

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
SUIT NO: M/4501/2020

BETWEEN:

MR. FREDRICK CHUKWU.....CLAIMANT

AND

**1. HON. AHMAD A. FATHI
(Area Court Judge Dei-Dei)** } **RESPONDENTS**
2. MRS. PAULINE ABBAYA }

Appearances:

A. C. Uzendu Esq appeared for the applicant. The applicant is in court.

E. F. Apuannaga Esq appeared for the 2nd defendant/respondent.

JUDGMENT

The applicant herein filed a motion on notice dated the 22nd day of January, 2020 coming under Order 44 Rule 5 (1) & (2) of the Rules of this court with No. M/4501/2020 seeking for the following:

- 1. an order of certiorari quashing all the criminal summons against the applicant dated the 19th December, 2019, and 7th January, 2020 respectively in case No. CR/196/2019 which was issued by the 1st respondent (Area Court Dei-Dei) Abuja without jurisdiction and ultra vires his powers upon Direct Criminal Complaint of 2nd respondent.**
- 2. Perpetual injunction restraining the respondents by themselves, agents, cronies or privies from proceeding against the applicant in any criminal action.**
- 3. And for such further of other orders as this Honourable court may deem fit to make in the circumstances.**

The grounds upon which this application was brought are as follows:

- a) That the Area Court lacks criminal jurisdiction to entertain criminal cases in Abuja FCT and it is ultra vires the powers of the 1st respondent to issue criminal summons against the applicant under section 13 of the Area Courts (Repeal and Enactment) Act 2010.**
- b) That the Area Court Judge failed to comply with section 89(5) of the Administration of Criminal Justice Act by not referring the case to the police before issuing the said summons thus without jurisdiction and ultra vires the powers of the 1st respondent**

The application is accompanied by a statement of facts and verifying affidavit deposed to by one Fredrick Chukwu, who is the applicant, and in which he relied upon all the paragraphs as are contained therein.

Attached to the application are the following documents:

- 1) EXH. '1A' which is the criminal summons form 2 and issued by Grade 1 Area Court Dei-Dei, FCT Abuja dated the 19th day of December 2019;**
- 2) EXH. '1B' which is another criminal summons form 2 issued by the same court against one Pauline Abbaya dated the 7th day of January, 2020;**
- 3) EXH. '2' a letter of protest written to the judge Grade 1 Area Court Dei-Dei dated the 6th day of January, 2020;**
- 4) EXH. '4' which is the copy of the judgment of this court delivered by Hon. Justice Suleiman Belgore in a suit with No. FCT/HC/CR/2107/14 between Bar. Ifeanyi – Chukwu Anugom And The Grand Kadi Sharia Court of Appeal and 2 others.**

In compliance with the Rules of this court, the counsel to the applicant proffered and filed a written address which he adopts as his oral argument in support of the application.

The 2nd respondent filed a counter affidavit in opposition to the application dated the 25th day of February, 2020, and which is accompanied by a written address proffered by the counsel to same, and which also he adopts as his oral argument.

Attached to the counter affidavit is a written criminal complaint dated the 19th day of December, 2019, and the criminal summons issued against the applicant by the Grade 1 Area Court Dei-Dei Abuja.

Thus, it is in the affidavit of the applicant that while he was in detention at Dutse Police Station, he was served with a criminal summons from Grade I Area Court Dei-Dei, Abuja through throwing, and that he believes that section 13 of the Area Court (Repeal and Enactment) Act robs Area Courts in FCT Abuja of the jurisdiction in criminal matters, and also by virtue of the decision of this court in a matter between Bar. Anugom Ifeanyi Chukwu And The Grand Kadi Sharia Court of Appeal & 2 Ors, and that the criminal summons was improperly issued for non compliance with section 89 (5) of the Administration of Criminal Justice Act, and that the issuance of the summons is ultra vires without the requisite jurisdiction.

In his written address the counsel to the applicant raised two issues for determination, to wit:

- 1. Whether considering the provision of section 13 of the Area Courts (Repeal and Enactment) Act 2010, the 1st respondent acting did not go ultra vires his powers by issuing two criminal summons against the applicant without requisite jurisdiction?**
- 2. Whether assuming that Area Courts have criminal jurisdiction in FCT the failure of the 1st respondent (Area Court Dei-Dei) to refer the Direct Criminal Complaint of the 2nd respondent (against the applicant) to the police for investigation prior to issuance of criminal summons is not a breach of duty under section 89 (5) of the Administration of Criminal Justice Act, and thus ultra vires his powers?**

The counsel submitted that it is settled law that the powers of a court or the jurisdiction is usually provided for by the legislation or statute which created the court, and that the issue of jurisdiction is fundamental, and he referred to the case of **Okpala v. Ezeani & Ors. (1999) 4 NWLR (pt 598) p. 250 at 257 para. B, and also a book Sasegbons Laws of Nigeria, First Edition vol. 13 para. 319.** The counsel further submitted that with effect from the year 2010, Area Courts in FCT-Abuja ceased to have criminal jurisdiction, and he reproduced the provision of section 13 of the Area

Courts (Repeal and Enforcement Act 2010, and he urged the court to align itself with the decision of His Lordship Justice Suleiman Belgore of this court in a matter with No. FCT/HC/CV/2107/14 (EXH-3) which interpreted section 13 to the effect that Area Courts in FCT- have no jurisdiction to entertain criminal matters, and to him, the issuance of criminal summons is ultra vires and urged the court to quash EXH. '1a' and '1b' in their entirety.

