

**IN THE NIGER STATE HIGH COURT OF JUSTICE OF NIGERIA
IN THE MINA JUDICARY DIVISION
HOLDEN AT MINA**

Suit No: NSHC/MX/49/2024

**IN THE MATTER OF AN APPLICATION BY GARBA GALADIMA
PIADA FOR AN ORDER FOR THE ENFORCEMENT OF HIS
FUNDAMENTAL HUMAN RIGHTS TO FAIR HEARING AND OF OWN
IMMOVABLE PROPERTY AS ENTRENCHED IN SECTION 36, 43, 44(1)A-
B AND 46 OF THE 1999 CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA (AS AMENDED), THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS (UDHR) 1948 AND AFRICAN
CHARTER ON HUMAN RIGHTS AND PEOPLES RIGHTS
(RATIFICATION AND ENFORCEMENT) ACT CAP A9 L.F.N 2004.**

BETWEEN

GARBA GALADIMA PAIDA
(Suing for himself and on behalf of
the family of Late Galadima Paida)

----- **APPLICANT**

AND

- 1. GOVERNOR OF NIGER STATE**
- 2. HON. ATTORNEY GENERAL AND
COMMISSIONER OF JUSTICE NIGER STATE**
- 3. HON. COMMISSIONER OF LAND & HOUSING,
NIGER STATE**
- 4. NIGER STATE TRUST FUND**
- 5. NATIONAL HYDRO ELECTRIC POWER
PRODUCING AREA DEVELOPMENT**

} **RESPONDENTS**

COMMISSION

**COUNTER AFFIDAVIT IN RESPONSE TO ORIGINATING MOTION
DATED 12TH FEBRUARY, 2024**

I, Maidunama Muhammed Male, Adult, Nigerian of N-HYPPADEC Headquarters
Minna Niger State do hereby make oath and state as follows:

1. That I am the Head of General Service, Directorate of Operations of the 5th Respondent herein, by virtue of which I am conversant with the facts, deposed to in this affidavit.
2. That the schedule of my duties is to coordinate the activities of the Commission as it relates assets and properties of the 5th Defendant.
3. I have the consent and authority of the 5th Respondent to depose to this affidavit from facts within my knowledge and those coming to me as a result of my involvement in this case.
4. That I have been shown a copy of the Applicant's affidavit laced with distorted facts and unsubstantiated claims and I hereby state as follows in response:
 - a. The 1st Respondent is the Chief Executive officer and the Head of Government of Niger State.
 - b. The 2nd Respondent is the Chief Law Officer of Niger State
 - c. The 3rd Respondent is in charge of the Ministry of Land & Housing Niger State appointed by the 1st Respondent.
 - d. The 4th Respondent is an agency under the Government of Niger State.
 - e. The 5th Respondent is a body corporate created by law with perpetual succession and a common seal, capable of suing and being sued in its corporate name.
 - f. The information deposed to by the Applicant in paragraph 2, 3, 4,5,6,7 and 9 are untrue.
 - g. Contrary to Paragraph 3, 4, 5 and 7 all lands within Niger State are vested absolutely in the Governor of the state who is named as the 1st Respondent in this suit who delegates the management and the administration of the same to the 3rd Respondent or whosoever he desires.
 - h. Every title of land within Niger State must be derived or traceable to the 1st Respondent.
 - i. It is only the 1st Respondent that has the statutory powers to allocate land within Niger State.
 - j. The power to allocate any land within Niger State is solely vested in the 1st Respondent and the said power has not been in any way extended to any one in Niger State.
 - k. In Specific response the Niger State Government on the 21st November 2022 reallocated the property with Grant No.

