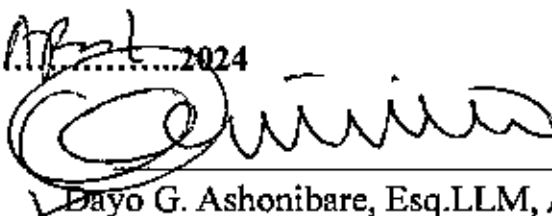


GROUNDS FOR OBJECTION

1. The Suit is statute barred in that it was filed in violation of Section 6 of the Niger State limitation law 2007.
2. That the Originating Application is for a Declaration of title to Land in which the cause of action is said to have arisen since 2003 more than 10 years before the action is brought before this Honourable Court thereby making it statute barred.
3. The suit was not initiated by due process of law having been commenced by an Originating Motion. Issues of Claim of title to land cannot be commenced by Originating Motion.
4. The facts contained in the Affidavit attached to the Origination application are contentious and cannot be determined by Affidavit Evidence.
5. Issues of contentious nature such as Declaration of Title ought to be instituted via a writ of summons.
6. That the Applicant/Respondent sued the Respondents for enforcement of their fundamental human rights which has already been abrogated by virtue of section 44 (2) (i) of the 1999 Constitution (as amended).
7. The Application is incompetent, and this Honourable Court lacks the Jurisdiction to entertain same.

Dated this.....15.....day of April.....2024



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

Ene Ashonibare, Esq

Simiat Sulaiman, Esq

Smart Fyनेface WofuruEsq

Blessing Etamessor, Esq

Suleiman M. Dikko, Esq

4th Respondents' Counsel

Levite Solicitors & Arbitrators,

Suite SF 22 Anafara'a Plaza

First Avenue, Gwarimpa

FCT-Abuja



08033661414

levitesolicitors@gmail.com

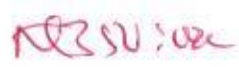
hello@levitesolicitors.com

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.

HIGH COURT OF JUSTICE
MINNA, NIGER STATE
LITIGATION OFFICE
ASSESSED
SIGN  DATE 16/4/2024


1st Respondent

GOVERNOR OF NIGER STATE
C/O the Office of the Office of the Attorney General
and Commissioner of Justice, Minna Niger State


1002911174
16/4/2024

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

**IN THE NIGER STATE HIGH COURT OF JUSTICE OF NIGERIA
IN THE MINA JUDICIARY 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
FUNDERMENTAL HUMAN RIGHTS TO FAIR HEARING ANDF OWN
IMMOVABLE PROPERTY AS ENTRENCHED IN SECTION36, 43,
44(1)A-B AND 46 OF THE 1999 CONSITITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA (AS AMENDED),THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS (UDHR) 1948 AND AFRICAN
CHARTER ON HUMMAN RIGHT AND PEOPLES RIGHT
(RATIFICATION AND ENFORCEMENT)ACT CAP A9 L.F.N 2004.**

BETWEEN

GARBA GALADIMA PAIDA
(Suing for himself and on behave of
the family of Late Galadima Paidia)

APPLICANT

AND

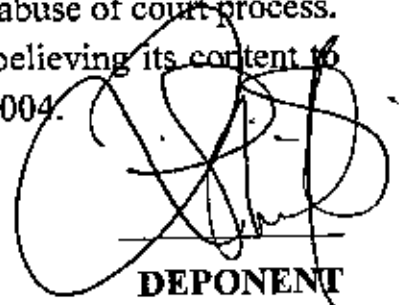
- 1. GOVERNOR OF NIGER STATE**
- 2. HON. ATTORNEY GENERAL AND
COMMISSIONER OF JUSTICE NIGER STATE**
- 3. HON. COMMISSIONER OF LAND & HOUSING,
NIGER STATE**
- 4. NATIONAL HYDRO ELECTRIC POWER
PRODUCING AREA DEVELOPMENT
COMMISSION**

RESPONDENTS

**AFFIDAVIT IN SUPPORT OF NOTICE OF PRELIMINARY
OBJECTION**

I, A.E. Shir Esq, Male, Adult, Nigerian Citizen and Legal Officer at the National Hydro-Electric Power Producing Areas Development Commission, (N-HYPPADEC) Abdul-Salam Abubakar way, Minna, Niger State do hereby make oath and state as follows:

1. That I am the Legal Officer at Hydro-Electric Power Producing Areas Development Commission, (N-HYPPADEC) by virtue of which I am conversant with the facts deposed to herein.
2. I have the consent and authority of the Respondent and my Employer to depose to this Affidavit from facts within my personal knowledge except where otherwise stated.
3. That I have seen and read the Applicant's Originating Application together with all the accompany documents
4. That the Applicant/Respondent sued the Respondents via Originating Motion praying for Declaratory Reliefs that bothers on Declaration and ownership of Land.
5. That I know as of facts by virtue of my training as a lawyer that the facts contained in the Affidavit attached to the Origination application are contentious and cannot be determined by Affidavit Evidence.
6. That the Originating Application is for a Declaration of title to Land in which the cause of action is said to have arisen since 2003 more than 10 years before the action is brought before this Honourable Court thereby making it statute barred. The right of Occupancy is hereby attached as **Exhibit A**
7. That the Applicant took no step to enforce his alleged right to the land since 2003 that Niger State Trust Fund have been in possession and was re-granted to the 4th Respondent/Applicant in 2022.
8. That the Claimant decided to wait for more than two decades to institute this action before this Honourable Court.
9. That it will be in the interest of Justice to Dismissed the Applicant's Originating Application for being incompetent and an abuse of court process.
10. That I make this oath in good faith, conscientiously believing its content to be true and correct and in accordance with the Oaths 2004.



DEPONENT

Dated this 15th day of April 2024.

Sworn to at the Registry of the
High Court of High Court of
Niger state Minna.

HIGH COURT OF JUSTICE
COMMISSIONER FOR OATH
CENTRAL REGISTRY
ABIMEDU HAMZAY
SIGN.....DATE.....
NIGER STATE OF NIGERIA
COMMISSIONER FOR OATH

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LAND 3A
Ref. No. NG/MN/611/1/34

Ministry of Lands, Survey & Town Planning
Lands Division,
P. M. B. No. 41,
Minna,
Niger State.

Date: 28th August, 19 2003

To: Niger State Trust Fund,
No. 1383, Abdulsalami Abubakar Way,
P.M.B. 119, Minna.

U.F.S.: Area Lands Officer,
Minna

(IN TRIPLICATE)

Sir,

Grant/Regrant of A Right of Occupancy

NO: NG/MN/611 OVER PLOT A PIECE OF LAND
AT MINNA (TOWN).

With reference to your application dated 27th April, 19 2003 which was forwarded to this Ministry under the Area Estate Officer's Letter No. of 19 2003; I am directed to inform you of the approval of a *Grant/Regrant of a Right of Occupancy to you in respect of a piece of land at Minna in Minna Local Government Area covering an area of 1.083 hectares, survey will be necessary on the following terms:-

- (i) Rent:- ₦ 75,000.00 per annum
- (ii) Improvement:- ₦ 30,000,000.00 within 2 years
- (iii) Term:- 40 Years
- (iv) Rent Revision:- Annually
- (v) Purpose(s):- Commercial

2. This *Grant/Regrant is Right of Occupancy Number NG/MN/611

3. I am to add that the following conditions will also be inserted in the Certificate of Occupancy evidencing *Grant/Regrant of this Right of Occupancy.

(a) (i) Within two years from the date of commencement of this Right of Occupancy you are to erect and complete on the said land the buildings or other works specified in detailed plans approved, or to be approved by the Town Planning Authority or other Officer so appointed. (ii) Such buildings or other works to be of not less than ₦ 30,000,000.00
(Thirty ~~thousand~~ Million Naira only.

and to be erected and completed in accordance with such plans and to the satisfaction of this Ministry.

(b) Not to erect or build or permit to be erected or built on the said land, any buildings other than those covenanted to be erected by virtue of the Certificate of Occupancy nor to make or permit to be made any additions or alteration to the said buildings already erected on the Land except in accordance with plans and specifications approved by the Ministry or any other body so charged.

(c) Not to alienate the Right of Occupancy hereby *Granted/Regranted or any part thereof, by sale, mortgage, transfer of possession, sublease, or bequest or otherwise, however without the consent first been obtained.

(d) To pay without demand on ground rent so charged annually.

4. Please, return two copies of this letter to this Office after signifying your acceptance of these terms in the space below.

