



IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT WUSE ZONE 2, ABUJA
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME
ON FRIDAY, 10TH DAY OF FEBRUARY, 2023.

SUIT NO: FCT/HC/CV/851/2022

BETWEEN:

1. IBRAHIM ALI

-

APPLICANT

VS

- 1. MAGISTRATE EKPEYONG IYANG OKON**
- 2. IBRAHIM PETER ALIH**
- 3. AREA COMMANDER, MAITAMA**

RESPONDENTS

JUDGEMENT

The applicant on the 9th day of March, 2022 brought this application via an originating motion against the respondents seeking amongst others the following orders;

- 1. AN ORDER quashing the decisions of the 1st respondent referring the Direct Criminal Complaint to the 3rd respondent CR/WZ6/38/2021 between IBRAHIM PETER ALIH Vs IBRAHIM ALI as it was wrongly referred to the 3rd respondent.**
- 2. AN ORDER directing the 3rd respondent to forthwith stop the suit No. CW/WZ6/38/2021 between IBRAHIM PETER ALIH Vs IBRAHIM ALI.**
- 3. AN ORDER striking out the entire Suit No. CR/WZ6/38/2021 IBRAHIM PETER ALIH Vs IBRAHIM ALI not revealing the prima facie.**
- 4. AND for such further Order(s) as this honourable court may deem fit to make in the circumstances.**

In support of this application is a 14 paragraph affidavit deposed to by the applicant himself and a written address.

The applicant in his affidavit deposed to the following amongst others;

1. That he is a former staff of National Examinations Council (NECO) and the applicant in this suit.
2. That on 21/2/2022 he was invited by the police via telephone requesting his appearance at Wuse Zone 3 Police station as there was a complaint against him from the 2nd respondent.
3. That he requested his lawyer to find out the details of the complaint and on his meeting the team of investigators at Wuse Zone 3 Police station, he was told that the complaint of the 2nd respondent was based on a Letter of complaint he wrote on behalf of himself and other staff of the Council who were illegally dismissed by the management of the Council at the instigation of the 2nd respondent.
4. That the letter which was addressed to the Honorable Minister was just an official correspondence between employees and their employer calling for the Minister's attention to the plight of the victimized staff of the Council.
5. That it was while his lawyer was searching documents at the Central Registry of the Court that he discovered that the invitation from the Police was on the order of the respondent pursuant to a Direct Criminal Complaint filed by the 2nd respondent. The said order is attached as EXHIBIT A.
6. That he would not have been aware of the existence of the Direct Criminal Complaint and the Order referring it to the police for investigation if his lawyer had not accidentally sighted the case at the central registry of the Court sometime in February 2022.
7. That no process of Court was served on him in line with the provisions of the law to warrant it being referred to the police for investigation.
8. That it is his right to be served with the copy of the Direct Criminal Complaint before the commencement of the case.
9. That the Application of the 2nd respondent does not reveal any prima facie case of defamation of character but the 2nd respondent is only using the Court and Police as tools of oppression to prevent the victimized staff of Council from ventilating their grievances legally.

The 2nd respondent in response to the originating motion filed a 5 paragraph affidavit dated the 9th day of June, 2022 and deposed to by one Veronica Chiamaka Ugwuania litigation secretary in the law firm of counsel to the 2nd respondent and a written address to support same.

Veronica Ugwuani deposed as follows;