On the second issue, the counsel submitted that a careful perusal of the provision of section 89 (5) of the Administration of Criminal Justice Act 2015, the word used is 'May', and to him, in the context of section 89 (5) of the ACJA the word 'May' ought to be construed as 'shall', and he referred to the case of **Ude v. Nwara (1993) 2 S.C.N.J. 47**. He submitted further that this position was enunciated by the Supreme Court while interpreting the provision of the law in the above quoted case of **Ude v. Nwara (supra)** to the effect that where the word 'May' is used in a legislation or statute to convey a duty upon a public officer, performance which will be for the benefit of a citizen, then the word 'May' ought to be construed in a mandatory sense Just like 'shall', and to him, the Direct Criminal Complaint shall be referred to the police station for investigation.

The counsel then submitted that the mischief which section 89 (5) of ACJA set out to curb is for institutional, untied better and more efficient administration of criminal justice as it introduced a morality and a departure from the procedure under the repealed Criminal Procedure Code of Northern Nigeria. He then urged the court to grant the application.

On his part, the 2nd respondent stated in his counter affidavit that the case before Grade I Area Court Dei-Dei has not been mentioned and no plea was taken, and that a criminal summons was issued against the applicant by the Grade 1 Area Court Dei-Dei pursuant to a direct criminal complaint filed by the 2nd respondent.

In his written address, the counsel to the 2nd respondent formulated two issues for this court to determine, that is to say:

- 1) Whether the 1st respondent has criminal jurisdiction to hear criminal cases in Abuja FCT, or of such nature before it?**
- 2) Whether the 1st respondent Honourable Ahmed Fathi (Area Court Dei-Dei) Abuja FCT also have jurisdiction to hear direct criminal complaint in case No. CR/196/2019 filed by the 2nd**

respondent against the applicant in the said application before this court?

In an answer to the above questions, the counsel to the 2nd respondent answered in the affirmative.

On the first issue, the counsel did not cite any statutory or judicial authority in trying to give an answer to such question, however, he referred to paragraphs 3, 4, and 5 of the 2nd respondent's counter affidavit to the effect that the matter has not been mentioned before the Grade 1 Area Court Dei-Dei, and it is only when it is mentioned that the Judge will become aware of the case for him to take a decision to refer it to the police. This is the same argument given in an answer to the said question, and further submitted that the word used in section 89 (5) of the ACJA is 'May' which gives the Area Court discretion to refer to the police any matter filed before it for investigation. The counsel also referred this court to section 87 of the ACJA 2015, urged the court to hold that the application filed by the applicant is frivolous and it is aimed in buying time by the applicant.

Now having summarised the affidavit of both parties and the submissions of both counsel, it is appropriate to reformulate the issues for determination with a view for this court to resolve in one way or the other. See the case of **Nwuke v. U.B.N. Plc (2009) All FWLR (pt 499) 539 at 553 paras A-D** where the Court of Appeal Lagos Division held that upon examination of the issues raised by parties for determination in their briefs, the court has a duty to either adopt them or formulate issues it believes would adequately determine the complaint or grievance in the case.

I therefore formulate the following issues:

- 1) Whether the 1st respondent has jurisdiction to entertain criminal matters?**
- 2) If the answer to the above is the positive whether non compliance with section 89 (5) of the Administration of Criminal Justice Act by the Area Court Dei-Dei is wrong in law?**

On the first question, the counsel to the applicant concluded that by virtue of section 13 of the Area Courts (Repeal) and Enactment) Act 2010, Area Courts in the Federal Capital Territory Abuja have no jurisdiction to entertain criminal matters, and therefore, the act of issuance of the criminal summons against the applicant by the Area Court Dei-Dei is ultra

vires, and based on that the criminal summons be quashed. While the counsel to the 2nd respondent contended that Area Court Dei-Dei has jurisdiction to entertain criminal matters.

The counsel to the applicant cited the provision of section 13 of the Area Courts (Repeal and Enactment) Act 2010, and for that attached the copy of the judgment of this court per Coram. S. Belgore I. which is labeled as EXH. '3' to the effect that this court has given a judgment and the provision of section 13 of the Area Courts (Repeal and Enactment) Act 2010 is interpreted to mean that Area Courts in the FCT Abuja have no jurisdiction to entertain criminal matters.