5. The date of commencement of this Right of Occupancy will be the date of acceptance as signified by you on this letter, and should be within two months from the date of this letter.

6. It is a condition of the grant that you should pay such bills as may be charged, before the Grant of the Certificate of Occupancy.

7. When accepting the terms and conditions, you must state whether you require the land which is the subject of this Right of Occupancy to be demarcated and surveyed by the Surveyor-General or by a licensed Surveyor if the licensed surveyor fails to submit to the Surveyor-General within Six months of the date of the issue of the Surveyor-General's Authority (as required in the regulation published as N.N.L.N 137 of 1962) a satisfactory plan, of demarcation survey of the land in accordance with survey regulations, then the surveyor-General may at his discretion withdraw the authority and arrange himself for the demarcation and survey.

8. All dwellings should be self contained and of good standard of design with adequate provisions for sanitation and cooking.

9. Compensation payable for this grant is to be assessed by A.B.O. Minna, (N.N.L.N 137 of 1962) and you are required to settle it while accepting the offer. This will be deducted from the final bill which you will be required to settle before the preparation of Certificate of Occupancy.

10. Any other conditions as may be deemed fit.

NB. Allottee to retain original copy.

Hon. Commissioner
Min. of Lands, Survey
and Town Planning

ALH. ALITU MAFUFA
Honourable Commissioner

Ref. No.

Date: 22-10-2003

(INDUPLICATE)

ACCEPTANCE/REJECTION OF *GRANT/REGRA NT OF A RIGHT
OF OCCUPANCY NO. N.S/MN/611

I hereby *accept/reject the terms and conditions of the grant/regrant of Right of Occupancy No. N.S/MN/611 as stipulated above. My reason for rejection is