NG/MN/610 and 611 to the 5th Respondent which before now was granted/re-grant of a Right of Occupancy to Niger State Trust Fund on the 27th April 2003. **The certificate is hereby attached as exhibit A.**

- l. That the Niger State Trust Fund has been in possession of the property in the past 19 years ago before the Commission took over from it in 2022 after the reallocation.
 - m. That from the time the property in contention was allocated to Niger State Trust Fund in 2003; the Applicant did not deem it proper to bring an action for compensation, declaration of title, and or failure of the Niger State Government to issue them notice of revocation.
 - n. That by virtual of my training and office, I am aware that the suit is statute barred having been brought more than ten (10) years from the date of accrual of right of action for dispossession.
 - o. That the issues contained in this suit are contentious and cannot be resolved vide affidavit evidence.
 - p. The Applicant did not also show how his fundamental right has been breached.
 - q. That the Applicant did not disclose any reasonable Cause of Action against the 5th Respondent.
 - r. The Applicant will not be prejudiced if this Application is Dismissed as it will be in the overall interest of justice to grant same.
5. I solemnly swear to this affidavit on oath in good faith consciously believing same to be true and correct in accordance with the provisions of the Oath Act 2004



Deponent

SWORN TO AT THE REGISTRY OF THE HIGH COURT OF JUSTICE

MINNA, NIGER STATE

This 25th day of March 2024

BEFORE ME
NIGER STATE JUSTICE
COMMISSIONER FOR OATH
G. I. I. A. I. R. A. H. M.
H. I. I. A. I. R. A. H. M.
COMMISSIONER OF OATHS

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- 5. NATIONAL HYDRO ELECTRIC POWER
PRODUCING AREA DEVELOPMENT
COMMISSION**

} **RESPONDENTS**

**WRITTEN ADDRESS IN SUPPORT OF THE COUNTER AFFIDAVIT IN
RESPONSE TO THE APPLICANT'S ORIGINATING MOTION DATED
12TH OF FEBRUARY, 2024.**

1.1 INTRODUCTION

The Applicant Commenced this suit by way of an Originating Application For the Enforcement Of His Fundamental Human Rights To Fair Hearing and Own

Immovable Property As Entrenched In Section 36, 43, 44(1)A-B And 46 Of The 1999 Constitution Of The Federal Republic Of Nigeria (As Amended), The Universal Declaration Of Human Rights (UDHR) 1948 And African Charter On Human Right And Peoples Right (Ratification and Enforcement) Act Cap A9 L.F.N 2004 and sort the following reliefs against the Respondents:

- i. *A DECLARATION that the under section 36, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria as amended, Articles 10 and 17 of the Universal Declaration of Human rights (UDHR) 1948 and Article 7 and 14 of the African Charter on Human and People's Right (Ratification and Enforcement) Cap 9, Law of the Federal of Nigeria 2004, the 1st Respondent lacks the power to take the possession and right over the Applicant's farm land without prior Notice of acquisition for overriding public purpose and payment of adequate compensation and joined the 4th Respondent being the party in possession of the property at the material time.*
- ii. *A DECLARATION that the divesting possession and right of the Applicant by the 1st Respondent over their farm land compulsorily reallocation to the 4th Respondent is illegal, invalid and null and void and of no effect whatsoever.*
- iii. *A DECLARATION that reallocation of the Applicant's farmland to the 4th Respondent by the 1st Respondent of the Applicant farmland via a Certificate of Occupancy No. NG/MN/611, measuring 99.91 meters by 70.6 meter by 103.86 meters by 39.99 (0.738 hectares and situate at Tunga, Chanchaga Local Government Area, Niger State, is illegal, invalid and null and void and of no effect whatsoever.*
- iv. *A DECLARATION that the certificate of Occupancy No. NG/MN/611 measuring 99.91 meters by 70 meters by 70.6 meter by 103.86 meters by 39.99n(0.738 hectares granted by the 1st Respondent to the 4th Respondent is illegal invalid and null and void and of no effect whatsoever.*
- v. *An order restraining the 1st 2nd, 3rd, 4th, and 5th Respondents from further taking possession of the farmland or interfering with the Applicant's rights and interests therein.*
- vi. *ANY OTHER ORDER OF FURTHER ORDERS as the Honourable Court may deem fit and proper to make in the circumstance.*

IN ALTERNATIVE, the Applicant pray this Honourable Court:

- vii. An order directing the first 1st to 5th Respondents, jointly and severally, to pay to the Applicant the sum of One Billion Naira (1,000,000,000) as adequate compensation for compulsory acquisition of the Applicant farmland.
- viii. 5% (percent) monthly post-judgment interest from the date of judgment until judgment sum is fully liquidated.
- ix. ANY OTHER ORDER OF FURTHER ORDERS as the Honourable Court may deem fit and proper to make in the circumstance.

