

Before Our Lordships

Sidi Dauda BageJustice of the Court of Appeal

Joseph Shagbaor IkyeghJustice of the Court of Appeal

Tijjani AbubakarJustice of the Court of Appeal

Between

1. A. I. C. LIMITED 2. CHIEF HARRY AKANDEAPPELANT(S)

And

FEDERAL AIRPORTS AUTHORITYRESPONDENT(S)

## RATIO DECIDENDI

### ACTION - STATEMENT OF CLAIM/WRIT OF SUMMONS

- Effect of the claim contained in a writ and/or statement of claim

"It is trite that the nature of the claim contained in the writ and/or statement of claim determines jurisdiction of the Court to adjudicate on the matter before it vide *Ecobank (Nig) Plc v. Intercontinental Bank Plc.* (2012) 5 NWLR (pt. 1293) 219 at 236, *Justice Elelu-Habeeb and Anor. v. The Hon. Attorney General of the Federation and Ors.* (2012) 40 WRN 1 at 50, 76, 108, *First Bank of Nigeria Plc v. Government of Ondo State and Ors.* (2012) 11 NWLR (pt. 1312) 502 at 515, *Tukur v. Government of Gongola State* (1989) 4 NWLR (PT. 117) 517 and *Onuorah v. Kaduna Refining and Petrochemical Co. Ltd.* (2005) 6 NWLR (pt.921) 393 at 404."

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### JURISDICTION - JURISDICTION OF THE FEDERAL HIGH COURT

- Whether the Federal High Court has jurisdiction in respect of trespass to land

"In considering the issue of exclusive jurisdiction of the Federal High Court under Section 251 (1) of the 1999 Constitution, as altered, the parties to the action and the nature of the action must be taken together vide the lead judgment of *Chukwuma-Eneh, J.S.C.*, (as he was) in *Ahmed v. Ahmed* (2013) 15 NWLR (pt. 1377) 274 at 335 thus -"The appellant has referred to and relied on the case of *N.E.P.A. v. Edeghero* (2003) FWLR (Pt. 139) 1556 at 1569C, (2002) 18 NWLR (Pt. 798) 79 for contending that the provision of Section 251 (1), (p) and (r) have to be so narrowly construed... In my view, it is not just enough to identify and rely on such proposition of the law as per the appellant's case that the sole fact of the 4th respondent being an agency of the Federal Government as sued is conclusive of the issue; in other words without adverting to whether the subject-matter of the cause of action in matter also comes within the exclusive purview of the Federal High Court to deal with. It would be wrong to proceed on that basis alone to hold in conclusion that the instant matter is completely within the exclusive ambit of the Federal High Court to deal with. What I am otherwise saying here is that to determine the applicability of the provisions of the said Sub-sections 1 (p), (q) and (r) of Section 251 to an action, ... the subject-matter of the cause of action in the matter as well as the parties so sued in the action must be examined to ascertain, whether both factors which must co-exist have been so connected to the action as to bring the action within the purview of the provisions of the said section (i.e. Section 251 (1) (supra) for the action to come within the exclusive jurisdiction of the Federal High Court. I think the appellant has misconstrued the decision in *N.E.P.A. v. Edeghero* (supra); and I hope that this short observation has corrected the

misconception." See also *Farouk Salim v. Congress for Progressive Change (C.P.C.) and Ors.* (2013) 30 W.R.N. 1 at 18 per the lead Judgment of Peter Odili J.S.C., following the cases of *Adeogun v. Fasogbon* (2008) 17 NWLR (pt. 1115) 119 and *Dingyadi v. I.N.E.C. and Ors* (2011) 10 NWLR (pt. 1255) 347, *P.D.P. v. Sylva* (2012) 13 NWLR (pt.1316) 85 at 138. It is beyond dispute that the respondent is an agency of the Federal Government thus satisfying the first twin requirement, and nothing further need be said on it. As for the second indispensable requirement, the claim (*supra*) being rooted in trespass to land and a perpetual injunction to safeguard the piece of land from further/future acts of alleged trespass, the claim does not fall within the compass of Section 251(1) of the 1999 Constitution, as altered, vide the case of *Adetona v. Zenith International Bank Ltd.* (2009) 3 NWLR (pt. 1129) 577, 593 (per the lead judgment of Augie, J.C.A.) and, in particular, the judgment of Fabiyi, J.C.A., (now J.S.C.) in page 596 thus - "It is pertinent to note that the basic complain of the respondent is that the 1st appellant trespassed tortuously on their own mortgage side of the Henley Industries Ltd. Land. Trespass is not within the purview of Section 251 (1) (e) of the 1999 Constitution and I so hold." The matter went to the Supreme Court and is reported as *Adetona and Anor. v. Zenith International Bank Plc.* (2011) 18 NWLR (pt. 1279) 627 where the judgment of Ngwuta, JSC., highlighted Section 251 (1) (e) of the 1999 Constitution, as altered, as one of the issues raised in the High Court which the Court of Appeal had resolved against the appellant who did not pursue it further at the Supreme Court, where the Apex Court directed that the substantive case be determined by the High Court of Ogun State, the venue of the dispute.. Accordingly, it stands to reason that the lead judgment of Augie, J.C.A., supported by the judgment of Fabiyi, J.C.A., (now J.S.C.) quoted above are extant. I follow the said judgment to hold that an issue of trespass to land (which is an interest in land) and perpetual respecting the land allegedly trespassed upon is not within the jurisdiction of the Federal High Court under Section 251 (1) of the 1999 Constitution, as altered. See also the analogous land cases of *Nkuma v. Odili* (2006) 6 NWLR (pt. 977) 587, *Federal Mortgage Bank of Nigeria v. Lagos State Government and Ors.* (2010) 5 NWLR (pt. 1188) 570, *Nigerian Institute of Medical Research v. National Union of Road Transport Workers* (*supra*), *Adetayo v. Ademola* (2010) 15 NWLR (pt.1215) 169. I agree with and follow the submission of the respondent that in virtue of the decision in *Ogbonna v. A.G., Imo State* (1992) 1 NWLR (pt.220) 647 at 674, the title of an enactment is not helpful in the construction of the enactment. Again, I agree with the appellant's submission that Section 1(g) of the Admiralty Jurisdiction Act be given literal interpretation vide *Udoh v. O.H.M.B.* (1993) 7 NWLR (pt.304) 139 at 147. Ignoring the title of the Admiralty Jurisdiction Act and giving the Act a literal interpretation, I do not think Section 1(g) thereof to wit - "The admiralty jurisdiction of the Federal High Court ....includes ....any matter arising within a Federal port or national airport and its precincts," supplied by the respondent really changes the position that land related matters, specifically trespass to land, a specie of action covered by the Land Use Act 1978, can be enlarged to vest jurisdiction in the Federal High Court over an action for trespass to a piece of land; as Courts are not hungry for jurisdiction and would not, by interpretation, strain to expand jurisdiction beyond the express/clear words of the statute or Constitution conferring jurisdiction vide *African Newspapers (Nig.) Ltd. v. Federal Republic of Nigeria* (1985) 2 NWLR (pt.6) 137. The first issue is resolved in favour of the appellants that the Court below lacked the jurisdiction to entertain the action."

