

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

SUIT NO:

BETWEEN

DANIEL NDUBUISI JOHNSON

- CLAIMANT

AND

1. BERKSHIRE INVESTMENT COMPANY LIMITED

2. NATHANIEL JOSHUA OGWUCHE

- DEFENDANTS

DEFENDANTS' COUNTER-AFFIDAVIT

I, **AKUBO PETER**, Male, Nigerian, of No. 9 Kampala Street, Wuse II, FCT-Abuja, do hereby make oath and state as follows:

1. That I am the Personal Assistant to the Managing Director of the 1st Defendant in this suit and by virtue of my position I am fully conversant with the facts and circumstances surrounding the transaction which gave rise to this suit.
2. That I have read the Originating Summons filed by the Claimant together with the Affidavit in Support thereof, and the Defendants deny each and every allegation contained therein save for paragraphs relating strictly to the formal description and identification of the parties, which are admitted only to that limited extent.
3. That the 2nd Defendant is neither a director, officer nor agent of the 1st Defendant, and was not a contracting party to the transaction between the 1st Defendant and the vendor which forms the subject matter of this suit.
4. That I am aware that the 2nd Defendant only received certain documents for inspection on behalf of the Managing Director of the 1st Defendant, owing to time constraints, after part payment of the sum of ₦75,000,000.00 (Seventy-Five Million Naira) had been made to the vendor.

5. That prior to the involvement of the Claimant, the 1st Defendant through its lawyer prepared agreements relating to the proposed transaction and same were forwarded to the vendor Mr. Babajide Kayode in London, United Kingdom through his WhatsApp account.
6. That I am aware that the vendor declined to execute the said agreements and informed the Defendants during a WhatsApp communication that he had already briefed the Claimant who would represent him in the transaction.
7. That I know as a fact that the Claimant was at all material times acting as the lawyer to the vendor and not as solicitor to the 1st Defendant.
8. That the Claimant was never retained, instructed, engaged or briefed by the 1st Defendant to render any legal service whatsoever in respect of the transaction in question.
9. That any engagement between the vendor and the Claimant was done without the knowledge, consent, authority or subsequent ratification of the 1st Defendant.
10. That I am aware that the Claimant prepared a Deed of Assignment and a Power of Attorney, and not a Contract of Sale as alleged by the Claimant, and the preparation of those documents was at the instruction of the vendor.
11. That the said documents were never executed by the 1st Defendant due to the inchoate nature of the transaction.
12. That the 1st Defendant, being a corporate entity, completes the execution of all its documents by affixing the company seal, which was never done in respect of the documents prepared by the Claimant.
13. That I am aware that the Defendants did not sign any of the said documents before any Commissioner for Oaths as alleged by the Claimant.
14. That upon inspection and window search conducted in respect of the property, it was discovered that the property had already been reallocated to another person.

15. That this development was communicated to the vendor who vehemently denied the same and further stated that the Claimant, being his lawyer, would handle the situation on his behalf. **The WhatsApp chat evidencing this communication is attached and marked as Exhibit B.**
16. That I was present at the site when an attempt was made to take possession of the said land based on the assurances given by the vendor that the property had not been reallocated, but we were restrained by the original allottee of the property.
17. That I was informed by the 2nd Defendant, which information I verily believe to be true, who forwarded to me a screenshot of the WhatsApp communication wherein the vendor assured that the Claimant would handle the situation, and **the said WhatsApp chat is attached and marked as Exhibit C.**
18. That by reason of the above development, the proposed transaction became inchoate and incapable of completion.
19. That the 1st Defendant therefore did not execute any Deed of Assignment, Power of Attorney or any other document prepared by the Claimant.
20. That the Claimant did not render any professional service whatsoever to the Defendants capable of grounding a claim for professional fees.
21. That till date the said vendor who is the client of the claimant have not been able to deliver possession of the said property and also failed to refund the consideration furnished.
22. That there is no privity of contract whatsoever between the Claimant and the Defendants.
23. That the alleged Bill of Charges dated 16th July 2025 was never agreed to by the Defendants and was only seen for the first time when it was frontloaded alongside the Originating Summons.
24. That the Claimant's claim for professional fees against the Defendants is therefore baseless and legally unsustainable.
25. That the Claimant's suit discloses no reasonable cause of action against the Defendants.

