

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

6TH DAY OF JULY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/M/2003/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

EUCHARIA IFEOMA NWAFORCHA APPLICANT

AND

**1. COMMISSIONER OF POLICE, FCT COMMAND }
2. HON. HASSAN ISHAQ MUHAMMED } RESPONDENTS
(HON. JUDGE, UPPER AREA COURT, KARU)**

JUDGMENT

The Applicant's Originating Motion brought pursuant to Order 44 Rules 1, 2 and 3 of the High Court of the FCT (Civil Procedure) Rules, 2018 and Section 13 of the FCT Area Courts (Repeal and Enactment) Act, 2010, prays the Court for:

(1) An Order of *certiorari* quashing the Ruling and proceedings of the Upper Area Court, Karu, Abuja delivered on 24/10/2022 in Charge No.

CR/126/2022: COMMISSIONER OF POLICE vs. EUCHARIA IFEOMA NWAFORCHA filed by the 1st Respondent and presided over by 2nd Respondent for lack of jurisdiction.

- (2) An Order striking out the First Information Report in Charge No. CR/126/2022: COMMISSIONER OF POLICE vs. EUCHARIA IFEOMA NWAFORCHA pending before the Upper Area Court, Karu, Abuja filed by the 1st Respondent and presided over by the 2nd Respondent.

The grounds upon which the reliefs are sought:

- (1) Lack of subject matter jurisdiction

That the matter is a criminal matter and Area Courts of the FCT lack the requisite jurisdiction.

That 2nd Respondent erred in relying on Section 494 of Administration of Criminal Justice Act to assume jurisdiction.

- (2) Lack of territorial jurisdiction.

- (3) Lack of procedural jurisdiction.

That both Applicant and Nominal Complainant are Christians.

That Applicant repeatedly said she did not submit to the jurisdiction of the Area Court.

- (4) That the 2nd Respondent did not pronounce on all issues of jurisdiction submitted to him for determination.

Learned Counsel relies on the 16-paragraph Affidavit. She deposes essentially that she is the Applicant and the Defendant in Charge No. CR/126/2022: COMMISSIONER OF POLICE vs. EUCHARIA IFEOMA NWAFORCHA pending before Upper Area Court, Karu, Abuja presided over by 2nd Respondent.

That she lives and carries on business in Utako, Abuja. That the Nominal Complainant lives in Dutse. That she is a Christian. That she did not consent to the exercise of the jurisdiction of the Area Court over her.

That preferring the First Information Report (FIR) in Upper Area Court, Karu amounts to forum shopping. That the alleged offence was not committed there. That the matter was a civil case but charged as a criminal matter.

That she filed an objection to the Charge but by a Ruling dated 24/10/2022, the Court dismissed the objection and assumed jurisdiction. That 2nd Respondent failed to pronounce on all issues of jurisdiction. That it is in the interest of justice to grant the application.

The Originating Motion was served on the Respondents. The 2nd Respondent filed a Notice of Objection on the ground that:

- (1) The 2nd Respondent is a public officer.
- (2) The action was commenced after the expiration of three (3) months.
- (3) That the action is statute barred.

Learned Counsel to the 2nd Respondent argued that the 2nd Respondent is a public officer, that the suit ought to have been filed within 3 months.

That the act complained of occurred on 24/10/2022 while the Originating Motion is dated 13/02/2023. That the period between 24/10/2022 and 13th February 2023 is over 3 months.

That action is caught by Section 2 (c) of the Public Officers Protection Act. That time begins to run from the time the cause of action accrues. Learned Counsel urges the Court to strike out same.

The Applicant's Counsel relies on his Reply on Points of law to the Notice of Objection. He argues that the suit commenced November 28, 2022 for leave to bring an application for judicial review by way of certiorari.

Leave was granted in February 2, 2023. Pursuant thereon the Originating Motion was filed on 24th October 2022. That period of the event complained of and the filing of the action is one (1) month and 3 days.

That Section 2 (a) of the Public Protection Act is not relevant to this proceedings. He urges the Court to dismiss the objection.

I have read the objection and the reply thereto. This is an application for judicial review, i.e. *certiorari*. By the

Rules of Court, particularly Order 44 Rules 1 & 2. It is the law that no application for judicial review shall be made unless the leave of the Court has been obtained. That grant of the leave operates as a stay of proceedings.

The *ex parte* application for leave is dated 28/11/2022, it came up on the 2nd day of February 2023 and it was accordingly granted.

The 2nd Respondent assumed jurisdiction after a Notice of Objection on 24/10/2022. The Applicant was aggrieved and started the *certiorari* proceedings on the 28/11/2022.

I wish to emphasise that the *certiorari* proceedings did not commence on 13/02/2023 when the Originating Motion was filed. It commenced on 28/11/2022.

