IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE S. U. BATURE.

COURT CLERKS:	**JAMILA OMEKE & OTHERS.**
COURT NO:	**HIGH COURT NO. 34.**
CASE NO:	**SUIT NO. FCT/HC/CV/2595/18.**
DATE:	**21ST MAY, 2020.**

BETWEEN:

SANI IBRAHIM SULEIMAN……PLAINTIFF

AND

THE FEDERAL REPUBLIC OF NIGERIA & 2 ORS……DEFENDANT

JUDGMENT

By an originating summons DATED AND FILED 17/8/2018, the Applicant herein prayed this Honourable Court for the following questions for determination as well as reliefs namely:-

QUESTIONS FOR DETERMINATION:-

1. Whether in view of the provisions of Sections 10, 11, 12, 13, 14, and 15 of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment Act) 2010, the entire proceedings in

respect of the first information Report NO: CR/61/15 is not null and void in as much as the first information Report NO: CR/61/15 is in Respect of any matter relating to, arising from or connected with the prosecution of a criminal charge before the Area Courts in the Federal Capital Territory, Abuja.

2. Whether in the light of the judgment delivered by this Honourable Court Coram Hon. (Mr.) Suleiman B. Belgore on the 11th December, 2017, in the case of Barr. Anugom Ifeanyi Chukwu V. The Grand Khadi Sharia Court of Appeal & 2 Ors., the Grade 1 Area Court Gwagwa is still seized with the power to continue with the conduct of hearing in respect of the first information Report NO: CR/61/15 against the Applicant, either alone or alongside any other person howsoever described.
3. Whether the refusal to grant reliefs C and D in the case of Barr. Anugom Ifeanyi Chukwu V. The Grand Khadi Sharia Court of Appeal & 2 Ors., would serve to invest the Area Courts in the Federal Capital Territory. Abuja with the jurisdiction to

continue to hear and determine Criminal cases in the Federal Capital Territory, Abuja.

4. Whether the continuos trial and/or impending prosecution of the Applicant by the 1st Respondent, its agents and/or privies whatsoever described before the 2nd Respondent when the jurisdiction of the Area Courts have been ousted by the decision of this Honourable court in the case of Barr. Anugom Ifeanyi Chukwu V. The Grand Khadi Sharia Court of Appeal & 2 Ors. is valid and lawful?

RELIEFS SOUGHT:-

1. An Order of this Honourable Court removing the entire proceedings in respect of the first information report NO: CR/61/2015, between Commissioner of Police V. Sani Suleiman and Haruna Suleiman from the Grade 1 Area Court sitting in Gwagwa and bringing unto this Court for the purpose of the proceedings in first information report NO:-

CR/61/2015, Between Commissioner of Police Vs. Sani Suleiman being quashed by an Order of Certiorari .

2. A Declaration that in the light of the provisions of the Section 10, 11, 12, 13, 14 and 15 of the Federal Capital Territory Area Courts (Repeal And Enactments) Act 2010, the Act Establishing Area Courts, in the Federal Capital Territory, Abuja and Section 106 Administration of Criminal Justice Act, 2015, regulating the conduct of Criminal trial and proceedings, the 2nd Respondent cannot superintend or continue to superintend any Criminal proceedings whatsoever, howsoever described against the Applicant either alone or alongside anybody or person howsoever described in respect of any matter.
3. An Order of certiorari quashing the proceedings pending before the 2nd Respondent in respect of the first information Report NO. CR/61/2015, filed against the Applicant.
4. An Order of this Honourable Court dismissing the first information report NO. CR/11/2015 by an Order of certiorari

owing to the provisions of Sections 10, 11, 12, 13, 14 and 15 of the Federal Capital Territory, Abuja Area Courts (Repeal And Enactments) Act 2010, the Act establishing area Courts in the Federal Capital Territory, Abuja.

5. An for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

Accompanying the Originating Summons is a Statement in support of the application for judicial review, facts upon which the application is made, grounds upon which the Reliefs are sought, Affidavit in support of the application comprising 8 paragraphs, deposed to by Catherine Joseph a front desk officer in the Law Firm of Madyan Legal Consult; Solicitors to the Applicant, Exhibits marked FOA1 & FOA2, as well as a Written Address dated 17/8/2018.

