondent and also in flagrant disregard and defiance of the Honourable Court's directive that status quo be maintained pending determination of this suit.

That in view of the serious of the consequence of non – adherence to acceptable sanitary standards, the Abuja Environment Protection Board conferred authority on the 2<sup>nd</sup> Respondent to enforce her laws within the Garki Model Market as contained in Exhibit “L”.

That the current situation has plunged the Garki Model Market into a crisis status, with the likely effect of breakdown of amenities, exposure to outbreak of disease and possible chaos, as payments to all service providers including private security



outfit and stipend allowance offered to public security outfits will not be available in the current situation.

In support of their counter affidavit, 2<sup>nd</sup> Defendant filed written address wherein they raised the following questions for determination:-

1. **“Whether this suit as presently constituted is incompetent?”**
2. **“Whether the 1<sup>st</sup> Defendant has acted within its statutory powers to have issued a Certificate of Occupancy in favour of the 2<sup>nd</sup> Defendant in respect of the Panel of land comprised of Garki Model Market?”**
3. **“Whether the 2<sup>nd</sup> Defendant after its creation is vested with the powers to own property under our laws and whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

as well as other Government Organs and Agencies are not vested with powers to make rules and take decisions that will enhance the smooth administration of Government apparatus and public facilities in the best way available as in the creation of the 2<sup>nd</sup> Defendant aimed at the smooth and effective market administration?”

4. “Whether the 2<sup>nd</sup> Defendant as a free market enterprise enabled by law to charge service charge or facility fees on the Garki Model Market it manages and whether service charge and facility fees as charged the Claimants by the 2<sup>nd</sup> Defendant amount to any form of statutory tax or levy so as to constitute any form of double taxation in any shade whatsoever?”

5. **“Whether relationship between the Claimants and the 2<sup>nd</sup> Defendant is not contractual and terms contained in agreement freely entered into by the Claimants is not binding on them?”**

On issue 1, **“Whether this suit as presently constituted is incompetent”**.

Counsel submits that the case of the Plaintiffs as presently constituted is incompetent, an abuse of court process which consequently robs this Honourable Court’s jurisdiction.

***LAWANI VS. SHETTIMA (2001) FWLR (Pt. 71) at 1870;***

***OBETA VS OKPE (1996) 9 NWLR (Pt. 473) 411;***

***PETROJESSICA ENTERPRISES LTD. VS LEVENTIS TECHNICAL COMPANY CO. LTD.***

*(1992) 5 NWLR (Pt. 244) page 675 at 693 were cited.*

Counsel humbly submits that the present suit of the Claimants as presently constituted is an abuse of court process. Abuse of court process in the contemplation of the law involves circumstances and situations of infinite variety. But it has one common denominator which is the improper use of the process of court by a party in litigation to interfere with the due administration of justice to the annoyance and irritation of his adversary.

***AMAEFULE & ORS. VS THE STATE (1998) 2 SCNJ 69 at 87 – 89;***

***ABUBAKAR VS BEBEJIDE OIL AND ALLIED PRODUCT LTD. (2007) 18 NWLR (Pt. 1066) 319;***

*F.R.N VS LAWANI (2014) ALL FWLR (Pt. 712)  
1808 C.A were cited.*

On issue 2, “whether the 1<sup>st</sup> Defendant has acted within its statutory powers to have issued a Certificate of Occupancy in favor of the 2<sup>nd</sup> Defendant in respect of the Parcel of land comprised of Garki Model Market?”

Counsel submits that, the allocation of land to any person, be it natural or artificial, corporate entities or organization is an executive function vested in the State Governors and the Minister of the Federal Capital Territory, who has the equivalent functions and powers of a State Governor, as enshrined in Section 176(2) of the Constitution Federal Republic of Nigeria 1999 as amended. Section 18(c) Federal Capital Territory Act Cap F6 Law of the Federation

of Nigeria 2004; *ASSOCIATED DISCOUNT HOUSE LTD. VS MINISTER OF FEDERAL CAPITAL TERRITORY (2014) ALL FWLR (Pt. 713) 1864 SC.*

On issues 3 and 4 counsel urged the court to resolve the issues in favour of the Defendants.

On whole, counsel submits that, from the totality of the content of the 2<sup>nd</sup> Respondent's counter affidavit as well as exhibits attached and written argument herein, we humbly urge the honourable court to discountenance the reliefs of the Applicants and grant the 2<sup>nd</sup> Respondent the reliefs as contained in her counter claim herein below.

2<sup>nd</sup> Defendant on their part filed a counter claim wherein the following were claimed against the Applicant.

- a. A declaration that the 2<sup>nd</sup> Respondent is the beneficial owner of Garki Model Market, Garki, Abuja, Federal Capital Territory.
- b. A declaration that the Respondent is vested with the right to manage all the shops at Garki Model Market, Garki, Abuja, Federal Capital Territory, as well as all the facilities therein.
- c. A declaration that as managers of the Garki Model Market, Garki, Abuja, Federal Capital Territory, the 2<sup>nd</sup> Respondent reserved the right to periodically review the service charge as well as other rates so as to bring them in consonance with current economic realities.
- d. An Order of this Honourable Court perpetually restraining the Applicants, agents, privies or anyone called whatsoever from taking any steps

tantamount to causing the breach of public peace in the Garki Model Market, Garki, Abuja, Federal Capital Territory, including but not limited to, any form or violence, unlawful demonstration of any other act of sort.

- e. An Order directing the Applicants to immediately pay the such total sum standing against each traders name as per AMML A and AMML I being accumulated unpaid arrears of service charge a enumerated in AMML A and AMML I, till judgment and thereafter until judgment sum is totally liquidated.
- f. An Order of this Honourable Court restraining the Defendants and their agents, assigns and privies from further threatening the peace of the community of the Garki Model Market, Garki,



Abuja, Federal Capital Territory, or doing anything that is inimical to the public peace safety, security and general economic interest of the entire Garki Model Market, Garki, Abuja, Federal Capital Territory, as well as its environ.

- g. The sum of N5,000,000.00 (Five Million Naira only) as specific damage against the 2<sup>nd</sup> Defendant.
- h. The sum of N10,000,000.00 (Ten Million Naira only) representing general damages.
- i. The sum of N2,000,000.00 (Two Million Naira only) representing solicitor's fee.

2<sup>nd</sup> Defendant equally filed a further and better affidavit in support of their counter affidavit and stated that only 10 persons made payment after the order was granted with these ten including Abdullahi

Kabiru of shop 18 A-B Yusuf Hali with receipt No. 2879942 and Sumaila Abdulahi No. 2876856.