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#### **PRACTICE AND PROCEDURE - ABUSE OF COURT/JUDICIAL PROCESS(ES)**

- Instance(s) when abuse of Court process cannot/will not arise

"In my respectful opinion both suits can proceed without collision and cannot be tagged an abuse of the other as to constitute an abuse of the process of the Court. See *Christian Outreach Ministries Inc. and Ors. v. Cobham and Anor.* (2006) 15 NWLR (pt.1002) 283 at 305 -306 per Omokri, J.C.A. (now of blessed memory) thus -"The claims for damages for wrongful and

forceful ejection viet armis; damages to the properties of the appellants; are maintainable without any prejudice or interference with any other suit. It is not the law that once a party files another suit before another Court on the subject matter, there is an abuse of Court process. An act can give rise to different suits. A subject matter may very well give rise to different rights. See *Unifam Ind. Ltd. v. Oceanic Bank Int'l (Nig.) Ltd.* (supra) at page 100. In *Fasakin Foods (Nig.) Co. Ltd. v. Shosanya* (2003) 17 NWLR (pt.849) 237, this Court held that:"It cannot amount to an abuse of Court process for a defendant who conceives that he has reliefs which are different from those claimed against him by the plaintiff to initiate separate proceedings in Court seeking those reliefs even though the two different reliefs drive their base from the same facts and the same subject matter. In the instant case, the respondents' suit is not an abuse of the process of Court because the reliefs sought therein are distinct from that sought in the appellants' suit ..." What transpired in the above case is similar to the facts of the instant case on appeal. The appellants' suit is best described as a cross-action in a different Court. It is not a case of two actions which one party has sued the same defendant."Also, in *Okafor and Ors. v. A.-G., Anambra State and Ors.* (1991) 6 NWLR (pt.200) 609 at 671(H) Omo, J.S.C., (as he was; now of blessed memory) held inter alia that the fact that parties are sued jointly and severally does not derogate from any of the party's right to pursue whatever remedy the law has given to him. See further *Benkay (Nig.) Ltd. v. Cadbury Nigeria Plc* (2012) 39 WRN 1 at 19 -20, 22 and 29."

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## **JURISDICTION - JURISDICTION OF THE FEDERAL HIGH COURT**

- Whether the Federal High Court has jurisdiction in respect of trespass to land

"The jurisdiction of the Federal High Court under Section 251 of the Constitution of the Federal Republic of Nigeria 1999 is clear and explicit. One of the contending parties must be the Federal Government of Nigeria or any of its agencies. The subject matter of litigation grounding contest before the Court must relate to matters within Section 251 (a) - (s). In other words, jurisdiction of the Federal High Court is a combination of party or parties and subject matter of litigation, both pillars must be visible in an action, before the Federal High Court assumes jurisdiction. See: *OBIUWEUBI V. CBN* 2011, 2 - 3 S.C. PT.1, PAGE 46. *NEPA V. EDEGBERO*, (2002) 18 NWLR (PT.798, PAGE 79, *OLORUNTOBA-OJU V. ABDUL-RAHEED & 3 OTHERS* (2009) 5 - 6 S.C. PART 11 PAGE 57. I entirely agree with my learned brother Ikyegh JCA; that the subject matter in the instant appeal, trespass to Land is not within the jurisdiction of the Federation High Court; The learned trial judge embarked on a slight over drive, thereby over-shooting the limits set out in the provisions of Section 251 of Constitution. ?My learned brother without any doubt and as usual came up with reasoning and conclusion precisely representing my views, I for the above reasons and the more elaborate reasons set out explicitly in the lead judgment delivered by my learned brother, I too allow the appeal on the same ground, and order that the matter be and is hereby transferred to the Lagos State High Court, the appropriate Court, there to be heard and determined."

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## **JUDGEMENT SUMMARY**

### **INTRODUCTION:**

## THE APPEAL BORDERS ON CIVIL PROCEDURE.

### FACTS:

THE APPEAL IS FROM THE DECISION OF THE FEDERAL HIGH COURT, LAGOS DISMISSING THE APPELLANTS' NOTICE OF PRELIMINARY OBJECTION CHALLENGING THE JURISDICTION OF THE TRIAL COURT TO ENTERTAIN AN ACTION FOUNDED ON DAMAGES FOR TRESPASS AND PERPETUAL INJUNCTION AGAINST THE RESPONDENT OVER LEASED PROPERTY SITUATE AT MURTALA MUHAMMED INTERNATIONAL AIRPORT IKEJA, LAGOS.

THE RESPONDENT HAD ISSUED A WRIT OF SUMMONS DATED 22-01-13 SEEKING RELIEFS OF PERPETUAL INJUNCTION, DAMAGES OF N150,000,000.00 (ONE HUNDRED AND FIFTY MILLION NAIRA) FOR TRESPASS TO LEASED LANDED PROPERTY AND N50,000,000.00 (FIFTY MILLION NAIRA) FOR COSTS OF THE ACTION AGAINST THE APPELLANTS.

IN A PRELIMINARY OBJECTION THE APPELLANTS ARGUED AT THE TRIAL COURT THAT THE ACTION IS OUTSIDE THE JURISDICTION OF THE COURT AND AMOUNTED TO AN ABUSE OF THE PROCESS OF THE COURT, IN THAT SIMILAR ACTION BEARING NO. FHC/L/CS/906/2010 WAS PENDING IN THE FEDERAL HIGH COURT LAGOS. THE RESPONDENT ARGUED CONTRARIWISE. THE TRIAL COURT SAW NO MERIT IN THE APPELLANTS' PRELIMINARY OBJECTION. IT OVERRULED THE PRELIMINARY OBJECTION. CONSEQUENT UPON WHICH THE TRIAL COURT ASSUMED JURISDICTION IN THE CASE REASONING, ALSO, THAT THE ACTION WAS NOT AN ABUSE OF THE PROCESS OF THE COURT.

UNHAPPY WITH THE DECISION, THE APPELLANTS FILED A NOTICE OF APPEAL BEARING TWO GROUNDS OF APPEAL FOLLOWED BY A BRIEF OF ARGUMENT WITH TWO ISSUES FOR DETERMINATION DATED AND FILED ON 02-07-14.

