

IN THE HIGH COURT OF THE FEDERAL CAPITAL ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON 18TH DAY OF JUNE 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT\HC\M\4499\19

BETWEEN:

GLADYS CHUKWU

.....

APPLICANT

AND

- 1. HON. GAMBO GARBA**
(HON. JUDGE OF THE UPPER AREA COURT)
- 2. MRS AJIBOLA VICTORIA B**

}

RESPONDENTS

**EMMANUEL OKOLI FOR THE APPLICANT
RESPONDENTS ARE ABSENT**

JUDGMENT

Pursuant to leave earlier granted on 20th May 2019 the Applicant, on 24th May 2019 filed an originating motion seeking:

- “1. AN ORDER of certiorari quashing the orders and proceedings of the Upper Area Court in charge No DC/CR/778/2018 MRS. AJIBOLA VICTORIA B. V GLADYS CHUKWU pending before the Upper Area Court, Zuba presided over by Hon. Gambo Garba for want of jurisdiction.
2. AN ORDER pursuant to the supervisory jurisdiction of this Honourable court, striking out the Direct Criminal Complaint in Charge No.

DC/CR/778/2018 MRS. AJIBOLA VICTORIA B. V GLADYS CHUKWU pending before the Upper Area Court, Zuba presided over by Hon. Gambo Garba for want of jurisdiction.

3. AN ORDER of this Honourable Court discharging the Applicant.
4. AND for such further order or orders as this Honourable Court may deem fit to make in the circumstance.”

The application is supported by a statement wherein the 12 grounds relied upon are set out. Also filed is a 15 paragraph affidavit deposed to by the Applicant herself to which documents marked Exhibits A to D are attached.

In the written address of Uchenna Ede Esq. argued by Victor U. Itodo Esq. for the Applicant, three issues were distilled for the courts determination thus;

- “1. Whether the Upper Area Court Zuba has the jurisdiction to try the offence alleged against the Applicant, the Applicant not being a Muslim and having not consented to the exercise of the jurisdiction of the Upper Area Court over her?
2. Whether the institution of a Direct Criminal Complaint at the Upper Area Court Zuba against the Applicant amount (sic) to forum shopping in view of the facts that the alleged offence occurred in Gwagwalada, and the Applicant herein is a Christian and is resident in Gwagwalada and not Zuba.
3. Whether the Upper Area Court Zuba has the jurisdiction to try the offence alleged against the Applicant same being criminal in nature?”

On Issue one

As a preliminary point of law, learned counsel submitted that by a combined effect of section 97 of the ACJA 2015, and section 12(1) of the FCT Abuja Area Courts (Repeal and Enactment) Act 2010 (hereinafter referred to as the Area Courts Act), this Honourable Court has the inherent jurisdiction to determine

whether or not the Upper Area Court can exercise jurisdiction in a criminal matter over a person who is not a Muslim and who has not consented to the jurisdiction of the Upper Area Court.

It was submitted that by virtue of S.11 of the Area Courts Act, the Upper Area Court Zuba does not have the jurisdiction to try the offence alleged against the Applicant who is not a Muslim and has not consented to the exercise of the jurisdiction of the Upper Area Court over her.

Paragraphs 1,5,6 and 11 of the affidavit in support of the originating motion as well as Exhibit A attached were relied upon.

It was urged that the condition precedent to the exercise of the jurisdiction of the Upper Area Court over the Applicant has not been actuated therefore the Upper Area Court is divested of jurisdiction over her and any proceeding conducted over her will be incurably defective and a nullity.

Reliance was placed on **NIGERCARE DEVELOPMENT COMPANY LTD V ADAMAWA STATE WATER BAORD & ORS (2008) LPELR – 1997 (SC) P 25 PARAGRAPH A** Per Ogbuagu JSC; **ORAKUL RESOURCES LTD V NCC (2007) 16 NWLR (PT 1060) 270 AT 307 PARAGRAPHS C-D**; Per Odili JCA (AS SHE THEN WAS); **OZOBIA V ANAH, (1999) 5 NWLR (PART 601) 13 RATIO 2**; **DAIRO V UNITED BANK FOR AFRICA (2007) 16 NWLR (PART 820) P. 490 PARAGRAPH E; & ORS.**

On issue two

It was submitted that assuming, without conceding that the Upper Area Court has jurisdiction over the Applicant, that the Upper Area Court Zuba where the 2nd Respondent initiated the Direct Criminal Complaint against the Applicant is not the convenient forum to hear the action as the Applicant's affidavit, shows that all the alleged facts constituting the offence occurred at St Mary's Catholic Hospital Gwagwalada, Abuja and as the Applicant also resides in Gwagwalada, the only territory which is seized of the jurisdiction to hear the suit is Gwagwalada and not Zuba. S. 93 (1) ACJA 2015 was relied upon.