1. That the affidavit of the applicant is false and filled with half-truths
2. That she was informed by Mr. Ibrahim Peter Ali the 2nd respondent in this suit that;
 - a) the Letter which was addressed to the Honourable Minister of Education dated 3rd August, 2021 was not just an official correspondence between employees and their employer but was defamatory of the character and person of the 2nd respondent and contained injurious falsehood and unsubstantiated allegations deliberately perpetrated by the Applicant against Respondent.
 - b) The letter which was addressed to the Honourable Minister of Education dated 3rd August, 2021 contained libelous statements which warranted the filing of a Direct Criminal Complaint before the lower court.
 - c) That the applicant's right to fair hearing had not been breached by the proceedings of the Lower Court as no prejudicial step against the interest of the applicant had been taken by the respondents and the lower court.
 - d) The Lower Court was procedurally right to have referred the case to the 3rd respondent for investigation before taking any further step(s) in the case and no further steps were taken by the respondents beyond the requirement of law.
 - e) That the applicant is not entitled to service of the Direct Criminal Complaint since he was not criminally summoned or tried in absentia by the court without his being aware of the pendency of such complaint against his person.
 - f) That investigation of criminal allegations is one of the statutory duties of the 3rd respondent.
 - g) That paragraph 12 of the affidavit was denied as 2nd respondent had not lied or misled the court in anyway whatsoever about the address of the applicant as Niger State was referenced as address for service. In any case, the alleged crimes which were committed by the applicant were committed in FCT-Abuja.
 - h) That there has been no attempt at serving the applicant at the address stated on the Direct Criminal Complaint and no affidavit of service was ever filed at the lower court.
 - i) That paragraph 13 of the affidavit in support was denied because the 2nd respondent knows as a fact that a Direct Criminal Complaint is not required

to disclose any prima-facie case before the court is empowered to direct the 3rd respondent to investigate the allegations.

- j) That the Direct Criminal Complaint revealed ingredients of defamation of character as well as other crimes committed against the 2nd respondent and that the 2nd respondent is not using the 1st and 3rd respondents as tools of oppression to prevent the victimized staff of NECO from ventilating their grievances legally as the Applicant's Petition to the Honourable Minister of Education dated 3rd August, 2021 is still valid before the Honourable Minister and same has not been withdrawn by the applicant.
- k) That the directive of the 1st respondent being challenged by the applicant was issued on 9th December, 2021.
- l) That the applicant's suit was commenced more than three (3) months after the occurrence of the subject of application.
- m) That this court lacks jurisdiction to entertain the applicant's Originating Motion filed on 15th March, 2022.

The 3rd defendant on the 21st April, 2022 filed a 12 paragraph counter affidavit to the applicant's Originating Motion and supported same with a written address.

Sgt. Nasiru Alfa an Investigation Police Officer deposed to the following amongst others that;

1. That the 1st respondent is a Magistrate sitting within the jurisdiction of this Honourable court, whose court wrote the office on the 9th day of December, 2021, to carry out an investigation on a direct complaint brought before it by the 2nd Respondent.
2. That the 2nd respondent is the complainant in this suit on whose petition/complaint the 1st and 2nd respondent acted upon.
3. That the 3rd respondent is the Area Commander, Maitama Area Command of the Nigerian Police Abuja and he has the authority and consent of the 3rd Respondent to depose to this affidavit.
4. That the 2nd respondent upon believing that a crime had been committed against him instructed his lawyer to make a complaint to the 1st respondent against the applicant in respect of the alleged offence.
5. That the 1st respondent upon the receipt of the complaint from the 2nd respondent, wrote the 3rd respondent requesting the 3rd respondent to carry out an investigation on the alleged offence committed by the applicant against the 2nd respondent and report back to court within two weeks.
6. That the 3rd respondent saddled with the constitutional and statutory responsibility to invite, interrogate, arrest and investigate any complaint

brought before them, proceeded with the investigation of the alleged offence.

7. That while investigations were still ongoing, the 3rd respondent was served with court processes challenging the propriety of the investigation filed by the Applicant.

On 1st February, 2023, the day of hearing of the originating motion, Counsel to the applicant and 3rd respondent were absent and their respective addresses adopted by the court and matter adjourned for judgment.

ARGUMENT OF COUNSEL TO THE APPLICANT

Counsel to the Applicant submitted a sole issue for determination;

"Whether the Direct Criminal Complaint and the Order referring same to the police made against the Applicant by the Respondent and the trial Magistrate were made with regards to the provisions of law, principles of justice and fairness? "

Abiodun Babablola Esq. submitted that the complaint made by the 2nd respondent against the applicant was simply to restrict the applicant's right to personal liberty and freedom of movement. The 2nd respondent's complaint was made on a baseless allegation of defamation of character. The 2nd respondent is merely using the instrumentality of the law that is the 1st and 3rd respondents to witch-hunt the applicant.