On the other hand, the 1st Respondent challenged this suit by filing a Counter – Affidavit of 5 paragraphs deposed to by one Mrs. Bello Elizabeth, a Litigation officer of the Federal Ministry of Justice, as

well as a Written Address filed in support of the said Counter – Affidavit of the 1st Respondent.

Equally in opposition to this originating summons, the 2nd and 3rd Respondents filed a Notice of Preliminary Objection challenging the jurisdiction of this Honourable court to entertain the suit, on the following grounds namely:

1. The suit is caught by the doctrine of res judicata.
2. The suit constitutes an abuse of Court process.

While the Reliefs sought are as follows:-

1. An Order striking out the suit and/or dismissing the suit.
2. Any other Orders the Court may deem fit to make in the circumstances.

In support of the Notice of Preliminary Objection is a 7 paragraphed Affidavit deposed by one Gambo Umar Magaji, Clerk, Grade 1 Area Court Gwagwa presided by the 2nd Respondent, two annextures marked Exhibits A and B, as well as a Written Address supporting the Preliminary Objection.

In opposition to the Notice of Preliminary Objection, the Applicant/Respondent filed a Counter – Affidavit of 10 paragraphs deposed by one Temitope Arohumolase, a front desk officer of Madyan Legal Consult, solicitors to the Applicant/Respondent, as well as a Written Address in support of same.

On 12 – 03 – 2020, both the main application and the Notice of Preliminary Objection were taken together.

Now, considering the nature of the preliminary Objection which challenges the jurisdiction of this Court, it is pertinent that it be considered first.

In the written Address in support of the Notice of Preliminary Objection, Abubakar Musa Esq. Applicant's Counsel, formulated two issues for determination thus:-

1. Whether this action is caught by the doctrine of res judicata
2. Whether this action constituted an abuse of Court process.

In arguing issue one, Learned Counsel submitted that it is trite Law that where a matter has been decided with finally by a Court of

competent jurisdiction between the same parties and/or their privies there can be no further litigation upon the same subject matter by the same parties or privies. That there should be a bar to re-litigation already decided issues and matters based on the rationale that there must be an end to litigation. Reliance was placed on the case of ***SYLVA Vs INEC (2015) 16 NWLR (PT. 1486) 576 (SC) at Ration 15.***

That in the instant case, a careful examination of Exhibits A and B and the Originating summons, the statement in support of the Application and Affidavit in support filed by the Applicant in this case, it is obvious that this case relates to the same parties and upon the same subject matter or issue. That the Originating Summons was determined by the High Court of the Federal Capital Territory, a Court of competent jurisdiction thereby being caught by the doctrine of res judicata. That the doctrine of res judicata applies not only against a party but also against the jurisdiction of the Court itself in the sense that where a party is estopped per rem judicatum

from bringing the same case before the Court, the jurisdiction of the Court is ousted. Reference was yet again made to ***SYLVA Vs INEC (Supra).***

Therefore, Counsel urged the Court to strike out this case for lack of jurisdiction.

On issue two, as to whether this suit constitutes an abuse of Court process, Counsel referred the Court to the case of ***R-BENKAY (NIG.) LTD Vs CADBURY (NIG.) PLC (2012) 9 NWLR (PT.1306) P – 596 Ration 2, on the concept of abuse of Court process. As well as the case of OGBORU VS UDUAGHAN (2013) 13 NWLR (PT. 1370) 33, Ratio 28 (SC).***

The Learned Counsel submitted that in determination of whether an abuse of judicial process has occurred, the Court will consider the content of the first process vis – a - vis the second one to see whether they are aimed at achieving the same purpose. Reference was made to the case of ***AGWASIN Vs OJICHE (2004) 10 NWLR (PT.882) 613 Ratio 3.***

That in the instant case, a careful consideration of the content of Exhibit A and 15 being the first and second processes, it is clear that the Application in this case being aimed at achieving the same purpose. That it is clear from the process that the Applicant's action is predicated on an application for judicial review of the proceedings of the 2nd Respondent.

