IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THURSDAY THE 4TH DAY OF DECEMBER, 2025

BEFORE THEIR LORDSHIPS

ADEBUKUNOLA ADEOTI BANJOKO	JUSTICE, COURT OF APPEAL
OKON EFRETI ABANG	JUSTICE, COURT OF APPEAL
OYEJOJU OYEBIOLA OYEWUMI	JUSTICE, COURT OF APPEAL

CA/ABJ/CV/1243/2024

BETWEEN

1. DIRECTORATE OF ROAD TRAFFIC SERVICES
2. THE DIRECTOR, DIRECTORATE OF ROAD TRAFFIC SERVICES
3. MR. LEO, THE AREA COMMANDER
4. ONOJA SOLOMON, TEAM LEADER, DIRECTORAT OF ROAD TRAFFIC SERVICES
5. THE MINISTER OF THE FEDERAL CAPITAL TERRITORY

APPELLANTS

AND

MR. MARSHAL ABUBAKAR, ESQ ==========RESPONDENT

JUDGMENT
(DELIVERED BY OYEJOJU OYEBIOLA OYEWUMI, JCA).

1. This Appeal is against the decision of the Federal High Court Abuja Judicial Division delivered on the 2nd day of October, 2024, wherein the Trial Court granted all the reliefs sought by the Respondent (Cross Appellants) herein (who was the Plaintiff at the Trial Court).

2. **FACTS OF THE CASE:**

The fact culminating in this suit is that sometime on the 12th of December, 2023, the Respondent was accosted by the officers of the 1st Appellant and asked for his Toyota Corolla vehicle number YAB 435 DN, the papers, and his driver's license, which he promptly showed to them. The Respondent was using a spare tyre because he got a patch and had just bought a new one (in the trunk of the vehicle) to replace it. When the Officers of the 1st Appellant detained the Respondent, he informed them that his sister needed to board a vehicle to Borno State and that it served no purpose for them to delay him for no reason for over an hour already. The 3rd Appellant arrived just then and after conversing with one of the officers of the 1st Appellant, ordered that the Respondent Toyota Corolla vehicle number YAB 435 DN (Red) be driven to their office immediately without hearing his own side of the story. The Respondent complained to the 3rd Appellant about the need to hear from him too, but instead, his complaint fell on deaf ears. The 3rd Appellant told the Respondent that he cannot teach him his job. The Appellants carted away his car without allowing the Respondent to take any of his belongings from the car, which includes the sum of N500,000 (Five Hundred Thousand naira), an iPad, one bag of rice, a power bank, two rechargeable lamps, a brand-new Toyota Corolla tyre and other personal effects in the vehicle.

3. Consequently, an originating motion dated the 15th of December, 2023, was filed by the Respondent at the Abuja Division of the Federal High Court. Upon being served with the Originating Motion, the Appellants herein filed their Counter

Affidavit on the 18th of April, 2024. The parties also exchanged other Processes. Judgment was consequently delivered on the 2nd day of October, 2024, granting all the reliefs sought by the Applicant.

4. Aggrieved by the decision of the Trial Court, the Appellants consequently launched a Ten-ground Notice of Appeal dated 21st day of October, 2024 and filed the same day, challenging the whole decision of the Trial Court and urging this Court to allow this Appeal. In compliance with the Rules of this Court, the Appellants transmitted the Record of Appeal on the 1st November, 2024. They filed their Brief of Argument on the 25th November, 2024 while the Respondent, on the other hand, filed his Brief of Argument on the 14th October, 2025 and was deemed properly filed on the 15th October, 2025.

5. ARGUMENT OF COUNSEL

In their Brief of Argument filed on the 30/10/2023 and deemed properly filed on the 29/6/2024, the Appellants distilled six issues for the determination of this Court, to wit:

1. ***Whether the Trial Federal High Court acted without jurisdiction when it entertained and adjudicated on the Respondent's suit despite it being apparent that neither the subject matter of the proceedings as espoused by the Respondent's claims nor the parties sued by the Respondent were agencies of the Federal Government of Nigeria such as to vest the Federal High Court with either Party or Subject Matter jurisdiction contrary to the express provisions of Section 251(1) and 299 of the Constitution of the Federal Republic of Nigeria? [Ground 8 of the Notice of Appeal]***

2. ***Whether in adjudicating on the claims presented by the Claimant/Respondent, the learned Trial judge decided the case without considering the effect of the fact that 1st and 2nd Appellants were non-juristic persons, whose presence in the matter tainted the***

entire case and rendered the entire proceedings a nullity? [Ground 9 of the Notice of Appeal]

3. *Whether the learned Trial Judge further erred in law when in adjudicating over the Plaintiff's claims found against the 3rd and 4th Appellants, against whom there were no claims and who by their names and designations were neither necessary nor proper parties to the proceedings and being agents of a disclosed principal, the Federal Capital Territory Administration, which agency was not made a party to the suit, rendered the entire proceedings inchoate and therefore incompetent?[Ground 10 of the Notice of Appeal]*

4. *Whether the Learned Trial judge was right in concluding that within the gamut of the laws governing the Federal Capital Territory Abuja, there are no laws or statutes empowering the 1st to 4th Appellants to stop, impound or confiscate vehicles of erring motorists or impose fine on them on the roads within the Federal Capital Territory Abuja?*

5. *Whether the Minister of the Federal Capital Territory (5th Appellants) lacks the vires to make Regulations with regards to Road Traffic Control and motor vehicle administration in the Federal Capital Territory, Abuja?[Ground 3 of the Notice of Appeal]*

6. *Whether the Trial Federal High Court properly evaluated the affidavit evidence before it, and the extant laws applicable to the circumstances of the case prior granting the Respondent's reliefs contained in the originating motion bordering on the enforcement of his fundamental human rights?[Ground 5,6,&7 of the Notice of Appeal]*

7. Respecting issue one, learned Senior Counsel to the Appellants, J. B. Daudu, submitted that the Trial Court lacks the requisite jurisdiction to entertain the suit and grant declaratory relief in favour of the Respondent. Counsel presented that neither the subject matter as espoused by the Respondent Claim before the Trial Court nor the parties are agencies of the Federal Government, such as to vest the Federal High Court with the Jurisdiction according to **Section 251(1) and 299 of the Constitution of the Federal Republic of Nigeria as amended**.

8. It was argued that issue one arises on ground eight of the notice of Appeal, which is on the question of the jurisdiction of the lower Court, which can be raised at any time. Reliance was placed on the case of ***Osadebay ns ATT. GEN, BENDEL STATE (1991)1 NWLR (PT.169)525.*** Learned counsel advanced in his submission that the inability of the Appellants to raise the issue at the Trial Court is not a bar towards canvassing same on Appeal. Learned Senior Counsel maintained that the combine reading of ***Section 299, 301 and 302 of the Constitution of the Federal Republic of Nigeria as amended*** the Federal Capital Territory, Abuja holds the status of a State and the FCT Minister as its Governor, relying on this premise counsel submitted that since the Minister of the FCT and other Agency of the Federal Capital territory cannot in anyway be classified as the agency of the Federal Government of Nigeria. Cited in support of this assertion is the case of ***Bakari vs Ogundipe & 3 Ors 5 NWLR 1 AT 37.***

9. Learned Senior Counsel to the Appellants stressed that the Administrative and Executive action of agencies Created by the Federal Capital Territory Act are of persons or agencies (such as the 1st, 2nd and 5th Appellants) are within the exclusive jurisdiction of the Federal Capital Territory High

Court, he asserted that the Trial Court ought to have decline jurisdiction in the spirit of Section 251 of the Constitution. Counsel further submits that fundamental right action jurisdiction is limited by the subject matter he referred to ***Adetona v. Igele Ent. Ltd (pt. 569) 1031*** and also ***Osunde v. Baba (2025) All FWLR (Pt. 781)1504.*** He therefore submits that the Federal High Court lacks jurisdiction to entertain this matter and that the Court ought to strike out the claim. It is the further submission of Appellants' counsel that the claim of the Respondent at the Trial Court at best is a tortuous claim allegedly rooted in assault, false imprisonment and detinue, if proven, whereof the Federal High Court lacks jurisdiction. In aid is the case of ***7UP Bottling Co. Ltd v. Abiola & Sons Ltd (2001) 13 NWLR PT 730469 cited.*** Learned Senior Counsel finally submits on this issue that the Court cannot rely on ancillary claims to assume jurisdiction, where it lacks jurisdiction to entertain the main claim he referred to the notorious case of ***Tukur vs Governor of Gongola State (1989)4 NWLR (PT. 117)517.*** In urging this Court to resolve this issue in favour of the Appellants.

ISSUE 2: ***Whether in adjudicating on the claims presented by the Claimant/Respondent, the learned Trial judge decided the case without considering the effect of the fact that 1st and 2nd Appellants were non-juristic persons, whose presence in the matter tainted the entire case and rendered the entire proceedings a nullity?***

10. The Appellants in arguing issue two contended that the 1st and 2nd Appellants are non-juristic persons, whose presence in the matter tainted the whole suit he further stated that the Directorate of Road Traffic Services (the 1st Appellant) is not a juristic person capable of suing or being sued as same is merely a department within the Transportation Secretariat of

the Federal Capital Territory Administration. Particularly, the said Directorate of Road Traffic Services was created as a sub-department, initially within the Road Traffic Division of the Engineering Services of the then Federal Capital Territory Development Authority by virtue of Federal Government circular No VP/912/Vol1 dated 19th April, 1993 and Official Gazette No.20 Vol 84 of 7th April,1997 and was later migrated to or merged with the Transportation Secretariat of the Federal Capital Territory Authority (FCTA) by virtue of Federal Capital Territory Road Transport Regulation s, 2023. He further opined that the same position is applicable to the 2nd Appellant, who is the Director of the said non-juristic 'department' of the Federal Capital Territory Authority. He asserted that what amounts to a juristic personality has been defined by this Court and the Supreme Court to be a natural person, that is, a human being of requisite capacity or an entity created by law, which includes an incorporated body, corporation sole or corporation aggregate, or a special artificial being created by legislation and vested with capacity to sue and be sued. He referred to ***PPMC Ltd. Vs. Akinyemi & Anor. (2018)LPELR-44849 (CA), Onyuike Vs. The People of Lagos State & Ors.(2013) LPELR-24809 (CA) and Kwage Vs. Upper Sharia Court Gwandu & Ors. (2017) LPELR-42508 (CA).***

11. It was asserted that a non-juristic person cannot sue or be sued before a Court of law, and where a non-juristic person is made a party, the action is rendered incompetent and liable to be struck out, for the Court would have no jurisdiction to entertain it. He referred to the case of ***Shell Petroleum Development Co. & Anor. Vs. Daniel Pessu (2014) LPELR-23325 (CA), T.M. Lewin (Nig.) Ltd. v. Smartmark Ltd (supra) and Osondu & Ors. Ngonadi (2016) LPELR-41528 (CA)and Esiri & Ors. Vs. Registered Trustees of Anointed Bible Ministries &***

Anor.(2018) LPELR-44541 (CA) and the case of T.M. Lewin (Nig.) Ltd v. Smartmark Ltd[2017] LPELR-43136 (CA)

12. Finally, it was argued for the Appellants that joinder of the 1st and 2nd Appellants to the Respondent's suit rendered the entire proceedings a nullity as both parties are non-juristic persons in the eyes of the law. A cursory examination of the Respondent's affidavit evidence and reliefs in support of the originating motion filed at the Trial Federal High Court reveals that both parties are the principal targets of the action and consequently, the action cannot be maintained in their absence. Learned senior Counsel to the Appellants urged this Court to resolve this issue in favour of the Appellants.