That the Claimants deliberately attempted to mislead the Honourable Court with the retinue of receipts by deliberately repeating same receipts misrepresenting them as different ones with each repeated up to five times in Exhibit “B” which can be perused by the receipt of Usman Halilu with No. 2866927, as well as others appearing in five different places.

That majority of the Exhibit “B” relied on are made up of payments made as far back as 2006 which services have since been enjoyed without payment for the current period which is the relevant period in this suit, which much can be gleaned from the receipt of Idinaka Kalu, with receipt No. 0047960 among several others.

That only one Yasaf Nigeria Ltd., made payment after the order of the Honourable Court was handed down in September, with his payment of N30,000.00 covering December, 2021 to May 2022, with receipt No. 2880947.

That considering the analysis of the Claimants Exhibit “B” made above, it is crystal clear that they have been in flagrant disobedience of the Honourable Court’s directive of maintaining status quo for their deliberate refusal to pay the old rate of N2,500.00 with only one person paying any sum at all after the Order was handed down and very few other paying before the order, but with a several duplicated number of receipts for very old payments brandished to confuse and mislead the Honourable Court.

That the record of the Honourable Court will confirm that the matter was adjourned for report of settlement on the day the Claimants' counsel moved the court for the grant of the order of injunction.

That it is very clear from the 2<sup>nd</sup> Respondent's records attached AMML "C" that the negative response consequence to the order has affected the finances of the 2<sup>nd</sup> Respondent. Which is the clear picture of the current situation.

On their part, 3<sup>rd</sup> Defendant also filed counter affidavit of 5 paragraphs where they stated as follows:-

That the fact as deposed in the Plaintiffs' affidavit in support of their Originating Summons are false and aimed at misleading this Honourable Court.

That the Plaintiffs' suit challenges the power of the 2<sup>nd</sup> Defendant to collect tax and rates (revenue) from the alleged respective shops/stalls of the Plaintiffs in Garki Model Market, Garki II and other markets within the Federal Capital Territory, Abuja.

That the 1<sup>st</sup> Defendant amongst other duties is empowered to collect taxes and rates from shop owners and occupants in the Federal Capital Territory, Abuja.

That the collection of taxes and rates from shops owners and occupants in Garki Model Market, Garki II and various markets within the Federal Capital Territory, Abuja constitute one of the duties of the 1<sup>st</sup> Defendant.

That the 1<sup>st</sup> Defendant in an effort to collect taxes and rates in Garki Model Market, Garki II, engaged

the 2<sup>nd</sup> Defendant to collect taxes and rates in some respective markets within the Federal Capital Territory, Abuja from shop owners and occupants.

That the Abuja Environmental Protection Board (AEPB) does not collect rates and taxes for other services rendered in the various market within the Federal Capital Territory, Abuja.

That contrary to paragraph 8 of the affidavit in support of the Plaintiffs' Originating Summons, the 2<sup>nd</sup> Defendant under the instruction of the 1<sup>st</sup> Defendant has not collected the sum of N2,500 and N5000 from the individual Plaintiffs from the inception of Garki Model Market in 2006 till date.

That all rates paid in the respective markets managed by the 2<sup>nd</sup> Defendant on the instruction of the 1<sup>st</sup> Defendant are not fixed by the 2<sup>nd</sup> Defendant but by

appropriate authority responsible for same in the administration of the Federal Capital Territory, Abuja.

That the Plaintiffs in this suit has not at any time written to the 3<sup>rd</sup> Defendant complaining of any alleged double taxation or illegal collection of rates by any person or authority including the 2<sup>nd</sup> Defendant.

That in any event shop owners or occupants in the various markets in the Federal Capital Territory, Abuja are aggrieved either as a result of double taxation, illegal demand of rates or in any other way, the said grievance are usually channeled to the authority of the 1<sup>st</sup> Defendant or any other authority like the 3<sup>rd</sup> Defendant through the union or

association representing the interest of the individual markets.

That Claimants have engaged in the duplication of Plaintiff(s) and that following sets of Plaintiffs are one and same persons:

The 316<sup>th</sup> – 322<sup>nd</sup>, 326<sup>th</sup>, 327<sup>th</sup>, 332<sup>nd</sup>, 353<sup>rd</sup> and 354<sup>th</sup> Plaintiffs, the 128<sup>th</sup> and 130<sup>th</sup> Plaintiffs, the 171<sup>st</sup> – 172<sup>nd</sup> Plaintiffs, 245<sup>th</sup> – 246<sup>th</sup> Plaintiffs, the 252<sup>nd</sup> – 253<sup>rd</sup> Plaintiffs, the 264<sup>th</sup> - 273<sup>rd</sup> Plaintiffs, the 279<sup>th</sup> – 281<sup>st</sup> Plaintiffs, the 291<sup>st</sup> – 294<sup>th</sup> Plaintiffs, the 295<sup>th</sup> – 296<sup>th</sup> Plaintiffs, the 299<sup>th</sup> – 300<sup>th</sup> Plaintiffs, the 301<sup>st</sup> – 302<sup>nd</sup> Plaintiffs, the 303<sup>rd</sup> – 304<sup>th</sup> Plaintiffs, the 314<sup>th</sup> – 315<sup>th</sup> Plaintiffs, the 329<sup>th</sup> – 331<sup>st</sup> Plaintiffs, the 342<sup>nd</sup> – 343<sup>rd</sup> Plaintiffs, the 356<sup>th</sup> – 357<sup>th</sup> Plaintiffs, the 364<sup>th</sup> – 365<sup>th</sup> Plaintiffs, 372<sup>nd</sup> –



373<sup>rd</sup> and 375<sup>th</sup> Plaintiffs, 391<sup>st</sup> – 392<sup>nd</sup> Plaintiffs, the 395<sup>th</sup> – 396<sup>th</sup> Plaintiffs, and 425<sup>th</sup> – 426<sup>th</sup> Plaintiffs.