Mr Babalola further submitted that this Honourable Court has an inherent jurisdiction to control the trial Magistrate Court not only in its appellate capacity, but also in a supervisory capacity which extends to seeing that it observes the law and that fairness and justice are upheld. He relied in the case of **CHAIRMAN & MEMBERS OF CUSTOMARY COURT MBAWSI & ORS v. STATE EX-PARTE, NDIMELE NWOSU (2014) LPELR-22852(CA)**.

Counsel argued that even in a Direct Criminal Complaint, the applicant is entitled to be served with the process of court before the court can assume jurisdiction to commence any form of hearing, failure to serve the applicant with the commencing process robbed the court of jurisdiction. Relying on **SECTION 123 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 (ACJA) AND SECTION 117 OF THE ACJA, 2015**.

The Direct Criminal Complaint was never served on the applicant, as such all actions carried out are without jurisdiction.

Counsel submitted that it is the principle of law that an accused is to be served with the process of court which serves as an invitation to be aware of any case against him unless such is duly served, informing the accused of the allegation against him and the failure to serve same on the defendant will rob the court of the jurisdiction to proceed with the case as the presence of a defendant in a criminal matter ordinarily cannot be dispel at any stage relying on **SECTIONS 113 AND 117 OF THE ACJA.**

According to counsel, it is also trite that summons is to be served personally on the defendant and receipt of same acknowledged referring this court to **SECTION 123 OF THE ACJA.**

That contrary to the principle of fair hearing, the 2nd respondent and the 1st respondent filed the processes and took steps in the matter without first putting the applicant on notice.

Counsel further submitted that the mere filing of a Direct Criminal Complaint does not automatically merit the activation of the Court's jurisdiction to hear it and refer matter to the Police, but the 1st respondent is under a duty to look at the content of the Direct Criminal Complaint with the view to making sure that it qualifies to be referred to the police for investigation and he is bound to exercise his discretion judicially and judiciously. Counsel submits that the presence of the applicant would have helped the Court in the seeing facts that can help in the exercise of its discretion.

The proper action for the trial Court to take was to order the 2nd respondent to serve the applicant with the copy of the Direct Criminal Complaint and not for the court to proceed to issue an order of arrest/investigation against a person who has not been served with the process of Court thus giving room to the 2nd respondent to use the process to deny the applicant of his freedom of movement. Court was urged to grant leave to remove and quash the said order referring the matter to the 3rd Respondent for investigation.

The Act empowering the trial court to refer a Direct Criminal Complaint to the police makes same discretionary by using the word "may" and this shows that the Court can also exercise its discretion and dismiss same wherein it discovers that it does not reveal a prima facie case on the face of it. Counsel submitted that for the trial court to refer the case to the police to arrest and investigate the applicant without recourse to hearing the applicant to guide it in the exercise of its discretion is unlawful. Counsel urged the court to so hold and to grant leave to remove and quash the order against the applicant.

See the provisions of **SECTION 89 (5) OF THE ACJA, 2015** "*All complaint made to the Court directly under this section may first be referred to the police for investigation before any action is taken by the Court*" and case of **NJC v. DAKWANG & ORS (2019) LPELR-46927(SC)**.

Counsel concluded by submitting that this honorable court has the constitutional powers to supervise and review orders and to quash same where unlawfully made as in this instant case relying on the case of **STATE V CUSTOMARY COURT OWERRI URBAN & ORS (2016) LPELR-40969 (CA)**.

ARGUMENT OF THE 2ND RESPONDENT COUNSEL

Counsel to the 2nd respondent adopted the Applicant's sole issue for determination.