### ISSUES:

THE APPELLANTS FORMULATED TWO ISSUES FOR DETERMINATION COUCHED -  
THUS

ISSUE ONE  
WHETHER THE LOWER COURT HAD JURISDICTION TO ENTERTAIN THE RESPONDENT'S SUIT THE SUBJECT-MATTER OR PRINCIPAL CLAIM/RELIEF IN WHICH IS FOUNDED ON THE TORTUOUS CLAIM OF TRESPASS.  
ISSUE TWO

WHETHER SUIT NO: FHC/L/CS/90/2013 INSTITUTED BY THE RESPONDENT AT THE LOWER COURT DURING THE PENDENCY OF POST ARBITRATION SUIT NO: FHC/L/CS/1058/2013 (AND AT A TIME WHEN APPELLANT'S MOTION FOR INTERLOCUTORY INJUNCTION, AND MOTION FOR MANDATORY INJUNCTION DATED 26/1/2012 AND 11/1/2013 RESPECTIVELY IN THAT EARLIER SUIT ON THE SAME SUBJECT MATTER WERE STILL PENDING), WAS WRONGLY HELD BY THE TRIAL COURT NOT TO BE AN ABUSE OF COURT PROCESS.

DECISION/HELD:

IN THE FINAL ANALYSIS, THE APPEAL SUCCEEDED IN PART ON THE ISSUE OF JURISDICTION. THE ORDER OF THE TRIAL COURT ASSUMING JURISDICTION IN THE CASE WAS SET ASIDE.

JOSEPH SHAGBAOR IKYEGH, J.C.A.(DELIVERING THE LEADING JUDGMENT): THE APPEAL IS FROM THE DECISION OF THE FEDERAL HIGH COURT, LAGOS (THE COURT BELOW) DISMISSING THE APPELLANTS' NOTICE OF PRELIMINARY OBJECTION CHALLENGING THE JURISDICTION OF THE COURT BELOW TO ENTERTAIN AN ACTION FOUNDED ON DAMAGES FOR TRESPASS AND PERPETUAL INJUNCTION AGAINST THE RESPONDENT OVER LEASED PROPERTY SITUATE AT MURTALA MUHAMMED INTERNATIONAL AIRPORT IKEJA, LAGOS.

BRIEFLY, THE RESPONDENT ISSUED A WRIT OF SUMMONS DATED 22-01-13 AT THE COURT BELOW SEEKING RELIEFS OF PERPETUAL INJUNCTION, DAMAGES OF N150,000,000.00 (ONE HUNDRED AND FIFTY MILLION NAIRA) FOR TRESPASS TO LEASED LANDED PROPERTY AND N50,000,000.00 (FIFTY MILLION NAIRA) FOR COSTS OF THE ACTION AGAINST THE APPELLANTS.

IN A PRELIMINARY OBJECTION THE APPELLANTS ARGUED AT THE COURT BELOW THAT THE ACTION OUTSIDE THE JURISDICTION OF THE COURT BELOW AND AMOUNTED TO AN ABUSE OF THE PROCESS OF THE COURT, IN THAT SIMILAR ACTION BEARING NO. FHC/L/CS/906/2010 WAS PENDING IN THE FEDERAL HIGH COURT LAGOS. THE RESPONDENT ARGUED CONTRARIWISE. THE COURT BELOW SAW NO MERIT IN THE APPELLANTS' PRELIMINARY

OBJECTION. IT OVERRULED THE PRELIMINARY OBJECTION. CONSEQUENT UPON WHICH THE COURT BELOW ASSUMED JURISDICTION IN THE CASE REASONING, ALSO, THAT THE ACTION WAS NOT AN ABUSE OF THE PROCESS OF

THE

COURT.

UNHAPPY WITH THE DECISION OF THE COURT BELOW, THE APPELLANTS FILED A NOTICE OF APPEAL BEARING TWO GROUNDS OF APPEAL FOLLOWED BY A BRIEF OF ARGUMENT WITH TWO ISSUES FOR DETERMINATION DATED AND FILED ON 02-07-14, COUCHED THUS -

*"ISSUE ONE WHETHER THE LOWER COURT HAD JURISDICTION TO ENTERTAIN THE RESPONDENT'S SUIT THE SUBJECT-MATTER OR PRINCIPAL CLAIM/RELIEF IN WHICH IS FOUNDED ON THE TORTUOUS CLAIM OF TRESPASS. (GROUND 1).*

*ISSUE TWO WHETHER SUIT NO: FHC/L/CS/90/2013 INSTITUTED BY THE RESPONDENT AT THE LOWER COURT DURING THE PENDENCY OF POST ARBITRATION SUIT NO: FHC/L/CS/1058/2013 (AND AT A TIME WHEN APPELLANT'S MOTION FOR INTERLOCUTORY INJUNCTION, AND MOTION FOR MANDATORY INJUNCTION DATED 26/1/2012 AND 11/1/2013 RESPECTIVELY IN THAT EARLIER SUIT ON THE SAME SUBJECT MATTER WERE STILL PENDING), WAS WRONGLY HELD BY THE TRIAL COURT NOT TO BE AN ABUSE OF COURT PROCESS. (GROUND 2)."*

AFTER CITING THE



360 ON THE IMPORTANCE OF JURISDICTION OR THE COMPETENCE OF THE COURT TO ENTERTAIN AN ACTION, THE APPELLANTS ARGUED THAT THE ACTION AT THE COURT BELOW WAS FOUNDED ON THE TORT OF TRESPASS, A CLAIM AT COMMON LAW OUSTING THE ORIGINAL JURISDICTION OF THE COURT BELOW VIDE SECTION 251(1) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999, AS ALTERED (1999 CONSTITUTION, AS ALTERED), SECTION 7 OF THE FEDERAL HIGH COURT ACT, CAP.F12, LAWS OF THE FEDERATION (LFN) 2004 READ WITH THE CASES OF OLADIPO V. N.C.S.B. (2009) 12 NWLR (PT.1156) 563 AT 585, ADETONA V. ZENITH INTERNATIONAL BANK LTD. (2009) 3 NWLR (PT.1129) 577 AT 594 -595, ADISA V. OYINWOLA (2000) 10 NWLR (PT.674) 116 AT 174 -175, NKWOCHA V. GOVERNOR OF ANAMBRA STATE (1984) 6 SC 362, N.I.M.R. V. N.U.R.T.W. (2010) 12 NWLR (PT.1208) 328 AT 349 - 350 AND ONUORAH V. KADUNA REFINERY AND PETROCHEMICAL CO. LTD. (2005) 6 NWLR (PT.921) 393; UPON WHICH THE APPELLANTS CONTENDED THAT THE COURT BELOW ERRED IN ASSUMING

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JURISDICTION OVER THE DISPUTE AND URGED THAT THE APPEAL BE ALLOWED ON THE ISSUE.