Counsel submitted further that the Applicant in this case was the Applicant in the earlier proceedings while the 2nd and 3rd Respondents in this case were Respondents in the previous proceedings, therefore, the Applicant's suit constitutes abuse of Court process, and urged the Court to so hold.

Counsel made reference to the cases of ***O. S. S. I. E. C Vs N. C. P. (2013) 9 NWLR (PT. 1360) 451, Ration 3 ; TSA IND. LTD Vs F.B.N. PLC (no. 1) (2012) 14 NLWR (PT. 1320) 326, Ration 6, (SC).***

Finally, Learned Counsel submitted that in view of paragraphs 3.9 and 3.20 of their address, if this Honourable Court agreed with their submissions that its process has been abused, the Court has a duty

to dismiss it, and urged the Court to uphold their objection and dismiss the suit for being an abuse of Court process with substantial cost.

Meanwhile, in the Written Address in opposition to the Preliminary Objection of the 2nd and 3rd Respondents, F.O. Amedu Esq. Learned Respondent's Counsel argued on the two issues formulated by the Applicants in their Address.

On issue one which is whether the Applicant's suit is caught by doctrine of res judicata, Learned Counsel submitted that it is settled that "Res Judicata" is a rule of evidence wherein a party or his privy is precluded from disputing in any subsequent proceedings matters which had been adjudicated upon previously by a competent Court, between him and his opponent. That if the evidence of res was admissible and properly admitted it becomes judicata irrespective of the time the proceedings involving it were initiated. Reliance was placed on the cases of ***ODUKA Vs KASUMU (1967)S NSCC, page 290 at 296 lines 5 – 25, per Coker JSC; COLE Vs JIBUNOIT (2016) 4***

NWLR (PT. 1503) Page 499 at 531, paragraphs D – F, (SC) per Kekeren – Ekun JSC.

Learned Counsel submitted that in the instant case, a careful examination of the case file and all the documents will reveal that the parties in suit NO: CV/2674/15 (Exhibit A) and suit NO. FCT/HC/CV/2674/2015 Exhibit B, are distinct from the parties in the instant suit (CV/2596/18) and that the subject matter of the suit is totally different.

That the Applicant/Respondent has initiated this application contesting the jurisdiction of the Area Courts in the Federal Capital Territory to try him for a criminal offence. That this application is premised on the clear and unambiguous decision of this Honourable Court, which stripped the Area Court of its power to preside over criminal cases. That this application touches on the jurisdiction of the Area Court in the light of the decision of this Honourable Court in the case of Barr. Anugom Ifeanyi Chukwu Vs The Grand Khadi Sharia Court of Appeal & 2 Ors.

Learned Counsel submits, that when a Court no longer has jurisdiction, the Court should on its own, note its incompetence and decline to exercise further jurisdiction where the Court's incompetence is apparent on the face of the proceedings, as the question of incompetence can be raised at any stage of the proceeding. Since it would remain so on the face of the proceedings.

That this Application therefore, cannot be prevented on the premise of the principle of "Res judicata" as same does not apply in the instant case where the Radical question of the jurisdiction of the Area Court to try Criminal matters is raised in the context of the decision of this Honourable Court in the case of Barr. Anugom Ifeanyi Chukwu Vs The Grand Khadi Sharia Court of Appeal & 2 Ors., as per decision of Hon. Justice Belgore at page 58, wherein this Honourable Court reached the decision that all Area Courts in the Federal Capital Territory Abuja (of whatever grades have no jurisdiction to hear and determine criminal cases or matters: that the same decision was reached after an in – depth review of the Area

Courts Repeal and Re – enactment Act 2010, particularly Sections 10, 11, 12 and 13 of the Act which is the enabling Act establishing Area Courts in the Federal Capital Territory.

That the 2nd Respondent conceded to the fact that Area Courts have been stripped of their power to determine criminal matters or cases when in the ruling on Applicant's application contesting the jurisdiction of the Area Courts to try the Applicant, 2nd Respondent held that:

> ***"By and large, it is most gratifying to note that though the declaratory judgment was partly against the Area Courts jurisdiction to try criminal matters."***

That it was admitted that the judgment of this Honourable Court on the 11th of December 2017 had stripped Area Courts of jurisdiction to hear and determine criminal matters.