3<sup>rd</sup> Defendant also filed written address wherein a lone issue was formulated for determination. The issue is;

**“Whether in view of the relevant laws, the fact and circumstances of this case, the Plaintiffs are entitled to the grant of the declarations in A and D and the reliefs sought in this suit.”**

Counsel submits that, it is an established principle of law that declaratory reliefs must be proved by a Plaintiff with cogent and verifiable evidence. Declaratory reliefs are not granted even upon admission on the part of the defence. A Plaintiff seeking for declaratory reliefs must provide

sufficient evidence to establish his case. *INEC VS. ATUMA (2013) 11 NWLR (1366) at 494 S.C.*

Counsel contend that the Plaintiffs' claims in the instant suit relates to the Power of the 1<sup>st</sup> Defendant to engage the 2<sup>nd</sup> Defendant to collect rate and tax from the individual Plaintiffs, and/or the propriety of the 2<sup>nd</sup> Defendant to collect tax (revenue) from the individual Plaintiffs. The 1<sup>st</sup> Defendant is appointed by the Federal Government, the 2<sup>nd</sup> Defendant was engaged by the 1<sup>st</sup> Defendant as an agent of the Federal Government to deal with issues bordering on management and collection of rates in designated markets within the Federal Capital Territory, Abuja, the collection of tax and rates comes within the duties of the 1<sup>st</sup> Defendant. The collection of same from the Plaintiffs by the 2<sup>nd</sup> Defendant on the instructions of the 1<sup>st</sup> Defendant does not in any way

breach any provisions of Section 7 (1) (b)(c)(j)(k)(iii)(iv) and (v) to the Fourth Schedule of the 1999 Constitution (as Amended).

Counsel submits that, these averments as contained in paragraphs 10 and 11 cannot be relied upon as the said publication is not before the court. Even where the said publication is produced before the court, same cannot be considered to have established the truth of the contents of the publication, but only established the fact that the publication was made.

***ABEGUNDE VS THE ONDO STATE HOUSE OF ASSEMBLY & ORS. (2014) LPELR – 23683 (CA).***

Counsel contend that, flowing from the above, it is an established principle of law that special damages must be accompanied by valid particulars establishing same. Special damages are not granted

automatically. The Plaintiffs in this suit sought for the sum of N5,000,000,000.00 (Five Billion Naira) in its relief “E” as special damages for the alleged locking up of the Plaintiffs’ shops on failure to pay N2,500.00 (Two Thousand, Five Hundred Naira) and subsequent N5,000.00 (Five Thousand Naira) to the 2<sup>nd</sup> Defendant. No particulars were given as to how the Plaintiffs arrived at the sum. Special damages must be strictly proved.

***ARABAMBI & ANOR VS. ADVANCE BEVERAGES (2005) NSCQR VOLUME 24 Page 520 at 556;***

***ARABAMBI & ANOR VS. ADVANCE BEVERAGES (Supra) at Page 557*** were cited.

Counsel submits that, the Plaintiffs having failed to strictly prove the special damages claimed hence not

entitled to the grant of same. Counsel urge this Honourable Court to so hold and dismiss the claims of the Plaintiffs.

Learned counsel submits that, Plaintiffs in this suit have failed to provide sufficient evidence to warrant the grant of the reliefs presented before this Honourable Court.

That Plaintiffs are not in any way entitled to the damages claimed against the Defendants in this Suit. This is premised on the face that the requirement for the grant of damages has not been satisfied, and that Plaintiffs' Relief "D" cannot be granted, the Plaintiffs having brought this suit without regard to the Fundamental Rights Rule.

Learned counsel respectfully urge this Honourable Court to dismiss the claims of the Plaintiffs.

Claimants also filed further and better affidavits in answer to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants counter affidavit to their Originating Summons. As it relates to the 2<sup>nd</sup> Defendant's counter affidavit, it is the further affidavit of Claimant that;

That the Plaintiffs listed in this Suit are aware of the filing of this Suit and gave their consent before the institution of this action. The Plaintiffs conducted a meeting before instituting this action.

That the Defendants have failed to provide documentary evidence showing the cost of subsidy that would warrant the inflated N5,000.00 (Five Thousand Naira) service charge. Whereas the 2<sup>nd</sup> Defendant have other source of generating revenue such as from private cars driving into the market on a daily basis paying N100, buses N200, mini trucks

N500, heavy trucks N1000, trailer N2000 at the point of entry as gate pass, even traders and shop owners pay N100 as gate pass. The Market is also turned into an open space market on Sundays where goods are displayed, each trader is required to pay the sum of N1000 for the Sunday Market with many traders in attendance.

That contrary to Paragraph 15 of the Defendants counter affidavit, the Plaintiffs listed in this suit have not defaulted in regular payment of their fees even before the Order to maintain the status quo was granted. Since then, the Plaintiffs have maintained status quo by paying the required N2,500.00 and N5,000.00 respectively.

That paragraph 3 of the Agreement states that shops of defaulters will be locked up for failing to pay the

service charge N2,500.00 (Two Thousand, Five Hundred Naira).

That parties that refused to pay the inflated rate of N5,000.00 (Five Thousand Naira) were victims of the locked-up shops. Whereas the agreement stated the service charge as N2,500.00 (Two Thousand, Five Hundred Naira).

That the Claimants/Respondent were not the party that frustrated the amicable settlement but the 2<sup>nd</sup> Defendant and that the interlocutory injunction Order was legitimately secured as all the Defendants were put on notice and hearing notices served on them and the Order was secured after the amicable settlement was frustrated by the 2<sup>nd</sup> Defendant as evidenced in our correspondence to the registrar of this Honourable Court and the Claimants were never



disobedient to the directives of this Honourable court whatsoever.

That the Plaintiffs rely and repeats all averment contained in the affidavit in support of the Originating Summons and further affidavit as defence to the counter claim of the 2<sup>nd</sup> Defendant.

In line with the law, a written address was filed wherein, learned counsel formulated a lone issue for determination, to-wit:-

**Whether the 2<sup>nd</sup> Defendant has made out a case to warrant the dismissal of the Plaintiffs claim and a grant of the reliefs sought in their Counter Claim.**

Learned counsel submits that, it is trite law that a suit must be properly constituted for it to be competent.

***A.P.G.A VS. OYE (2019)2 NWLR (Pt. 1657) 393;***

***KWARA STATE UNIVERSITY VS. ALAO (2021)  
15 NWLR (Pt. 1799) 193*** were cited.

Learned counsel argued further that, the 2<sup>nd</sup> Defendant in their Counter Affidavit to the Originating Summons has alleged that the case of the Plaintiffs is built on falsehood aimed at misleading the Honourable Court because the consent of the other Plaintiffs were not sought before the 1<sup>st</sup> Plaintiff instituted this action.

On the part of 3<sup>rd</sup> Defendant's counter affidavit, Claimants filed further affidavit and contend that the Claimants suit challenges the Power of the 2<sup>nd</sup> Defendant and not the 3<sup>rd</sup> Defendant to collect illegal rates from the Claimants in Garki Model Market, Garki II, Abuja, and also states that it is not the duty

of the 1<sup>st</sup> Defendant nor of the 2<sup>nd</sup> Defendant to be collecting taxes and rates from the Claimants who are shop owners and Occupants in Garki II, Model Market, Abuja.