Charles Abalaka Esq. in his argument submitted on a preliminary note, that the extant applicant's Originating Motion is incurably defective, the same being incompetent and ought to be dismissed by this Honourable Court. Simply put, this Court lacks jurisdiction to entertain the Applicant's Originating Motion for Judicial Review in the circumstances.

The grounds for the above submission of counsel are as follows -

- a. By virtue of **ORDER 44 RULE 4 OF THE HIGH COURT OF THE FCT (CIVIL PROCEDURE) RULES, 2018**, an application for judicial review shall be brought within three (3) months of the date of occurrence of the subject of the application. This suit is caught up by statute of limitation, and
- b. That the applicant's Motion Ex-parte for Leave to commence these proceedings by way of Judicial Review did NOT include Orders of this Court extending time within which to commence the proceedings and a Deeming Order having filed the Originating Motion prior to being granted leave of Court to commence proceedings for judicial review.

Counsel submitted that it is settled law, that where the provision of statute or subsidiary legislation has provided time limits for the taking of legal steps and/or commencement of legal proceedings, any such legal step commenced upon the expiration of such a time and in violation of same robs the Court of jurisdiction to entertain the same and renders the proceedings incompetent. Relying on **ONTEXACO PANAMA INCORPORATION V. S.P.D.C (NIG) LTD (2002) FWLR (PT 96) 579 SCANDATOLAGBE V. AWUNI (1997) 9 NWLR (PT 522) 536 SC**.

Abalaka Esq. submitted that in the instant case, this case was commenced by the applicant on 15th March, 2022 via Motion Ex-parte for leave to commence proceedings for judicial review. The grouse of the applicant with the respondents is the directive of the 1st respondent issued to the 3rd respondent to investigate criminal allegations levied against the applicant by the 2nd respondent at the lower Court. The said directive was issued by the 1st respondent on 9th December, 2021 and attached to the applicant's Originating Motion as Exhibit A.

Counsel submitted that three (3) months within the occurrence of the 1st respondent's directive would be 9th March, 2022 and not 15th March, 2022 on which day the applicant commenced these proceedings. The implication is that the Applicant's suit is caught up by limitation of action encapsulated in **ORDER 44 RULE 4 OF THE RULES OF THIS COURT.**

Counsel argued that where issues of limitation of action is raised, it is jurisdictional in nature and its determination goes to the root of the applicant's case and where the court finds as in this case that the Applicant had commenced this suit in violation of a Limitation Law, this Court ought to decline jurisdiction and dismiss the suit. Relying on **ABUBAKAR V. MICHELIN MOTOR SERVICES LTD (2020) 15 W.R.N @ PG 4.**

Counsel further submitted that Order 44, Rule 4 of the rules of this court is a mandatory provision of the Rules, which the Applicant's suit has fallen short of and urged the Court to decline jurisdiction in the circumstance and dismiss this heavily contested suit in limine.

Counsel posited further that the applicant's motion ex-parte for leave to commence these proceedings by way of Judicial Review did NOT include an Order of this Honourable Court either extending time within which to commence these proceedings and/or deeming the applicant's originating motion as regular having filed its Originating Motion contemporaneously with his motion ex-parte for leave to commence proceedings for judicial review.

It is counsel's submission that the purpose or effect of a 'Deeming Order' on the competence of a process of court is that it removes all blemish or taints of incompetence from the said process and regularizes it. **DICK V. OUR & OIL COE LTD (2020) 40 W.R.N 47.**

Counsel urged the Court to find that the applicant's originating motion filed on 15th March, 2022 is blemished and incompetent having been filed in the absence of a Deeming Order being granted on 25th March, 2022 when leave was granted to commence these proceedings. The same ought to be struck out with costs.