On issue of jurisdiction, Learned Counsel referred the Courts to the case of ***SARAKI Vs F.R.N. (2016) 3 NWLR (PT. 1500) 531 at 588 – 589, paragraph E – C.***

Learned Counsel submitted further that Courts are a creation of statute and the jurisdiction of Courts is confined, limited and circumscribed by the statute creating it. That a Court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes.

Counsel referred the Court to the cases of ***AFRICA NEWSPAPERS Vs NIGERIA (1985) 2 NWLR (PT. 6) 137 at 59 – 160, paragraph G – B; ONWUDIWE Vs F.R.N. (2006) 10 NWLR (PT. 988) 382 at 428 paragraph A – D; ANSA Vs R.T.P.C.N. (2008) 7 NWLR (PT. 1086)421 at 443, paragraph E – F.***

Learned counsel submitted that based on the above cited cases, and the unequivocal unanimous decision of the Court of appeal of Nigeria in FCT/HC/CV/2017 between Barr. Anugom Ifeanyi chukwu Vs. the Grand Khadi of the Sharia Court of Appeal & 2 Ors. Delivered on the 11th December, 2017, it is submitted that the Area Courts lack jurisdiction to try the Applicant on the criminal charge in

F.I.R/61/2014. That this application is for judicial review and it is in no way affected by the principle of res judicata.

That for the present suit to constitute a res judicata there must have been a previous adjudication of the issues joined by the parties, the parties or the privies must have the same in the previous case, the issues and subject matter in the instant case must have been the same in the previous case adjudicated upon by a Court of competent jurisdiction and urged this Honourable court to so hold.

Counsel further urged the Court to hold that the parties, issues and subject matter in the previous suit and the instant suit are clearly distinct and different.

On this issue Counsel referred the Court to the cases of ***OGBOLOSINGHA Vs BAYELSA STATE INDEPENDENT ELECTORAL COMMISSION (2015) 6 NWLR (PT. 1455) Page 311 at 333 -334, paragraph C – G; BARR. ANUGOM IFEANYI CHUKWU Vs THE GRAND KHADI OF SHARIA COURT OF APPEAL & 2 ORS.(Supra);***

Counsel submitted that the letter is binding on all authorities and persons including the 2nd and 3rd Respondents until set aside.

On this Counsel placed reliance on the case of ***NATIONAL ELECTRI POWER AUTHORITY Vs. ONAH (1997) 1 NWLR (PT. 454) 680 at 68, paragraph B – E.***

The Court is urged to resolve issue NO. 1 in the Applicant/Respondent's favour.

On issue two which is whether the Applicant's suit amounts to an abuse of Court process, it is submitted that the common features of abuse of Court process centres on improper use of judicial process by a party in litigation aimed or targeted at interference with due administration of justice. Reliance was placed on the case of ***ALLANAH Vs KPOLOKWU (2016) 6 NWLR (PT. 1507) page 1 at 27 – 28, paragraph G – C per Sanusi JSC.***

That the concept of abuse of process applies only to proceedings which are …. Of good faith which are not only frivolous, but also vexations or oppressive; which almost always have an element of

malice in them, having been commenced mala fide, to irritate or annoy the opponent and the efficient and effective administration of justice. Reference was made to the cases of ***F.R.N. Vs DAIRO (2015) 6 NWLR (PT. 1454) page 14 at 172 paragraph B – E per Nweze, JSC; ALAFIA Vs GBOPE VENTURES (NIG.) LTD (2016) 7 NWLR (PT. 1510) Page 116 at 140, paragraph A – B, per Galadima JSC.***

On jurisdiction, Learned Counsel further referred the Court to the following cases;

1. ***SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD Vs ANARO (2015) 12 NWLR (PT. 1472) PAGE 122 at 185, paragraph B – C, per Kekere – Ekun, JSC.***
2. ***MADUKKOLU Vs NKEMDILIM (1962) 2 SCNLR P 342;***
3. ***BRONK MOTORS LTD AND ANOR Vs WEMA BANK LTD (1983) 1 SCNLR P 296.***
4. ***SLB CONSORTIUM LTD Vs NIGERIAN NATIONAL PETROLEUM CORPORATION (2011) 9 NWLR (PT. 1252) PG 317 at 355, PARA B-C, PER MUKHTAR JSC, (as she then was) .***

That in the instant circumstance, the Applicant/Respondent's suit is one that raises a question as to jurisdiction and thus cannot be termed to be an abuse of Court process. That the instance suit was brought in good faith not frivolous, vexations or oppressive and without an element of mala fide, to irritate or annoy the opponent and the efficient and effective administration of justice.