ISSUE THREE

13. On this issue, the Learned senior Counsel to the Appellants submits that the learned Trial Judge erred in law when in adjudicating over the Respondent's claims found against the 3rd and 4th Appellants, whom there were no claims and who by their names and designations were neither necessary nor proper parties to the proceedings and being agents of a disclosed principal, the Federal Capital Territory Administration, which agency was not made a party to the suit, rendered the entire proceedings inchoate and therefore incompetent.

14. It is the further submission of the Appellants' Counsel that the 3rd and 4th Appellants are neither agents nor servants of the 5th Appellant, who as Minister of the Federal Capital Territory is merely a repository of the powers to administer the territory and to make subsidiary legislations as authorized by the primary or main legislation and is not the employer of the said 3rd and 4th Appellants. Consequently, the 1st Respondent, by omitting, failing or refusing to sue the disclosed principal of the 3rd and 4th Respondents, i.e.,

the Federal Capital Development Authority (FCDA), now known as the Federal Capital Territory Authority (FCTA), conspicuously failed to disclose a cause of action in the suit.

15. He argued that the 5th Appellants, i.e. the Minister of the Federal Capital Territory, though a Minister of the Federal Government, occupies a similar position of a Governor of a State, since Abuja is classified as a State by Section 299 of the Constitution and is a distinct legal personality from the FCTA. The Federal Capital Territory Authority which was not joined as a party to the suit at the Trial Court, was established by Section 3 of the Federal Capital Territory Act. It is a Governmental Agency of the Federal Territory, Abuja, vested with the administration of the FCT and, for all intents and purposes, is the employer of the 3rd and 4th Appellants. The 3rd and 4th Appellants, in the circumstances, were agents of a known or disclosed principal who was not joined as a party to the proceedings at the Trial.

16. Learned Counsel reiterated the trite position of the law that the agent of a disclosed or known principal is an unnecessary party to a proceeding. Reliance was placed on the recent decision of the Supreme Court in ***Attorney General of Kaduna State & 9 Ors v. Attorney General of the Federation & 2 Ors [2023] 12NWLR (Pt. 1899) 554-555.***

17. It was posited that in the instant case, the 3rd and 4th Appellants were, in the circumstances, acting as agents of a disclosed principal (the FCTA) who was not made a party to the suit and ought to incur no liability. He referred to ***Carlen (Nig.) Ltd. v. University of Jos (1994) 1 NWLR (Pt. 323)631,*** and then urged this Court to so hold and resolve issue 3 in favour of the Appellants.

18. **Issues 4 and 5 argued together;** The next set of issues essentially revolve around whether the Trial Court was right in concluding that within the gamut (entirety) of the laws governing the Federal Capital Territory Abuja, there are no laws or statutes empowering the 1st to 4th Appellants to stop, impound or confiscate vehicles of erring motorists or impose fine on them on the roads within the Federal Capital Territory Abuja.

19. The Learned Senior Counsel to the Appellants further asserted that contrary to the findings of the learned Trial Judge, the FCT Directorate of Road Traffic Services is charged by the express provisions of ***Section 2 of the Federal Capital Territory Road Transport Regulations, 2023,*** with general road traffic management and motor vehicle administration within the Federal Capital Territory which includes the enforcement of the ***Road Traffic Act CAP 548, Laws of the Federal Capital Territory 2004*** and other applicable legislations. According to the Appellants, the 1st and 2nd Appellants or any other road traffic officers such as the 3rd and 4th Appellants so authorized are empowered by the provisions of ***Paragraphs 117(1) & (2) of the Federal Capital Territory Road Transport Regulation s, 2023*** to summon or arrest any individual and to impound, tow-away or detain any vehicle respectively in circumstances where such a vehicle is used in violation or likely to be used to violate any provisions of the law pending conclusion of an investigation or where the driver fails to obey the instructions of the Director or any road traffic officer that violates or is likely to violate any provisions of the law pending conclusion of an investigation. They argued that it is not in dispute that the Director of the FCT Directorate of Road Traffic Services or any other road traffic officer authorized by him is empowered by the provisions of

Paragraph 117(2)c of the Federal Capital Territory Road Transport Regulations, 2023; to charge and collect levies/fines imposed in the 14th Schedule of the said Regulations.

20. The Learned Senior Counsel to the Appellants submits that the provisions of the Federal Capital Territory Road Transport Regulation s, 2023 referred to above enjoys the status of subsidiary legislation made by the Minister of the Federal Capital Territory pursuant to the powers delegated to that office by the provisions of **Section 11(1)** and **46(1) Road Traffic Act, Cap 548 Laws of the Federal Capital Territory Act CapF6**. He further argued that judicial notice of a subsidiary legislation is taken as having the force of law without further assurance or proof by all Courts of competent jurisdiction. The Learned senior Counsel to the Appellants refers to **Amusa v. State (2003) LPLER- 474(SC)**

21. The Learned Senior Counsel to the Appellants asserts that the learned Trial Court in the circumstances ought to have taken judicial notice of **Section 11(1)** and **46(1) Road Traffic Act, Cap 548 Laws of the Federal Capital Territory Act CapF6** which expressly empowers the Appellants to stop, impound or confiscate vehicles of erring motorists or impose fine on them on the roads within the Federal Capital Territory Abuja.

22. It was posited that by dint of **Section 13(3) B of the FCT Act** the functions conferred by the Road Traffic Act on the Minister (in the instant case-Section 11 and 46 of the Road Traffic Act shall without exercise of those functions by the President and until other provision in respect of such function is made by the authority having power to do so, vest in the Minister charged with the responsibility for the Federal Capital Territory. The Learned senior Counsel to the

Appellants referred to ***Minister, FCT & Anor V. Olayinka Oyelami Hotels Ltd (2017) Lpelr-42876(CA).*** The Learned senior Counsel to the Appellants referred to the fact that just as the power of the Minister of Finance to make Regulations was adjudged to have been taken over by the Minister of FCT by dint of Section 13 of the FCT Act, and urged this Court to so.

23. The Appellants contended respecting issue six, that the Trial Court did not evaluate the affidavit evidence before it in the Respondent's originating motion filed before the lower Court. He submitted that declaratory reliefs are granted on credible evidence led by the person seeking the relief. Declaratory relief is not granted even on admission by the Respondent; he relied on ***Anyaru v. Mandillas Ltd (2007)4 SCNJ and Chukwumah v. S.P.D.C (Nigeria) Ltd (1993) LPELR-864 SC.***

24. It is the Appellants' contention that they denied all the material paragraphs of the Respondent, and in their Counter Affidavit, they disclose the reason for their action, which in the Appellants' view, is a valid justification for their action. The Learned Senior Counsel to the Appellants submits that the Court, when it reconciled the two Affidavit Evidence without calling witnesses, referred to ***FALOBI VS. FALOBI (1976) 9-10 SC 1*** *and* ***PHARMACISTS BOARD v. ADEBESIN (1978)5 SC 43 and NATIONAL BANK (NIG)LTD v. ARE BROTHERS (NIG)LTD (1977) 6 SC 97.***

25. The Learned Senior Counsel to the Appellants asserted that the right to own moveable property is not absolute. He further argued that such a right can be seized temporarily in accordance with the provision of ***Section 44(1)k of the Constitution.*** Reference was made to the case of ***Mr***

Imonikhe Murtala v. Director General, State Security Service & Ors [2023] LPELR-59323(CA). Finally, it was contended that the Respondent failed to lead any cogent or credible evidence to show that his arrest and subsequent impounding of his vehicle was without lawful justification or that it was permanent thereby giving rise to a legitimate invocation of his fundamental rights alleged to have been violated, he therefore prayed this Courts to allow his Appeal and set aside the decision of the lower Court.

26. In response to the Appellants' submission in their brief, the learned Respondent's Counsel filed his Respondent's Brief of Argument on the 14th October, 2025, it was deemed properly filed on the 15th October, 2025, and adopted all six issues framed by the Appellants in his Brief of Argument.

27. In arguing this issue one, the learned Respondent's Counsel argued that the Appellants have failed to provide any law that conferred on them the right to the powers that have been challenged before the Trial Court, learned Counsel asserts that the case relied on by the Appellants are not relevant because the fact of the case is with regards to land and not fundamental human rights as in this instant and that the decision would have deferred if it was fundamental human right. Leaned Counsel argued that the combine reading of ***Sections 299, 301 and 302 of the 1999 Constitution*** as amended, the Executive power of the FCT is vested in the President and the Minister of the FCT is an agent appointed to work on his behalf. Learned Respondent Counsel also submits conversely that the Minister of the FCT is not an agency created by the FCT Act.