On the substantive matter, Abalaka Esq. submitted that by virtue of **SECTION 89 (5) OF THE ACT**, a Court is empowered by law to exercise 'discretion' by directing the Police to investigate a direct criminal complaint before taking any step(s) in the case. The lower court had no discretion to exercise in the case other than to direct the 3rd respondent to investigate the allegations in compliance with **Section 89 (5) of the ACJA** and the authorities of **MOKELU V FEDERAL COMMISSIONER FOR WORKS AND HOUSING (1976) LPELR 1904 (SC)** and **ADEGBENRO V. AKINTILO (2010) ALL FWLR (PT 544) AT 156 CA; ADESOLA V. ABIDOYE (1999) 12 SCNJ 61.**

Counsel submitted that the applicant Counsel's reference to **SECTIONS 113, 115, 117 AND 123 OF THE ACJA** are all erroneous and misplaced being that NO Summons was issued by the Respondent.

Moreover, by virtue of **SECTION 4 OF THE POLICE ACT; 2020** the Nigeria police are statutorily empowered to prevent and detect/investigate crimes throughout the Federal Republic Nigeria.

Counsel urged this Honourable Court to answer the applicant's issue raised for determination in the affirmative, hold that the 2nd respondent's Direct Criminal Complaint and the Order referring same to the Police were made in accordance with the law.

ARGUMENT OF THE 3RD RESPONDENT COUNSEL

Alasan James Yissa Esq. Counsel to the 3rd Respondent distilled a sole issue for determination to wit;

Whether or not the Powers of Police Officers to Investigate an Alleged Reported crime is legal and derived from the Police Act 2020?

Counsel argued that the power of the 3rd respondent to investigate an alleged reported crime in matters of this nature is constitutional and is derived from **SECTIONS 214 AND 216 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS AMENDED (CFRN) AND SECTION 4 OF THE POLICE ACT 2020.** Counsel submitted that the mere exercise of this power cannot by virtue of **SECTION 35(1) OF THE CFRN** amounts to a breach of the applicant's fundamental right, even when such exercise results in curtailing of his freedom of movement or liberty that according to **SECTION 88(1) OF THE ACJA** a person may make a complaint against any other person alleged to have committed or to be committing an offence. **Section 88(3) (ACJA)** states further that a complaint

may be made by the complainant in person, or by a legal practitioner representing him, or by any person authorized in writing in that behalf.

SECTION 89(5) OF ACJA, 2015 provides that all complaints made to the court directly under this section may first be referred to the Police for investigation before any action is taken by the court.

Counsel to the 3rd respondent submitted that the 1st respondent followed the procedure as by ACJA.

Counsel concluded that in this situation, the applicant has not shown sufficient proof of the breach of his fundamental rights and the question of the infringement of fundamental rights is largely a question of fact disclosed in the processes filed to determine whether his fundamental rights have been infringed upon.

DECISION OF THE COURT

When the court is faced with a challenge to its jurisdiction, it is the writ of summons and the accompanying processes only that the court will consider to determine if it has jurisdiction.

Whenever the issue of jurisdiction, which is both intrinsic and extrinsic to judicial proceedings, arises or is raised in the course of proceedings (at all stages or steps of the judicial ladder), the court before which it arises or is raised has the duty and obligation to consider and determine it first before proceeding with other issues or taking further steps in the case. See ***ADEYEMI V ACHIMU/NDIC (2023) PART 1866 1NWL R P. 583 @ P. 610 PARAS B-D.***

Jurisdiction is the life-wire of a court as no court can entertain a matter where it lacks jurisdiction. The issue of jurisdiction can be raised at any time. See apex decision of ***DAIRO V UBN PLC (2007) 7 SC (PT II) PAGE 97 @ 111 paras 5-10.***

In the apex court decision of ***AUDU V APC (2019) LPLER 48134 SC PAGE 12,*** the court defined jurisdiction thus;

"Jurisdiction simply means "a Court's power to decide a case or issue" Black's Law Dictionary 9th Ed. Jurisdiction also refers to "the authority a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision" - MOBIL PRODUCING (NIG.) UNLIMITED V. LASEPA

(2002) 18 NWLR (R. 798) 1 SC. Jurisdiction are of various types; substantive jurisdiction refers to matters over which the Court can adjudicate, and it is usually expressly provided by the Constitution or enabling statutes. PAGE 21 PER AMINA AUGIE JSC held thus;

".... jurisdiction is the pillar under which the entire case stands, therefore, filing an action in a Court presupposes that the Court has jurisdiction. However, once the Defendant shows that the Court has no jurisdiction then the "foundation of the case is not only shaken but is broken. The case crumbles."