It was learned counsel's conclusion that initiating the case at Upper Area Court Zuba, in the absence of any justifiable reason, amounts to forum shopping and an abuse of court process. Further the forum shopping divests the Upper Area Court Zuba of jurisdiction.

Several authorities were relied upon including **ABRAHAM V FRN (2018) LPELR – 44136 (CA) IBORI V FRN (2009) 3 NWLR PART 1128 PAGE 283 AT 320 – 321 PARAGRAPH H-D; MAILANTARKI V TONGO OR ORS (2017) LPELR – 42467 (SC) RODA V FRN (2015) 10 NWLR PART 1486) PAGE 427.**

The court was urged to resolve this issue in favour of the Applicant.

On Issue three

It was submitted that the Upper Area Court Zuba and indeed all Area Courts in FCT are not clothed with criminal jurisdiction over criminal proceedings.

The clear pronouncement of my learned brother Suleiman Belgore J at pages 63 paragraph 3 and 64 paragraph 1 of his judgment (Exhibit D attached to the affidavit) in **BARR ANUGOM IFEANYI CHUKWU V THE GRAND KHADI OF SHARIA COURT OF APPEAL & ZORS** was relied upon: Also Exhibits B & C

attached to the affidavit which clearly show that the complaint of the 2nd Respondent before the Upper Area Court Zuba is Criminal Defamation of Character contrary to section 392 of the Penal Code Law.

The court was urged to find in favour of the Applicant, quash the proceedings and discharge the Applicant.

The Respondents were served the originating motion on 28th May 2019 and 28th October 2019 respectively. Neither of them responded to the originating motion despite hearing notices served on them

They therefore leave the application of the Applicant unchallenged.

The Applicant's case will therefore be proved on minimal proof .See **UNITY BANK PLC ALUJI ADAMU & ORS (2013) LPELR – 22047 (CA) PAGE 40-41 PARAGRAPH A- F. ADEWUYI V ODUKWE (2005) 7 SCNJ 227) PLATEAU STATE HEALTH SERVICES MANAGEMENT BOARD & ANOR V INSPECTOR (2012) LPELR – 9830 SC PAGE 17 PARAGRAPHS E-F.**

RESOLUTION

In determining this application I shall adopt the three issues for determination as distilled by learned counsel for the Applicant.

I shall begin with issue No 3.

“Whether the Upper Area Court Zuba has the jurisdiction to try the offences alleged against the Applicant same being criminal in nature.

The facts that birthed this application are straight forward as stated in the affidavit in support of the Applicant.

The Applicant is a Reverend Sister of the Catholic Church and a Matron at St Mary's Catholic Church Hospital Gwagwalada.

On Friday, the 7th day of December 2018, she received a criminal summons bearing the Sharia Court of Appeal of the Federal Capital Territory Abuja, directing her to appear before the Upper Area Court Zuba to answer to an allegation of defamation of character contrary to S.392 of the Penal Code Act.

The Criminal Summons was taken out by the 2nd Respondent and accompanied by a Direct Criminal Complaint brought pursuant to 89 (3) of ACJA and section 14 (1) Area Courts Law. See Exhibit C.

It was deposed that:

The Applicant is not a Muslim and not subject to Muslim Personal Law and has not consented to be tried by either the Sharia Court or the Area Court. The offence was allegedly committed at St Mary's Catholic Church Hospital Gwagwalada, Abuja and nothing concerning the matter occurred at Zuba.

It was the Applicant's contention that the Upper Area Court has no jurisdiction over the criminal matter alleged over her. She therefore brought this application to quash the proceedings of the Upper Area Court Zuba.