RELIANCE WAS PLACED BY THE APPELLANTS ON THE SUBJECT MATTER IN SUIT NO. FHC/L/CS/1058/2010 TO CONTEND THAT THE LAND IN DISPUTE IN THAT ACTION IS THE SAME AS THE ONE IN THE PRESENT ACTION THEREFORE THE RESPONDENT'S ACTION AT THE COURT BELOW WHICH GAVE RISE TO THE PRESENT APPEAL CONSTITUTES AN ABUSE OF THE PROCESS OF THE COURT AND LIABLE TO BE STRUCK OUT VIDE THE CASES OF R-BENKAY (NIG.) LTD. V. CADBURY (NIG.) PLC (2012) 9 NWLR (PT.1306) 596 AT 614 -615 AND 616 -618, ANSA V. CROSS LINES LTD. (2005) 14 NWLR (PT.946) 645 AT 666, A. -G., ONDO STATE V. A. -G., EKITI STATE (2001) 17 NWLR (PT.743) 706 AT 771 AND NIMB LTD. V. UBN LTD. (2004) 12 NWLR (PT.888) 599 AT 622.

IT IS BASED ON THE SUBMISSIONS (SUPRA) THAT THE APPELLANTS ADVOCATE FOR THE APPEAL TO BE ALLOWED, AND THE DECISION OF THE COURT BELOW SET ASIDE AND THE ACTION STRUCK OUT FOR BEING AN ABUSE OF THE PROCESS OF THE COURT.

IN A BRIEF OF ARGUMENT FILED ON 27-10-14, BUT DEEMED PROPERLY FILED ON 04-02-15, THE RESPONDENT ADOPTED THE APPELLANTS' FIRST ISSUE FOR DETERMINATION AND DISTILLED A SEMANTICALLY DIFFERENT

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SECOND ISSUE FOR DETERMINATION, THOUGH IN SUBSTANCE THE SAME AS THE APPELLANTS' SECOND ISSUE FOR DETERMINATION THUS -  
**"II. WHETHER IN THE CIRCUMSTANCES OF THE DISPUTE BETWEEN THE APPELLANTS AND THE RESPONDENT THE LOWER COURT WAS NOT RIGHT IN HOLDING THAT THE PRESENT SUIT DID NOT CONSTITUTE AN ABUSE OF PROCESS?"**

IN ARGUING THE FIRST ISSUE, THE RESPONDENT POINTED OUT THAT IT IS AN AGENCY OF THE FEDERAL GOVERNMENT AND THE SUBJECT MATTER OF THE ACTION HAVING FALLEN WITH THE PHRASE "ANY ENACTMENT, LAW AND EQUITY" IN SECTION 251(1) OF THE 1999 CONSTITUTION, AS ALTERED, READ WITH THE CASES OF ALI V. C.B.N. (1997) 4 NWLR (PT.498) 192, NEPA V. EDEGBERO (2002) 18 NWLR (PT.798) 89, ONA V. ATANDA (2000) 5 NWLR (PT.656) 244, OBUSEZ V. OBUSEZ (2007) 10 NWLR (PT.1043) 430 AT 446, INEGBEDION V.



SELO-OJEMEN (2013) 8 NWLR (PT.1356) 211, (AN ACTION IN DEFAMATION), AYENI V. UNIVERSITY OF ILORIN (2000) 2 NWLR (PT.644) 290 AT 308, MINISTER, FEDERAL MINISTRY OF HOUSING AND URBAN DEVELOPMENT V. BELLO (2009) 12 NWLR (PT.1155) 345 AND SECTION 1(G) OF THE ADMIRALTY JURISDICTION ACT, THE COURT BELOW WAS RIGHT TO ASSUME JURISDICTION OVER THE DISPUTE.

THE RESPONDENT

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ARGUED ON THE SECOND ISSUE THAT THE PARTIES AND THE RELIEFS SOUGHT IN THE TWO ACTIONS ARE NOT THE SAME AND DO NOT CONSTITUTE AN ABUSE OF THE PROCESS OF THE COURT VIDE THE CASES OF UMEH V. IWU (2008) 8 NWLR (PT.1089) 225, C.O.M. V. COBHAM (2006) 15 NWLR (PT.1002) 283 AT 306 AND OGOEJEFO V. OGOEJEFO (2006) 3 NWLR (PT.966) 205; UPON WHICH THE RESPONDENT URGED FOR THE DISMISSAL OF THE APPEAL.

IN MY CONSIDERED OPINION, THE TWO ISSUES FOR DETERMINATION IDENTIFIED BY THE APPELLANTS ARE APT FOR THE DISCOURSE. I ADOPT THE SAID ISSUES FOR THE DISCOURSE ACCORDINGLY.

IT IS TRITE THAT THE NATURE OF THE CLAIM CONTAINED IN THE WRIT AND/OR STATEMENT OF CLAIM DETERMINES JURISDICTION OF THE COURT TO ADJUDICATE ON THE MATTER BEFORE IT VIDE ECOBANK (NIG) PLC V. INTERCONTINENTAL BANK PLC. (2012) 5 NWLR (PT. 1293) 219 AT 236, JUSTICE

ELELU-HABEEB AND ANOR. V. THE HON. ATTORNEY GENERAL OF THE FEDERATION AND ORS, (2012) 40 WRN 1 AT 50, 76, 108, FIRST BANK OF NIGERIA PLC V. GOVERNMENT OF ONDO STATE AND ORS. (2012) 11 NWLR (PT. 1312) 502 AT 515, TUKUR V. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (PT. 117) 517 AND ONUORAH V. KADUNA REFINING AND

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PETROCHEMICAL CO. LTD. (2005) 6 NWLR (PT.921) 393 AT 404.

NOW PARAGRAPHS 12 -18 OF THE STATEMENT OF CLAIM IN PAGES 6 -8 OF THE RECORD OF APPEAL (THE RECORD) PLEADED THAT -  
12. THE PLAINTIFF CONTENDS THAT REGARDLESS THE DISPOSITION OF THE PARTIES TO THE DECISION RENDERED IN/BY THE FINAL AWARD OR SOME OF ITS ASPECTS, IT REMAINS EXTANT AND BINDING UNTIL SET ASIDE. AND THAT THE CLEAR EFFECTS OF THE DECISION INCLUDE THE RECOGNITION OF NOT ONLY THE LEGAL TITLE OF THE PLAINTIFF OVER THE LAND BUT ALSO ITS POSSESSION OF SAME.

13. THE PLAINTIFF HAS ACCORDINGLY BEEN IN PEACEFUL AND QUIET POSSESSION OF THE LAND (WHICH IS EARMARKED FOR MORE PERMANENT STRATEGIC USES WITH THE ENVISAGED EXPANSION OF THE MURTALA MOHAMMED INTERNATIONAL AIRPORT) AND UPON WHICH IT HOWEVER REFRAINED FROM DOING ANYTHING FOR SOMETIME IN OBEDIENCE TO THE ORDER OF INJUNCTION MENTIONED IN PARAGRAPH 8 ABOVE.