Finally, Learned Counsel urged the Court to so hold.

Having carefully considered this Notice of Preliminary Objection, the grounds upon which same is predicated, the reliefs sought and all the accompanying processes for and in opposition to same, I too adopt the two issues for determination as formulated by the Applicants.

In the Counter Affidavit of the Applicants particularly paragraphs 5 f, g and h it is averred that prior to the institution of this action, the applicant had earlier instituted an action, at the Federal Capital Territory High Court against the Respondents in respect of this case and has attached Exhibit A therewith.

That this action and the earlier proceedings was delivered on 31st day of October, 2017 in favour of the Respondents and a copy of the judgment is therewith attached and marked as Exhibit B.

In Exhibit 5k, it is averreded that this Applicant notwithstanding the judgment of this Honourable Court filed this application on same grounds and seeking same Reliefs against same parties.

Meanwhile, in the Counter Affidavit to the Motion on Notice of Preliminary Objection, it is averred particularly in paragraph 5 that it is not correct as stated in paragraph 5 (g) as the Applicant's Affidavit that the parties, subject matter and reliefs sought in the extant suit is the same with suit number CV/2674/2015, exhibited as Exhibit A before this Honourable Court in the Affidavit of the 2nd and 3rd Respondents.

In paragraphs 6 and 7 it is averred at follows:-

Paragraph 6:

> ***"In the extant suit, the parties are different, the decision for which judicial Review is being sought is***

different i.e. the Ruling delivered by the 2nd Respondent on the 17th July 2018 furthermore the Reliefs sought in both application are completely and totally different from one another."

Paragraph 7:

"Whilst the Applicant in suit number CV/2674/2015 sought for the interpretation of Section 8, 106, 109, 137, 277 (4) and 348 of the Administration of criminal justice Act 2015. The Applicant in this present suit is praying the Court that by the provisions of Sections 10, 11, 12, 13, 14 and 15 of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment Act) 2010 and the decision of this Honourable Court Coram Hon. Justice Suleiman B. Belgore on the 11th December 2017 in the case of Barr. Anugom Ifeanyi Chukwu Vs The Grand Khadi Sharia Court of Appeal & 2 Ors, the Area Courts not seized with jurisdiction to hear and

determine criminal matters in the Federal Capital Territory."

Now, let me consider the two issues formulated for the Court's determination in this Notice of Preliminary Objection.

On the first issue which is whether this suit is caught by the doctrine of Res judicata, it must be borne in mind, that before a plea of res judicata or cause of action estoppels or Estoppel per rem judicata will be upheld, there are certain conditions outlined by the Supreme Court, which must be satisfied by the party raising it. On this premise, I refer to the case of AYUYA & ORS Vs YONRIN & ORS (2011) LPELR – 686 (SC), per Onnoghen JSC (as he then was) at p 22, paragraph A – E where the Court held thus:-

"It is settled Law that for a plea of estoppel by res judicata to success, the party relying on it must plead and establish the following:-

a) That the parties or their privies involved in both the previous and present proceedings are the same;

b) That the claim or issue in dispute in both proceedings are the same;

c) That the res judicata or the subject matter of the litigation in the two cases is the same;

d) That the decision relied upon to support the plea is valid, subsisting and final; and

e) That the Court that gave the previous decision relied upon to sustain the plea is a Court of competent jurisdiction."

