

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

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**SUIT NO: CV/480/2022**

**BETWEEN:**

**ODECO OIL LIMITED.....CLAIMANT**

**AND**

**TOTAL ENERGIES MARKETING NIGERIA PLC.....DEFENDANT**

**JUDGMENT**

By the originating summons with No. CV/480/2022 the claimant seeks for the determination of the following questions:

1. Whether by the entire provision of the agreement between the claimant and the defendant titled "Deed of Sublease", the defendant has power to sublet to Stanbic IBTC Bank Plc to carry out the business of ATM Services on the claimant's property situate and being at 1<sup>st</sup> Avenue, 1H Road Lugbe, Abuja FCT?
2. Whether the carrying out of the business of ATM Services on the claimant's property has not contravened the dictates of the agreement between the claimant and the defendant?
3. Whether the act of the defendant subletting the claimant's property to Stanbic IBTC Bank Plc without the claimant's consent does not amount to a breach of the agreement between the claimant and the defendant?

The claimant, upon consideration and determination of the issues stated above, seeks the following reliefs:

1. A declaration that the defendant breached the provisions of the agreement signed by the claimant and the defendant.
2. A declaration that the respective agreement titled "Deed of Sublease and Supplemental Deed of Sublease" between the claimant be terminated upon the fundamental breach of the defendant.
3. An order of this Honourable Court directing the defendant to vacate the property of the claimant situate and being at 1<sup>st</sup> Avenue, 1H Road Lugbe, Abuja FCT.
4. An order of this Honourable Court directing the defendant to pay the claimant the sum of N100,000,000.00 (One Hundred Million Naira) only as general and exemplary damages.
5. And such further or other orders this Honourable Court deem fit to make in the circumstances of this suit.

The summons is supported by eighteen paragraphed affidavit and attached to it are the following documents:

1. A letter addressed to the Senior Partner, Profezia Attorneys & Solicitors for the attention of Layi Ademokoya Esq from the Legal Services of Stanbic IBTC Bank Plc dated the 31<sup>st</sup> day of October, 2022 labeled as EXH. 'A'.
2. A letter from Profezia Attorneys & Solicitors addressed to the Managing Director of the defendant and for the attention of Mark Manor; Kwazema Kelechi; Balogun Wasiu dated the 25<sup>th</sup> October, 2022 marked as EXH. 'B'.

It is also supported by a written address of counsel.

It is in the affidavit in support of this originating summons that the defendant entered into a lease agreement titled "Deed of Sublease" on the 9<sup>th</sup> day of November, 2015 for a period of 10 years and the agreement was extended for a period of 5 years by another lease agreement titled "Supplemental Deed of Sublease" dated the 8<sup>th</sup> day of August, 2019 on the claimant's property situate and known as 1<sup>st</sup> Avenue, 1H Road Lugbe, Abuja, FCT, and that the rent paid by the defendant on the said property is the sum of ₦180,000,000.00 (One Hundred and Eighty Million Naira for another period of 10 years, and the defendant subsequently paid the sum of ₦90,000,000.00 (Ninety Million Naira) for another period of 5 years. That the lease of the defendant would by the agreement aforesaid expire on the 31<sup>st</sup> day of November, 2030.

It is stated that the claimant upon signing the said copies of the agreement forwarded same to the defendant for signing and the defendant has refused to send back to the claimant the signed copies of the Deed of Sublease dated 9<sup>th</sup> day of November, 2015 and the Supplemental Deed of Sublease dated 8<sup>th</sup> day of August, 2019 respectively, and the relationship between the claimant and the defendant is governed by the respective agreement entered into by the claimant and the defendant, and that the said agreement does not in any way empower the defendant to further sublease the claimant property without the claimant express consent, and that the sole purpose of the lease of the claimant's property to the defendant is for running of a petrol station and nothing else, and the defendant in total disregard of the agreement sublet the property aforesaid to Stanbic IBTC Bank Plc for the running of the ATM Services.

It is stated that the act of the defendant in leasing the claimant's property to the Stanbic IBTC Bank Plc without the claimant's consent is a fundamental breach of its agreement with the claimant, and that the subsisting agreement is supreme and binding on the claimant and the defendant, and the breach committed by the defendant has terminated the agreement between the claimant and the defendant.