Jurisdiction, has been defined as the enabling power of the court to entertain a matter, without which a court labours in vain. It is the lifeblood of any adjudication - a threshold matter. So fundamental is it, that it can be raised at any stage of proceedings, even for the first time on appeal, and whenever it is questioned, the court must determine the issue, before any further proceedings can validly be undertaken in the matter.

See **MADUKOLU V NKEMDILIM (1962) 2 SCNLR 341; OHAKIM V AGABSO (2010) 19 NWLR (PART 1226) PAGE 127 AT 269; ADEWALE ADEDOKUN V ATTORNEY GENERAL OF LAGOS STATE & ORS 2014 LPELR – 24119 (CA) OLABOMI & ANOR V OYEWINLE & ORS 2013 LPELR – 20969 (SC) PAGE 13 PARAGRAPH C-F; TIZA & ANOR V BEGHA (2005) LPELR – 3251 (SC) P.18 PARAGRAPHS D-E.**

With regard to the issue No 3 I must commend learned counsel to the Applicant Uchenna Ede Esq. for making available to me the unreported judgment of my learned brother Suleiman Belgore J in **BARR ANUGO IFEANYI CHUKWU V THE GRAND KHADI SHARIA COURT OF APPEAL &2 ORS FCT/HC/CV/2107/14** where his Lordship addressed the issue of the criminal jurisdiction of the Area Court so brilliantly that I cannot improve on what he has done. I shall therefore simply concur with his sound reasoning and quote him in extenso at pages 54 – 60 as follows:

“To advance on this issue of jurisdiction further, all counsel agreed (and this is because it is long settled in our jurisprudence) that the source of jurisdiction of a court is the organic law (Constitution) or the statute or law creating or establishing the court. So, in my humble view, the constitution or the statute or law that creates or establishes a court is likened to a transformer that generate electricity and therefore bring forth current that gives light. So, to decide whether a court has jurisdiction or not on any cause or matter, we must reach for the constitution where necessary or the statute creating the court. In the case of **DAGANA VS USMAN (supra)** it was held-

“Courts are set up by the constitution, decrees, Laws, Acts and Edicts. They cloth the courts with the powers and their jurisdictions of adjudication. If the constitution, decrees, laws, Acts, and Edicts do not grant jurisdiction to court or tribunal, the courts and the parties cannot by agreement endow itself with jurisdiction. The jurisdiction of the court is confined, limited and circumscribed by the statute creating it “.

See also Prof. A.R Anao’s case (supra); Alhaji (Dr) Ado Ibrahim’s case (supra).

I now descend ultimately to the live issue at hand. Can the Area Courts constituted and sitting in the Federal Capital Territory entertain criminal matters?. Do they have criminal jurisdiction? From what I have said elsewhere in this judgment on this issue, my answer by now should be obvious.

I make bold to say that the proponents or those who argue that Area Courts have criminal jurisdiction have put their view on two legs or axis or pillars. They are;

- (1) Administration of Criminal Justice Act, (ACJA) 2015, defines courts to include Area Courts. And it makes its provisions applicable in the Area Courts.
- (2) Although, there is no specific provision in the FCT Area Courts (Repeal and Enactment) Act, 2010 conferring criminal jurisdiction on the Area Courts, the whole and entire provisions of that 2010 Act must be adverted to in order to say the Area Courts have criminal jurisdiction.

ADMINISTRATION OF CRIMINAL JUSTICE ACT, (ACJA) 2015

The Area Courts is included in section 494 as one of those courts mentioned in ACJA. Section 494 says.

“Court’ includes Federal Court, Magistrate court and Federal Capital Territory Area Courts presided by legal practitioner”.

This definition of “Court” alone in Section 494 of ACJA cannot inure to confer criminal jurisdiction on the Area Courts. This is because the Act 2010 establishing Area Courts confer no criminal jurisdiction on them. At best, and this agrees with the submission of the plaintiff and the Chief Duro Adeyele SAN, the provision of Section 494 ACJA only looks into the future. It is futuristic in the sense that the legislature should be taken to have contemplated that in case the Area Courts Act of 2010 is amended to expand their jurisdiction to cover criminal jurisdiction, then they would have an adjectival law to regulate their proceedings. So there would be no need to amend ACJA to create room for them.