That the 1<sup>st</sup> Defendant who is the representative of Mr. President in FCT and the 2<sup>nd</sup> Defendant which is just an incorporated company are not statutorily empowered to be enforcing payments of rates which is within jurisdiction authority of the Abuja Municipal Areal Council on the Claimants whose Market is located within Abuja Municipal Area Council (AMAC) that contrary to paragraph 4(e), (f), (g), (h) of the 3<sup>rd</sup> Defendant's Counter affidavit, the collection of taxes and rates from shop owners and occupants in Garki Model Market, Garki II, Abuja and various Markets within the Federal Capital Territory, Abuja does not constitute one of

the duties of the 1<sup>st</sup> Defendant nor that of the 2<sup>nd</sup> Defendant.

That the illegal rates the 2<sup>nd</sup> Defendant is collecting from the Claimants are not revenues for the Federal Government nor are they partly for services rendered which ranges from security to other basic amenities being provided by the Federal Government.

That the 2<sup>nd</sup> Defendant which is just an incorporated company is not statutorily empowered to be enforcing payments of rates which are the statutory duty of Abuja Municipal Area Council, Abuja of Federal Capital Territory.

That the Claimants through their Solicitors had written two different letters marked as Exhibit “D” and Exhibit “F” in their affidavit in support of the

Originating Summons complaining of double taxation to the 1<sup>st</sup> Defendant.

That the Claimants did not engage in the duplication of Claimants in instituting this suit as being insinuated by the 3<sup>rd</sup> Defendant but is the 3<sup>rd</sup> Defendant which has taken over the duty and responsibility of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ignorantly for no just cause that should have sought the attention of the 2<sup>nd</sup> Defendant for enlightenment on why the names of some Claimants appeared in more than one place in the Originating Summons.

That some of the Claimants have two or more shops and for ease of reference the different shops were also listed against their names thereby leading to the repetition of the Claimants name against their respective different shops.

That the 3<sup>rd</sup> Defendant as the Chief Law Officer of the State has the responsibility to defend the interest of the Federal Government of Nigeria but not to take over the burden of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this case as the 3<sup>rd</sup> Defendant has decided to do.

An address of 10 pages was filed wherein the issue, whether, in view of the applicable laws, the facts and circumstances of this case, this Honourable Court can validly grant the claims and reliefs sought by the Claimants in this Suit?

Counsel argued that, the counter affidavit of the 3<sup>rd</sup> Defendant before this Honourable Court has failed to contradict or discountenance any of the averments in the 36 paragraphs of the Claimants' affidavit in support of Originating Summons and the 3<sup>rd</sup> Defendant has also failed to present any

contradicting document to challenge the averments of the Claimants as stated in their affidavit.

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

***FAMFA OIL LIMITED VS. ATTORNEY GENERAL OF THE FEDERATION (2003) 9 -10 SC. 31*** was cited

Learned counsel submits that, the Originating Summons procedure adopted in this Suit is

appropriate from the processes filed as there is no single relevant paragraphs of the counter-affidavit filed by the 3<sup>rd</sup> Defendant to support the 3<sup>rd</sup> Defendant's contention that the facts were disputed.

***FABUNMI VS. REGISTERED TRUSTEES  
FOURSQUARE GOSPEL CHURCH IN  
NIGERIA (2011) LPELR 9168 (CA)*** was cited

Order 2 Rule 2(1), (2) and Rules 3 of the High Court of Justice of the Federal Capital Territory (Civil Procedure) Rules 2018.

Counsel also maintained the fact that the 3<sup>rd</sup> Defendant filed a counter affidavit to the Originating Summons of the Claimants did not mean that the facts are disputed.

Learned counsel also argued that, since there is a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, by



all implications, there is also a cause of action against the 3<sup>rd</sup> Defendant, since the 3<sup>rd</sup> Defendant is the law officer of the Federal Republic of Nigeria of which the 3<sup>rd</sup> Defendant is one of its established institutions.

It is also the argument of learned counsel that the 3<sup>rd</sup> Defendant is the Chief Law Officer of the Country and in view of the fact that FCT Minister is sued and by the nature of FCT, the Attorney General of Federation is a necessary party Pursuant to Section 150 of the Constitution of Federal Republic of Nigeria 1999 (as amended).

***ATTORNEY GENERAL KANO VS. ATTORNEY GENERAL FEDERATION (2007) 6 NWLR (Pt. 1029) P. 164 at 192*** was cited.

Supreme per ESO J.S.C observed as follows:-

*“The pre-eminent and incontestable position of the Attorney General, under the common law, as the Chief Lawofficer of the State, either generally as a legal adviser or specially in all Court proceedings to which the State is a party, has long been recognized by the Courts. In regard to these powers, and subject only to ultimate control by public opinion and that of common law, been a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise, vis-a-vis his powers of instituting or discontinuing criminal proceedings. These powers of the Attorney General are not confined to cases where the State is a party. In the exercise of his power to discontinue a Criminal case or to enter a nolle*

*prosequi, he can extent this cases instituted by any other person or authority. This is a power vested in the Attorney General by the common law and it is not subject to review by any Court of law. It is no doubt, a great ministerial prerogative coupled with grave responsibilities”*

Counsel submits that, in the light of the above, both in civil or criminal matter the 3<sup>rd</sup> Defendant being the Chief Law Officer of the Federal Republic of Nigeria is a necessary party to any matter instituted against the Government or its agency or establishments as in this case. Counsel urge this Honourable Court to so hold.

### **COURT:-**

I need to state at this juncture that the FCT Minister, who initially filed counter affidavit, withdrew the

said counter affidavit which was eventually struck-out. 2<sup>nd</sup> and 3<sup>rd</sup> Defendant also filed Preliminary Objection.

I am now only left with the counter affidavits of the two Defendants and Preliminary Objection to determine.

I have looked at the nature of the Preliminary Objections filed by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants which seeks to attack the jurisdiction of this Court to determine this Suit. I shall for the purposes of sanity and procedure determine the two Preliminary Objection in view of the importance of jurisdiction generally.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who were both sued by Plaintiffs, upon receipt of the Originating Summons,

filed separate Preliminary Objection challenging the jurisdiction of this Court on almost the same issues.

I have consolidated both Preliminary Objection in line with procedure and law.