1.2 BRIEF STATEMENT OF FACT

The Applicant Commenced this suit by way of an Originating Application For the Enforcement Of His Fundamental Human Rights To Fair Hearing and Own Immovable Property against the 1st to the 5th Respondent more than ten (10) years after the alleged revocation is said to have taking place without providing any prove to the said title and any cogent evidence as to how his fundamental Right is said to have been breached.

1.3 ISSUES FOR DETERMINATION

The Applicant/4th Respondent formulated the following issues herein submitted for determination:

1. In the circumstances of the case whether the Applicant is entitled to the reliefs sort; having failed to disclose any reasonable Cause of Action against the 5th Respondent.
2. Having regards to the mode of commence whether a Declaration for title to land can be commenced via Originating Motion and whther this matter is not statute barred thereby rubbing this Honorable the jurisdiction to entertain same.

2.1 LEGAL ARGUMENTS

ISSUE ONE

In the circumstances of the case whether the Applicant is entitled to the reliefs sort; having failed to disclose any reasonable Cause of Action against the 5th Respondent.

- 2.2 We submit with the greatest respect that the Applicant is not entitled to the reliefs sort; having failed to disclose any reasonable Cause of Action against

the 5th Respondent. Our submission is predicated on the fact that from the entirety of the affidavit evidence before this Honourable nothing has been provided to disclose any reasonable cause of action against the 5th Defendant. We shall demonstrate same shortly.

- 2.3 However, a good starting point is to look at the definition of a Cause of Action as defined by the Black's Law Dictionary 10th edition,

"Cause of Action is a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. The Black's law went step further to quote Edwin E Bryant, *the of pleading under the Code of Civil Procedure* 170 (2d ed. 1899) to wit:

"What is a cause of action? Jurist have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. This state of facts may be- (a) a primary right of the plaintiff actually violated by the defendant; (b) the threatened violation of such right, which violation the plaintiff is entitled to restrain or prevent, as in case of action or suits for injunction; or (c) it may be that there doubts as to some duty or right or the right beclouded by some apparent adverse right or claim, which the plaintiff is entitled to have cleared up, that he may safely perform his duty, or enjoy his property."

- 2.4 My Lord, Cause of Action has been giving judicial interpretation and definition in a stream of authorities. In **Ezerebo v. IGP ((2009) 11 NWLR (Part 1151) page 117** the court held thus:

"...it is a factual base or some factual situation, a combination of which makes the matter in litigation actionable or enforceable"

- 2.5 My Lord, we submit that the Plaintiff has not disclose any reasonable cause of action against the 5th Respondent having failed to show the said existing

title that he owns before the alleged title was revoked and reissued to the 5th Respondent.

- 2.6 It is our humble submission that a critical examination of the reliefs sought by the Applicant in this case, shows clearly that the grounds for the application and the statement of fact accompanying the application is conspicuously missing. It only points to the fact that the Applicant lacks the factual base or factual situation, a combination of which makes the present matter in litigation actionable or enforceable. We refer My Lord to the case of Ezerebo v. IGP(Supra).
- 2.7 It is further submitted that despite couching and clothing the reliefs in this suit with a semblance of the enforcement of fundamental right, same woefully failed to disclose infringement of the perceived fundamental right of the applicant as the main or basis of the claim before this Honourable Court and we urge my noble Lord to so hold. We refer my noble Lord to the case **IGWE v. EZEANOCHIE (2009) LPELR-11895 (CA)** the Court held that whenever the Court is confronted with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is imperative that the Court to critically examine the reliefs sought by the Applicant, the grounds for seeking the reliefs and the facts contained in the statement accompanying the application and relied on for the reliefs sought. The Applicant case has woefully failed to provide the grounds for seeking the reliefs and the facts contained in the statement accompanying the application
- 2.8 In **ABDULHAMID v. AKAR (2006) 13 NWLR (Pt. 996) 127** where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim of the ordinary civil or common law nature, it will be incompetent to constitute the claim as one for the enforcement of a fundamental right: See **Federal Republic of Nigeria & Anor v. Ifegwu (2003) 15 NWLR (Pt. 842) 113**, at 180. **Tukur v. Government of Taraba State (1997) 6 NWLR (Pt. 510) 549**; and **Sea Trucks (Nig) Ltd. v. Anigboro (2001) 2 NWLR (Pt. 696) 159**."
- 2.9 In the forgoing, we urge my noble Lord to so hold that the Applicant has failed to disclose any reasonable cause of action and cannot use originating motion in the guise of Enforcement of Fundamental Right for the Declaration of title to land.