Furthermore, it must be stated again and again that ACJA is a procedural law, it certainly cannot prescribe jurisdiction on any court.

FEDERAL CAPITAL TERRITORY AREA COURTS (REPEAL AND ENACTMENTS) ACT, 2010

Prior to the legislative birth of the above law, there was in existence Area Courts Act Cap 477, laws of the Federation 2006. This law, CAP 477, was specifically enacted for the Federal Capital Territory under the laws of applicable in the Federal Capital Territory, Abuja.

Sections 18, 19 (1) and 22 (a) of the above mention law (Cap 477), granted the Area Courts in the FCT jurisdictional power to hear and determine criminal cases in accordance with the provisions of the Penal Code. They were also to follow and be guided by the provisions of the Criminal Procedure Code Act, then in existence.

In 2010, the National Assembly members in their wisdom exercised their legislative power by enacting a new Law or Act styled “Federal Capital Territory Abuja Area courts (Repeal and Enactment) Act 2010. This new Act of 2010, clearly and specifically abrogated or repealed the Area Courts Act of 2006. In the new Act of 2010 for Area Courts of the Federal Capital Territory, some important provisions of the former Act of 2006 were deleted. They were conspicuously missing. Chief among those missing provisions or sections were Section 18, which dealt with criminal powers of the Area Courts, Section 19(1) which related to venue of trial of criminal cases and Section 22(a) which hitherto provided for the Procedural Rules to be followed by Area Courts in criminal matters. All these sections were completely removed in the new Act of 2010. So clearly in letters, words or phrases, criminal jurisdiction is not mentioned anywhere in the Federal Capital Territory Area Courts (Repeal and Enactment) Act 2010. In effect, the new Area Court Act of 2010 which abrogated the Area Courts Act of 2006 was particularly enacted to remove the criminal jurisdiction of Area Courts in the Federal Capital Territory, Abuja. To me, it is not inadvertence or legislative error or draftsman incompetence or inaccuracy that those relevant provisions touching on criminal jurisdiction were found missing in the new Act. It cannot be a mistake.

By way of emphasis, I believe it is pertinent to bring out the provisions in full. After all, all the amici curiae and the plaintiff did the same thing.

Section 18 of the Area Courts Act, 2006 Cap 477, laws of the Federal Capital Territory, reads:

“An Area Courts shall have jurisdiction and power to the extent set forth in the warrant establishing it, and subject to

the provisions of this Act and of the Criminal procedure Code Act, in all Civil and Criminal causes in which all the parties are subject to the jurisdiction of the Area Court”.

Section 13 of the FCT Area Courts (Repeal and Enactment) Act, 2010, (Which is impari materia with section 18 of the 2006 Act) provides:

“An Area Court shall have jurisdiction and power to the extent set forth in the warrant establishing it, and subject to the provisions of this Act, and of Civil Causes in which all the parties are subject to the jurisdiction of the Area Court”.

It manifests and comes out boldly that the Act of 2010 expressly and clearly deleted the phrase “of criminal procedure code Act, in all civil and criminal causes”

Furthermore, Section 19(1) of the Area Courts Act of 2006 provides:

“The place of trial of all criminal causes shall be determined in accordance with the provisions of the Criminal Procedure Code Act”.

The whole of the above phrase or provision was glaringly absent in section 14 of the Act of 2010 which is the corresponding section to that of section 19 of 2006 Act.

Section 22 of the Area Courts Act of 2006 Cap 477 provides:

“In criminal causes, on Area Court shall administer the provisions of the Penal Code Act, the criminal procedure Code Act and any subsidiary legislation made there under”.

The Act of 2010 completely deleted the above provision under its own section 15.

In my humble view, it bears no controversy that the National Assembly members intended and have in fact removed the criminal jurisdiction of Area Courts in this Federal Capital territory. No matter the Rule of interpretation to be employed in construing the provisions that are set out above.

For completeness, let me turn attention to section 8 (3), Section 10 and Section 51 of the 2010 Act. Both A.U Mustapha SAN and Obinna Ajoku Esq., amici curiae laid some emphasis on these provisions. They submitted that since those sections mentioned criminal jurisdictions and criminal matters and defines 'cause' to include criminal proceedings, it necessarily mean, Area Courts does have criminal jurisdiction. Section 8 (3) basically allows the Area Courts to authorize a police officer to act as court bailiff by serving criminal processes. Section 10 provides that, "any person may institute and prosecute any cause or matter in an Area Court. And section 51 went ahead to define "cause" to "includes any action, suit or other original proceeding between plaintiff and a defendant and also any criminal proceeding".