2<sup>nd</sup> Defendant (Abuja Market Management Limited) raised four (4) grounds on law, as the basis of its objection;

1. That the subject matter falls within the exclusive jurisdiction of the Federal High Court Pursuant to Section 251(a) and (b) of the 1999 Constitution of Federal Republic of Nigeria (as amended);
2. That the subject matter falls under the administrative decision of the Federal Government in view of the fact that the Suit challenges the Power of the 1<sup>st</sup> Defendant to

engage the 2<sup>nd</sup> Defendant to collect Management fees from the Plaintiffs;

3. That the Plaintiffs' Relief 3 is incompetent as same seeks enforcement of Plaintiffs' Fundamental Human Rights, and
4. That the phrase "following individual Claimants to be paying 2500.00 (Two Thousand Five Hundred Naira) monthly" is not breach of any Fundamental Human Rights as contained under Chapter IV of the 1999 Constitution (as amended). That at most it could constitute extortion and not breach of right.

Learned counsel filed a 13 page written address wherein the following issues were formulated for determination, as follows:-

1. *Whether this Court has the jurisdiction to entertain this Suit in view of Section 257(1) and 251(1) of the 1999 Constitution of Federal Republic of Nigeria (as amended).*
  
2. *Whether this Honourable Court can assume jurisdiction over Relief “D”, the Plaintiffs having not brought the instant Suit under the Fundamental Human Rights (FHR) Rules 2009.*

It is the argument of learned counsel for the 2<sup>nd</sup> Defendant/Applicant that FCT High Court does not have jurisdiction to determine the Suit of Plaintiffs/Respondents in view of the fact that same touches on the revenue or tax derived by Federal Government which falls under Section

251(1)(a)&(b) of 1999 Constitution, thereby making only the Federal High Court (FHC) competent.

It is also the argument of the 2<sup>nd</sup> Defendant that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are agents of the Federal Government and by the same provision aforementioned, all matters relating or connected to revenue or taxation of Federation and taxation of bodies carrying business in Nigeria and persons subject to Federal Taxation falls under the exclusive jurisdiction of the Federal High Court. Counsel argued that the 1<sup>st</sup> Defendant was appointed by the Federal Government; 2<sup>nd</sup> Defendant was engaged by the 1<sup>st</sup> Defendant as agent of the Federal Government to deal with issues bordering on Management and collection of fees in Markets within Federal Capital Territory.



On the argument that the former Minister of FCT, Bala Mohammed once issued a directive to all authorities and agencies under his command, 2<sup>nd</sup> Defendant inclusive, on collection of taxes and rates in the Federal Capital Territory, learned counsel cited the decision of ***ABEGUNDE VS. THE ONDO STATE HOUSE OF ASSEMBLY & ORS (2014) LPELR – 23683(CA)*** to say this Court cannot rely on same to represent the true position as Newspaper Publication is no reliable evidence. Learned counsel reiterated his argument on the fact that the three (3) Defendants are agents of the Federal Government, hence this Court should not assume jurisdiction to entertain the present suit.

On Relief “D”, which is on the issue Fundamental Human Rights, learned counsel contend that this Court does not have the competence to determine the

issue in view of the fact that Fundamental Human Rights (FHR) Matters are not begun vide Originating Summons but vide Originating Motion and Pursuant to Fundamental Human Rights (FHR) Enforcement Rules 2009 for above reason, learned counsel argued that the relief is incompetent.

The case of ***UMEH UDOEKE UMUEZE VILLAGE ISUOFA & ANOR VS. UMUEZE VILLAGE UNION & 11 ORS (2001)6 (Pt. 1243) 394 CA*** was cited in support of above preposition.

On the whole, counsel urge the Court to strike-out the suit of the Plaintiffs for want of jurisdiction.

Replying to the written legal argument in support of the Preliminary Objection of 2<sup>nd</sup> Defendant, learned counsel for the Plaintiffs/Respondents filed reply on points of law wherein he argued that the status of

Federal Capital Territory is akin to a state and therefore all agencies under her are State agencies and not Federal to warrant the argument that the FCT Minister is an agent of the Federal Government hence only Federal High Court can hear the present suit. Section 299 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) was cited. It is also the argument of learned counsel for the Plaintiffs that the Provision of Section 251 1(a)(b)(p)&(r) are most unambiguous to warrant any misunderstanding.

Counsel argued that Federal High Court has jurisdiction to exclusively entertain matters specified in subsections (a) to (f) of Section 251 of the Constitution of Federal Republic of Nigeria 1999 (as amended) and that in the determination of such, it is the claim of a party that would determine the

jurisdiction of the Court. Learned counsel argued that the parties must be Federal Government or Agencies, subject matter must be such that is listed under the exclusive jurisdiction of the Federal High Court for the argument to be founded.

Learned counsel argued that 2<sup>nd</sup> Defendant which is a Limited Liability Company cannot be an agency of the Federal Government, and that the subject matter of the suit is not collection of tax or revenue of Federal Government, but whether 2<sup>nd</sup> Defendant has power to assess, detain, demand and legislate on collection of rates without strict compliance and in accordance with Section 7 of the Constitution of the Federal Republic of Nigeria and paragraph 1(b),(c),(j),(k)(iii),(iv) and (v) of the fourth schedule to the Constitution unless there is a law in place

passed by National Association of Secretaries of State (NASS).

The case of *WEMA SECURITIES AND FINANCE PLC. VS. NIGERIA AGRICULTURAL INSURANCE CORPORATION (2015)16 NWLR (Pt. 1484) 93* was cited in aid on the argument with respect to Section 251(1) of the Constitution.

Counsel noted that the jurisdiction of the Court cannot just be limited to status of parties before the Court, and that it would be wrong on the case cited above for a State High Court to decline jurisdiction only because one of the parties is the Federal Government or her agency.

The subject matter shall be taken into account. Learned counsel urged the Court to dismiss the Preliminary Objection.

Next is the issue of abuse of Court process which 3<sup>rd</sup> Defendant/Applicant made as a ground of objection to the suit of the Plaintiffs/Respondents.

It is the argument of learned counsel for the Attorney General of the Federation (AGF) i.e 3<sup>rd</sup> Defendant that Suit No. **FCT/ABJ/BW/CV/102/2020** between **Ezekwgu Ugwuodo Nicholas & 645 Ors** was still pending when the present suit was filed by the Plaintiffs and that the subject matter in both suits are same and one. Learned counsel therefore urged the Court to decline jurisdiction on grounds of abuse of judicial process. The case of *UMEH VS. IWU (2008)8 NWLR (Pt. 1089)* was cited in and on abuse of Court process.

Reacting to the argument, learned counsel for the Plaintiffs/Respondents stated that the said Suit was struck-out vide ruling on Motion **M/7871/2020** dated 31<sup>st</sup> March, 2020 which he exhibited as “A”.