In his written address, the counsel to the claimant raised these issues for determination, to wit:

1. Whether upon the terms used in the agreement, the defendant has breached the contained provisions of subletting the claimant's property to Stanbic IBTC Bank Plc?
2. Whether the act of breach by the defendant does not terminate the agreement between the claimant and the defendant?

The counsel submitted that the agreement titled "Deed of Sublease" is on all fours binding on the claimant and the defendant, and he cited the case of **Ali & Anor. V. Lakeside Mews Ltd (2021) LPELR – 56134 (CA)** to the effect that lease agreement freely entered into by the parties is binding on them, and that where the intention of the parties to a contract is clearly expressed in a document, the court must strictly give effect to the literal interpretation of the terms of the agreement so that the intention of the contracting parties prevail and he further cited some judicial authorities, including the case of **Larmie V. Data Processing Maintenance & Services Ltd (2005) LPELR – 1756 (SC)** to the effect that the claimant has deposed in his affidavit that the defendant breached the said agreements by subletting the claimant's property to Stanbic IBTC Bank Plc, and he cited the case of **Jos Floor Mills Ltd & Anor V. Giwa & Ors. (2020)**

**LPELR – 51452 (CA).** He referred to several judicial authorities including the case of **Nwaolisah V. Nwabufoh (2011) LPELR – 2115** to the effect that a claimant for breach of contract must prove not only that there was a breach but that there was the existence of an enforceable contract which was breach.

The counsel cited the case of **Oteri Holdings Ltd V. Heritage Banking Co. Ltd (2020) LPELR – 50802 (CA)** to the effect that a lease agreement can be terminated where there has been a breach of covenants, and to him, the defendant is liable to forfeit its remainder term on the lease with the claimant due to its act of breach of the covenant on the agreement; and he urged the court to resolve the issues in favour of the claimant and to grant the reliefs sought.

Thus, the originating summons procedure is a means of commencement of action, adopted in cases among others, when the sole or principal question in issue is or is likely to be one directed at construction of a written law, constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. See the case of **N.A.S.U. V. Jacob (2020) All FWLR (pt 1053) p. 14 at pp. 48 – 49, paras. G-B.** In the instant suit, the claimant commenced this action for the construction of a deed of sublease and supplemental Deed of Sublease with a view to ascertain whether the defendant has breached the terms of the Deeds. It is also the law that in an action commenced by originating summons, it is the relief sought and the affidavit in support with any annexure attached that the court will look into. See the case of **Ojoku V. Reg. T.A.L.B.O.N. (2016) All FWLR (pt 829) p. 1185 at 1196. paras. A-B.** In the instant suit, it is the duty of this court to separate the affidavit and the document attached

which is meant to be interpreted. See the case of **Ogah V. Ikpeazu (2021) All FWLR (pt 1076) p. 312 at pp. 341 – 342, paras. G-B.**

The claimant filed the originating summons supported by an affidavit and could not attached the Deed of Sublease and Supplemental Deed of Sublease vis-à-vis the document to be interpreted on the ground that as at the time he signed the documents and handed them over to the defendant to sign, those documents have not been returned to him. In essence the documents sought to be interpreted are not placed before this court.

Now, the question that first has to be answered is:

**How can the court interpret the content of a document that is not placed before it? To my mind, this leaves the court with the matter of conjuncture.**

Where it is obvious from the state of facts in the affidavit that there would be an air of friction in the proceedings, then an originating summons is not appropriate, and in the absence of the document to be interpreted, originating summons is not appropriate as this court will not be left with the matter of conjuncture. In addition to that the claimant did not in his affidavit suggest as to how the document would be brought before this court. See the case of **Sani V. Kogi State House of Assembly (2020) All FWLR (pt 1030) p. 282 at pp. 291 – 292; paras. H-D.**

In the circumstances of this suit and in the absence of the document to be interpreted, the appropriate thing to do is to direct the filing of pleadings, that is to come by way of writ of summons. See the case of **Kuti V. Adekoya (2016) All FWLR (pt 818) p. 965 at 968, paras. D-E.**

I therefore direct the claimant to re-trace the step taken by coming to the court by writ of summons and to file pleadings.

Hon. Judge  
Signed  
7/6/2023

Appearances:

D.O. Ademola Esq appeared for the claimant, appearing with Layi Ademokoya Esq.

Ujah Isreal Ujah Esq appeared with M.U. Usman Esq for the defendant.