3.1 ISSUE 2

Having regards to the mode of commence whether a Declaration for title to land can be commenced via Originating Motion and whether this matter is not statute barred thereby rubbing this Honorable the jurisdiction to entertain same.

- 3.2 It is our submission that the Applicant cannot commence a suit predicated on a Declaration of title to land using affidavit evidence owing to its hostile and contentions nature. The Applicant action ought to have been commenced by way of writ of Summons being the appropriate mode for commencement of actions that are hostile in nature. In **NATIONAL BANK OF NIGERIA v. ALAKIJA (1978) 9-10 SC 39 at 71, Eso, JSC**

"In other words, it is our considered view that originating summons should only be applicable in such circumstances as where there is no dispute on question of facts or the likelihood of such dispute. Where for instance, the issue is to determine short questions of construction and not matters of such controversy that the justice of the case would demand the settling of pleadings, originating summons could be applicable." See also **DOHERTY v. DOHERTY (1967) 1 ALL NLR 299, OLUMIDE v. AJAYI (1997) 8 NWLR (Pt. 517) 433 at 442-443, PAM v. MOHAMMED (2008) 16 NWLR (Pt. 1112) 1 at 88 and ANATOGU v. ANATOGU (1997) 9 NWLR (Pt. 519) 49 at 70-71.**

- 3.3 Similarly in **OJE & ORS v. FEDERAL MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT & ORS (2018) LPELR-CA/L/951/2016** Demystified the Circumstances when the adoption of originating summons will/will not be appropriate to commence an action in Declaration of title to land or the ownership of a property is vide writ of summons.

- 3.4 My lord, from the foregoing, it is crystal that the Applicant instituted this action via a wrong mode of commencement contrary to the provisions of extant rules. We therefore urge this Honourable Court to dismiss this action with substantial cost as same amounts to abuse of Court process and waste of the precious judicial time of the Court.

3.5 On the other leg of our argument, we submit with the greatest respect that by virtue of the provisions of Section 6 of the Niger State limitation law, the Applicant is caught by limitation law to institute an action for recovery of land of land allegedly revoked sometimes in the year 2003 more than after ten years of been dispossessed or has discontinued his possession. For clarity the provision of Section 6 of the Niger State limitation law is hereby reproduced:

“No action shall be brought by any person to recover any land after the expiration of ten years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to the person”.

3.6 It is pertinent to reproduce the relevant and unambiguous sections of the 1999 Constitutional for the court to see the reason why the claim of the Applicant is unmeritorious. By virtue of section 44 (2) (i) of the 1999, the Applicant, 1st Respondent are limited to bring an action against a party for the enforcement of fundamental human right provided under section that is caught by limitation law.

3.7 My Lord, in the instance case, the claims of the Applicant is subsumed by the Limitation law of Niger State having slept on its right to claim compensation or declaration of title after the Niger State Government revoked the supposedly deem right more than two decades ago. My Lord, the question that readily comes to mind is on how issue of limitation of action should be treated. In *INEC V. OGBADILO LG. (2016) 3 NWLR (PT. 1498) 167* the Supreme Court held and emphasized that:

“An issue of limitation law is related to the substantive’s jurisdiction of court. Therefore, a successful plea of limitation law by a defendant has two effects against a claimant’s action. First, it takes away the claimant’s right of action and right to judicial relief. In other words, it renders the claimant’s cause of action unenforceable. Second, the court ceases to have requisite jurisdiction to entertain the claimant’s action”.