28. It was the further contention of the Respondent who appeared for himself in this Appeal that the Directorate of Road Traffic Services and other Appellants in the instant

suit are also not creations of the Federal Capital Territory Act. No law creates or establishes the 1st to 4th Appellants herein; they were simply empowered by the 5th Appellant herein to generate revenue and make remittances. Generating revenue by stopping vehicles, impounding cars, imposing fines etc., which violates the fundamental rights of the Applicant/Respondent and other Nigerians (to freedom of movement, right to presumption of innocence etc. He stressed that it also offends the provisions of the 1999 Constitution as amended (Sections 6 (6)(B),36(1)(8) and (12); inter alia and it was on this basis that the Respondent, as applicant in the Court below, initiated the suit. Contrary to the submission of Appellants, the Respondent asserted that the suit at the lower Court was not a challenge on acts done in the exercise of the Executive or Statutory powers of the agents purporting to act on behalf of the Governor of the FCT (The President). The Respondent quipped that the suit at the Trial Court basically challenged the absence of such authority and powers and the absence of any Statutory powers or enabling law to so act.

29. Learned Respondent's Counsel submits that on the issue of subject matter jurisdiction, the correct position of the law is that there should be no impediment to fundamental human right matters he referred the Court to ***EFCC & Ors v. Chukwura (2018)LPELR-43972 (CA), Seed Vest Microfinance Bank PLC & Anor v. Ogunsina & Ors INSP. Gabriel of the C.O.P. Monitoring Unit, Lagos v. ukpabio & Ors (2022)LPELR-57032(SC) And Futmina & Ors v. Olutayo (Supra)***

30. Learned Respondent Counsel dismissed the Appellants' submission that the Applicant's claim is at best a claim of tort rooted in assault, false imprisonment and detinue.

Counsel held that all ten reliefs at the Trial Court are strongly founded on fundamental human rights. Learned Respondent Counsel therefore submits that the argument of the senior Appellants' Counsel cannot be substantiated in law and prayed this Court to so hold.

31. On issue two, Learned Respondent's Counsel argued that the argument canvassed by the Appellants was never canvassed before the Trial Court and the leave of this Court was not obtained to canvass such an argument. Counsel submitted that the Appellants cannot introduce a new issue and relied on **Carlen vs. University of Jos (1994).** Learned Respondent Counsel learned further contended that the submission that some of the Appellants are non-juridical persons is incorrect and be it as it may, Learned Respondent Counsel referred to **Mabel Anyankoya & Ors Vs E- Aina Olukoya & Ors (1996)**, learned Respondent Counsel submits that the issue of joinder is governed by the rules of Court. Learned Respondent Counsel further that the 1st and 2nd Appellants are proper partiesn, relying on **A. G Bayelsa State Vs Odok (2024)** Learned Respondent Counsel argued that a self-funded entity which generates funds, owns property, hires staff, fires staff, pays salaries and makes remittance to the Government cannot contend that it lacks the capacity to sue and be sued. Learned Respondent Counsel argued that even a non-juristic person can sue; he referred to **Ataguba & Co. Vs Gura Nig. Ltd.,** and also **Sosan vs. HFP Engineering Ltd.**

32. Next is issue three, in arguing this issue, Learned Respondent Counsel submits that non-joinder of a party does defeat an action; he avers that it neither affects the potency of the action nor the jurisdiction of the Trial Court, he referred to **Green V. Green (1987) 3WLR**

(pt.61)480, Azuh V UBN Plc, (2014) II NWLR (pt. 1419) 580 at 610- 611, SBPC V. Purification Tech. Nig. Ltd (2013) 7 NWLR (pt. 1352) 82 at 109. Learned Respondent Counsel submit that where certain public officials abuse power in a manner that affects the fundamental rights of Nigerians, it is appropriate to join such officials so as to serve as deterrence and to ensure that such officials pay part or some of the damages that may be awarded, he referred to **KSPWB VS Baba (2018)9 NWLR 1623 SC36 per Bage JSC (as then was), Dilly VS IGP & ORS. CA/L/12/2013 (2016) NGCA 21, Omoyanhu & Ors VS IGP (2015) LPELR 25581, Akaraka Chinweikeezeonara & 3 Ors VS IGP & ORS (CA) L/CV/671/2019, NPF & ORS VS Omotosho & Ors (2018) LPELR 45778 (CA).**

ISSUES FOUR AND FIVE

33. Learned Respondent's Counsel submit that issues four and five were never brought before the learned Trial Judge therefore, the judge could not have considered them. He further stated that subsidiary legislation are not laws per se and that the 5th Appellants lacks the power to make Regulations that vest in the 1st and 2nd Appellants the powers to stop, impound and confiscate vehicle of Nigerians he referred to **Section 36(8) and (12) of the Constitution of the FRN** as amended and also ***INEC VS NNPP(2023) LPELR*** *and* ***Alabi Vs National Assembly*** (supra). Finally learned Respondent's Counsel submits that the 5th Respondent lacks the capacity to make Regulations and laws with punitive sanctions, and not even the President can usurp the powers of the legislature to make laws. Counsel relied on ***Shell Nigeria exploration and Production Co. Ltd V. National Oil Spill detection and Response Agency (Nosdra) [2021] LPELR-53068(CA), Nosdra V. Mobil Prod. (Nig.) Unltd [2018] 13 NWLR***

(Pt.1636) 334, Alabi v. National Assembly Supra, FRSC v. Gideon (2015) Supra, Faith Okafor v. Lagos State Government & Anor. (2016) Supra, Onyia v. FRN (2018) Supra, Olabode George v. FRN, Fidelity Bank Plc v. Bayuja Ventures Ltd. & Anor. (2011), Saleh v. Monguno & Ors. (2006) LPELR-2992 SC.

34. In responding to issue six, learned Counsel to the Respondent argued that the Trial Court erred when it entertained the Appellants' counter affidavit without complying with Section 115 of the Evidence Act. Learned Counsel relied on ***A.C.N v. Nyako (2015)18 NWLR (PT1491)352(SC), National Security Adviser & Anor. v. Mr Wilfred Tassang & 50 Ors. Appeal No; CA/A/494/2019 Judgment delivered on Wednesday, 23rd March, 2022, the Abuja division of this Court per Hon. Justice Hamma Akawu Barka (JCA).*** Learned Counsel to the Respondent submits that decisions lacked any form of relevance to their case and asserts that it is not appropriate for counsel to cite decisions whose facts and ratio have no bearing on their case. On account of the foregoing, learned Counsel to the Respondent urged this Court to discountenance with the argument of the Appellants and resolve issue six in favour of the Respondent.

35. In Response to the argument canvassed by the learned Respondent's Counsel, the Appellants filed their Reply Brief to the Respondent's Brief of Argument dated 20th October, 2025 and filed on the 21st October, 2025.

36. In his Reply to the Respondent argument at paragraph 6.03 to 6.06 of the Respondent's Brief of Argument, the Appellants submit that the said issue have already been dealt with at paragraphs 47 to 49 of the Appellants' Brief of

Argument wherein they commended to the Court the specific provisions of the Road Traffic Act CAP 548, Laws of the Federal Capital Territory 2004 and the Federal Capital Territory Road Transport Regulations 2023, the learned Appellants Counsel adopted his argument in the Appellants brief therein and submitted that the case of ***Bakari v. Ogundipe & 3 Ors (Supra),*** is on all fours with the instant Appeal, More so, the Judgment or Ruling of a Court must be read as a whole unit to bring out the Court's decision or ratio decidendi of the Judgment or Ruling.

37. Regarding the Respondent's argument at paragraphs 6.07 to 6.11, learned Senior Counsel recaptured the position of the law that the Minister of the Federal Capital Territory is akin to a Governor of a State, despite not being expressly mentioned in ***Sections 301 and 302 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.*** In furtherance of the above, it was submitted that the 1st Appellant, is a statutory body established under the Road Traffic Act, CAP 548, Laws of the Federal Capital Territory 2004. He rehashes some of the arguments in the Appellants' brief regarding the status of the 2nd, 3rd and 4th Appellants as employees in the service of the 1st Appellant and by implication Agents of the Federal Capital Territory Administration (FCTA). Learned Senior Counsel further reiterated that issue two framed is based on jurisdiction and, being the fulcrum of adjudication, no leave of this Court is required. He avers that the argument of the Respondent to link this issue with joinder, misjoinder and procedural irregularity is unsubstantiated. Learned Senior counsel avers further that the only condition under which agents can be sued is when they act in an illegal manner. He finally submits that the argument of the learned Respondent's Counsel on liking the

Appellants with an incorporated trustee is not applicable to this case.

38. Finally, the Appellants' Senior Counsel contended that the position of the Respondent's counsel on their Counter Affidavit before the lower Court, insisting that their Affidavit complied with Sec 115(1)-(4) and urged this Court to discountenance with all the Respondent's argument and allow this Appeal.

39. **RESOLUTION OF APPEAL:**

I have given an in-depth consideration to the submissions of learned Counsel on both sides of the divide, the Record of Appeal and the Judgment of the Trial Court. The vexed issues framed by the Appellants and adopted by the Respondent in this Appeal can be collapsed and rooted in three major issues for which I will consider this Appeal, first, is whether or not the lower Court has the requisite vires to entertain the suit in the first place, secondly whether or not the 1st -2nd Appellants are juristic persons and misjoinder of parties can vitiate the Suit and finally whether or not the Appellants acted within the ambit of the law. I will therefore address these three issues in the determination of this Appeal.

40. ***With regards to issue one, which is whether the Trial Federal High Court acted without jurisdiction when it entertained and adjudicated on the Respondent's suit.*** The pith of this issue is whether or not the lower Court has jurisdiction to entertain the entire proceedings for want of subject matter jurisdiction. As a way of introduction, it is pertinent to understand that the Minister of the Federal Capital Territory is an appointee of the President confirmed by the National Assembly and delegated with powers by the President to carry out administrative functions on behalf of the President in the FCT. The FCT Minister is delegated with

Executive functions in the similitude of the Executive Powers conferred on a Governor of a State by the electorate. This being said it is important to categorically state that, it is a misinterpretation of the law to state that the Minister of the FCT is not the Minister of the Federal Republic of Nigeria, this assertion is dangerous, the Supreme Court in expounding on this principle succinctly held in ***Bakari v. Ogundipe & Ors (2020) LPELR-49571(SC) (Pp. 15-17 paras. F-F);*** a case cited by the Appellants. Wherein **RHODES-VIVOUR, JSC puts it thus-**

> ***It is very important to decide the status of Abuja and whether the 2nd and 3rd Respondents are Agencies of the Federal Government of Nigeria. A decision would lay to rest once and for all time proper Court to hear the Plaintiff's claim Section 299 of the Constitution states that: 299. The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly- (a) all the Legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja; (b) all the powers referred to in paragraph (a) of this Section shall be exercised in accordance with the provisions of this Constitution; and (c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this Section. By virtue of the provisions of Section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria has the status of a State. It is as if it is one of the States of the Federation. An Agency is an executive or regulatory body of a***

state, such as state Offices, Departments, Divisions, Bureaus, Boards and Commissions. The 2nd Respondent, i.e. <u>the Minister of the Federal Capital Territory, though a Minister of the Federal Government</u> occupies a similar position of Governor of a State, since Abuja is classified as a State by Section 299 of the Constitution. The 2nd Respondent is thus the Chief Executive of the Federal Capital Abuja. The Federal Capital Development Authority i.e. the 3rd Respondent is established by Section 3 of the Federal Capital Territory Act. It is a Governmental Agency of the Federal Territory, Abuja. It is the actions of the 2nd and 3rd Respondents that are challenged. They are both agents of the Federal Capital Territory, Abuja, which has the status of a State. They are not agencies of the Federal Government of Nigeria." [Emphasis mine]

41. Flowing from the above, it is obvious and without any iota of doubt that the Minister of the Federal Capital Territory is a Minister of the Federal Republic of Nigeria. Relying on same authority, the Apex Court held that the FCT Minister is an agent of the Federal Capital Territory, Abuja and not an agent of the Federal Government of Nigeria. I therefore adopt the position of the law as correctly interpreted by the Apex Court in Bakari's case supra.