It is clear therefore that the proceedings were commenced within three (3) months of the accrual of the cause of action. Consequently, the action is not statute barred and I so hold.

The 2nd Respondent filed a Counter Affidavit dated 5/04/2023. Learned Counsel relied on same in opposition to the Originating Motion.

Abdulrahman Umar, Assistant Registrar, Upper Area Court, Karu deposes as follows:

That 2nd Respondent is the presiding Judge of the Upper Area Court, Karu. That 2nd Respondent is vested with jurisdiction to try certain criminal offences including offences of joint act, criminal breach of trust, cheating and criminal misappropriation.

That Applicant was arraigned on First Information Report with Case No. CR/126/2022 dated 6/04/2022 for the aforementioned offences. That Applicant pleaded Not Guilty and was granted bail. While proceedings were ongoing, Counsel filed a Notice of Objection dated 13/07/2022.

That the objection was overruled. The Information Report and Records are Exhibits A1 and A2.

That an Upper Area Court presided over by a Legal Practitioner such as in this case has jurisdiction to hear and determine criminal cases. That it will serve the interest of justice to dismiss the application.

Learned Counsel to the Applicant submits an issue for determination, which is: *Whether given the grounds of this application vis-a-viz the entire facts and circumstances of this case, this Court can grant the application.*

He submits that the Upper Area Court lacks jurisdiction to entertain the Applicant's case. That the condition precedent to try a non-consenting Christian and forum shopping amongst others are the issues involved.

The law establishing the Upper Area Courts, Repeal & Enactment Act, 2010 repealed the 2006 Area Courts Act. That by the express repeal of Sections 18, 19 (1) and 22 (1) of the FCT Area Courts Act, Cap 497, 2006 which

earlier granted Area Courts criminal jurisdiction and by the insertion of Section 13 clearly removed criminal jurisdiction.

That it provides only for civil cases hence the Area Courts in the FCT lacks criminal jurisdiction. That the Ruling of the Upper Area Court amounts to judicial usurpation of power.

That the cases relied upon by 2nd Respondent are clearly distinguishable from the instant case. He urges the Court to grant the application.

The 2nd Respondent's Counsel also adopted his Written Address. He posited two (2) issues for determination:

- (1) Whether Area Courts in FCT have jurisdiction to hear and try criminal matters under the FCT Area Courts (Repeal & Enactment) Act, 2010 and the Administration of Criminal Justice Act (ACJA).
- (2) Whether the trial Court rightly assumed jurisdiction in this matter.

Learned Counsel refers to Section 10 (1) of the FCT Abuja Area Courts (Repeal & Enactment) Act, 2010.

Section 15 defines a “cause” to include criminal proceedings. That the Court was properly constituted. That the Warrant establishing the Upper Area Courts gives criminal jurisdiction to the Area Courts. The Court should call on the Chief Registrar for a copy of the Warrant.

That Area Courts in FCT presided by a Legal Practitioner have jurisdiction to conduct criminal trials. That “Judge” is defined by Section 494 (1) of ACJA to include Area Court Judge. He finally urges the Court to refuse the application.

The first issue for determination in my view is as postulated by the 2nd Respondent’s Counsel, which is:

Whether the Area Court, Karu presided by the 2nd Respondent has jurisdiction to try criminal matters under the FCT Area Courts (Repeal & Enactment) Act, 2010.

I have earlier summarised the Affidavit evidence of the Applicant and the Counter Affidavit by the 2nd Respondent. I have also considered the Written Addresses of Counsel.

The Federal Capital Territory, Abuja Area Courts (Repeal & Enactment) Act, 2010 was gazetted as No. 61 Vol. 98 Government Notice 152. It is Act No. 12 Federal Capital Territory Abuja Area Courts (Repeal & Enactment) Act, 2010. This law repealed the Area Courts Act Cap 477, Laws of the Federal Capital Territory, Abuja, 2006. The commencement date is stated in the law as 14th day of January 2011.

Section 1 (1) of the Act states: ***“There is established such grade of Area Courts for the Federal Capital Territory, Abuja.”***

Section 1 (2) states: ***“An Area Court shall exercise the jurisdiction conferred upon it.”***

Section 1 (3) states: *“The Grand Kadi, in consultation with the Chief Judge shall assign to each Area Court established in pursuance of this section such name as may deem fit and shall issue a Warrant under his hand in respect of such Court.”*

The Chambers 21st Century Dictionary (Revised Edition) defines a “warrant” as a *“written legal authorisation for doing something, e.g. arresting someone or searching property; (2) someone who gives this authorisation; (3) a certificate such as a licence, voucher or receipt, that authorises, guarantees or confirms something; (4) a justification - has no warrant for such accusation, use to assert something with confidence to be willing to bet on it.”*

The jurisdiction of Area Courts in the Act is provided for in Section 10 (1) & (2) of the Act while those subject to the said jurisdiction is contained in Section 11 of the extant law.