It is also settled Law that all the above conditions must be proved concurrently. On this please see ***AYUYA & ORS. Vs. YOURIN & ORS. (Supra); OKON Vs EKPENYONG & ANOR (2014) LPELR – 23496 (CA); OKE Vs ATOLOYE (NO. 2) (1986) 1 NWLR (PT. 15) 241; OLAYINKA Vs ADEPARUSI & ANOR (2011) LPELR – 869 (CA):***

In the instant case, this Court is urged to take a careful look at Exhibit A and B, the Originating Summons, the statement in support of the application and Affidavit in support filed by the Applicant in

this case, to see that this case relates to the same parties and upon the same subject matter or issue. That the originating summons was determined by the High Court of the Federal Capital Territory, a Court of competent jurisdiction thereby being caught by the doctrine of res judicata.

On the other hand, it is the contention of the Respondent that the doctrine of res judicata is inapplicable in the instant case. It argued that a careful examination of the case file and all the documents will reveal that the parties in suit NO. CV/2674/15 (Exhibit A) and suit NO. FCT/HC/CV/2674/2015 Exhibit B are distinct from the parties in the instant suit (CV/2596/18) and that the subject matter of the suit is totally different.

Now, it is settled that res judicata is determined by the present Court Critically and carefully examining the previous suit and comparing its major features with the present one. On this I refer to the case of ***MAKUN Vs FEDERAL UNIVERSITY OF TECHNOLOGY***

MINNA (2011) 6 – 7 (SC) (PT.) 32 at 72, where the Court per Adekeye, JSC, held as follows:-

> *"In determining whether the issues, the subject matter of the two actions and the parties are the same, the Court is permitted to study the pleadings, the proceedings and the judgment in the previous action. It is entirely a question of fact whether the parties and their privies, the facts in issue and the subject matter of the claim are the same in both the previous and the present suits. The plea of res judicata applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject matter of litigation and which the parties exercising reasonable diligence might have brought forward."*

In the instance case having carefully put all the above factors into consideration, I have observed firstly that the Applicant in Exhibit A and B (attached to the Notice of Preliminary Objection) is also the same Applicant in the instant suit i.e Sani Ibrahim Suleiman.

The Respondents i.e (1) The Commissioner of Police (2) Hon. Muhammed S. Ola (the Grade 1 Area Court Complex) (3) The Chief Registrar (Sharia Court of Appeal) are the same Respondents in Exhibits A and B. Therefore, the parties in Exhibits A and B are the same.

However, the question to ask here is whether the parties in Exhibits A and B are the same as parties in the instance suit?

I have taken a careful look at the parties listed in the instance suit and I have observed that while the Applicant is the as the Applicant in the previous suit, the Respondents in the present suit are as follows:

1. The Federal Republic of Nigeria.

2. His Worship. Hon. Adamu Ahmad Haruna (The Grade 1 Area Court sitting at Gwagwa Area Court Complex).
3. The Chief Registrar (Sharia Court of Appeal).
4. Haruna Ibrahim.

A careful look at Exhibit A and B will show that in the previous suit, the Commissioner of Police is listed as the first Respondent.

Now, although the first Respondent in the present suit is the Federal Republic of Nigeria, I do not see any difference between the two as other. Commissioner of Police is an agent of the Federal Republic of Nigeria. Therefore, for all intends and purpose, the 1st Respondent in the present suit and the 1st Respondent in the previous suit are the same.

With regard to the 2nd Respondent. It is clean from Exhibits A and B that the 2nd Respondent in the previous suit is His Worship Hon. Muhammed S. Ola, was then presiding over Area Court Grade 1, sitting at Gwagwa Area Court Complex. However, in the instant suit, the 2nd Respondent is His Worship Hon. Adamu Ahmad Haruna, over

Area Court Grade 1 sitting at Gwagwa Area Court Complex. Now, although the presiding Area Court are different, I have thoroughly gone through all the processes both previous and present and I have discovered that the two Rulings of both Area Court judges mere by the same Area Court Grade 1, sitting at Gwagwa, in respect of the same parties and all rooted or connected with the same subject matter. I so hold.

The third Respondent in both previous and presents suit is the same i.e the Chief Registrar (Sharia Court of Appeal).

Although the fourth Respondent in the present suit was not listed as a Respondent in Exhibit A and B, 1 find as earlier stated that the main Respondents i.e 1st, 2nd, and 3rd Respondents in the two suits are the same. In my humble view, the addition or removal of the fourth Respondent herein i.e Haruna Ibrahim does not change the fact that the main parties in both suits are the same. I so hold.