Thus, I agree with the counsel to the applicant that the issue of jurisdiction is radically fundamental, and cannot be donated nor assured at will by a court because the particular court is confronted by same infractions criminal in contest. See the case of **F.R.N. v. Solomon (2018) All FWLR (pt 934) p. 1095 at 1119 para. E.**

Thus, it was held by the Supreme Court in the case of **Attorney General Federation v. Abubakar, (2009) All FWLR (pt 449) p. 409 at 432 paras. B-D** that while a person's right of access to the courts may be taken away or restricted by statute the language of any such statute will be watched by the court and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. A provision in a statute ousting the ordinary jurisdiction of the court must construed strictly. In the instant case, reference was made to the provisions of section 13 of the Area Courts (Repeal and Enactment) Act 2010 which 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 Procedure Code in all civil causes in which all the parties are subject to the jurisdiction of the Area Court.”

The counsel to the applicant made heavy weather on the judgment given by my brother judge His Lordship Justice Suleiman Balgore in a matter between Bar. Anugom Ifeanyi Chukwu and the Grand Kadi Sharia Court of Appeal Abuja and 2ors. with No. FCT/HC/CV/2107/14 in which he looks at page 60 of the typed record of proceedings that all Area Courts in this Capital Territory Abuja (of whatever grades) have no jurisdiction to hear and determine criminal cases or matters. In the circumstances, I

agree with my learned brother Judge on this. I am therefore, persuaded by that decision that with the express repeal of the provisions of section 18, 19 (1) and 22 of the Federal Capital Territory Area Courts Act Cap. 497 LFN (Abuja) 2006 and by insertion of the above section 13 in the Act creating the court amounts to express removal of the power of the Area Courts in FCT Abuja to hear and try criminal matters as the statute Criminal Procedure Code is deliberately admitted in section 13 of the Area Courts (Repeal and Enactment) Act 2010. It is also my firm belief that the warrants establishing the Area Courts nowadays do not confer criminal jurisdiction on Area Courts to hear and determine criminal matters, and to this, I therefore, so hold that the 1st respondent does not have jurisdiction to entertain criminal matters, and to this, the question No, 1 is answered in the negative.

Having provided an answer to the first question in the negative, I need first delve into finding an answer to the question No. 2 as whatever the judge did was in futility. See the case of **Akhabufe v. Igueben L. G. C. (2018) All FWLR (pt 934) p. 1527 at 1441 paras. C-D** where the Court of Appeal Benin Division held that where a court has no jurisdiction with respect to a matter before it, the judicial basis of the exercise of any power with respect to such a matter is absent since jurisdiction per se is the right in the court to hear and determine the dispute between the parties. See also the case of **Ezenwaji v. U. N. N. (2018) All FWLR (pt 933) p. 915 at 938 paras. A-E** where the Supreme Court held that without jurisdiction, the court act in futility.

Thus, one of the grounds upon which an application of this nature can be brought is lack of jurisdiction. The act or issuance of a criminal summons is one of the judicial acts which the court must have jurisdiction to do. See the case of **NAS v. Adesanya (2003) FWLR (pt 145) 687 at pp. 691 – 692 paras. H-A** where the Court of Appeal Lagos Division held that in law, the question of jurisdiction is so fundamental in an action that a court must have jurisdiction first to try a case before it can exercise any form of judicial power on a matter. In the instant case, the Area Court Dei-Dei, having no jurisdiction to entertain the matters, should not have issued a criminal summons dated the 19th December, 2019 and 7th January, 2020. The argument of the counsel to the 2nd respondent that the matter was not mentioned by the Area Court Dei-Dei while the applicant took out this application is hereby discountenanced.

Based upon the foregoing considerations, I have come to the conclusion that the application can be granted, and it is hereby granted accordingly.

An order of certiorari is hereby given quashing the criminal summonses against the applicant dated the 19th day of December, 2019 and 7th day of January, 2020 with No. CR/196/19 which were issued by the 1st respondent (Area Court Dei-Dei) Abuja without jurisdiction. The applicant while couching the prayer No. 2 prayed that:

“Perpetual injunction restraining the respondents by themselves, agents, cronies or privies from proceeding against the applicant in any criminal action,”

To my mind this is absolutely unclear and undoubtedly ambiguous and on the face of their prayer it is so. The court cannot grant a prayer that is not so clear and very ambiguous. See the case of **Olacom Industries Ltd v. Adaba (2005) All FWLR (pt 25) p. 340 at 344 paras. D-F** where the Court of Appeal Ilorin Division held that an order sought must be distinct, clear and unambiguous to enable the court to exercise its discretion. Where it is vague, it would amount to acting in vain, and the court of law cannot act in vain.

In the circumstances, prayer No. 2 is not granted as it is unclear and ambiguous.

Signed
Hon. Judge
13/05/2020