Jurisdiction of a Court is said to be a radical and crucial question of competence because if a Court has no jurisdiction to hear and determine a case, the proceedings are a nullity *ab initio* no matter how well conducted and brilliantly decided, because a defect in competence is not intrinsic but extrinsic to the entire process of adjudication. It is the nerve centre of adjudication, the blood that gives life to an action in a Court of law in the very same ways that blood gives life to the human being.

See **DAPLANLONG vs. DARIYE (2007) 8 NWLR (PT. 1036) 332.**

The law is trite that Courts are creatures of status and it is the statute that created a particular Court that will also confer on it its jurisdiction. Jurisdiction may be extended not by the Courts but by the legislature.

See **OKULATE vs. AWOSANYA (2000) 1 SC 107**

MESSRS NV SCHEEP vs. THE MV S. ARAZ (2000) 12 SC (PT. 1) 164.

In the circumstance of this case, no Warrant by whatever name called can extend the jurisdiction of the Area Courts nether can the Grand Kadi.

The meaning of Warrant used in the FCT Area Courts Act does not and cannot be interpreted to mean that it has power to confer jurisdiction. Neither the Honourable Grand Kadi nor the Honourable Chief Judge of the Federal Capital Territory, High Court can donate jurisdiction to the Area Courts in the FCT.

It is the statute that created the Court that can also confer jurisdiction. Jurisdiction is not a chieftaincy title that can be conferred on Courts.

The Learned Counsel to the 2nd Respondent did not avail the Court the said Warrant neither did he cite the year the Warrant was signed/established. He did not cite the section in the said Warrant donating criminal jurisdiction to the Area Courts.

He annoyingly and ignorantly implored the Court to call the Chief Registrar for a copy of the said Warrant. From the time of old, the law is that he who asserts must prove. Learned Counsel cannot abdicate his responsibility and attempt to send the Court on a slavish errand. This Court will not go on a voyage of discovery or lent itself to be used.

Having not cited the year the Warrant was established or the section conferring the said jurisdiction, it is my view that the said Warrant cannot avail the 2nd Respondent.

Section 10 (1) states:

“10 (1) Subject to the provisions of this Act and of any written law, any person may institute and prosecute any cause or matter in an Area Court.

(2) A person who institutes any cause or matter in an Area Court under sub-section (1) of this Section shall in the cause or matter be subject to the jurisdiction of the Area Court and of any other Court exercising jurisdiction in that cause or matter.”

Section 11 (1) *“Subject to the provisions of this Act and of any other written law, the following persons shall be subject to the jurisdiction of 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.”

By Section 12 (1) *“Where at any stage of the proceedings before the final judgment on any cause or matter in an Area Court, a person alleges that he is not subject to the jurisdiction of Area Court, the proceedings shall on the application of that person to the High Court be transferred to the High Court which shall inquire into and determine the truth of the person’s allegation, etc.”*

From the totality of the Sections of the Act reproduced above, the Area Courts of the FCT Abuja *a fortiori* the Upper Area Court in Karu has jurisdiction in criminal and civil matters subject to the conditions stated in Section 11 of the Act.

For the avoidance of obscurity, the persons subject to the jurisdiction of the Area Courts are:

- (1) Any person who is a Muslim.
- (2) Any other person in a cause or matter who consents to the exercise of the jurisdiction of the Area Court.

The Applicant deposed that she is not a Muslim. She also deposed in her Affidavit relied upon in the Originating Process that she did not consent to the exercise of jurisdiction of the Area Court. The 2nd Respondent did not controvert the above germane facts.

I have read the Judgment of some of my learned brothers on this issue who reasoned otherwise. I am not persuaded by their reasoning.

In the circumstance, I respectfully refuse to concur. It is my view and I so hold that the 2nd Respondent has no jurisdiction to try the Applicant.

Judgment is therefore hereby entered in favour of the Applicant against the Respondents as follows:

1. The proceedings and Ruling of the Upper Area Court, Karu, Abuja delivered on 24/10/2022 in Charge No. CR/126/2022 between COMMISSIONER OF POLICE vs. EUCHARIA IFEOMA NWAFORCHA filed by the 1st Respondent and presided over by the 2nd Respondent is hereby quashed.
2. The Applicant is hereby discharged.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
06/07/2023

Applicant present.

Respondents absent

S. M. Oyeghe, Esq. for the Applicant.

Abubakar Musa, Esq. for the 2nd Respondent.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
06/07/2023