On whether the issues and subject matter in the present and previous suits are the same. Having critically analyzed all the

processes filed in the two suits particularly Exhibits A and B and those in the present suit, 1 have observed that the questions for determination in the originating summons that gave rise to Exhibit B, are questions formulated for the Courts determination in relation to Sections 8, 108, 109, 137, 277 (4) & 348 (2) of the Administration of Criminal Justice Act 2015, in respect of first information report NO. CR/61/2015, while in this originating summons, the questions for determination of the Court are in relation to Sections 10, 11, 12, 13, 14 and 15 of the Federal Capital Territory Abuja, Area Courts (Repeal and Enactment) Act 2010, in respect of the entire proceedings in first information Report NO. CR/61/15 in respect of any matter relating to arising from or connected with the prosecution of a criminal charge before the Area Courts in the Federal Capital Territory Abuja in light judgment delivered by this Honourable Court Coram Hon. (Mr.) Suileiman B. Belgore on the 11th December 2017, in the case of Barr. Anugom Ifeanyi Chukwu Vs The Grand Khadi Sharia Court of Appeal & 2 Ors.

Now, while I greatly appreciate the arguments and submissions of Learned Applicant's Counsel on this issue, must say that the formulated for determination in the present suit were just given a new dressing as the issues in this suit and those in the previous suit are all the same and rooted and connected to the same subject matter which is criminal jurisdiction or otherwise of the Area Courts in the Federal Capital Territory, Abuja. All these issues are related to the first information Report i. e CR/61/2015 between Sani Suleiman and Haruna Suleiman.

The main Relief sought in the previous suit as in the present suit is for an Order of certiorari in respect of proceedings between the same parties, on the same issues connected to the same subject which has already been decided upon by His Worship Hon. Justice U.A. Musale.

Relief NO. 4 in the previous suit is exactly the same a Relief NO. 3 in the present suit: relief NO. 3 in this suit read thus:-

"An Order of certiorari quashing the proceedings pending before the 2nd Respondent in respect of the first information report NO. CR/61/2015 filed against the Applicant."

See Relief NO. 4 of the previous suit i.e suit NO. FCT/HC/CV/2674/2015 as well as Exhibit B.

I'm not unmindful of the decision of His Lordship Hon. Justice Belgore on the same issues on subject matter, and the fact that it came later in time to that of Hon. Justice Musale.

However, since the issues the parties and the subject matter in the previous and present suit are the same, it is my strong view that this present suit is no doubt caught up with the doctrine of Res Judicata having been decided upon by a court of competent jurisdiction. I so hold.

One first issue for determination is hereby resolved in favour of the Respondents against the Applicant.

The 2nd issue for determination is whether this suit constitutes an abuse of Court process.

On the concept of abuse of process, the Supreme Court has held that an abuse of Court process manifests in a variety of situations and/or circumstances. But there is a common feature; that is an improper use of judicial process by a party in ligation to interfere with the due administration of justice. Please see the case of ***PDP & ANOR Vs UMEH & ORS (2017) LPELR – 42023; OKAFOR Vs THE CASE OF A.G. ANAMBRA STATE (1991) 3 NWLR (PT. 200) 659 at 681, per Kavibi whyte JSC. In the case of OGBORU & ANOR Vs UDUAG HAN & ORS. (2013) LPELR 20805 (SC)*** the Court held that is generally employed when a party improperly uses to the irritation and annoyance of his opponent the efficient and effective administration of justice. An example is where a multiplicity of actions on the same subject matter are instituted against the same opponents on the same issues.

On this issue, I also commend the decision of the Supreme in ***R – Benkay (Nig.) Ltd Vs Cadbury (Nig.) Plc*** (Supra) cited by the 2nd and 3rd Respondents in the Written Address to the Preliminary Objection.

