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

SUIT NO:

BETWEEN

DANIEL NDUBUISI JOHNSON – CLAIMANT/RESPONDENT

AND

1. BERKSHIRE INVESTMENT COMPANY LIMITED
2. NATHANIEL JOSHUA OGWUCHE – DEFENDANTS/APPLICANTS

CLAIMANT'S COUNTER AFFIDAVIT IN OPPOSITION TO THE
DEFENDANTS' NOTICE OF PRELIMINARY OBJECTION

I, DANIEL NDUBUISI JOHNSON, Male, Nigerian Citizen, Legal Practitioner of Plot 724 Zone B Apo Resettlement, Abuja, do hereby make oath and state as follows:

1. That I am the Claimant/Respondent in this suit and by virtue of that fact I am fully conversant with the facts and circumstances of this case.
2. That I have read the Notice of Preliminary Objection filed by the Defendants together with the affidavit in support thereof deposed to by one Akubo Peter, and I depose to this Counter-Affidavit in opposition thereto.
3. That the depositions contained in the Defendants' affidavit are largely speculative, misleading and constitute conclusions of law rather than facts.
4. That the deponent to the Defendants' affidavit, Akubo Peter, is neither a director nor officer of the 1st Defendant but merely claims to be a personal assistant and has no personal knowledge of most of the facts deposed to.
5. That several paragraphs of the said affidavit, particularly those stating that the deponent was "informed by the 2nd Defendant", are based on hearsay and not on facts personally known to the deponent.
6. That contrary to the assertion of the Defendants, I was engaged in respect of the transaction involving Plots J114A and J114B, Cadastral Zone 08-04, Mbape Layout, Bwari Area Council, Abuja, and I rendered extensive professional legal services in relation thereto.
7. That my professional services included drafting and preparing the relevant title

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18/03/26

transfer instruments, preparing powers of attorney, facilitating documentation, and attending to various official processes relating to the said property.

8. That the Defendants themselves acknowledged receipt of several of the documents prepared by me in respect of the said transaction.
9. That in the executed Contract of Sale between the vendor and the purchaser, the Defendants expressly undertook to pay my professional legal fees assessed at five percent (5%) of the purchase consideration of ₦180,000,000.00.
10. That by virtue of the said undertaking, the Defendants assumed liability for the payment of my professional legal fees.
11. That on 16 July 2025, I duly issued and delivered my professional Bill of Charges to the Defendants in the sum of ₦9,000,000.00.
12. That the said Bill of Charges was duly transmitted to the Defendants and evidence of delivery was preserved. --
13. That more than the statutory period prescribed under Section 16(1) of the Legal Practitioners Act elapsed after delivery of the said Bill before this action was commenced.
14. That the Defendants neither objected to nor settled the said Bill of Charges despite repeated demands.
15. That the Defendants benefited from the professional services rendered by me in respect of the said transaction.
16. That the Defendants' attempt to deny the existence of a retainer is a deliberate afterthought aimed at evading their contractual obligation.
17. That the issue before this Honourable Court largely concerns the determination of rights and obligations arising from written instruments including the Contract of Sale and other documents prepared in the course of the transaction.
18. That the determination of these rights is properly commenced by Originating Summons as the principal questions relate to the interpretation and legal effect of the said documents.
19. That the mere existence of some dispute raised by the Defendants does not render the Originating Summons procedure incompetent.
20. That contrary to the Defendants' assertion, the 2nd Defendant actively participated in the transaction and received documents relating to the said property.
21. That the said participation raises issues of agency and involvement which cannot be resolved merely by bare denial.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation $f(x) = \int_0^x f(t) dt$. It is shown that $f(x)$ is a continuous function and that it satisfies the differential equation $f'(x) = f(x)$. The solution of this equation is $f(x) = Ce^x$, where C is a constant. The value of C is determined by the initial condition $f(0) = 1$, which gives $C = 1$. Therefore, the function $f(x)$ is $f(x) = e^x$.

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**CLAIMANT'S REPLY ON POINTS OF LAW IN OPPOSITION TO THE
DEFENDANTS' NOTICE OF PRELIMINARY OBJECTION**

1.0 INTRODUCTION

1.1 This Reply on Points of Law is filed on behalf of the Claimant/Respondent in opposition to the Defendants/Applicants' Notice of Preliminary Objection challenging the competence of this suit commenced by Originating Summons.

The Defendants contend that:

- the Originating Summons procedure is inappropriate;
- the Claimant lacks locus standi;
- the suit discloses no reasonable cause of action;
- the 2nd Defendant is improperly joined.

With respect, the objection is misconceived in law and unsupported by the facts before this Honourable Court.

1.2 The Supreme Court has consistently held that courts should prioritize substantial justice over technical objections.

In *Amaechi v. INEC* (2007) 9 NWLR (Pt.1040) 504 at 588, the Supreme Court held "The aim of the court is to do substantial justice and not to rely on technical rules to defeat justice."