2. I require the land to be demarcated and surveyed by the Surveyor-General/a Registered Surveyor

3. I hereby pay an amount of N. in *cash/cheque/
Bank draft being refund of compensation paid for the land. R.C.R. No.

T.R. Date of Acceptance 22/10/03

Signature

(i) WITNESS Name and address

Alh. Hamzat Jafar
Land & Survey, MN

(ii) Occupation Civil Servant

(iii) Signature

NG/MN/511

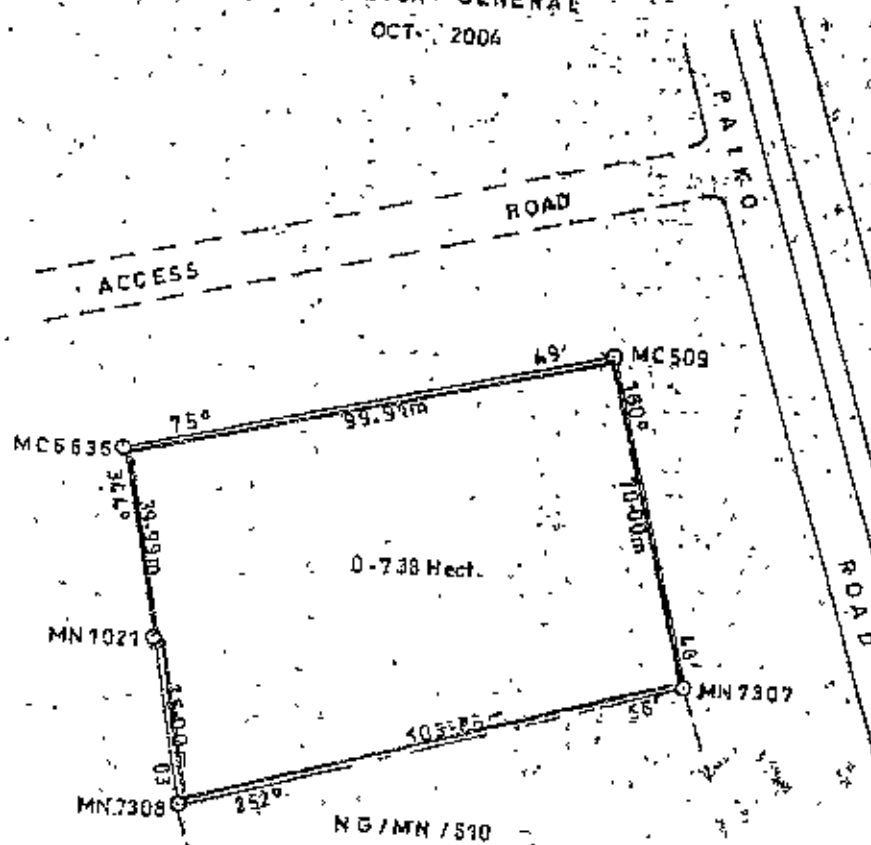
NIGER STATE TRUST FUND

MINNA

MINNA L.G. AREA

Donlodi Nasir
SURVEYOR-GENERAL

OCT. 2004



M. Co-ordinates of PBMG6638

060,507.37m

232,765.54m

Origin - UTM Zone 32 (MNCSP1)

Derived from Registered data by Donlodi Nasir on Feb. 2004

By *SA Akuma*

By *[Signature]*

By *[Signature]*

By *[Signature]*

By *[Signature]*

By *[Signature]*

By *[Signature]*

All bearings and distances shown on this plan

have been computed from Registered Co ordinates

No NG/MN/510

**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 PAIDA FOR AN ORDER 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 RIGHTS AND PEOPLES RIGHTS (RATIFICATION AND ENFORCEMENT) ACT CAP A9 LFN 2004.

BETWEEN

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

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. NATIONAL HYDRO ELECTRIC POWER
PRODUCING AREA DEVELOPMENT
COMMISSION**

} **RESPONDENTS**

**WRITTEN ADDRESS IN SUPPORT OF THE NOTICE OF
PRELIMINARY OBJECTION**

1.0 INTRODUCTION:

- 1.1. The Claimant instituted this action against the Defendant seeking the following reliefs from this Honorable Court:

- a. A declaration that under Section 36, 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999, as amended, Article 10 and 17 of the Universal Declaration of Human Rights (UDHR) 1948 and Article 7 and 14 of African Charter on Human and People's Right (Ratification and Enforcement Act Cap 9, Laws of Federation of Nigeria 2004, the 1st Respondent lacks the power to take over the possession and right over the Applicant's farm land without prior notice of acquisition for overriding public purpose and payment of adequate compensation.
 - b. A Declaration that the divesting possession and right of Applicant by the 1st Respondent over their farm land compulsorily is illegal, invalid and null and void and of no effect whatsoever
 - c. A Declaration that re-allocation of the Applicant's farmland to the 4th respondent by the 1st Respondent via Certificate of Occupancy Number NG/MN/611, measuring 99.91 metres by 70.6 metre by 102.86 metres by 39.99 (0.738 hectares) and situate at Tunga, Chachaga Local Government Area, Niger State, is illegal, invalid and null and void and of no effect whatsoever
 - d. A Declaration that the Certificate of Occupancy Number NG/MN/611, measuring 99.91 metres by 70.6 metre by 102.86 metres by 39.99 (0.738 hectares) granted by the 1st Respondent to the 4th respondent is illegal, invalid and null and void and of no effect whatsoever
 - e. 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 interest therein
 - f. ANY other order or orders as the Honorable Court may deem fit and proper to make in the circumstance.
 - g. An order directing the 1st to 5th Respondent jointly and severally, to pay to the applicant the sum of one Billion Naira (N1,000,000,000.00) as adequate compensation for the compulsory acquisition of the Applicant farmland
 - h. 5% monthly post-judgement interest from the date of the judgement until judgement sum is fully liquidated
 - i. ANY other Order or Orders as the Honourable Court may deem fit and proper to make in the circumstance.
- 1.2. The 5th Respondent/Applicant contends that this suit is incompetent because it was initiated via an originating motion.
 - 1.3. Pursuant to the rules of this Honourable Court, this is the Defendant's address in support of its preliminary objection seeking an order striking out this suit.

2.0. **BRIEF STATEMENT OF FACTS**

- 2.1. The 5th Respondent/Applicant urges the tribunal to consider the averments in the affidavit in support of granting our application.

3.0. ISSUE(S) FOR DETERMINATION

3.1. *Issue one*

"Whether or not the Court has the Jurisdiction to hear this matter which seeks for declaration of title to land, same having being commenced via Originating Motion"

3.2. *Issue two*

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.