42. While completely agreeing with the learned Senior Counsel to the Appellants on the status of the Minister of the Federal Capital Territory as a Minister of the Federal Republic of Nigeria and an agent of the Federal Capital Territory Abuja, I do not subscribe to the learned Senior Counsel's position that the Trial Court lacks jurisdiction to entertain this suit. It has long been settled in law that for a Court to be competent to adjudicate on any matter before it, these ingredients must coexist: that it is properly constituted as

regards numbers and qualifications of members of the bench, and no member is disqualified for one reason or another; 2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; 3. The case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity, however well conducted and decided; the defect is extrinsic to the adjudication. By the notorious case of ***Madukolu v. Nkemdilim (1961) NSCC, vol. 2, 374, at page 379,*** these ingredients must co-exist in a case for it to donate jurisdiction in a Court.

43. I find it paramount to state that the proceeding of the lower Court was predicated upon an application for the enforcement of Fundamental Rights, which was a special procedure with its own Rules drawn out of the Constitution of the Federal Republic of Nigeria and the Fundamental Rights Enforcement (Procedure) Rules made by the Chief Justice of Nigeria. The African Charter on Human and Peoples' (Ratification and Enforcement) Act. The intendment of the law basically is to provide an urgent remedy for human rights abuses or imminent human rights abuses, as the case may be. Thus, any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled has been, is being, or is likely to be infringed may apply to the Federal High Court or the High Court of a State where the infringement occurs or is likely to occur, for redress. See Order II, Rule 1 and the preamble.

44. Fundamental Human Right actions are sui generis; the argument that only the FCT High Court has the jurisdiction to entertain this suit has no bearing in law, as the Apex Court has settled this argument long before now in several

authorities, including the case of ***Insp. Gabriel of The C.O.P Monitoring Unit, Lagos V. Ukpabio & Ors (Pp. 24-26 Paras. D).*** **Per Amina Augie, J.S.C thus-**

> ***It is well settled that the Federal High Court and State High Courts have concurrent jurisdiction in hearing matters of breach or likely breach of any of the fundamental rights enshrined in Chapter IV of the Constitution - see IHIM v. Maduagwu & Anor (2021) LPELR-53906(SC), where this Court per Okoro, JSC, aptly stated that:***
>
> ***"A community reading of Section 46 of the 1999 Constitution and Order 1(2) of the Fundamental Rights Enforcement Procedure Rules would reveal undisputedly that both the Federal High Court and the High Court of a State have concurrent jurisdiction on matters of breach or likely breach of any of the fundamental rights enshrined in Chapter IV of the Constitution. This has been the consistent position of this Court upheld in an avalanche of cases, some of which are Jack V. University of Agriculture, Makurdi (2004) (2004) 5 NWLR (Pt. 865) 208; Olutola V University of Ilorin (2004) 18 NWLR (Pt. 905) 416; Ogugu V. The State (1994) 9 NWLR (Pt. 366) 1." See also EFCC V. Reinl (2020) LPELR-49387 (SC), wherein Kekere-Ekun, JSC, restated what she said in F.U.T. Minna V. Olutayo (2017) LPELR-43827(SC): "It would negate the principle behind the guarantee of fundamental rights if a citizen were to have any obstacle placed in the path of enforcing those rights. There is no ambiguity in the provisions of the Constitution or of the Fundamental Rights (Enforcement Procedure) Rules regarding which Court has jurisdiction to entertain an application for the enforcement of fundamental rights.... So long as the enforcement of the Applicant's fundamental right is the main claim in the Suit and not an ancillary claim, the Federal High and State High Courts, including the High Court of the FCT have concurrent jurisdiction to entertain it.[Emphasis mine]***

45. See also **Hassan v. EFCC & Ors [2024] LPELR-62999(SC) (Pp. 63-70 Paras. E-E) Per Abiru, J.S.C**

It is not in contest that the precursor to Section 46 of the 1999 Constitution is Section 42 of the 1979 Constitution while that of Section 251 of the 1999 Constitution is Section 230 of Decree 107 of 1993. In Jack Vs University of Agriculture, Markudi supra, Katsina-Alu, JSC, (as he then was) stated at pages 100-101 thus:

"I have closely read Decree No. 107 of 1993 and I find nothing even remotely which has repealed or abrogated the provisions of Section 42 of the 1979 Constitution. Rather a careful reading of the Decree reveals that the provisions of Section 42 of the 1979 Constitution were preserved by Decree 107 of 1993. I would like to add that Section 230 (1) of Decree No 107 of 1993 is a general provision relating to the jurisdiction of the Federal High Court while Section 42 of the 1979 Constitution relates to the special jurisdiction for the enforcement of the fundamental rights provided for in Chapter IV of the 1979 Constitution. As I have already stated the High Court of Benue State has concurrent jurisdiction with the Federal High Court in matters of the enforcement of a person's fundamental rights provided in Chapter IV of the 1979 Constitution.

This statement of the law was reiterated and re-affirmed by the Court, per Eko, JSC, in Federal University of Technology, Minna Vs Olutayo (2018) 7 NWLR (Pt 1617) 176 at 191C-193E thus:

"The contention of the Appellants counsel is that the named Appellants herein are all agents or agencies of the Federal Government and that in the expulsion of the respondent from the University, the Appellants were undertaking or had taken executive or administrative action or decision in their official capacities and also within their statutory powers. He therefore called in aid NEPA v. Edegbero (2002) 18 NWLR (Pt.798) 79 and invoked Section 251 (1)(q), (r) & (s) of the 1999 Constitution, in the submission that only the Federal

High Court, to the exclusion of the Niger State High Court, has jurisdiction in the matter since the Appellants, as the defendants, were agents or agencies of the Federal Government. In the process the Appellants counsel had disingenuously cited in support of his fallible position the Court of Appeal decision in University of Agriculture Markudi v. Jack (2000) 11 NWLR (Pt.679) 658 per Mangdiji, JCA, that was set aside by this Court in Jack v. University of Agriculture, Makurdi (2004) All FWLR (Pt.200) 1506; (2004) 5 NWLR (Pt 865) 208.

The core issues in Garba v. University of Maiduguri (supra), Jack v. University of Agriculture, Makurdi (supra) and the instant case are not dissimilar. They are whether the State High Court has jurisdiction to entertain the complaints of students of higher institutions of learning that the University authorities, in purporting to discipline them for misconduct, had infringed on their fundamental rights guaranteed in Chapter 4 of the Constitution.

Section 42(1) of the 1979 Constitution, under which Garba v. University of Maiduguri (supra), Jack v. University of Agriculture, Makurdi (supra) were brought for the enforcement of the fundamental rights of students of the Universities, is in pari materia with Section 46(1) of the 1999 Constitution. Section 46(1) of the 1999 Constitution provides:

46.(1) Any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State in relation to him may apply to a High Court for redress.

Section 46(1) of the 1999 Constitution (ipssma verba with Section 42(1) of the 1979 Constitution) clearly vests concurrent jurisdiction in both the Federal High Court and the State High Court in the matters for the enforcement of citizen's fundamental right. A High Court in Section 46(1) of the Constitution and FREP, means and includes the Federal High Court and or a State High Court. Katsina-Alu, JSC (as he then was) had put it succinctly thus in Jack v. University of Agriculture, Makurdi (supra) at 1518 -

'In the resolution of this issue, I would like to point out that Section 42(1) of the Constitution of the Federal Republic of Nigeria, which I reproduced above, has provided the Court for the enforcement of the fundamental rights as enshrined in Chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 - defines a Court as meaning the Federal High Court or the High Court of a State. What this means is this, both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may, therefore, be made either to the judicial division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur.

It is of paramount importance to reiterate here that the drafters of the Constitution intentionally removed any barrier for a litigant who seeks the enforcement of his fundamental human right; clogging the enforcement of this right with the provision of **Section 251 of the Constitution** will yield no fruit.

46. The only question that the Court ought to consider is whether the main claim of the Applicant bothers on enforcement of a fundamental right. In this Appeal, it is apparent that the main claim of the Respondent at the lower Court was on the enforcement of his fundamental Right, which he alleged to have been breached by the Appellants. I therefore find that the Trial Court in the instant Case was right in assuming jurisdiction in this suit; I therefore resolve this issue in favour of the Respondent that the lower Court has jurisdiction to entertain the Suit.