26. That, but for the Claimant's action in bringing the Defendants before the Court, there would have been no need to secure legal representation or incur professional fees amounting to the sum of ₦2,000,000.00 (Two Million Naira). **A part-payment receipt of the said professional fees is hereby attached for reference.**
27. That this suit is frivolous, speculative and vexatious, and was instituted solely to harass the Defendants and unjustly extract money without any legal basis.
28. That I depose to this Counter-Affidavit conscientiously believing the facts stated herein to be true and correct in accordance with the Oaths Act.



DEPONENT

Sworn to at the Registry of the
FCT High Court, Abuja,
this.. 6th Day of March 2026.

BEFORE ME
COMMISSIONER FOR OATHS
FCT HIGH COURT OF DISTRICT
NASSIRU ULLAH
COMMISSIONER FOR OATHS
DATE 6/3/2026

< 218

Séco Jide Mpape Land Sel...

21 Jul 2025

Hello Nate.

How are you?

Has my lawyer contacted you?
We're following due process to
bring the fence down so that it's
legally binding and permanent.
Whether I do this or you do this
after closing, the process is the
same.

It's taking a bit of time although I've
paid for fast tracking. I'm assured
it'll take a few weeks but I'm
exploring ways to do it faster.

Rest assured, I'm on it.

Let's catch up during the week.

22:07

24 Jul 2025



EXH B

21:59

5G 14

< 219

Séco Jide Mpape Land Sel...



And the lawyer too 01:39

My lawyer said to me last week that her people reached out to him to discuss buying the land they had encroached on from me Edited 01:39

I'll try to get the lawyer to contact you so he can be present too.

01:52

Could you kindly provide the meeting location so my lawyer can be present. Edited 02:21

Good morning Nate 07:28

Can you please provide the address of the meeting? 07:29

My lawyer should be at this meeting 07:29

Let's squash this issue once and for all. 07:31



Missed voice call

Tap to call back 07:46

Good morning Jide 08:34 ✓

He can meet me and then we do



22:00

5G 14

< 219

Séco Jide Mpape Land Sel...



It's obviously my land. I bought it from the current Chairman of Mpape Area Council. Nkem met with the chairman who confirmed this face to face. We went to Mpape to meet with the Chairman in May. These are fraudsters claiming to sell what doesn't belong to them.

The Cameroonian lady who you're meeting later this morning encroached on a major part of my land. Nkem ascertained with a surveyor in April/May the boundaries of the two plots and confronted the lady and her associates. It ended up in the police station. My lawyer went there to present my legal title and the lady confessed implicitly by saying "they just fenced it they didn't know anyone was there". Nkem can testify to this. He was directly involved.

The lawyer will bring along a surveyor's report showing the extent of the encroachment/land grab.

09:22



Exh D



Suite Sf22 Anafara's Plaza,
1st Avenue, Opp,
Oando Filling Station, Gwarinpa, Abuja
08033661414

RECEIPT

Date: 5/10/26

0025

Received From: Daniel Ndubisi Johnson

The Sum of: Six hundred thousand only

Being Payment for: Legal fee

DEPOSIT

BALANCE

N 600,000.00 : **K**

Cashier's Signature

Customer's Signature

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

SUIT NO:

BETWEEN

DANIEL NDUBUISI JOHNSON

- **CLAIMANT**

AND

1. BERKSHIRE INVESTMENT COMPANY LIMITED

2. NATHANIEL JOSHUA OGWUCHE

DEFENDANTS



**WRITTEN ADDRESS IN SUPPORT OF THE DEFENDANTS' COUNTER-
AFFIDAVIT**

1. INTRODUCTION

- 1.1. This Written Address is filed on behalf of the Defendants in opposition to the Claimant's Originating Summons and in support of the Defendants' Counter-Affidavit and Counter-Claim duly filed before this Honourable Court.
- 1.2. The Defendants rely on all the paragraphs of the Counter-Affidavit deposed to in this suit and on the document attached thereto and marked as Exhibit A, as well as on all the averments contained in the Counter-Claim, as if same were herein fully set out and reproduced.
- 1.3. By their Counter-Claim, the Defendants seek the following reliefs against the Claimant:
 - a. A DECLARATION that the Claimant's Originating Summons is frivolous, vexatious, speculative, and an abuse of the process of this Honourable Court.
 - b. A DECLARATION that the Claimant is not entitled to any professional fees or compensation whatsoever from the Defendants.
 - c. A DECLARATION that the 2nd Defendant is not a party to the transaction which is the subject matter of this suit and is not liable in any manner whatsoever.

- d. AN ORDER awarding the sum of ₦15,000,000.00 (Fifteen Million Naira) against the Claimant as cost of defending this suit and as general damages for frivolous, speculative, and opportunistic litigation.
 - e. AN ORDER dismissing the Claimant's suit in its entirety.
 - f. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.
- 1.4. The grounds upon which the Defendants' opposition and Counter-Claim are predicated are that no retainer or instruction whatsoever existed between the Claimant and the Defendants; no contractual or statutory basis exists for the alleged professional fees; no reasonable cause of action is disclosed against the 2nd Defendant; and the action constitutes a speculative and abusive invocation of the judicial process.

2. ISSUES FOR DETERMINATION

- 2.1. The Defendants respectfully formulate the following issues for determination by this Honourable Court:
- a. Whether the Claimant has proved the existence of a valid and enforceable retainer between himself and the Defendants capable of grounding a claim for professional fees.
 - b. Whether any reasonable cause of action is disclosed against the 2nd Defendant so as to justify his joinder as a necessary or proper party to this suit.
 - c. Whether, having regard to the affidavit evidence before this Honourable Court, the Claimant's action is not frivolous and an abuse of the process of Court, thereby entitling the Defendants to the reliefs in their Counter-Claim.

3. LEGAL ARGUMENTS

3.1. ISSUE ONE

Whether the Claimant has proved the existence of a valid and enforceable retainer between himself and the Defendants capable of grounding a claim for professional fees.

3.1.1. My Lord, the first and most fundamental question is whether a binding retainer existed between the Claimant and the Defendants. Without a retainer, there can be no entitlement to professional fees. The law is trite that the relationship between counsel and client is contractual in nature. By **Rule 18(2) of Rules of Professional Conduct for legal Practitioners 2007**, a lawyer shall ensure that important agreements between him and the client are as far as possible, reduced into writing. **Shettima v. Shettima (2016) LPELR40178**

3.1.2. In **Edozien v. Edozien (1993) 1 NWLR (Pt. 272) 678**, the Court held;

It is well settled that the relationship between counsel and client arises from contract. The contract is with respect to the service or services which counsel has agreed and undertaken to render in respect of his client. The general and accepted view is that counsel acts on the general instruction of his client. He must adhere to any special instructions given by or on behalf of his client. Counsel, however, as a general rule has complete control over how these instructions are to be carried out. (P.702, para. A) 9. On Duties of Counsel in the conduct of a client's case - There is the usual dominant and general instruction to Counsel to conduct the litigation in court to finality.