It is the averment of Plaintiffs that there is no other Suit pending anywhere on the same subject matter. Counsel urged the Court to dismiss the Preliminary Objections filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

**COURT:-**

I have carefully read the issues discussed in the legal arguments of both 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants touching on the incompetence of the FCT High Court to determine the present suit of the Plaintiffs/Respondents. I shall in that order address them in the course of this ruling.

The issue of jurisdiction, once raised shall be determined frontally first to avoid getting involved in any academic exercise since without jurisdiction, no matter can be validly determined.

See *MADUKALU VS. NKEMDILIM (1962) SC.*;  
*UAC VS. MCFOM (1962) (SC).*

It is spent peradventure that jurisdiction is the life and blood of any case. It is akin to a door key, without which you cannot assess a room or chambers. It is the Power from which Courts do derive their authority to entertain matters placed before them for adjudication. Jurisdiction is a matter that is statutorily based as provided by Constitution or Acts of National Assembly.

To ascertain therefore the jurisdiction of Court, the facts of the case have to be examined and this shall



be done by scrutinizing the pleadings before the Court particularly that of the Plaintiffs in the case since it what the Court shall look at to determine its jurisdiction and not the statement of Defence.

See *AHMED VS. AHMED & ORS (2013) LPELR – 21143 (SC)*.

Jurisdiction of Court can be challenged from either the subject matter or parties or both as done by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in this case.

This then brings us to the provisions of Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) on these matter which only the Federal High Court can exercise jurisdiction to the exclusion of other Courts.

The arguments of Kolawole, Esq. and Suleiman Jubrin, Esq. for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is the fact that

the suit of the Plaintiffs touches on revenue/taxation to the Federal Government and therefore only the Federal High Court has jurisdiction.

Both Counsel equally raised the fact that the Defendants are agencies of the Federal Government and therefore this Court cannot assume jurisdiction to hear the suit.

Let me frontally state that the argument of both Counsel in this area of the law is not Nobel as these issues have been determined in plethora of judicial decisions. I only need to mention the fact that Section 251 of the 1999 Constitution is very unambiguous on those areas where only the Federal High Court can exercise exclusive jurisdiction, and where an issue is therefore not mentioned or contained in the said provision, no Court or party

shall read into such provision any other issue or item not the same mentioned.

It is settled that the Federal Capital Territory enjoys the status of a State like other States in Nigeria, and therefore any issue of tax not regulated by the Federal Inland Revenue Service or by any Federal Agency, the said revenue collected from the Plaintiffs in this case inclusive, remains a state tax. It can be likened to the various taxes and or levies collected by various officials from public bus drivers or taxi drivers.

This is in the event that Plaintiffs are even challenging the collection of such taxes or revenue. No. The action of the Plaintiffs has to do with the activities of the 2<sup>nd</sup> Defendant i.e Abuja Market Management Limited (AMML) which Plaintiffs

have accused of collecting rates, establishment, maintenance and regulations of Markets, public convenience, tenements rates, shops, and levies without compliance with Section 7 of the 1999 Constitution.

Section 1, Part 1 of the *Taxes and Levies (Approved List for Collection) Act 1998 Vol. 21 LFN, 2004* lists out the taxes to be collected by Federal Government as follows:-

1. Company Income Tax
2. Withholding Tax on Companies, residents of Federal Capital Territory, Abuja and Non-resident individuals
3. Petroleum Profit Tax
4. Value added Tax

5. Education Tax
6. Capital Gains Tax on residents of the Federal Capital Territory, Abuja Bodies Corporate and Non-resident Individuals
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory Abuja.
8. Personal Income Tax in respect of:-
  - a. Members of the Armed Forces of the Federation
  - b. Members of the Nigeria Police Force
  - c. Residents of the Federal Capital Territory, Abuja;
  - d. Staff of the Ministry of Foreign Affairs and non-resident individuals.

It is therefore preposterous and laughable that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants regard such taxes as Federal taxes falling under Section 251(1)(b) of the 1999 Constitution and therefore coming under the jurisdiction of the Federal High Court. Since jurisdiction is primarily determined by the subject matter of the case, the Federal High Court cannot have jurisdiction with respect to State affairs. In the case *FEDERAL MINISTRY OF COMMERCE AND TOURISM & ANOR VS. EZE (2005) LPELR – 5626 (CA)*, the Court held thus: “..one of the principles developed on the point from the decided cases is that in their interpretation or application of Section 251 on the exclusive jurisdiction of the Federal High Court, the Courts construe the said provision strictly or even technically and they confine themselves in that sense only to the specific

**subjects or subject matters contained in the section.**  
**Thus, any other matter or subject not specifically**  
**mentioned under or in the provision of the section**  
**are regarded as excluded from the jurisdiction of**  
**the Federal High Court.”**

Let me reiterate again that the provision of Section 299(1) of the Constitution of Nigeria 1999 is clear on the status of the FCT as a state, with all such Executive, Legislature Powers being vested in the President of the Federal Republic of Nigeria (FRN) and the National Assembly (NASS) as done in States Houses of Assembly.

It is therefore clear that FCT Minister, Federal Capital Development Authority (FCDA), Federal Capital Territory Administration (FCTA) are not and cannot be agents of the Federal Government.

See *BAKARI VS. OGUNDUPE & ORS (2020) LPELR 49571 (SC)*, where the issue has been put to rest.. I rely on the said authority to equally put to rest this argument.

The arguments of both counsel on the issue of Section 251 and the fact that Defendants are agents of Federal Government, is therefore, a non-starter.

I further wish to also state that by the nature of the transaction between some of the Claimants and the 2<sup>nd</sup> Defendant, it is constitutional; while for those that are renting stalls from the 2<sup>nd</sup> Defendant, it remains a relationship of landlord and tenant which remains the domain of the High Court and not the Federal High Court.

On the issue of abuse of Court process, it is settled that once a Notice of Discountenance is filed at the



applicable Courts registry, the lifespan of such a case would have been terminated unless same is re-awaken as in this case again.

Plaintiffs/Respondents have shown by their Motion that they have filed a Notice of Discountenance of the earlier Suit. 3<sup>rd</sup> Defendant/Applicant has not proffered any superior argument on the issue. Having so filed the said application which terminated the existence of the earlier suit, a case of abuse cannot be raised against the present suit. Order 24 Rule 2 of the Rules of this Court is founded.

On the argument that is within the administrative decision of the Federal Government, I say no more in view of my findings on the provision of Section 299(1) of the Constitution and the case cited (Supra).

Next is the issue of competence of Relief “D” which essentially is on the issue of enforcement of the Fundamental Human Rights (FHR) of the Plaintiffs/Respondents.