Similarly, in *A.G. Federation v. Abubakar* (2007) 10 NWLR (Pt.1041) 1, the Supreme Court held

"Courts exist to do substantial justice and not to shut out litigants on mere



technicalities.”

1.3 The Defendant’s objection raises no issue capable of terminating the suit and therefore constitutes an abuse of the procedure relating to preliminary objections.

In **B.M.L. Ltd v. Woermann Line (2009) 13 NWLR (Pt.1157) 149**, the Supreme Court cautioned that: “A preliminary objection should only be filed where it is capable of disposing of the entire suit.”

1.4 A preliminary objection challenges the competence of a suit or the jurisdiction of the court to hear it. If the objection is successful, it renders further proceedings unnecessary.

If the objection only targets a minor, severable, or non-dispositive issue like what’s filed by the defendants, it is not a proper “preliminary objection,” but rather an interlocutory application or motion.

ISSUE ONE: WHETHER THE ORIGINATING SUMMONS PROCEDURE IS INAPPROPRIATE.

The Defendants argue that the suit ought not to have been commenced by Originating Summons because facts are allegedly in dispute.

This submission is not supported by the settled position of the law, the law governing Originating Summons. Originating Summons is appropriate where the dispute involves the construction or interpretation of documents, statutes, or legal instruments.

In **Famfa Oil Ltd v. A.G. Federation (2003) 18 NWLR (Pt.852) 453**, the Supreme Court held:

“Originating summons is appropriate where the principal question is the construction of a written instrument.” This Supreme Court decision clarifies that the procedure is ideal for interpreting documents, even if some facts are disputed, as long as they are not violently in conflict.

Similarly, in **Inakuju v. Adeleke (2007) 4 NWLR (Pt.1025) 423**, the Supreme Court held “The mere fact that there are disputes does not make originating summons inappropriate if the disputes can be resolved by reference to documentary evidence.”

The Court of Appeal reiterated this principle in **Keyamo v. House of Assembly, Lagos State (2002) 18 NWLR (Pt.799) 605**, where it held that “Originating summons is particularly suitable where the dispute involves interpretation of documents and the material facts are largely contained in documentary evidence.”

Furthermore, in **A.G. Adamawa v. A.G. Federation (2005) 18 NWLR (Pt.958) 581**, the Supreme Court emphasized that originating summons is suitable where the issues are largely legal rather than factual.

Assuming without conceding that originating summons is inappropriate, the law is clear that the proper order is conversion to pleadings rather than dismissal of the action.

In **Din v. A.G. Federation (1988) 4 NWLR (Pt.87) 147**, the Supreme Court held "Where originating summons is wrongly used, the court may order pleadings rather than strike out the action."

Similarly, the Supreme Court in **Doherty v. Doherty (1968) NMLR 241** held that

"A wrong choice of procedure should not defeat a legitimate cause of action."

The dispute in the present case arises from documentary instruments including:

- the Contract of Sale
- the professional engagement between the parties
- the Bill of Charges issued by the Claimant
- documentary correspondence exchanged between the parties.

The issues in contention therefore revolve around interpretation of documentary evidence, making the Originating Summons procedure entirely appropriate.

ISSUE TWO: WHETHER THE CLAIMANT LACKS LOCUS STANDI

The Defendants argue that the Claimant lacks locus standi.

This contention is unsustainable.

A locus classicus on locus standi is **Adesanya v. President of Nigeria (1981) 5 SC 112**, where the Supreme Court held "The plaintiff must show that he has sufficient interest in the subject matter of the action."

Similarly, in **Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669**, the Supreme Court held that

"Where the civil rights and obligations of a person are in issue, that person has locus standi."

The Supreme Court further clarified in **Owodunni v. Registered Trustees of Celestial Church of Christ (2000) 10 NWLR (Pt.675) 315** that locus standi is determined from the originating processes.

Additionally, in **A.G. Kaduna v. Hassan (1985) 2 NWLR (Pt.8) 483**, the Supreme Court held that:

"Where a party's legal rights have been infringed or threatened, locus standi is established."

The Claimant clearly has sufficient interest because:

- he rendered professional legal services to the Defendants;
- the Defendants accepted and benefited from those services;
- the Claimant issued a Bill of Charges for professional fees.

These facts demonstrate that the Claimant's legal rights and financial interests are directly affected, thereby conferring locus standi.

ISSUE THREE: WHETHER THIS SUIT DISCLOSES A REASONABLE CAUSE OF ACTION

The Defendants contend that the suit discloses no cause of action.

This contention is incorrect.

In **Savage v. Uwechia (1972) 3 SC 214**, the Supreme Court defined cause of action as "The entire set of circumstances giving rise to an enforceable claim."

Similarly, in **Chevron (Nig.) Ltd v. Lonestar Drilling Nig. Ltd (2007) 16 NWLR (Pt.1059) 168**, the Supreme Court held "A cause of action consists of every fact which the plaintiff must prove to succeed."