See OKOLO V. UBN (2004) 3 NWLR (PT. 859) 87, wherein Tobi, JSC, added;

"In effect, there is no case before the Court for adjudication. The Parties cannot be heard on the merit of the case. That is the end of the litigation."

For a court to be competent, it has to be properly constituted as regards number and qualification of members of the bench, and no member is disqualified for one reason or another; the subject matter of the case is within its jurisdiction, there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of its jurisdiction. It has to be brought forward by due process of law. See the locus classicus, ***MADUKOLUM V NKEMDILIM (1962) 1 ALL NLR 587 SC.***

In ***EKWEZOR V REGISTERED TRUSTEES OF THE SAVIOURS APOSTLE CHURCH 2020 SC LPLER 49568 PAGE 16*** the apex court held thus;

"the jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. However, when evidence has been taken before the raising of the issue of jurisdiction, the Court may refer to any part thereof necessary. In this instance a reference to the plaintiff's pleadings becomes necessary to clarify any grey areas. See TUKUR V GOVERNMENT OF GONGOLA STATE

(NO. 2) (1989) 4 NWLR (PT. 117) P. 517; MUSTAPHA V GOVERNMENT LAGOS STATE (1987) 2 NWLR (PT.58) 539; ATTORNEY GENERAL KWARA STATE V OLAWALE (1993) 1 NWLR (PT. 272) 645; ADEYEMI V OPEYORI (1976) 9 - 10 SC 31."

Owing to the decisive nature of jurisdiction, it cannot be conferred on or taken away from any court because the parties have agreed or consented to do so. See ***DAIRO V UBN PLC (2007) SUPRA @ 111 PARAS 10-15 and ADEYEMI V ACHIMU/NDIC (supra) P. 618 paras B-C.***

Flowing from the position of the law on jurisdiction, there are conditions which must be satisfied before this court can exercise jurisdiction.

In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held;

"I also agree with the learned counsel, that going by the parameters set BY MADUKOLU VS. NKEMDILIM (1962) SCNLR 341, AND FOLLOWED IN SALATI VS. SHEHU (1986) INWLR (PT. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that: (i.) The proper parties are before the Court. (ii.) The Court's properly constituted as to its membership and qualification. (iii.) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction. iv. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction."

The grouse of 2nd Respondent Counsel is that;

- a. By virtue of **Order 44 Rule 4 of the High Court of the FCT (Civil Procedure) Rules, 2018** an application for judicial review shall be brought

Within three (3) months of the date of occurrence of the subject of the application. This suit is caught up by statute of limitation, and

- b. That the applicant's motion ex-parte for leave to commence these proceedings by way of Judicial Review did NOT include Orders of this court extending time within which to commence the proceedings and a Deeming Order having filed the originating motion prior to being granted leave of court to commence proceedings for judicial review.

The present application is for judicial review of the Order of the 1st respondent referring a direct criminal complaint to the Police for investigation. The application is brought under **ORDER 44 RULE 1(1) of the Rules of this court;**

1(1) An application for:

- (a) An order of mandamus, prohibition or certiorari, or**
- (b) An injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provision of the Order**

Counsel's grouse is Order 44(4):

An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.

This appears to be a statute of limitation a statute of limitation is defined in **MR. USMAN SANNI & ORS v. MR. EDWARD A. DOHERTY & ORS (2016) LPELR-49933(CA) (Pp. 11-12 paras. C)As;**

"... a statute prescribing Limitation to the right of action on certain described causes of action or criminal prosecutions; that is, declaring that, no suit shall be maintained or criminal charge be made, unless brought within a specified period of time after the right accrued, again statutes of Limitation are statutes of repose, and are such legislative enactments as prescribed the periods of repose within which actions may be brought upon certain claims or within which certain rights may be enforced. In criminal cases, however, a statute of Limitation is an act of grace, a surrendering by sovereign of its right to prosecute. See BLACKS' LAW DICTIONARY 8 EDITION pages 1450-1451."