- 3.8 Similarly in the Supreme Court case of *EGBE V. ADEFARASIN (NO.2)* (1987) 1 NWLR (PT. 47)47 held that:

"Where a statute prescribes a time-bar within which an action should be commenced, such legislation is a limitation law. If an aggrieved person files a case outside the statutorily allowed time-bracket, his action is usually declared as statute-barred when no proceedings can be brought to enforce it because the period laid down by the limitation law has expired by passage of time".

- 3.9 My Lord, it is our submission that for the court to determine whether this suit is statute barred or not a closer look at the processes filed would show clearly when the cause of action originally accrued and with the limitation statute within which this action was commenced shows that the cause of action originally accrued in the year 2003 making it more than the ten (10) years required by the Niger State statute of limitation.
- 3.10 My Lord, conclusively on this point a community reading of the Niger State Limitation Law and the 1999 Constitution, the Applicant is statute barred to institute this action and the only since he was not vigilant to take advantage of the law but rather allowed the cause of action to linger for more than twenty years before he realized and woke up from their slumbers to remember that the Government compulsory acquired their land.
- 3.12 It is our submission that in the Applicant's Originating motion there is no date provided in order to guide the court to ascertain when the Government compulsory acquired the property in dispute rather, the Applicant only chose to make heavy claims that are unfounded.

4.1 CONCLUSION

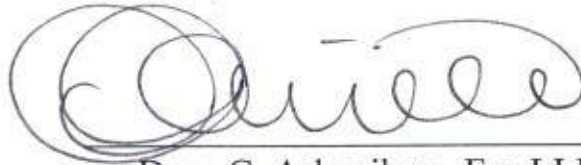
My Lord in conclusion, from the entirety of the case of the Applicant we refer my noble Lord to the case of *ANIMASHAUN v. OLOJO* (1990) LPELR-491(SC) (P.14, paras.E-F) His Lordship OBASEKI, J.S.C postulated apropos of this principle that:

"In a claim for declaration of title, the plaintiff can only succeed in obtaining the declaration from the court on the strength of his own case and not on the weakness of the defence".

- 4.2 We humbly submit that this suit is a waste of the precious judicial time, abuse of court process as the Claimant has failed to establish a *prima facie* case against the 5th Respondent, no reasonable cause of action, statute

- barred and wrong mode of commencement and we humbly ask the court to dismiss this suit for being an afterthought, premeditated and gold digging.
- 4.3 In the light of the generality of the forgoing, we urge your Lordship to dismiss this suit in its entirety with substantial costs.

Dated this.....¹¹.....day of⁰³.....2024



✓ Dayo G. Ashonibare, Esq.LLM,ACI Arb (UK)

Ene Ashonibare, Esq

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FOR SERVICE ON:

The Applicant

C/O Counsel

I.J. Ibrahim Esq

Gimba Hassan Esq.

Guidance Chambers,

Opposite AEDC Office, Tunga,

Minna Niger State

08036981234.

HONOURABLE COURT OF JUSTICE
MINNA NIGER STATE
LITIGATION OFFICE
ASSESSOR
SIGN _____ DATE 25/3/2024

TO ISSU: CO

Hear,

1222557893

25/03/24

1st Respondent

GOVERNOR OF NIGER STATE

C/O the Office of the Office of the Attorney General
and Commissioner of Justice, Minna Niger State

2nd Respondent

HON. ATTORNEY GENERAL AND

THE COMMISSIONER OF JUSTICE NIGER STATE

C/O the Office of the Office of the Attorney General
and Commissioner of Justice, Minna Niger State

3RD Respondent

3. HON. COMM. OF LAND & HOUSING, NIGER STATE

C/O the Office of the Office of the Attorney General
and Commissioner of Justice, Minna Niger State

4TH Respondent

NIGER STATE TRUST FUND.

C/O the Office of the Office of the Attorney General
and Commissioner of Justice, Minna Niger State