47. Next is issue two, which is whether or not the 1st and 2nd Appellants are juristic persons and thus are necessary parties. The issue of joinder is a procedural issue which is

handled mostly by the Rules of Court; the Appellants ought to have filed a motion in the Trial Court challenging the presence of the 1st and 2nd Appellants in the proceeding as non-juridical persons, as they claim. I therefore say this without equivocation that the presence of the 1st and 2nd Appellants, even if they were misjoined, cannot rob the Trial Court of its jurisdiction to entertain the suit. See ***Wurbo & Anor v. Ahmed (Pp. 31-32 Paras. D-D) Per MBABA, JCA*** **puts it thus-**

> ***"...by law, joinder or misjoinder of a party does not vitiate the suit. See JULIUS BERGER (NIG.) PLC v. ALMIGHTY PROJECTS INNOVATIVE LTD & ANOR. (2021) LPELR - 56611 (SC). An action cannot be defeated by the misjoinder or nonjoinder of parties. If the presence of the 2nd Respondent in this suit is but a misjoinder as canvassed by the Appellants does not rob the Court of its jurisdiction rather the Court may in every cause or matter, deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. See Sapo & Anor v Sunmonu (2010) LPELR - 3015 (SC). In conclusion on the vexed issue, I would say that I have taken the luxury to delve into the matter which is being raised for the first time in this Apex Court so as to reiterate a position already well settled and that is that assuming there was a misjoinder of the 2nd respondent, such a happening did not oust the jurisdiction of the Court below to hear and determine the matter. However, from what I can see, the suit was properly instituted at the Court of Trial which had exercised its jurisdiction and the Court below correct to entertain the appeal. See Nigerian Bottling Company Ltd v Ngonadi (1985) 1 NWLR (pt.4)739." Per PETER-ODILI, JSC (Pp. 25-27, paras. D-B)."***

48. It is of importance that we define a juristic person, this Court in ***Sosoliso Airlines & Ors V. Starburst Aviation***

(Uk) Ltd & Ors (Pp. 23-25 Paras. D) **equally reasoned thus-**

> ***A Juristic Person is a bearer of rights and duties and has no bearing with whether he is a Natural Person or not but who is given Legal Personality by Law. A Juristic Person may be a Company, Firm or a Government Agency. Simply put, a Juristic Person is an entity other than human being on which the law bestows Legal Personality.***

49. A juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by law, which includes an incorporated body and a special artificial being created by legislation and vested with the capacity to sue and be sued. Therefore, the main characteristic of a juristic person is the capacity to sue and be sued either personally or by representation. Hence, for an action to be imbued with life, it must have been commenced both by and indeed against juristic person(s). The Appellants referred to a statute establishing them, in paragraph 48 of their Brief of Argument, that sequel to the Federal Capital Territory Road Transport Regulations 2023, they are bearers of rights and duties; this qualifies them to sue and be sued and thus, by that Regulation, the 1st and 2nd Appellants are bestowed with legal personality. See ***Kwage & ors v. Upper Sharia Court Gwandu & Ors [2017] LPELR-42508(CA) (Pp. 16-17 paras. E); where this Court held that-***

> ***The concept of Juristic personality or legal persons is now central to virtually every legal system. <u>A juristic person is a bearer of rights and duties simpliciter</u> and has nothing to do with whether he is a natural person or not; but who is given legal personality by the law. A juristic person may be a company or a firm or some Governmental Agency or body for example. In other words, Juristic persons are entities other than human beings and on which the law bestows legal subjectivity.***

This does not mean that they assume the guise of natural persons, but that the law for the sake of some economic or social expediency recognizes a thing or community or group of persons as having legal personality and therefore the capacity to be the bearer of rights and duties and the ability to participate in the life of the law in its own name. As "juristic persons", they are so called because it is the law that accords them that status, and as artificial persons created by the law, they can sue and be sued in their own names.

50. It is on this premise that I therefore hold that the 1st and 2nd Appellants cannot claim that they have rights on one hand and on the other hand run away from duties and responsibilities that arise from their right, this will lead to approbating and reprobating that cannot be allowed by this Court. The 1st and 2nd Appellants clearly represent the office and staff of the 1st Appellant. They are therefore, juristic persons in this context and can be sued.

51. The law is equally of common and has gained notoriety that proceedings shall not be defeated by reason of misjoinder or nonjoinder of parties, and a Court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The implication of this is that misjoinder or non-joinder cannot be seen to defeat a cause of action. Misjoinder or Nonjoinder is without prejudice to the Court determining the case before it on its merits. Parties misjoined can be struck out and those not joined can be brought in. See ***Maitagaran Anor v. Dankoli & Anor [2020] LPELR- 52025(CA).*** This should not defeat the course of justice. It is in the light of all said here that I find that the 1st -2nd Appellants are juristic persons who can be sued in virtue of the Road Traffic Regulation and the part they played in the matter before the lower Court. Assuming but not conceding that

they were misjoined, their presence cannot defeat the cause of action before the Court.

52. With regard to the 3rd and 4th Appellants, it was posited by the Learned Appellants' counsel that there were no claims against them and that they were not necessary parties to the suit. That being agents of a disclosed Principal FCTA whose agency was not made a party, makes the suit incompetent. I beg to disagree with the submission of the learned Senior Counsel to the Appellants that there were no claims against the 3rd and 4th Defendants/Appellants at the trial Court. I found from pages 6-7 of the record of Appeal that all the reliefs sought, id est the 10 major reliefs, were all claims against all the Appellants, including the 3rd and 4th Appellants. I therefore find with due respect to the Learned Senior Counsel that his position is not correct. It is equally correct to say that they are all staff of the 1st Appellant, the Directorate of the Road Traffic Services. There is no provision of the law that says they cannot be joined as parties in a suit of this nature; this is in view of the part they took in the narrative of this case. I agree that they are agents of a disclosed Principal. Generally, the trite position of the law is that an agent acting on behalf of a known and disclosed principal incurs no liability. This is because the act of the agent is the act of the principal. This general position of the law admits of some exceptions, especially where the action of the agent is tortuous in nature. This Court in ***Chevron (NIG) Ltd & Anor v. Brittania- U (NIG) Ltd & Ors [2018] LPELR-43899(CA);*** explained the different instances where an agent of a disclosed principal may be sued together with its Principal, as in this present thus-

> ***The law of agency regarding disclosed principal operates in a very limited manner in the law of tort. In fact it even changes nomenclature in a***

sense in tort law to vicarious liability, meaning that a master is vicariously liable for the actions of his servant done within the course of his employment. In tort law, every person, including a servant, is responsible for his actions in tortuous actions and can be sued directly for his tortuous actions, just as a master can also be joined or sued separately for the actions of the servant done in in the course of his employment: Ifeanyi Chukwu (Osondu) Ltd v. Soleh Boneh Ltd (2003) 5 NWLR (PT 656) 322 (S.C.).

53. It is obvious from the position of this Court captured supra, that the joinder of the 3rd and 4th Appellants, who were actually the Officers that had an interface with the Respondent and all the reliefs sought were claims against them, are proper parties in this Appeal. Their action needs to be weighed to see whether or not they acted within the confines of the law. Their joinder or misjoinder cannot and have not in any way invalidated or made the suit incompetent, as I have stated earlier on this issue. Having said that, I do not see any cogent reason adduced by the Appellants to resolve the issue in their favour. I therefore agree with the Respondent and resolve this issue in favour and of the Respondent.

54. Now, to the final issue, this issue revolves around whether or not the Appellants acted within the ambit of the law. Put in another way, is there any law or statute empowering the 1st to 4th Appellants to stop, impound or confiscate vehicles of erring motorist or impose fine on them on the road within the Federal Capital Territory? I studied with keen attention the Record of Appeal; I do not see where this issue was raised before the Trial Court. The Appellants refused or failed to cite any provision of the law or Regulation they relied on in carrying out their actions at the Trial Court, only

to introduce them here at the stage of Appeal will be prejudicial to the case of the Respondent. The position of the law on bringing up new issues on Appeal has been settled long ago. See ***Bulet Intl' (Nig) Ltd & Anor v. Olaniyi & Anor [2016] LPELR-40303(SC) (Pp. 27-28 paras. E) Per NWEZE, J.S.C***

> ***"... As counsel for the respondents pointed out, if that issue had been raised at the Trial, they would, perhaps, have been able to join issues with the applicant on it. That is not all, entirely, agree with him that if this Court obliges this entreaty to raise that issue now, it would have endorsed the, evidently, surreptitious attempt to overreach the respondents by the introduction of an entirely new case or line of defence different from the issues fought by the parties at the lower Courts, Ejiofodomi v. Okonkwo (supra). As Aniagolu, JSC (of the blessed memory) posited, most eloquently, in Ejiofodomi v. Okonkwo (supra): "...I cannot see that this Court should now allow the Appellants to jettison before this Court, the issue on which the parties fought their case all the way to the appeal Court- an issue on which, he lost all the way. To do so would amount in effect, to our allowing her to commence an entirely new case before this Court. There must, in the public interest, be an end to litigation (interest res (sic) publicae sit finis litium) and it is my view that to allow the new issue to be raised at this late stage, is not to further, but to hinder, that public interest..."***

55. It is germane to state that Counsel owes the duty to assist the Trial Court in the just determination of a case, not to set a trap by refusing to avail it with the Regulations, id est the law under which the Appellants alleged they operate. See ***Loye & Anor v. Newlife Microfinance Bank Ltd (Pp. 30 Paras. C); where Affen, J.C.A puts it thus-***

Counsel owes a duty to assist the Court by citing decided cases that are relevant to the enquiry before it, which duty was observed in the breach in the instant appeal.