14. FURTHER TO PARAGRAPH 13 ABOVE, THE PLAINTIFF HAS EVER SINCE THE DETERMINATION OF THE ARBITRATION ON 1ST JUNE 2010 FELT FREE TO PUT TO

USE, AND HAS BEEN USING, THE LAND ESPECIALLY FOR VERY SHORT TERMS LIKE OUTDOOR WAREHOUSING OF SOME OF ITS CHATTELS

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IN TRANSIT AND VEHICLE PARKING DURING PEAK PERIODS WHEN TRAFFIC IS HIGH WITH THE ATTENDANT SCARCITY OF DESIGNATED PARKING SPACES.

15. SURPRISINGLY, ON THE 14TH JANUARY 2013 THE 2ND DEFENDANT LED INTO THE LAND OVER 20 (TWENTY) THUGS SMOKING INDIAN HEMP AND WIELDING DANGEROUS WEAPONS TO HARASS AND THREATEN SERIOUS BODILY HARM TO SERVANTS AND AGENTS OF THE PLAINTIFF WHO WERE THUS FORCED TO FLEE FROM THE LAND.

16. OFFICERS OF THE NIGERIAN POLICE TO WHOM THE INVASION OF THE LAND WAS REPORTED TO CONCLUDED THAT IT WAS A CIVIL MATTER FOR BOTH PARTIES TO RESOLVE AMICABLY, AND RATHER THAN TAKING DECISIVE ACTION TO REMOVE THE THUGS FROM THE LAND APPEARED TO HAVE BEEN INTIMIDATED BY THEIR EXTREMELY VIOLENT DEMEANOUR AND THE SUPPOSED INFLUENCE OF THE 2ND DEFENDANT TO WHOM THEY APPEALED THAT HE SHOULD HAVE THE MATTER AMICABLY RESOLVED WITH THE PLAINTIFF.

17. THE DEFENDANTS' VERY UNRULY AND TRUCULENT CONTINGENT APPEARED TO HAVE RETREATED FROM THE LAND AFTER ABOUT 2(TWO) DAYS, SEEMINGLY AFTER PACIFICATION BY SOME POLICE OFFICERS, ONLY TO RETURN IN GREATER FORCE ON MONDAY, JANUARY 21, 2013 TO CONTINUE THEIR VIOLENT HARASSMENT OF THE PLAINTIFF'S SERVANTS AND

AGENTS ON THE LAND AND SURROUNDING GROUNDS.

18. THE PLAINTIFF CONTENDS THAT NATIONAL SECURITY AND SECURITY OF INDIVIDUAL LAWFUL USERS AND DENIZENS OF THE AIRPORT ARE IN GRAVE JEOPARDY BY THE INVASION OF AND PRESENCE WITHIN NIGERIA'S PREMIER INTERNATIONAL AIRPORT BY A LARGE CONTINGENT OF UNAUTHORIZED, MALEVOLENT AND DANGEROUS PERSONS AS CAUSED BY THE DEFENDANTS IN THE CIRCUMSTANCES OF THIS SUIT.

WHEREFOR THE PLAINTIFF CLAIMS AS FOLLOWS:

**"I.) AN ORDER OF PERPETUAL INJUNCTION** RESTRAINING THE DEFENDANTS, ITS SERVANTS, AGENTS AND PRIVIES FROM DISTURBING AND IN ANY OTHER WISE INTERFERING AND/OR TAMPERING WITH THE PLAINTIFF'S POSSESSION AND USE OF THE LAND MEASURING 11.654 HECTARES WITHIN MURTALA MOHAMMED INTERNATIONAL AIRPORT, THE SUBJECT-MATTER OF THE FRUSTRATED AND/OR INVALIDATED LEASE AGREEMENT BETWEEN THE PLAINTIFF AND 1ST DEFENDANT DATED 17TH FEBRUARY 1998.

**II.) DAMAGES FOR TRESPASS** IN THE SUM OF N150, 000, 000: 00 (ONE HUNDRED AND FIFTY MILLION NAIRA)

**III.) COSTS OF THIS ACTION** IN THE SUM OF N50, 000, 000:00 (FIFTY MILLION NAIRA) OR AS MAY BE ASSESSED BY THIS HONOURABLE COURT"

THE SUBJECT MATTER OF THE SUIT AS GLEANED FROM

PARAGRAPHS 12 -18 OF THE STATEMENT OF CLAIM IS PRINCIPALLY TRESPASS TO LAND COUPLED WITH RELIEF FOR PERPETUAL INJUNCTION TO PROTECT THE RESPONDENT FROM FUTURE ACTS OF ALLEGED TRESPASS BY THE APPELLANTS IN THE DISPOSED PIECE OF LAND.

IN CONSIDERING THE ISSUE OF EXCLUSIVE JURISDICTION OF THE FEDERAL HIGH COURT UNDER SECTION 251 (1) OF THE 1999 CONSTITUTION, AS ALTERED, THE PARTIES TO THE ACTION AND THE NATURE OF THE ACTION MUST BE TAKEN TOGETHER VIDE THE LEAD JUDGMENT OF CHUKWUMA-ENEH, J.S.C., (AS HE WAS) IN AHMED V. AHMED(2013) 15 NWLR (PT. 1377) 274 AT 335 THUS -

*"THE APPELLANT HAS REFERRED TO AND RELIED ON THE CASE OF N.E.P.A. V. EDEGBERO(2003) FWLR (PT. 139) 1556 AT 1569C, (2002) 18 NWLR (PT. 798) 79 FOR CONTENDING THAT THE PROVISION OF SECTION 251 (1), (P)AND (R) HAVE TO BE SO NARROWLY CONSTRUED...*

*IN MY VIEW, IT IS NOT JUST ENOUGH TO IDENTIFY AND RELY ON SUCH PROPOSITION OF THE LAW AS PER THE APPELLANT'S CASE THAT THE SOLE FACT OF THE 4TH RESPONDENT BEING AN AGENCY OF THE FEDERAL GOVERNMENT AS SUED IS CONCLUSIVE OF THE ISSUE; IN OTHER WORDS WITHOUT ADVERTING TO WHETHER THE SUBJECT-MATTER OF THE CAUSE OF ACTION IN MATTER ALSO*