The law on the issue of enforcement of Human Rights is regulated by the Fundamental Human Rights (FHR) Enforcement Rules 2007, is settled. Any such action for violation of Human Right shall be begun vide Originating Motion Pursuant to the 2009 Rules, and the claim essentially, shall be on the issue of violation of Fundamental Human Rights and not ancillary claim.

See ***FRN & ORS VS. ABACHA & ORS (2014) LPELR – 22355 (CA)***;

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

The desire of Plaintiffs to enforce their Fundamental Human Rights vide Originating Summons as claimed in Relief “D” cannot be sustained. The argument of learned counsel for the 2<sup>nd</sup> Defendant/Applicant on this score is very apt and accordingly, hereby upheld.

Consequently, the said Relief “D” is hereby struck-out for want of jurisdiction.

See ***MADUKALU VS. NKEMDILIM (Supra)***.

On the other argument touching on the subject matter, parties and the issue being Federal Government Administrative Matter, which the Court in its consideration disagrees with the objection, the said argument as contained in the consolidated

applications of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are refused and dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*29<sup>th</sup> April, 2022*

I now gravitate to the issues raised in the Originating Summons submitted to Court for determination. The issues have been carefully produced in the body of this Judgment and I shall therefore proceed to determine them in seriatim, to avoid duplication.

Section 7 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and paragraph 1(b),(c),(j),(k),(iii),(iv) and (v) has the following provisions:-

b. Collection of rates, radio and television

- e. Establishment, maintenance and regulations of slaughter houses, slaughter slabs, markets, motor parks and public convenience.
- h. Provision and maintenance of public convenience, sewage and refuse disposals.
- j. Assessment of privately owned house or tenement for the purpose of levying such rates as may be prescribed by the House of Assembly of State.
- kiii. Shops and kiosks
- iv. Restaurant, bakeries and other place for sale of food to the public
- v. Laundries

As stated in the preceeding ruling of this Court, the Federal Capital Territory enjoys the status of a State

Pursuant to Section 299 of the Constitution of the Federal Republic of Nigeria (as amended); therefore, Section 7(1) of the Constitution which provides and guarantees Local Government System in States applies with respect to Area Courts in the Federal Capital Territory also.

It is the evidence of the 2<sup>nd</sup> Defendant that it was allocated the land housing the said Garki Market vide Certificate of Occupancy annexed and marked Exhibit “B”. The Power to Allocate Land in the FCT is solely the discretion of the FCT Minister pursuant to Section 18 FCT Act. The fact that FCT Minister enjoys the delegated powers of the President Federal Republic of Nigeria, is not in doubt.

The issue is whether those constitutionally provided duty of Local Government in Nigeria and Area

Councils can be exercised by the 2<sup>nd</sup> Defendant regardless of the allocation of the said land to it housing Garki Market. That in the grouse of the Claimant before this Court.

In ***KNIGHT FRANK & RUTLEY (NIG) & ANOR VS. A.G KANO STATE (1998) LPELR – 1694.***

Supreme Court of Nigeria reiterated the fact that the assessment and collection of rates and taxes on privately owned houses and tenements are exclusively the function of the Local Government as guaranteed by the Constitution and not by State Legislative issues of Constitution are not issues to be glossed-over or dismiss with the wave of the hand.

If indeed issues bordering on the allocation of Markets with respect to rates, taxes, collection of tenements are within the Constitutional powers of

the Local Government i.e Area Council with relation to FCT, it then presumptuous that only Abuja Municipal Area Council (AMAC) has the power to impose any such rates/taxes excreta on all occupation of the Market and other Markets with Abuja Municipal Area Council (AMAC).

Even though the 1<sup>st</sup> Defendant who has the Power to allocate land in FCT has so exercised its power to allocate the said land to the 2<sup>nd</sup> Defendant, it has no such power to enter into any such agreement with relations to any such collection of taxes, rates that it has now increased from N2,500.00 (Two Thousand, Five Hundred Naira) to N5,000.00 (Five Thousand Naira).

Any such agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, amounts to usurpation of the



Constitutional Powers of Abuja Municipal Area Council (AMAC), and to that extend, null and void and unconstitutional.

I have seen newspapers publication which was duly certified and annexed as Exhibit “C” by the Plaintiffs where the then FCT Minister issued directive to agencies of Government and the 2<sup>nd</sup> Defendant to stop collection of tenement rates or any such taxes to avoid payment of double taxation.

I have read the argument of Kolawole, Esq. for the 2<sup>nd</sup> Defendant on the need to disregard the said Newspaper publication as same does not have any value in law.

I need to mention at this point in time the fact that the 1<sup>st</sup> Defendant i.e FCT Minister who is at epic centre of this conundrum has decided to remain very

unconcerned. The disturbing aspect of the lack of concern came to the fore when its counsel for whatever reason on the day the Originating Summons was slated for definite hearing, withdrew the counter affidavit they earlier filed, leaving 2<sup>nd</sup> Defendant to defend the action of the 1<sup>st</sup> Defendant. If the former FCT Minister directed statutory bodies and the likes of 2<sup>nd</sup> Defendant to desist from collecting any such payment in FCT, why is 2<sup>nd</sup> Defendant still doing the same thing!

The averment by Plaintiffs that such directive was given by the outgone FCT Minister was not denied by the present FCT Minister who is the 1<sup>st</sup> Defendant in this suit... this averment remains very unchallenged as far as this claim is concerned.. the effect of an unchallenged averment is settled. The Court shall rely on same.

See *EZECHUKWU & ANOR VS. ONWUKA – (2016) LPELR 26055 (SC)*.

The argument of 2<sup>nd</sup> Defendant that it has on its Board Membership of Abuja Investment and Property is not a reason to usurp the Powers of the Abuja Municipal Area Council (AMAC) which is Constitutional.

What more, the 1<sup>st</sup> Defendant who ought to have denied the averments of the Claimants on its status, has not helped matters when it withdrew its counter affidavit.

2<sup>nd</sup> Defendant who is the beneficiary of the illegality, is crying wolf while flaunting the Certificate of Occupancy granted it by the 1<sup>st</sup> Defendant.

Laws have been made by National Assembly (NASS) on the regulation of Markets which is under the Area Council. Unless there is any such intervention by the National Assembly (NASS) on this issue, 2<sup>nd</sup> Defendant shall continue to lack the competence to levy any such payments on the occupants of the Market (Garki Market) as that would amount to double taxation.

Abuja Environmental Protection Board (AEPB) which is statutorily established to deal with such issues shall continue to carry out its function in collaboration with Abuja Municipal Area Council (AMAC) and not the 2<sup>nd</sup> Defendant.