4.0. LEGAL ARGUMENT

Issue 1:

"Whether or not the Court has the Jurisdiction to hear this matter which seeks for declaration of title to land, same having being commenced via Originating Motion"

- 4.1 My Lord, we submit that the Court has no Jurisdiction to entertain this suit because same is not properly before this Honourable Court as it does not conform to the precedent to the commencement of a contentious suit. For a court of law to be vested with Jurisdiction to entertain a matter before it, such matter must have been brought before it through the due process of law and upon fulfilment of the condition precedent to the commencement of the suit. *MADUKOLU V NKENDILIM (1962) ALL NLR 597.*

- 4.2 The Mode of Commencement of an action is governed by the rules of this Court and by Order 3 rule 1(c) of the Niger State High Court (Civil Procedure) Rules 2018, where an interested person claims a Declaration the mode of commencement is by writ. The disputed facts alleged by the

Applicants are substantial, contentious and the proper mode of commencing such action is by Writ of Summons so that pleadings can be filed and exchanged, witness can be cross examined to determine the issue in controversy between the parties. We rely on the case of: ***PDP V ATIKU ABUBAKAR (2007) 3 NWLR (PT. 1022) 515 @ 540.***

4.3 We submit further that where an enabling law or rules of court clearly provides for a procedure in the commencement of a particular action, a party is bound to commence the action in the way prescribed by law. Where there is non-compliance with a stipulated precondition for setting the legal process in motion, any suit instituted in contravention as in this case is incompetent and a court of law is for that reason lacking in Jurisdictional power to entertain the suit and we urge my noble Lord to so hold. We commend my Lord to the case ***U.B.A. V EKPO (2003) 12 NWLR PART 834 PAGE 332 AT 335 RATIO 3.***

4.4 It is our submission that where in a case party fails to comply with a condition precedent, the proper order the Court should make is an order striking out the suit. We refer the Court to the case of ***ASOGWA & ORS V CHUKWU & ORS (2003) 4 NWLR PART 811 PAGE 540 AT 559, RATIO 13.*** We therefore urge this Honourable Court to strike out this suit for want of jurisdiction.

4.5 Respectfully My Lord, an Originating motion should only be applicable in such circumstances as where there is no dispute on questions of fact or the likelihood of such dispute. We submit that from the totality of the affidavit in support of the Originating Motion, there exist grave chances of dispute and contentious fact which can only resolved by calling of witnesses.

4.6 We submit that the law is settled that where there disputed facts or where the proceedings are likely to be hostile, such actions should not be initiated by originating motion. Originating motion procedure is not the suitable procedure for commencing action in which there is dispute as to fact. More so, where the affidavit of the Plaintiff in support of the originating motion leaves matters for conjecture, originating motion is not appropriate procedure. Where affidavit raises contentious issues of facts as in this case,

the originating motion procedure is inappropriate. 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, OLUKIDE 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.**

4.7 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 not be appropriate to commence an action in Declaration of title to land or the ownership of a property is vide writ of summons.

4.8 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.

4.9 It is our position that there are contentious issues of facts that renders the Applicant's Originating Motion inappropriate in the overall circumstances of the case. We therefore urge Your Lordship to resolve the issue in favour of the 5th Respondent/Applicant and dismiss this suit in its entirety.

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.*

- 5.1 We submit with the greatest respect that by virtue of the provisions of Section 6 of the Niger State limitation law 2007, 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 2007 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".

- 5.2 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.

- 5.3 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. OGBADIBO 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".

- 5.4 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”.

- 5.5 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 shows 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.
- 5.6 My Lord, conclusively on this point a community reading of the Niger State Limitation Law 2007 and the 1999 Constitution, the Applicant is statute barred to institute this action and the only since he was not-wigilant 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. *Delay defeats Equity, Equity aids the vigilant not the indolent. Vigilantibus non dormientibus aequitas subvenit. A person who has been wronged must act relatively swiftly to preserve their rights.* It is only reasonable to infer that the Claimant never had title to the said land as they claim. We therefore urge this Honourable Court to resolve this issue in favour of the Applicant and dismiss this suit with substantial cost.

6.0 CONCLUSION

- 6.1 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 the rules of this court. The Rule of Court are not for decoration, they are the handmaiden of justice and must be followed.
- 6.2 Also, the Claimant instituted this action after more than two decades when the cause of action arose contrary to section 6 of the limitation law of Niger State and liable to be dismissed.