COMES WITHIN THE EXCLUSIVE PURVIEW OF THE FEDERAL HIGH COURT TO DEAL WITH. IT WOULD BE WRONG TO PROCEED ON THAT BASIS ALONE TO HOLD IN CONCLUSION THAT THE INSTANT MATTER IS COMPLETELY WITHIN THE EXCLUSIVE AMBIT OF THE FEDERAL HIGH COURT TO DEAL WITH. WHAT I AM OTHERWISE SAYING HERE IS THAT TO DETERMINE THE APPLICABILITY OF THE PROVISIONS OF THE SAID SUB-SECTIONS 1 (P), (Q) AND (R) OF SECTION 251 TO AN ACTION, ... THE SUBJECT-MATTER OF THE CAUSE OF ACTION IN THE MATTER AS WELL AS THE PARTIES SO SUED IN THE ACTION MUST BE EXAMINED TO ASCERTAIN, WHETHER BOTH FACTORS WHICH MUST CO-EXIST HAVE BEEN SO CONNECTED TO THE ACTION AS TO BRING THE ACTION WITHIN THE PURVIEW OF THE PROVISIONS OF THE SAID SECTION (I.E. SECTION 251 (1)(SUPRA) FOR THE ACTION TO COME WITHIN THE EXCLUSIVE JURISDICTION OF THE FEDERAL HIGH COURT. I THINK THE APPELLANT HAS MISCONSTRUED THE DECISION IN N.E.P.A. V. EDEGBERO(SUPRA); AND I HOPE THAT THIS SHORT OBSERVATION HAS CORRECTED THE MISCONCEPTION." SEE ALSO FAROUK SALIM V. CONGRESS FOR PROGRESSIVE CHANGE (C.P.C.) AND ORS. (2013) 30 W.R.N. 1 AT 18 PER THE LEAD JUDGMENT OF PETER ODILI J.S.C., FOLLOWING THE

CASES OF ADEOGUN V. FASOGBON (2008) 17 NWLR (PT. 1115) 119 AND DINGYADI V. I.N.E.C. AND ORS (2011) 10 NWLR (PT. 1255) 347, P.D.P. V. SYLVA (2012) 13 NWLR (PT.1316) 85 AT 138.



IT IS BEYOND DISPUTE THAT THE RESPONDENT IS AN AGENCY OF THE FEDERAL GOVERNMENT THUS SATISFYING THE FIRST TWIN REQUIREMENT, AND NOTHING FURTHER NEED BE SAID ON IT. AS FOR THE SECOND INDISPENSABLE REQUIREMENT, THE CLAIM (SUPRA) BEING ROOTED IN TRESPASS TO LAND AND A PERPETUAL INJUNCTION TO SAFEGUARD THE PIECE OF LAND FROM FURTHER/FUTURE ACTS OF ALLEGED TRESPASS, THE CLAIM DOES NOT FALL WITHIN THE COMPASS OF SECTION 251(1) OF THE 1999 CONSTITUTION, AS ALTERED, VIDE THE CASE OF ADETONA V. ZENITH INTERNATIONAL BANK LTD. (2009) 3 NWLR (PT. 1129) 577, 593 (PER THE LEAD JUDGMENT OF AUGIE, J.C.A.) AND, IN PARTICULAR, THE JUDGMENT OF FABIYI, J.C.A., (NOW J.S.C.) IN PAGE 596 THUS - *"IT IS PERTINENT TO NOTE THAT THE BASIC COMPLAIN OF THE RESPONDENT IS THAT THE 1ST APPELLANT TRESPASSED TORTUOUSLY ON THEIR OWN MORTGAGE SIDE OF THE HENLEY INDUSTRIES LTD. LAND. TRESPASS IS NOT WITHIN THE PURVIEW OF SECTION 251 (1) (E) OF THE 1999 CONSTITUTION AND I SO HOLD."*

THE MATTER WENT TO THE SUPREME COURT AND IS REPORTED AS ADETONA AND ANOR. V. ZENITH INTERNATIONAL BANK PLC. (2011) 18 NWLR (PT. 1279) 627 WHERE THE JUDGMENT OF NGWUTA, JSC., HIGHLIGHTED SECTION 251 (1) (E) OF THE 1999 CONSTITUTION, AS ALTERED, AS ONE OF THE ISSUES RAISED IN THE HIGH COURT WHICH THE COURT OF APPEAL HAD RESOLVED AGAINST

THE APPELLANT WHO DID NOT PURSUE IT FURTHER AT THE SUPREME COURT, WHERE THE APEX COURT DIRECTED THAT THE SUBSTANTIVE CASE BE DETERMINED BY THE HIGH COURT OF OGUN STATE, THE VENUE OF THE DISPUTE..

ACCORDINGLY, IT STANDS TO REASON THAT THE LEAD JUDGMENT OF AUGIE, J.C.A., SUPPORTED BY THE JUDGMENT OF FABIYI, J.C.A., (NOW J.S.C.) QUOTED ABOVE ARE EXTANT. I FOLLOW THE SAID JUDGMENT TO HOLD THAT AN ISSUE OF TRESPASS TO LAND (WHICH IS AN INTEREST IN LAND) AND PERPETUAL RESPECTING THE LAND ALLEGEDLY TRESPASSED UPON IS NOT WITHIN THE JURISDICTION OF THE FEDERAL HIGH COURT UNDER SECTION 251 (1) OF THE 1999 CONSTITUTION, AS ALTERED. SEE ALSO THE ANALOGOUS LAND CASES OF NKUMA V. ODILI (2006) 6 NWLR (PT. 977) 587, FEDERAL MORTGAGE BANK OF NIGERIA V. LAGOS STATE GOVERNMENT AND ORS. (2010) 5 NWLR (PT. 1188)

570, NIGERIAN INSTITUTE OF MEDICAL RESEARCH V. NATIONAL UNION OF ROAD TRANSPORT WORKERS (SUPRA), ADETAYO V. ADEMOLA (2010) 15 NWLR (PT.1215) 169.

I AGREE WITH AND FOLLOW THE SUBMISSION OF THE RESPONDENT THAT IN VIRTUE OF THE DECISION IN OGBONNA V. A.G., IMO STATE (1992) 1 NWLR (PT.220) 647 AT 674, THE TITLE OF AN ENACTMENT IS NOT HELPFUL IN THE CONSTRUCTION OF THE ENACTMENT. AGAIN, I AGREE WITH THE APPELLANT'S SUBMISSION THAT SECTION 1(G) OF THE ADMIRALTY JURISDICTION ACT BE GIVEN LITERAL INTERPRETATION VIDE UDOH V. O.H.M.B. (1993) 7 NWLR

IGNORING THE TITLE OF THE ADMIRALTY JURISDICTION ACT AND GIVING THE ACT A LITERAL INTERPRETATION, I DO NOT THINK SECTION 1(G) THEREOF TO WIT -

*"THE ADMIRALTY JURISDICTION OF THE FEDERAL HIGH COURT ....INCLUDES ....ANY MATTER ARISING WITHIN A FEDERAL PORT OR NATIONAL AIRPORT AND ITS PRECINCTS,"*

SUPPLIED BY THE RESPONDENT REALLY CHANGES THE POSITION THAT LAND RELATED MATTERS, SPECIFICALLY TRESPASS TO LAND, A SPECIE OF ACTION COVERED BY THE LAND USE ACT 1978, CAN BE ENLARGED TO VEST JURISDICTION IN THE FEDERAL HIGH COURT OVER AN ACTION FOR TRESPASS TO A PIECE OF

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LAND; AS COURTS ARE NOT HUNGRY FOR JURISDICTION AND WOULD NOT, BY INTERPRETATION, STRAIN TO EXPAND JURISDICTION BEYOND THE EXPRESS/CLEAR WORDS OF THE STATUTE OR CONSTITUTION CONFERRING JURISDICTION VIDE AFRICAN NEWSPAPERS (NIG.) LTD. V. FEDERAL REPUBLIC OF NIGERIA (1985) 2 NWLR (PT.6) 137. THE FIRST ISSUE IS RESOLVED IN FAVOUR OF THE APPELLANTS THAT THE COURT BELOW LACKED THE JURISDICTION TO ENTERTAIN THE ACTION.