The Court at page 596, Ratio 2, held:

> ***"The concept of abuse of Court Process is imprecise. It involves circumstances and situations of infinite varieties and conditions. But, a common feature of it is the improper use of judicial process by a party in litigation to interfere with the due administration of justice. The circumstances which will give rise to abuse of Court process include:***
>
> ***a. Instituting a multiplicity of actions on the same matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.***

b. ***Instituting different actions between the same parties simultaneously in different Courts, even though on different grounds.***

c. ***Where two similar processes are used in respect of the exercise of the same right for example a cross – appear and a respondent's notice.***

d. ***Where an application for adjournment is sought by a party to an action to bring an application to Court for leave to raise issues of fact already decided by the Lower Court.***

e. ***Where there is no Law supporting a Court process or where it is premised on frivolity or recklessness.***

f. ***Where a party has adopted the system of forum shopping in the enforcement of a conceived right.***

g. ***Where an Appellant files an application at the trial Court in respect of a matter which is already subject of an earlier application by the Respondent at the Court of Appeal. When***

the Appellant's application has the effect of over reaching the Respondent application.

h. Where two actions are commenced, the second asking for a Relief which may have been obtained in the first.

Likewise, in the case of ***AGWASIM Vs ANOR & OJICHE & ANOR. (2004) LPELR – 256 (SC), per TOBI JSC, P 14 paras D – F, the Court held as follows: -***

> ***"……The question is which of the processes is an abuse of the judicial process? In the determination of abuse of the judicial process, the Court will consider the content of the first process vis – a vis the second one to see whether they are aimed at achieving the same purpose."***

Flowing from the above therefore, the question to ask here is whether the previous suit and the present suit are aimed at achieving the same purpose."

Now, as stated earlier while considering the first issue for determination in this Preliminary Objection , the main Relief sought by the Applicant in the previous and present suit is the same. The Applicant and Respondents are the same, the subject matter is the same. This is evident when one considers critically Exhibits A and B, all the processes attached therein, particularly the originating summons, the statement in support of the application and Affidavit in support and the Court's judgment, being the first process vis – a vis the present application and all the processes filed in support of same. Both previous and present suits are indeed predicated upon an application for judicial review of the proceedings of the 2nd Respondent in respect of the same parties, same subject matter and the same Reliefs.

On this premise therefore, it is my firm view that although this suit is not perceived as being vexations or frivolous since it touches on the issue of jurisdiction, but for the reasons earlier highlighted I find that same constitutes an abuse of Court process.

The second issue for determination is hereby resolved in favour of the 2nd and 3rd Respondents against the Applicant. I so hold.

Before I conclude, let me state that I've had the honour and privilege of reading the two judgments of my Learned brothers Hon. Justice U. A. Musale and Hon Justice S.B Belgore both have reached their respective decisions full os wisdom.

It is particularly interesting to note that although Justice Belgore had granted declaratory Reliefs in respect of the subject matter of this suit in decision to other Reliefs in suit NO. FCT/HC/CV/2107/14 between Barr. Anugom Ifeanyi Chukwu Vs The Grand Khadi Sharia Court of Appeal, declaring among other things that the Federal Capital Territory Area Courts (pursuant to the Area Courts Repeal and Enactment) Act 2010) do not have jurisdiction to hear and try criminal cases under the penal code Act and Administration of Criminal Justice Act, His Lordship, in his wisdom refused to grant Reliefs C and D wherein the Applicant prayed that all judgments and

orders made by Area Courts in any Criminal proceedings without jurisdiction since 2010 be nullified.

I believe that to some extent, the instant suit is also asking the Court to grant the same Reliefs.

Now, although it is settled that the issue of jurisdiction is a threshold issued which can be raised at any time, even on appeal, for the purpose of the instant suit, the issues raised can best be determined by an appellate Court. This is because, an application for judicial review is not an appeal.

In the final analysis therefore, it is my considered opinion that any party that is aggrieved with the decision of the Lower Court should appeal that decision of the Lower Court should appeal that decision.

Consequently therefore, since this suit constitutes an abuse of Court process, the Preliminary Objection is sustained and the suit be and is hereby dismissed in its entirety.

Signed
Hon. Justice S. U. Bature
(Presiding Judge)
21/05/2020.

Amedu Esq.: We thank the Court for the Ruling. We appreciate it considering my Lord took time out to deliver this Ruling in the wake of the Covid – 19 pandemic.

F. O. Amedu Esq. for the Applicant.