3.1.3. Similarly, in **N.B.A. v. Ekomaru (2016) 11 NWLR (Pt. 1522) 154**, the Court held;

"There are acceptable ways, which if proved, would establish, or raise the presumption of a client-lawyer relationship. They include;

They include: payment of consultation fee and being in possession of a receipt evidencing such (a) process, and payment of deposit or full payment of professional fee and any

such other means (b) of establishing a client-counsel relationship. In the instant complaint, there was no evidence of any such payment. (P. 159, paras. G-H)

3.1.4. My Lord, the affidavit evidence shows that the Claimant drafted a Contract of Sale at the instance of the vendor after the vendor rejected the earlier draft prepared by the 1st Defendant's legal representative. The document prepared by the Claimant was never executed by the 1st Defendant. It remained a mere draft. An unsigned document cannot create contractual liability. In the case of **STATE v. SABAGI (2024) LPELR-62536(SC)**, my Lord Per JOHN INYANG OKORO, JSC held that:

"The position of the law is settled beyond equivocation that an unsigned document is a worthless piece of paper with no probative value.... As long as a document or Court process is unsigned, it is worthless and does not have any efficacy in law. See Ali Vs. State (2021)12 NWLR (Pt.1789)159; Maku Vs. Al-Makura & Ors. (2016) LPELR-48123 (SC); Conoil Vs. Vitol S. A. (2018)9 NWLR (Pt.1625)463; State Vs. Sa'idu (2019) LPELR-47397(SC)."

3.1.5. My Lord, the doctrine of privity of contract is decisive here. Only parties to a contract can sue or be sued upon it. The Claimant has not established any contractual nexus between himself and the Defendants. A unilateral Bill of Charges, seen for the first time upon service of the Originating Summons, cannot create liability where none existed.

3.1.6. We humbly submit that the burden of proof lies squarely on the Claimant. He who asserts retainer must prove retainer. **Section 131(1) of the Evidence Act, 2011.** Having failed to demonstrate instruction, agreement on fees, performance of services at the request of the Defendants, or any benefit accepted by them, the claim for professional fees is legally unsustainable.

3.1.7. We therefore urge this Honourable Court to resolve this issue in favour of the Defendants and dismiss the Originating Summons in its entirety.

3.2. ISSUE TWO

Whether any reasonable cause of action is disclosed against the 2nd Defendant so as to justify his joinder as a necessary or proper party to this suit.

- 3.2.1. My Lord, the second issue concerns the propriety of joining the 2nd Defendant. It is settled law that only persons against whom a legally enforceable right is disclosed may be properly joined in an action. In the leading case of **GREEN v. GREEN (1987) 3 NWLR (Pt. 61) 480**, the Supreme Court held that a necessary party is one whose presence is indispensable to the just and effectual determination of the matter.
- 3.2.2. The test is whether the Court can effectively determine the dispute in the absence of the party. The Court of Appeal reaffirmed in **AKINYELE & ANOR V. WILLIAMS & ORS (2025) LPELR-81551(CA)**, that it is the claimant's cause of action as endorsed on the originating process that determines proper parties before the Court. Where no cause of action is disclosed against a party, the Court lacks jurisdiction over him.
- 3.2.3. In the instant case, the Counter-Affidavit shows that the 2nd Defendant did not negotiate the transaction, did not instruct the Claimant, did not execute any document, and did not assume personal liability. At most, he merely received documents on behalf of the 1st Defendant. That act does not establish contractual liability.
- 3.2.4. No relief in the Originating Summons discloses any personal undertaking by the 2nd Defendant. No facts show that he benefited from the alleged services. The alleged professional fees can only arise, if at all, from a contractual relationship. Since no contract is shown between the Claimant and the 2nd Defendant, no cause of action lies against him.
- 3.2.5. My Lord, it is therefore our humble submission that the joinder of the 2nd Defendant appears speculative and calculated to exert pressure rather than to resolve a genuine dispute. His presence is not necessary for the effectual determination of the issues between the Claimant and the 1st Defendant.

3.2.6. This issue ought to be resolved in favour of the 2nd Defendant and we urge this Honourable to so hold.

3.3. ISSUE THREE

Whether, having regard to the affidavit evidence before this Honourable Court, the Claimant's action is not frivolous and an abuse of the process of Court, thereby entitling the Defendants to the reliefs in their Counter-Claim.