THE 2ND APPELLANT IS NOT A NAMED PARTY TO SUIT NO. FHC/L/CS/1058/2010. FROM THE PAPERS FILED IN BOTH THE RESPONDENT'S

SUIT, NOW ON APPEAL, AND THE SUIT NO. FHC/L/CS/1058/2010, THE 2ND APPELLANT EMERGES AS THE MOVING FORCE BEHIND THE 1ST APPELLANT, SO THE 2ND APPELLANT IS SUBSUMED UNDER THE 1ST APPELLANT AS THE LATTER'S ALTER EGO AND WOULD BE TAKEN TO BE A PARTY OR PRIVY TO SUIT NO. FHC/L/CS/1058/2010.

THE SUBJECT MATTER IN BOTH SUITS IS THE SAME PARCEL OF LAND MAKING THE SUBJECT MATTER THE SAME IN BOTH SUITS. HOWEVER, THE RELIEFS SOUGHT IN BOTH SUITS ARE NOT THE SAME. WHEREAS IN SUIT NO. FHC/L/CS/1058/2010, THE 1ST APPELLANT HEREIN SEEKS A REVERSAL OF PARTY OF THE MONETARY ARBITRAL AWARD IN

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ADDITION TO SPECIFIC PERFORMANCE OF THE LEASE AGREEMENT OVER THE DISPUTED PIECE OF LAND WHILE THE PRESENT RESPONDENT AS THE PLAINTIFF IN THE SUIT ON APPEAL IS CLAIMING DAMAGES FOR TRESPASS TO THE SAME PIECE OF LAND AGAINST THE APPELLANTS TOGETHER WITH A REQUEST FOR PERPETUAL INJUNCTION RESTRAINING THE APPELLANTS FROM COMMITTING FUTURE/FURTHER ACTS OF TRESPASS OVER THE DISPUTED PIECE OF LAND.

THAT THE RESPONDENT HAS ITS OWN RIGHT OF ACTION TO PURSUE IN TRESPASS AND PERPETUAL INJUNCTION WITH RESPECT TO THE DISPUTED PIECE OF LAND DOES NOT RENDER THE RESPONDENT'S SUIT AN ABUSE OF THE

PROCESS OF THE COURT REGARDING THE APPELLANTS' SUIT FOR REVERSAL OF PART OF THE MONETARY AWARD MADE BY THE SOLE ARBITRATOR, HON. JUSTICE KAYODE ESHO, J.S.C., (AS HE WAS AND NOW OF BLESSED MEMORY) AND SPECIFIC PERFORMANCE OF THE LEASE AGREEMENT.

IN MY RESPECTFUL OPINION BOTH SUITS CAN PROCEED WITHOUT COLLISION AND CANNOT BE TAGGED AN ABUSE OF THE OTHER AS TO CONSTITUTE AN ABUSE OF THE PROCESS OF THE COURT. SEE CHRISTIAN OUTREACH MINISTRIES INC. AND ORS. V. COBHAM AND ANOR. (2006) 15 NWLR (PT.1002) 283 AT 305 - 306 PER OMOKRI, J.C.A. (NOW OF BLESSED

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MEMORY)

THUS

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*"THE CLAIMS FOR DAMAGES FOR WRONGFUL AND FORCEFUL EJECTION VIET ARMIS; DAMAGES TO THE PROPERTIES OF THE APPELLANTS; ARE MAINTAINABLE WITHOUT ANY PREJUDICE OR INTERFERENCE WITH ANY OTHER SUIT. IT IS NOT THE LAW THAT ONCE A PARTY FILES ANOTHER SUIT BEFORE ANOTHER COURT ON THE SUBJECT MATTER, THERE IS AN ABUSE OF COURT PROCESS. AN ACT CAN GIVE RISE TO DIFFERENT SUITS. A SUBJECT MATTER MAY VERY WELL GIVE RISE TO DIFFERENT RIGHTS. SEE UNIFAM IND. LTD. V. OCEANIC BANK INT'L (NIG.) LTD. (SUPRA) AT PAGE 100. IN FASAKIN FOODS (NIG.) CO. LTD. V. SHOSANYA (2003) 17 NWLR (PT.849) 237, THIS COURT HELD THAT: "IT CANNOT AMOUNT TO AN ABUSE OF COURT PROCESS FOR A DEFENDANT WHO CONCEIVES THAT HE HAS RELIEFS WHICH ARE DIFFERENT FROM THOSE CLAIMED*

AGAINST HIM BY THE PLAINTIFF TO INITIATE SEPARATE PROCEEDINGS IN COURT SEEKING THOSE RELIEFS EVEN THOUGH THE TWO DIFFERENT RELIEFS DRIVE THEIR BASE FROM THE SAME FACTS AND THE SAME SUBJECT MATTER. IN THE INSTANT CASE, THE RESPONDENTS' SUIT IS NOT AN ABUSE OF THE PROCESS OF COURT BECAUSE THE RELIEFS SOUGHT THEREIN ARE DISTINCT FROM THAT SOUGHT IN

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THE APPELLANTS' SUIT ..."  
WHAT TRANSPIRED IN THE ABOVE CASE IS SIMILAR TO THE FACTS OF THE INSTANT CASE ON APPEAL. THE APPELLANTS' SUIT IS BEST DESCRIBED AS A CROSS-ACTION IN A DIFFERENT COURT. IT IS NOT A CASE OF TWO ACTIONS WHICH ONE PARTY HAS SUED THE SAME DEFENDANT."  
ALSO, IN OKAFOR AND ORS. V. A.-G., ANAMBRA STATE AND ORS. (1991) 6 NWLR (PT.200) 609 AT 671(H)OMO, J.S.C., (AS HE WAS; NOW OF BLESSED MEMORY) HELD INTER ALIA THAT THE FACT THAT PARTIES ARE SUED JOINTLY AND SEVERALLY DOES NOT DEROGATE FROM ANY OF THE PARTY'S RIGHT TO PURSUE WHATEVER REMEDY THE LAW HAS GIVEN TO HIM. SEE FURTHER BENKAY (NIG.) LTD. V. CADBURY NIGERIA PLC (2012) 39 WRN 1 AT 19 - 20, 22 AND 29.