56. Needful to add to the above that not only cases but also statutory provisions that are ordinarily within their knowledge, as in this case. One wonders why the Appellants failed to produce the above Regulations, which have been in existence since 2023, before this case was commenced at the lower Court, while arguing their case at the lower Court and decided to wait till on Appeal before producing same here. The position of the law on whose shoulders lies the burden of proving a fact has not changed. It is and always is that the burden rests on the party who asserts the affirmative of an issue and not on the party who denies it, the reason being that a negative is incapable of proof. Also, the burden of proof rests on the party who asserts the positive and not on one who asserts the negative; simply put, he who asserts must prove. The Appellants, who assert that they have the power to impound, detain, and impose a fine on the Respondent, bear the onerous duty of proving same by all means available to them; the Regulations are key to their responsibility to the Court. The failure or refusal of the Appellants to produce the Regulations or, at best, cite same to enable the Court to make use of it in rendering justice to the parties, appears to be a deliberate attempt by the Appellants to play a smart game against the Respondent. The above-captured Regulation has always been in their custody, and if indeed it's the law that regulates their activities, why is it from the Trial Court? According to the learned Respondent's counsel, the Appellants deliberately withheld the alleged Regulation from the Trial Court because they failed to either produce it or reference it in

their argument at the lower Court. As stated earlier in this Judgment I have crissed crossed the whole gamut of the Record of Appeal and found nowhere in the written address of the Appellants as Respondents at the Trial situate at pages 180 -189, where mention was made of any Regulations, the argument of Adeku Anuku who settled the written address based his submissions wholly on the 1999 Constitution, Section 13 of the FCT Act which according to him has domesticated the Road Traffic Act, nothing more. Clearly, the Appellants seem to be at sea with the now quoted provision of the Regulation at the lower Court. They have portrayed their ignorance of the existence of their own Regulations and, in order to outwit the Respondent, suddenly woke up from their deep slumber to realize that they have a Regulation that empowers them to impound, detain, prosecute and sentence alleged Traffic offenders. Courts of law, as umpires in a game, cannot go outside of the facts, evidence and laws placed before it, to fish for evidence in support of the case of one of the parties against the other party. Except in certain situations where the Court would have to cite authorities or notorious legislation that will further the justice of the case, unlike in this instant, where it is the law that the Appellants say it regulates their activities. This was succinctly captured by Owoade, JCA (Now Rtd); in ***Uko & Ors v. Govt. of The Federation of Nigeria & Ors;*** thus-

> ***For the umpteenth time, I must say that a trial is not an investigation and investigation is not the function of a Court. The function of a Court is to examine and decide on evidence that has been demonstrated and tested by the parties.***

57. Generally, it is correct to say that Courts are the repository of the law, but in situations where the Appellants, who are in custody of their own Regulation, failed to either mention/cite or present it before the Court should be

reprimanded. It is the truth that Judges are humans and cannot conjure up laws that are not brought to their attention. Especially legislation regulating the affairs of a party in a suit. The effigy of Justice, represented by the lady Justitia, with her blindfold, symbolizes impartiality; the scale in her left hand symbolizes the weighing of evidence, while the sword on her right hand represents the power to enforce the law.

58. Be that as it may, my lords, I would not want to overlook the provision of the presently cited Regulations by the Appellants and act like Julius Ceaser when he led his army across the Rubicon River. What should be of concern to the Court in this Appeal is to ensure that justice is done to the parties. Whether or not the Appellants referenced or produced it at the Trial Court does not change the fact that the Regulations exist; it is a law, being a subsidiary legislation, and has not changed its status from being an existing law. It is in the light of this that I will consider the highlighted provisions of the Regulations which, according to the Appellants, empowered them to stop, impound or confiscate vehicles of erring motorists or impose fine on them on the road within the Federal Capital Territory. Reference was made to the provision of Paragraphs 117(1) & (2) of the Federal Capital Territory Road Transport Regulations, 2023. For ease of reference, I will reproduce below:

> ***In the exercise of the functions of the FCT Directorate of Motor Vehicle Administration, the Director or any Road Traffic Officer authorized by him shall have powers to-***
>
> ***a. Summon or arrest, with or without warrant, an individual that violate or is likely to violate any of the provisions of this***

Regulation s pending conclusion of an investigation;

b. Impound, tow-away and detain any vehicles which-

i. Is used in violation or is likely to be used in violation of any of the provisions of this Regulation s pending conclusion of an investigation,

ii. Is declared to be off the road,

iii. Fails to obey instructions of the Director or Road Traffic Officer connected to the enforcement of this Regulation s,

iv. Is suspected to have been stolen and bring same to the attention of the police, or which was parked in a manner that causes obstruction, or

v. The driver fails to provide sufficient vehicle documents or any other license(s)required of the driver;

c) Charge and collect levies and fines as imposed in the 14th schedule of this Regulation for the Directorate.

c. e) Confiscate vehicle documents, vehicle identification number plate and driver's license in enforcement of provisions of this Regulation ;

d. (f) Use minimum force to demobilize or tow away vehicles that are wrongly parked or breakdown on carriageway in enforcement of provisions of this Regulation s and will not be responsible for any damage that may occur in the process of towing such vehicles;

(g) Use minimum force in enforcement of provisions of this Regulation;

h) Drive impounded vehicle to impoundment site;

i) Declare a vehicle finally off the road if found to be beyond economic repair and no longer safe for human use from FCT roads for the purpose of recycling only.'

54. From the words of Regulations 117(1) & (2) of the Federal Capital Territory Road Transport Regulations, 2023, captured supra; it can quite easily be deduced that this provision carries punitive sanctions. Noteworthy are the averments of the Respondent at paragraphs 3-14 of the Affidavit in support of his application at the lower Court, specifically at pages 10-12 of the Record of Appeal which evinces that the Respondent had issues with the Appellants when according to him he was taking his sister to Jabi Motor Park to board a vehicle to Maiduguri at about 8:40 am. He was stopped by the officials of the 1st Appellant and he was asked to produce his vehicle papers and his driver's license, which he promptly showed them. That he was thereafter detained, in other words they refused to hand over to him his vehicle particulars and driver's license for hours. He then informed them that he needed to drop off his sister, who was travelling to Maiduguri. He pleaded with them to allow him to drop off his sister, all to no avail. He continued that the Area Commander came and, after discussing with the Officials on duty, he ordered the confiscation of his car to their Office without hearing from him. He explained to the said Commander, but he rebuffed him, said he cannot teach him his job and threatened to deal with him. That while he was trying to book a bolt to convey his sister to the park, the said Area Commander forcefully took the key from him and gave it to one of his men to drive his car away with his personal belongings and the sum of N500,000.00.

55. Now, the pertinent question that requires an answer is whether the Traffic Regulation quoted by the Appellants and partly captured supra, gives far-reaching powers to the Appellants to arrest, prosecute and convict drivers by imposing fine without informing them of the offence or infraction and not giving them a right of hearing. If the answer is in the affirmative, then those provisions would be held to run contrary to the provisions of the Constitution. I have read through the arguments of Appellants' counsel and the Respondent at the lower Court as well as the Judgment of the lower Court and I find it safe to conclude that the area of contention is with regards to the powers of the officers of the Appellants to detain, confiscate vehicles and all its content, impose fines on traffic offenders in the light of the offences highlighted under the Regulation viz-a-vis the provisions of Sections 6, 36(1) and 41 of the 1999 Constitution as amended. Let it be known that the power to arrest, detain, prosecute, and sentence by imposing fines cannot, by any stretch of imagination, be extended to the power to convict. An arrest can be made by any person, particularly law enforcement agents who are empowered by law to do so, like the Nigerian Police. Prosecution is usually done by the Police, as stated earlier, or the legal Officers at the Ministry of Justice. This is the only power an organization outside a law Court can exercise. Conviction is made by a Court after the trial of the offender, obeying all the audi alterem partem rules in that regard. For instance, informing the offender of the crime or infraction committed and eliciting an answer from him. In this case, the Respondent averred in his affidavit that he was not told of any offence he committed and upon request, he was rebuffed. It is after the Court finds the offender guilty that he is said to be convicted and this is followed by a sentence which could be by way of fine or a term to be served in a correctional centre.

56. Regulation 117(1) & (2) of the Federal Capital Territory Road Transport Regulations, 2023, gives the power of impounding a vehicle, arresting a traffic offender and imposing a fine which in essence could only be done after conviction by a law Court. Regulation 160 provides for the issuance of a notice of Offence to an offender whom an Officer reasonably suspects to have committed any offence. There is no evidence of compliance with the provision of this regulation by the Appellants. The Respondent was not issued any notice informing him of any offence or infraction against their law. That is severely against the audi alterem partem Rule provided for by Chapter IV of the 1999 Constitution, a brazen disregard of the Fundamental Right of Nigerian Citizens. If that is the provision under which the 1st Appellant and its officers acted by impounding the Respondent's car, detained him and dispossessed him of the use of same without any just cause, I deliberately used the words "Just cause" in that the Appellants failed to issue any notice of offence as required by their regulations to the Respondent, first they breached the provision of the Regulations and secondly, the said provisions being an infraction against the Constitutional Right of the Respondent to freedom of movement and right to his property would be held to be null and void as it will be inconsistent and against the spirit of the 1999 Constitution as amended. By Section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria, that provision of the Regulations being inconsistence with the provision of the Constitution is null and void. By the recent Apex Court case of ***Owoniyi v. Aiyewumi [2025] 16 NWLR (PT. 2011), P. 237 @ 275;*** the Constitution is Supreme and any law which is inconsistent with it is void. Ditto any law that arrogates to itself the powers to deprive a citizen access to the Court is void. The attitude of our Court in cases where the fundamental right of a person is

infringed upon is as aptly captured by Ogakwu JCA, in ***NMCN v. Adesina [2016] LPELR-40610(CA);*** wherein His Lordship states thus-

> ***The Courts guard fundamental rights provisions very jealously. Therefore, any law or action that is perpetrated against the provisions of the fundamental rights of any individual which is against the spirit of the Constitution would not be allowed to stand. The spirit of the Constitution must be upheld at all times, the fundamental rights of the citizen which are immutable and inalienable cannot be subsumed or swept aside by a side wind such as the Appellants' Policies and Procedures on change of name. Any breach of the provisions of the fundamental rights provisions renders any act subsequent to that breach a nullity. See ONYEMEH vs. EGBUCHULAM (1996) LPELR (2739) 1 at 21, OKAFOR vs. A-G ANAMBRA (1991) LPELR (2414) 1 at 28 and TOLANI vs. KWARA STATE JUDICIAL SERVICE COMMISSION (2009) LPELR (8375) 1 at 52-53.***

56. The scenario in this case was well captured by the Trial Court in resolving this issue at pages 312-313 of the record of Appeal (pages 33-34 of the Judgment) held thus-

> ***I have looked critically at the facts adduced in this case, there is no dispute that the agents of the 1st Respondent confiscated the Applicant's vehicle. The Applicant alleged that the Area Commander got to the scene and after discussing with one of the officials of the 1st Respondent, he ordered them to seize the Applicant's vehicle. The Applicant alleged that the Area Command did not give him a right to state his own side of the story before giving such directive. Also, the Applicant stated that he did not commit any offence known to law that would have warranted such acts. The Respondents did not deny these facts; rather, the Respondents stated that the confiscation of the car was predicated on the***

hostility, highhandedness, impunity, and recklessness with which the Applicant paraded himself to be at the scene of the arrest of the vehicle. Furthermore, the Respondents alleged that the officers of the 1st Respondent flagged and slopped the Applicant in the course of their duties, but the Applicant refused to stop; instead, the Applicant went physical with the officers on duty while resisting the arrest of the vehicle. The Court wonders how the Applicant who refused to stop upon being flagged to stop would go physical with the officials of the Respondents. This to the Court appears to be a contradiction of facts. The word "physical" in this regard, is vague. More so, in the entire Counter Affidavit, there is nowhere it was stated that the Applicant assaulted any of the officials of the 1st Respondent, which would have constituted an offence. More so, the Respondents did not mention the particular offence which the Applicant committed that warranted them to seize his vehicle.