3.3.1. My Lord, an action is frivolous where it lacks legal basis and vexatious where it is instituted to harass or annoy. In **Idoko v. Ogbeikwu (2003) 7 NWLR (Pt. 819) 275**, the Court held that:

A suit may be said to be frivolous if it has no legal basis or where it is filed often to harass or extort money from the defendant. It is a corollary to a vexatious suit which is a suit instituted maliciously and without good cause. (P. 288, paras. G-H)

3.3.2. The central question is whether the action discloses a sustainable cause of action.

3.3.3. The Claimant's entire case is built on the assumption of retainer without proof of instruction, agreement, or execution of any binding instrument. The transaction itself failed because the vendor could not produce valid title documents and the property was discovered to have been reallocated. The 1st Defendant refused to execute the draft for proper investigation. No benefit accrued to the Defendants from the Claimant's draft.

3.3.4. My Lord, the principle in **Macfoy V. UAC Ltd. (1962) 1 AC 100 @p. 160** remains timeless: one cannot put something on nothing and expect it to stand. Without proof of retainer, the claim for professional fees stands on nothing.

3.3.5. Furthermore, this action was instituted only after the transaction collapsed and after the 1st Defendant sought to recover its part

payment. The timing raises legitimate concern as to motive. My Lord, Courts are enjoined to protect their processes from misuse just as a counsel is advised to refrain from bringing frivolous cases before the Court. The Court of Appeal in **Okafor v. Akanonu (2002) 3 NWLR (Pt. 753) 109** on duty on counsel to avoid frivolous action had this to say;

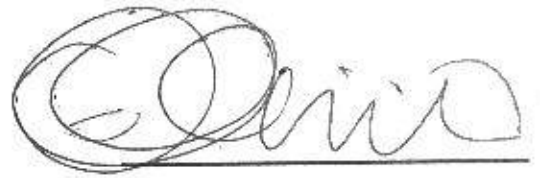
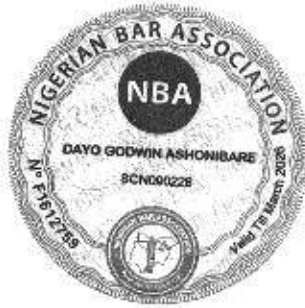
"It is on record at page 56 of the record of appeal that the learned counsel for the appellant who was respondent in the court below conceded that the trial Magistrate's Court had no jurisdiction before the lower court gave its judgment and it is amazing that in spite of that concession the appellant chose to appeal to this court instead of going to start a fresh case in an appropriate customary court. The result is that for 10 years the parties have been fighting this appeal which in my respectful view is quite unnecessary."

3.3.6. The Defendants have incurred legal expenses and suffered disruption in defending a claim unsupported by law. In appropriate cases, courts award damages and costs to deter speculative litigation. In the circumstances of this case, the counter-claim is justified and it is therefore our humble submission that this issue be resolved in favour of the Defendants, that the court award damages and also dismiss this suit in its entirety

4. CONCLUSION

- 4.1. My Lord, the Claimant has failed to establish the foundational element of his claim. No cause of action is disclosed against the 2nd Defendant. The action is legally hollow and constitutes an abuse of process.
- 4.2. We respectfully urge this Honourable Court to dismiss the Claimant's Originating Summons in its entirety and grant all the reliefs sought in the Defendants' Counter-Claim. May the Court be pleased.

DATED THIS DAY OF 2026



✓ Dr. Dayo G. Ashonibare, Esq
Ene Ashonibare, Esq
Simiat Suleiman, Esq
J. O. Ibrahim, Esq
Idowu Iyanuoluwa, Esq
(Defendants' Counsel)

Levite Solicitors & Arbitrators

Block 15D, Salis Court,
Efire Illeogun Street,
Gwarimpa, FCT-Abuja.
08033661414

levitesolicitors@gmail.com

FOR SERVICE ON:

CLAIMANT/APPLICANT

C/o of Counsel,

DANIEL NDUBUISI JOHNSON. ESQ

Erugo's Attorneys and Consultants

Plot 724 Zone B Apo Resettlement Abuja

09026366921

eaclawfirms@gmail.com