It is the above section that Mr. Obinna Ajoku alluded to in submitting that the entire provisions of the Area Courts Act 2010 must be looked into and that if that is done, it would mean that Area Courts have criminal jurisdiction.

With due respect to Mr. Ajoku I do not agree with him. Issue of jurisdiction is so weighty, fundamental and crucial that it cannot be left to conjecture or inference or deduction. Jurisdiction must be clearly, expressly and untaintedly given. To infer jurisdiction from ancillary provisions or sections or definition of

some terms would amount to expansion of jurisdiction. No. Courts should not expand their jurisdiction. They should only expound jurisdiction. See DANGANA VS USMAN (SUPRA) GOVERNOR OF KWARA STATE VS DADA (2011) ALL FWLR (PT 592) 1641.

In conclusion, it is my firm view that all Area Courts in this Capital Territory Abuja (of whatever grades) have no jurisdiction to hear and determine criminal cases or matters.”

I have not been informed that the judgment of my learned brother has been appealed against. It remains good law. Accordingly I abide by it.

I therefore answer issue No 3 in the negative. The Upper Area Court Zuba has no jurisdiction to try the offence alleged against the Applicant same being criminal in nature.

This issue alone is sufficient to dispose of this application.

However, I shall proceed to issues 1 & 2 as this is only a court of first instance.

On issue No 1

Whether the Upper Area Court Zuba has the jurisdiction to try the offence alleged against the Applicant the Applicant not being a Muslim having not consented to the exercise of the jurisdiction of the Upper Area Court over her S.11 of the FCT Abuja Area Courts (Repeal and Enactment) Act, 2010 provides that:

“Subject to the provisions of this Act, and any other written law, the following persons shall be subjects to the jurisdiction of the Area court

(a) Any person who is a Muslim

(b) Any other person in a cause or matter who consents to the exercise of the jurisdiction of the Area Court.

Section 12 thereof gives the High Court powers to enquire whether a person is subject to the jurisdiction of the Area Court.

Assuming without conceding that the Upper Area Court has criminal jurisdiction.

It is apparent from the affidavit in support of in this application that the Applicant is neither a Muslim nor did she consent to be tried by the Upper Area Court.

Therefore the condition precedent to the exercise of the jurisdiction of the Upper Area Court has not been fulfilled.

I therefore answer this issue in the negative in favour of the Applicant.

On issue 2

Whether the institution of the Direct Criminal complaint at Upper Area Court Zuba against the Applicant amounts to forum shopping in view of the facts that the alleged offence occurred in Gwagwalada and Applicant is a Christian and resident in Gwagwalada and not Zuba.

I am inclined to agree with the Applicant as there is no reason why this complaint was instituted at Upper Area Court Zuba whereas the alleged defamation occurred at Gwagwalada and there are competent courts in Gwagwalada that can entertain the matter.

I answer this issue in the affirmative.

Having found the application to be meritorious, it is hereby ordered as follows:

1. The orders and proceedings of the Upper Area Court in charge No DC/CR/778/2018 MRS AJIBOLA VICTORIA B. V GLADYS CHUKWU pending before the Upper Area Court Zuba presided over by Hon.

Gambo Garba is hereby removed to his court for the purposes of being quashed.

2. The orders and proceedings of the Upper Area Court in Charge No DC/CR/778/2018 MRS AJIBOLA VICTORIA B. V GLADYS CHUKWU pending before the Upper Area Court Zuba presided over by Hon. Gambo Garba are hereby quashed for want of jurisdiction.
3. Pursuant to the supervisory jurisdiction of this Honourable Court, the Direct Criminal Complaint in Charge No DC/CR/778/2018 MRS AJIBOLA VICTORIA B. V GLADYS CHUKWU pending before the Upper Area Court Zuba presided over by Hon. Gambo Garba is hereby struck out for want of jurisdiction.
4. The Applicant is accordingly discharged.

Hon. Judge