Doubtless, the 1999 Constitution (as amended) has made ample provisions to safeguard the rights to fair hearing, presumption of innocence and ownership of moveable and immoveable properties against unlawful seizure as provided under sections 36(1), (5) *and* ***section 44(1) of the FCRN 1999 (as amended). In this suit, the Applicant's vehicle was seized without giving him an opportunity to state his own side of the story. Furthermore, the officials of the 1st Respondents did not state the particular offence which the Applicant or his vehicle committed nor show that the seizure of the vehicle was lawfully seized in the manner provided under section 44(2) of the Constitution.***

56. Finally, it was held by the Trial Court thus-

The Court having considered the relevant provisions of the law in respect to this suit in the light of the evidence which has been thoroughly reviewed and being well guided by the decisions of the appellate courts on the issue between feuding parties, finds and holds that the actions of the Respondents violated the provisions of the 1999 Constitution (as amended), breached the provisions of the African Charter on Human and Peoples Rights and by extension universally- accepted standards of human rights. In this regard, the Applicant's case succeeds in part. Accordingly, Judgment is entered for the Applicant. [Emphasis Mine].

57. All I have been saying hereinbefore, is that the abhorrent denigrating action of the Appellants to the Respondent is clearly against the tenet of the law, nay the spirit of the Constitution of the Federal Republic of Nigeria, 1999 as amended for a Regulation to be made empowering traffic agents to impose punitive sanctions and prosecutorial powers on an agency other than the Court. This Court have, in a similar case, held thus in ***Shell Nigeria Exploration And Production Co. Ltd v. National Oil Spill Detection and Response Agency (NOSDRA) [2021] LPELR-53068(CA),***

The main contention in respect of the second issue as could be gathered from the above submission is whether Sections 5, 6, 7, 19 and 26 of the NOSDRA Act as well as Regulation s 25, 26 and 27 along sides the respondent's letters (Exhibits 3 and 6) are in conflict with Sections 4, 5 and 6 as well as 36, 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 as amended? It is imperative to state that the Constitution of the Federal Republic of Nigeria is the basic norm of the land. Its provisions are superior to all provisions made in other laws and therefore the validity of any other law is tested against the Constitution. The hierarchical positions as it stand in matters of

precedence are; the Constitution, Act of the National Assembly, Laws made by State Houses of Assemblies and then other subsidiary legislations. In order words, the Constitution is the law from which all other laws in the land derive its legitimacy. The provision of Section 1 (3) of the 1999 Constitution as amended specifically states that if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of that inconsistency be void. The Constitution does not also permit the exercise of a jurisdiction which of its nature belongs to the judicial powers of the Courts. See S.P.D.C.N. LTD V AJUWA (2015) 14 NWLR (prt 1480) 403. In the unreported Appeal NO. CA/C/244/2017, this Court held that by imposition of the fine, the Appellants acted in a judicial capacity which they are not imbued with under the Constitution. And that by so doing, the Appellants became a judge in its own cause, the complainant as well as the judge, contrary to the maxim "nemo judex in causa sua". It is thus my view by and large, that the respondent not being a Court of law cannot impose any fine and the Regulations to that effect are not only unconstitutional but capable of eroding the fundamental rights of the Appellants herein as enshrined in Sections 36 (1) and (2) of the Constitution of the Federal Republic of Nigeria as amended.

59. I adopt the position of this Court in the above-captured decision and state further that the 1st to 4th Appellants cannot be ***a complainant, a prosecutor as well as a Judge in their own cause, contrary to the maxim "nemo judex in causa sua***". Their purported power to stop, impound or confiscate vehicles of erring motorist and or impose fine on them on the road within the Federal Capital Territory is in contravention of Fundamental rights of the Respondent, specifically **Sections 4, 5 and 6 as well as 36, 41 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 as amended** and same declared unconstitutional. Consequently,

Paragraphs 117(1) & (2) of the Federal Capital Territory Road Transport Regulations, 2023 are void to the extent of their inconsistency with the provisions of the Constitution. See **Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.** See also ***AG of Ogun State & Ors v. AG Of The Federation (2002) LPELR-621(SC) (Pp. 19-20 paras. C-C).*** **Per ONU, J.S.C**

> ***The Supreme Court, it is pointed out, has effectively decided on the proper way to approach the subject of the inconsistencies of any law with the provisions of the constitution. In the very recent case of Edjerode v. Ikine (2001) 18 NWLR (Pt. 745) 446, it is stressed, the Court held that if any existing laws or any of their provisions are inconsistent as from 1st October, 1979 with the 1979 constitution, such laws or any of their provisions whether or not pronounced upon by the Court as being inconsistent with the said constitution, are impliedly repealed or modified to conform with its provisions. After we were referred to the dictum of Ejiwunmi, JSC in the latter case reference was also made to the Uwaifo v. Attorney-General of Bendel State (1982) 7 SC 124 where Idigbe, JSC succinctly stated the law thus: "It is important to note that the preclusion or prohibition is limited and confined to existing laws. It therefore becomes abundantly clear that if such laws or any of their provisions are inconsistent as from 1st October, 1979 with 1979 Constitution, such laws or any of their provisions whether or not pronounced upon by the Courts as being inconsistent with the said Constitution, are impliedly repealed or modified to conform with its provisions. Likewise, all things done or purported to be done under such impliedly repealed or modified laws after 1st October, 1979, are equally of no effect ...." Per ONU, J.S.C in ag of ogun state & ors v. ag of the federation (2002) LPELR-621(SC) (Pp. 19-20 paras. C-C).***

60. It is on this premise that I resolve the third issue in favour of the Respondent and against the Appellants.

61. I would like to finally address the issue raised by the Appellants respecting the mode of approaching the Court by the Respondent. The gamut of the Appellants' contention respecting their issue 6 framed is that, contrary to the findings of the Trial Court, the Appellants, having denied all material Paragraphs of the Plaintiff's affidavit at the Lower Court and ought to order the parties to file writ of summons and call for oral evidence. After a thorough study of the affidavit evidence of the parties, the learned Trial Judge at page 312 of the Record of Appeal held thus;

> ***I have looked critically at the facts adduced in this case, there is no dispute that the agents of the 1st Respondent confiscated the Applicant vehicle. The Applicant alleged that the Area Command got to the scene and after discussing with one of the officials of 1st Respondent he ordered them to seize the Applicant vehicle. The Applicant alleged that the Area Commander did not give him the right to state his own side of the story before giving such directives. Also the Applicant stated that he did not commit any offence known to law that would have warranted such acts. The Respondents did not deny these facts, rather, the Respondents stated that the confiscation of the car was predicated on the hostility, highhandedness, impunity and recklessness with which the Applicant paraded himself to be at the scene of the arrest of the vehicle. Furthermore, the Respondents alleged that the officers of the 1st Respondent flagged and stopped the Applicant in the course of their duties, but the Applicant refused to stop; instead, the Applicant went physical with the***

officers on duty while resisting the arrest of the vehicle. The Court wonders how the Applicant who refused to stop upon being flagged to stop would go physical with the officials of the Respondents. This to the Court appears to be a contradiction of facts. The word "physical" in this regard, is vague. More so, in the entire Counter Affidavit, there is nowhere it was stated that the Applicant assaulted any of the officials of the 1st Respondent, which would have constituted an offence. More so, the Respondents did not mention the particular offence which the Applicant committed that warranted them to seize his vehicle.

62. From the foregoing it is clear as crystal that the Appellants did not deny all the material facts adduced by the Respondent, they also did not state any contradicting averments of facts to that of the Respondent, they still did not state the particular offence committed by the Respondent and finally their affidavit evidence is self-contradictory to warrant the Trial Court to rely on it. The learned Trial Judge stated further, thus-

The Court wonders how the Applicant who refused to stop upon being flagged to stop would go physical with the officials of the Respondents. This to the Court appears to be a contradiction of facts.

63. The position of the law is settled on self-contradictory affidavit. See **INEC V. APC & Ors (Pp. 25 paras.A)**"

***It is trite law that an affidavit is self-contradictory when, as in this case, it deposes to inconsistent facts. A self-contradictory affidavit is destroyed by the contradictions therein making the same unreliable and of no probative value. See OLLY v. TUNJI (2012) LPELR (7911) 1 at 38, ATOSHI v. AGBU (2018) LPELR (44477) 1 at 24, INEC v. GUMA LGC (2015) LPELR (45820) 1 at* 43-44 and ROYAL**

EXCHANGE ASSURANCE (NIG) LTD v. ASWANI *TEXTILE IND LTD (1992) LPELR (2960) 1 at 17-18." Per OGAKWU ,J.C.A in INEC v. APC & Ors (Pp. 25 paras. A).*

64. From all said supra on this issue, I find it difficult to agree with the Appellants that the Trial Court ought to have called for oral evidence. I therefore discountenance with same.

65. In all, I find no iota of merit in this Appeal. It is in consequence that I disallow this Appeal and same is dismissed. Consequently, the decision of the lower Court delivered on the 2nd day of October, 2024 is hereby affirmed. Costs of N1,000,000.00 is hereby awarded in favour of the Respondent and against the Appellants.

CROSS APPEAL

66. The Cross Appellants filed a Cross Appellants' Brief of Argument on the 14th October, 2025 and it was deemed adopted on the 22nd October, 2025. In response to that, the Cross Respondent filed their Cross Respondent's Brief of Argument and preliminary Objection on the 21st October, 2025, which was later withdrawn at the hearing of the Appeal. It is important to note that a Cross Appeal is independent of the main Appeal. See in ***Akpan V.Bob & Ors (2010)17 Nwlr (Pt 1223) 421 In Ofongo v. APC(2022)4 NWLR (Pt 1821)543*** **@ 582, Paras. D-E Per His Lordship Augie JSC; Held thus;**

> ***A cross Appeal is, in fact a separate and an independent appeal and not an appendage to the main appeal. It can be initiated by any of the parties, whether as plaintiff, Appellants, Defendant or Respondent, once he is dissatisfied with any part of the decision of the Court from which the Cross Appeal stems"***

67. The Cross-Appellants filed a Notice of Cross Appeal contained in the 2nd Additional Record transmitted on 14th

October, 2025 and regularized on the 22nd October, 2025. Two grounds. For ease of reference the two grounds are hereunder reproduced thus-

GOUND ONE

The learned trial Judge erred in law and occasioned a miscarriage of justice when he held that, the deponent state that he is a staff of the 1st Respondent, and by virtue of his employment had knowledge of the facts of the case. In addition, the deponent disclosed the source of his further information in paragraph 4 of the Counter affidavit, which from Barr. Baba Samuel, who is one of the counsel handling the matter or that he works in the legal unit of the 1st Respondent. These are issues of facts which were not rebutted by the Applicant's counsel argued same in the Reply on points of law.