Even though Claimants have been made to pay such rates since 2006, the illegality has to stop from this minute. We must learn to do the right thing. If

indeed the said Plaintiffs have bought their shops outrightly, the most that could happen within the Market is for the 2<sup>nd</sup> Defendant to collect rates with relation to vehicular movements in and out of the Market which it shall deploy towards the provision of Security within the Market and not impose such amounts on shop owners in brazen and frontal violation of the provision of the Constitution. 1<sup>st</sup> Defendant cannot give 2<sup>nd</sup> Defendant what it does not have.

Having come this far, Relief 1 is answered in the negative.

I similarly answer Relief No. 2 in the affirmative.

I have seen pictures of stalls/shops locked-up on account of limited fact that they have not paid the said sum demanded of them by the 2<sup>nd</sup> Defendant.

2<sup>nd</sup> Defendant has no such Power to padlock Plaintiffs shops because they have refused to obey illegality.

Any such money demanded by 2<sup>nd</sup> Defendant i.e 2,500.00 (Two Thousand Five Hundred Naira) or N5,000.00 (Five Thousand Naira) is hereby set aside.

On the other reliefs touching on enforcement of the Fundamental Human Right (FHR) of the Claimant, my ruling on same is adopted in refusing the said claims in view of what is contained in my Ruling.

I hereby further Order that all shops locked-up on account of non-compliance with the demand of 2<sup>nd</sup> Defendant on payment of N2,500.00 (Two Thousand, Five Hundred Naira) to N5,000.00 (Five Thousand Naira) be unveiled immediately.

I further order that Abuja Municipal Area Council (AMAC) take-over such Constitutional responsibility regarding collection of such rates from all persons doing business at the Garki Market as provided for in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

I make no such Orders with respect to payment of damages.

Next is the counter claim of the 2<sup>nd</sup> Defendant, as follows;

- a. A declaration that the 2<sup>nd</sup> Respondent is the beneficial owner of Garki Model Market, Garki, Abuja, Federal Capital Territory.
- b. A declaration that the Respondent is vested with the right to manage all the shops at Garki Model

Market, Garki, Abuja, Federal Capital Territory, as well as all the facilities therein.

- c. A declaration that as managers of the Garki Model Market, Garki, Abuja, Federal Capital Territory, the 2<sup>nd</sup> Respondent reserved the right to periodically review the service charge as well as other rates so as to bring them in consonance with current economic realities.
- d. An Order of this Honourable Court perpetually restraining the Applicants, agents, privies or anyone called whatsoever from taking any steps tantamount to causing the breach of public peace in the Garki Model Market, Garki, Abuja, Federal Capital Territory, including but not limited to, any form or violence, unlawful demonstration of any other act of sort.



- e. An Order directing the Applicants to immediately pay the such total sum standing against each traders name as per AMML A and AMML I being accumulated unpaid arrears of service charge a enumerated in AMML A and AMML I, till judgment and thereafter until judgment sum is totally liquidated.
- f. An Order of this Honourable Court restraining the Defendants and their agents, assigns and privies from further threatening the peace of the community of the Garki Model Market, Garki, Abuja, Federal Capital Territory, or doing anything that is inimical to the public peace safety, security and general economic interest of the entire Garki Model Market, Garki, Abuja, Federal Capital Territory, as well as its environ.

- g. The sum of N5,000,000.00 (Five Million Naira only) as specific damage against the 2<sup>nd</sup> Defendant.
- h. The sum of N10,000,000.00 (Ten Million Naira only) representing general damages.
- i. The sum of N2,000,000.00 (Two Million Naira only) representing solicitor's fee.

It is the law that a beneficial owner enjoys completely all the rights and privileges legally possible for an owner to have in respect of such land.

See *ALLI VS. IKUREBIALA (1989) LPELR – 428 (SC)*.

It is in evidence that the said Plaintiffs have either bought their respective shops or are renting from

those that bought. 2<sup>nd</sup> Defendant cannot in law remain the beneficial owner of the said part of the land with shops that have been sold and paid for by the Plaintiffs.

The right of 2<sup>nd</sup> Defendant, if any, remains equitable if there is any part of the land that has not been sold-out. 2<sup>nd</sup> Defendant can therefore not be a beneficial owner since 2<sup>nd</sup> Defendant cannot again transfer the interests of those Plaintiffs who have bought their shops.

On the next claim of 2<sup>nd</sup> Defendant/Counter Claimant for declaration that 2<sup>nd</sup> Defendant is vested with the right to manage all shops at Garki Market, Garki, Abuja, FCT, as well as the facilities therein;

I make bold to reiterate my earlier position that Abuja Municipal Area Council (AMAC) reserves

the right to manage all markets within the Municipal Area Council and not the 2<sup>nd</sup> Defendant, regardless of the fact that 2<sup>nd</sup> Defendant was allocated the land housing the Market which built shops are privately owned now. 2<sup>nd</sup> Defendant at best shall provide security and manage the entry and exist gates of the said market for a fee from Market users.

I have also carefully read the argument of learned counsel for the 2<sup>nd</sup> Defendant on the fact that there exists a contract between them and the Claimants and that Claimants are bound by the said contract.

It is true that 2<sup>nd</sup> Defendant who have been collecting monies from the Claimants have a written agreement to that effect, I however wish to say that such an agreement which was premised or founded on illegality cannot stand.

See *MUSA VS. AHMAD (2018) LPELR 44247(CA)*;

*ALAO VS. A.C.B LTD. (1998) LPELR 407 SC.*

Having said earlier that it is Abuja Municipal Area Council (AMAC) and not the FCT Minister who has the Constitutional Power and Mandate to manage Market affairs in the FCT, on the one hand, and the fact that 2<sup>nd</sup> Defendant cannot on the face of the Constitutional provision be enforcing payments and levies on the Claimants, the so-called agreement entered-into with the Claimants cannot be used against the said Claimants as same remains illegal.

I am hoping and believing that with what I have said in the preceding part of this Judgment, 2<sup>nd</sup> Defendant's counter claims in Reliefs "C", "D", "E", "F", "G", "H" and "I" which have been reproduced

in the body of this Judgment shall fail. They are refused and hereby dismissed.

Above is the Judgment of this Court.

*Justice Y. Halilu*  
*Hon. Judge*  
*29<sup>th</sup> April, 2022*

**APPEARANCES**

Suleiman J., Esq. with Hassan N., Esq. – for the 3<sup>rd</sup> Defendant.

G.N. Onwughalu, Esq. – for the Claimants.

1<sup>st</sup> Defendant not in Court and or represented.