In **AKINSANYA & ORS V. SHONEYE & ORS (2016) LPELR-41939(CA) (PP. 39-40 PARAS. A)**The main purpose of limitation of action or limitation statute is to protect a defendant from injustice of having to face a stale claim. In such a situation, where a limitation statute applies, a plaintiff who might otherwise have had a valid cause of action loses the right to enforce the cause of action or claim by judicial process, this is because the period stipulated by the limitation statute for instituting such action has lapsed. A plea of limitation of statute is therefore a weapon of defence, and not attack. In other words, the limitation statutes, just like equitable doctrines of laches, are designed to promote justice by preventing surprises by reviving a claim or cause of action that has been allowed to lapse. Thus, in the case of **SULGRAVE HOLDINGS INC. V. F.G.N. (2012) 17 NWLR (PT.1329) P.309 AT P.343 PARAGRAPHS E - F**, Fabiyi, JSC said:

"It should be reiterated that a statute of limitation is a law that bars claims after a specified period. It is a statute which establishes a time limit for suing in a civil case based on the date the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims thereby providing finality and predictability in legal affairs. It is also termed non claim statute. The purpose of limitations like equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber."

In **ALL PROGRESSIVES CONGRESS v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2022) LPELR-59373(CA) (Pp. 16-17 paras. F)**The court held that;

"A statute of limitation, removes the right of action, the right of enforcement, and the right to judicial relief in a claimant and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred; that is to say, if such a cause of action is instituted outside the period allowed by law See Ibrahim v. J.S.C. [1998] 14 NWLR (Pt. 584) 1 at 31-31." Per ADEGBEHINGBE ,J.C.A in apc v. inec&ors (Pp. 16-17 paras. F)

The **Order 44 rule 4 is a rule of this court** and it is trite that Rules of Court must be complied with, observed and obeyed and that non-compliance attracts the sanction of incompetency, striking out or dismissal as the case may be. See ***ADESOLA & ANOR V. FALADE-FATILA & ORS (2014) LPELR-23800(CA) (PP. 28 PARAS. B)***

The rule in contention uses the word SHALL and it is a word of command which is normally given a compulsory meaning because it is intended to denote obligation. See ***AMOKEODO V. IGP & ORS (1999) LPELR-468(SC) (Pp. 24-25 paras. E)***"

The originating motion was filed on 15th March, 2022 while the action complained of occurred on the 9th day of December 2021 just outside the 3 months window of the time limit.

Counsel to the respondent also argued that that the applicant's motion ex-parte for Leave to commence these proceedings by way of Judicial Review did NOT include Orders of this court extending time within which to commence the proceedings and a Deeming Order having filed the originating motion prior to being granted leave of court to commence proceedings for judicial review.

According to **ORDER 44 RULE (3)** of the rules requires that leave be sought for an application for judicial review. I find that no deeming order was granted by this court when the Motion Exparte was granted. the effect of a deeming order is that it regularizes the processes before the Court ***BUILDERS PRODUCTS INDUSTRIES (NIG) LTD V. REGISTERED TRUSTEES OF COCIN (2021) LPELR-56295(CA) (PP. 19 PARAS. C)*** and in that wise the Originating Motion is not proper before this court and I so hold.

Having found merit in the preliminary objection, the substantive originating motion becomes academic and this court shall not delve into same.

I find that the application filed before this court is out of time and is caught up by the rules of this court. I find merit in the preliminary objection and dismiss this suit with no order as to cost.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance of Counsel:

1. Applicant absent and unrepresented.
2. 1st respondent absent and unrepresented.
3. Charles Abalaka and OnosiAghogho for 2nd respondent.
4. 3rd respondent and unrepresented.