GROUND TWO
The lower court erred in law and occasioned a miscarriage of justice when it held that in this present still, I must say that the issue of whether Barr. Samuel Baba was of the scene or not is not before the Court and was never raised by the Applicant. The Applicant did not file any further affidavit to rebut or controvert these facts, and it is not the duty of the Court to fill in the gap in this case.

68. The Cross-Appellant Distilled two issues, to wit:

1. ***Whether in view of the provisions of Section 115 of the Evidence Act, the Cross Respondents (Respondents at the court below) joint counter affidavit deposed to by ATTAH SUNDAY THANKGOD based on facts relayed to him by BARR. BABA SAMUEL is not hearsay and cannot be relied upon.***

2. ***Whether failure to file a further affidavit to an incompetent counter affidavit is fatal to the Applicant's affidavit deposed to by the Applicant himself. (Distilled from Ground 2 of the notice of cross appeal).***

69. It is the Cross-Appellant's remonstration that though the Cross-Respondent filed a counter affidavit which does not counter any material fact in his main application at the lower Court, the counter affidavit ought to have been struck out by the trial Court for being offensive to Section 115 of the Evidence Act. Learned Counsel asserts that the deponent of the Respondents' Counter Affidavit, one Attah Sunday Thankgod, relied on the information given to him by one Barr. Baba Samuel, who is a staff member in the legal Department of the Federal Capital Territory Authority. Learned Counsel contended that Barr. Samuel Baba is not a party to the instant suit; he was not there on December 12, 2023 when the issue ensued. he did not know what transpired and having not witnessed same, he cannot deny the oath depositions made by a person who was not at the scene or who witnessed same. That he has no such authority and capacity to depose to an affidavit. Learned counsel relied on ***Section 115 Of The Evidence Act, 2011*** and the Supreme Court decision in ***Abacha Vs State***, where it was held that when what is needed is evidence of what took place in hell, only an occupant of hell can testify on it. Also, ***Lafia Lg Vs Gov. Nassarawa State (2012) 17nwlr (1328) 95, Ola Vs University of Ilorin (2014) 15 NWLR 453, Edet Vs Chief of Army Staff (1994) 2 NWLR (324) Pg 41 @ Pg 63-64, Ibachem Vs Visa Investment And Securities Ltd (2009) LPELR 4273, Abiodun Vs CJ Kwara State (2007) 18 NWLR 109, Bamaiyi Vs State (2001) 8 NWLR (715) 270@289.***

70. Learned Counsel held that there is no any single paragraph in the said counter affidavit that state that Barr Samuel

Baba witnessed the incidence, therefore Barr Samuel Baba cannot hide under the Cloak of being of a counsel and speak on matters which cannot proceed from his mouth he referred to ***Haliru Vs FRN (2008) All FWLR (pt425) 1697 at 1719***. It was finally submitted that the counter-affidavit ought to have been struck out because it is, at best, a documentary hearsay. He prayed the Court to resolve that the Respondents' counter-affidavit was incompetent and strike out same.

71. Learned Counsel to the Cross-Appellant Submits respecting issue two that the Applicant's failure to file a further affidavit to an incompetent counter affidavit is not fatal. He further asserts that a notice of preliminary objection is sufficient to an incompetent counter affidavit; he relied on ***Vs University of Ilorin (2014) 15 NWLR 453,*** among others. Counsel finally reiterated that the counter affidavit of the cross-Respondent, being hearsay evidence, has no place in law and urged this Court to strike out the counter affidavit and allow this Cross-Appeal.

72. **CROSS-RESPONDENT BRIEF OF ARGUMENT**
In their brief of argument settled by Precious Andrew Esq learned Counsel formulates one issue to wit;

> ***Whether in view of the provisions of Section 115 of the Evidence Act, the Cross Respondents (Respondents at the court below) joint counter affidavit deposed to by ATTAH SUNDAY THANKGOD based on facts relayed to him by BARR. BABA SAMUEL is not hearsay and constitute admissible evidence.***

73. Learned counsel contended that their counter-affidavit is in all fours with the provision of Section 115 of the Evidence Act. Learned Counsel further argued that the deponent, Sunday Attah Thankgod, disclosed the source of his

information, which is from Barr. Samuel Baba. It is the Learned Counsel's further submission that the said informant is one of the Counsel handling this matter and also a staff member of the legal unit of the FCTA, which by virtue of his office is conversant with the fact of this suit. Learned Counsel submits that this fact where never countered, which makes it expressly admissible. Learned Counsel further argued that the issue of the presence of Barr. Samuel Baba at the scene was never raised by the Cross-Appellant and therefore should be discountenance with. Counsel finally urged this court to resolve this issue in his favour and dismiss this cross-appeal.

RESOLUTION OF THE CROSS-APPEAL:

74. I have carefully considered all the submissions of counsel and documents before me. I will adopt the first issue formulated by learned counsel to the Cross-Appellant, which was slightly referenced by the Cross-Respondent, to wit:

> ***Whether in view of the provisions of Section 115 of the Evidence Act, the Cross Respondents (Respondents at the court below) joint counter affidavit deposed to by ATTAH SUNDAY THANKGOD based on facts relayed to him by BARR. BABA SAMUEL is not hearsay and constitutes admissible evidence.***

75. I have carefully studied the Counter affidavit of the Cross-Respondent before the trial Court, which is in the 2nd Additional Record of Proceedings, the deponent to the counter affidavit who is Sunday Attah Thankgod, clearly states at paragraph 4 that he was informed by one Barr Samuel Baba, who works in their legal department and is one of the Counsel handling this matter. I find no contradiction to this fact because it was not even opposed by the Cross-Appellant at the Trial Court, as rightly argued

by the Cross-Respondents. I find it easy to agree with the position of the learned Trial Judge, that Counsel did not oppose the very fact that the deponent is a staff member or that Barr Samuel Baba works in their Legal department. Submissions of Counsel, no matter how beautifully and brilliantly couched, cannot take the place of Evidence. See ***Baba & Anor V. Inec & Ors [2024] LPELR-62230(SC) (Pp. 29 Paras. C) Per SAULAWA, JSC succinctly captured it thus-***

> ***the law is fundamentally settled, that the submission of learned Counsel no matter how brilliant, eloquent, or persuasive, cannot supplant factual proof. See OMISORE VS. AREGBESOLA (2015) LPELR-24803 (SC) @ 108 paragraph B; ANGADI VS. PDP (2018) LPELR - 44375 (SC) @ 5 PARAGRAPH B.***

76. The issue of whether the informant is at the scene or not was never before the trial Court as Counsel failed to file a further affidavit to establish that fact, and it is not for the Court to complement inadequacies or speculate, in a case which ordinarily only evidence can fill up. *See* ***Onuegbu & Ors V. Gov. Of Imo State & Ors [2024] LPELR-62620(SC) (Pp. 27-28 Paras. F) Per KEKERE-EKUN, CJN who reasoned thus-***

> ***It is settled law that the Court cannot speculate on the existence of any evidence or the content of a document not before it no matter how close what it relies on may seem to be on the facts. It was held by this Court in the case of Ivienagbor Vs Bazuaye & Anor (1999) LPELR-1562 (SC) @ 14 A - D, Isonguyo Vs The State (2022) LPELR-60912 (SC) @ 56 - 57E-C, that:***
>
> ***"Speculation is not an aspect of inference that may be drawn from facts that are laid before the Court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of Imaginative guess which, even where it appears plausible, should never be allowed by a Court of law to fill any hiatus in the evidence before it."***

77. Flowing from the above, I cannot fault the position of the Trial Court wherein it held that the Counter-affidavit has merit. It is in consequence that I find no iota of merit in the Cross Appeal and accordingly, dismiss it.

OYEJOJU OYEBIOLA OYEWUMI
Justice, Court of Appeal

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HOD LITIGATION
18/12/25

MR. MARSHALL ABUBAKAR appeared for himself.

Appellant represented by **Amade Mande** for Legal Adviser of the Appellant.

APPEARANCES:

J. B. DAUDU, SAN, with **MONDAY A. AKPONIEMIE**, for the Appellants

MR. MARSHALL ABUBAKAR for the Respondent

I have had the opportunity to read the Draft of the Judgment just delivered by My Lord, **OYEJOJU OYEBIOLA OYEWUMI, JCA**. I am in full agreement with His Lordship's reasoning and conclusions.

As the Apex Court, aptly instructed in ***INTER OCEAN OIL DEVELOPMENT COMPANY NIGERIA & ORS VS DR FESTUS ALANI FADEYI & ANOR (2024) LPELR-62449(SC) PER HARUNA SIMON TSAMMANI, JSC (PAGES 42-43, PARAS F-B),*** misjoinder or non-joinder of a Party, even if established, does not vitiate a Suit nor rob the Court of Jurisdiction. The Courts are empowered to do substantial justice between the Parties properly before it without undue technicality. The misjoinder of a Party, at worst, is a curable procedural irregularity, not a jurisdictional defect.

Accordingly for these reasons, and in light of the more detailed and comprehensive grounds outlined in the Lead Judgment, I agree that this Appeal lacks merit and, as a result, should be dismissed

HON. JUSTICE ADEBUKUNOLA ADEOTI BANJOKO
JUSTICE, COURT OF APPEAL.

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OKON EFRETI ABANG JCA

I had a preview of the draft of the leading Judgment of my Lord OYEJOJU OYEBIOLA OYEWUMI, JCA.

I agree with his reasoning and conclusions that the main appeal and the cross appeal lack merit and are hereby dismissed by me. I abide by the consequential Order made by way of cost.

OKON EFRETI ABANG
JUSTICE, COURT OF APPEAL

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