Furthermore, in **Shell Petroleum Development Company v. Farah (1995) 3 NWLR (Pt.382) 148**, the Supreme Court held that "In determining whether a cause of action exists, the court must examine the plaintiff's processes alone."

The law recognizes the right of a legal practitioner to recover professional fees.

In **Oyo v. Mercantile Bank (Nig.) Ltd (1989) 3 NWLR (Pt.108) 213**, the Court of Appeal held:

"A legal practitioner who renders professional services is entitled to payment for those services."

Also, in **Jay Jones v. Ehigia Okoruwa Abumere & Bertha (Suit No. B/857/11)**: The Edo State High Court recognized that a solicitor is entitled to agreed fees (c.g., 5% of transaction value) for services rendered, such as property searches and legal representation.

Furthermore, In **Edozien v. Edozien (1998) 13 NWLR (Pt.580) 133**, the Supreme Court held:

"The relationship between counsel and client arises from a contract known as a retainer"

A retainer may arise by implication from conduct, as held in **Adewunmi v. Plastex (Nig.) Ltd (1986) 3 NWLR (Pt.32) 767**.

In application to this case the claimant's affidavit evidence clearly establishes that:

- the Claimant rendered professional legal services;
- the Defendants benefited from those services;
- the Claimant issued a Bill of Charges for professional fees.

These facts clearly disclose a valid and enforceable cause of action.

ISSUE FOUR: WHETHER THE 2ND DEFENDANT IS IMPROPERLY JOINED

The law on necessary parties is settled in **Green v. Green (1987) 3 NWLR (Pt.61) 480**, the Supreme Court held "A necessary party is one whose presence is essential for the effectual and complete determination of the issues before the court."

Similarly, in **Pecnok Investments Ltd v. Hotel Presidential Ltd (1982) 12 SC 1**, the Supreme Court held "A party is necessary where the court cannot effectively adjudicate upon the matter in his absence."

And in **Uku v. Okumagba (1974) 3 SC 35**, the Supreme Court further held that "All persons whose rights may be affected by the result of the litigation should be joined."

The participation of the 2nd Defendant raises issues relating to agency and authority, which can only be resolved at trial.

ISSUE FIVE: WHETHER THE PRELIMINARY OBJECTION RAISES ANY JURISDICTIONAL DEFECT

The principles governing jurisdiction were laid down in **Madukolu v. Nkemdilim (1962) 2 SCNLR 341** where the Supreme Court held that a court is competent when:

1. it is properly constituted;
2. the subject matter is within its jurisdiction;
3. the case is initiated by due process of law;
4. all conditions precedent have been fulfilled.

Additionally, the Supreme Court in **Saraki v. FRN (2016) 3 NWLR (Pt.1500) 531** held "Jurisdiction is determined from the plaintiff's claim."

Similarly, in **Mobil Producing Nigeria Ltd v. LASEPA (2002) 18 NWLR (Pt.798) 1**, the Supreme Court held "Jurisdiction is determined from the claim before the court."

The Claimant's claim clearly falls within the jurisdiction of this Honourable Court.

ISSUE SIX ABUSE OF PRELIMINARY OBJECTIONS

The Supreme Court has condemned the misuse of preliminary objections

In **NNPC v. Orhiowasele (2013) 13 NWLR (Pt.1371) 211**, the Court held "Preliminary objections should not be filed as a matter of routine."

Similarly, in **Ajide v. Kelani (1985) 3 NWLR (Pt.12) 248**, the Supreme Court warned against objections aimed merely at delaying proceedings.

CONCLUSION

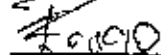
The Defendants' Preliminary Objection is misconceived, speculative, and unsupported by law.

The Claimant has clearly demonstrated:

- the propriety of the Originating Summons procedure;
- the existence of locus standi;
- the presence of a reasonable cause of action;
- the necessity of the 2nd Defendant as a party.

The Claimant therefore respectfully urges this Honourable Court to dismiss the Preliminary Objection with substantial costs and proceed to hear the substantive suit on its merits.

DATED THIS 16 DAY OF March 2026



DANIEL NDUBUISI JOHNSON, ESQ

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SUPREME COURT OF NIGERIA
OFFICE OF THE CHIEF REGISTRAR
Three Arms Complex, Central District, PMB 308, Abuja

Payment Receipt

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PAYER INFORMATION

Name: NDUBUISI DANIEL JOHNSON,
Payee Branch: Abuja
Enrollment No.: SCN142124
Email: yellowkidmourikade@gmail.com
Year of Call: 2024

PAYMENT DETAILS

PAYMENT DATE	PAYMENT REF	PAYMENT DESCRIPTION	AMOUNT #	CHARGES #	VAT #	TOTAL #
2026-02-27T07:15:31.496Z	BPF-CRED-530865-268764	Bar Practicing Fee	5000	0.00	0.00	5000

PAYMENT CHANNEL INFORMATION

TRANSITION	STATUS	PAYMENT TYPE	PAYMENT YEAR	BILLING METHOD
NBA Portal	Successful	BPF	2026	CREDIT