IN THE RESULT, I DO NOT SEE THE ABUSE OF COURT PROCESS IN THE SUIT FOR TRESPASS TO LAND AND PERPETUAL INJUNCTION FILED BY THE RESPONDENT AGAINST THE APPELLANTS AND THE SUIT FOR PARTIAL REVERSAL OF THE



MONETARY ARBITRAL AWARD AND FOR SPECIFIC PERFORMANCE OF THE LEASE AGREEMENT RESPECTING THE SAME PIECE OF LAND BROUGHT BY THE 1ST APPELLANT AGAINST THE RESPONDENT IN SUIT NO. FHC/L/CS/1058/2010, AS BOTH SUITS ARE CLAIMING DIFFERENT RELIEFS BY DIFFERENT

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CLAIMANTS. I RESOLVE THE SECOND ISSUE AGAINST THE APPELLANTS.

IN THE FINAL ANALYSIS, THE APPEAL SUCCEEDS IN PART ON THE ISSUE OF JURISDICTION. THE COURT BELOW SHOULD HAVE DECLINED JURISDICTION IN THE CASE. IT IS A CASE FOR THE HIGH COURT OF A STATE. I WOULD ALLOW THE APPEAL ON THIS GROUND. THE ORDER OF THE COURT BELOW ASSUMING JURISDICTION IN THE CASE IS HEREBY SET ASIDE.

SINCE THE COURT BELOW HAS THE POWERS TO TRANSFER THE SUIT TO THE HIGH COURT OF A STATE THAT HAS JURISDICTION, I INVOKE SECTION 15 OF THE COURT OF APPEAL ACT 2004 AND REMIT THE SUIT TO THE CHIEF JUDGE OF LAGOS STATE FOR ASSIGNMENT TO ANY HIGH COURT IN IKEJA JUDICIAL DIVISION (WHERE THE LAND IS SITUATE) FOR DETERMINATION ON THE MERIT VIDE SECTION 22(2) OF THE FEDERAL HIGH COURT ACT (CAP.F2) LAWS OF THE FEDERATION OF NIGERIA, 2004. PARTIES TO BEAR THEIR COSTS.

SIDI DAUDA BAGE, J.C.A.: HAVING READ IN DRAFT, THE LEAD JUDGMENT OF MY

LEARNED BROTHER **JOSEPH SHAGBAOR IKYEGH J.C.A.**, I HAVE NOTHING  
EXTRA TO ADD.

MY LEARNED BROTHER **JOSEPH SHAGBAOR IKYEGH JCA**, DEALT WITH THE  
ISSUES IN THIS APPEAL

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THOROUGHLY AND WELL, AND LEFT NO SPACE FOR FURTHER CONTRIBUTION,  
FOR THE ABOVE REASONS AND THE MORE DETAILED REASONS GIVEN IN THE  
LEAD JUDGMENT, I TOO JOIN MY LEARNED BROTHER IN HOLDING THAT IN THE  
FINAL ANALYSIS, THE APPEAL SUCCEEDS IN PART ON THE ISSUE OF  
JURISDICTION. THE COURT BELOW SHOULD HAVE DECLINED JURISDICTION IN  
THE CASE. IT IS A CASE FOR THE HIGH COURT OF A STATE. I TOO WOULD  
ALLOW THE APPEAL ON THIS GROUND. THE ORDER OF THE COURT BELOW  
ASSUMING JURISDICTION IN THE CASE IS ALSO HEREBY SET ASIDE.

SINCE THE COURT BELOW HAS THE POWERS TO TRANSFER THE SUIT TO THE  
HIGH COURT OF A STATE THAT HAS JURISDICTION, I INVOKE **SECTION 15 OF  
THE COURT OF APPEAL ACT 2004** AND REMIT THE SUIT TO THE CHIEF JUDGE  
OF LAGOS STATE FOR ASSIGNMENT TO ANY HIGH COURT IN IKEJA DIVISION  
WHERE THE LAND IS SITUATE FOR DETERMINATION ON THE MERIT  
VIDE **SECTION 22 (2) OF THE FEDERAL HIGH COURT ACT (CAP. F2) LAWS OF  
THE FEDERATION OF NIGERIA, 2004**. PARTIES TO BEAR THEIR COSTS.

TIJJANI ABUBAKAR, J.C.A.: THE JURISDICTION OF THE FEDERAL HIGH COURT UNDER SECTION 251 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 IS CLEAR AND

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EXPLICIT.

ONE OF THE CONTENDING PARTIES MUST BE THE FEDERAL GOVERNMENT OF NIGERIA OR ANY OF ITS AGENCIES. THE SUBJECT MATTER OF LITIGATION GROUNDING CONTEST BEFORE THE COURT MUST RELATE TO MATTERS WITHIN SECTION 251 (A) - (S). IN OTHER WORDS, JURISDICTION OF THE FEDERAL HIGH COURT IS A COMBINATION OF PARTY OR PARTIES AND SUBJECT MATTER OF LITIGATION, BOTH PILLARS MUST BE VISIBLE IN AN ACTION, BEFORE THE FEDERAL HIGH COURT ASSUMES JURISDICTION. SEE: OBIUWEUBI V. CBN 2011, 2 - 3 S.C. PT.1, PAGE 46. NEPA V. EDEGBERO, (2002) 18 NWLR (PT.798, PAGE 79, OLORUNTOBA-OJU V. ABDUL-RAHEED & 3 OTHERS (2009) 5 - 6 S.C.

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I ENTIRELY AGREE WITH MY LEARNED BROTHER *IKYEGH JCA*; THAT THE SUBJECT MATTER IN THE INSTANT APPEAL, TRESPASS TO LAND IS NOT WITHIN THE JURISDICTION OF THE FEDERATION HIGH COURT; THE LEARNED TRIAL JUDGE EMBARKED ON A SLIGHT OVER DRIVE, THEREBY OVER-SHOOTING THE LIMITS SET OUT IN THE PROVISIONS OF SECTION 251 OF CONSTITUTION. MY LEARNED BROTHER WITHOUT ANY DOUBT AND AS USUAL CAME UP WITH

REASONING AND CONCLUSION PRECISELY REPRESENTING MY VIEWS, I FOR THE ABOVE REASONS AND THE MORE ELABORATE REASONS SET OUT

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EXPLICITLY IN THE LEAD JUDGMENT DELIVERED BY MY LEARNED BROTHER, I TOO ALLOW THE APPEAL ON THE SAME GROUND, AND ORDER THAT THE MATTER BE AND IS HEREBY TRANSFERRED TO THE LAGOS STATE HIGH COURT, THE APPROPRIATE COURT, THERE TO BE HEARD AND DETERMINED.

PARTIES SHALL BEAR THEIR RESPECTIVE COSTS.

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**APPEARANCES:**