

**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: CV/10/2005

BETWEEN:

1. **ALH. ABDULLAHI KAJIYA** } _____ **CLAIMANTS/APPLICANTS**
2. **MADAKI KPETU DEZE** }

AND

1. **CHIEF BAKA SHADA** } _____ **DEFENDANTS**
2. **ALH. ABUBAKAR GOMINI** }
3. **ALH. ALIYU MUSA** }

RULING

By the motion on notice dated the 24th day of October, 2022 with No. M/451/2022, the applicant seeks for the following orders”

1. An order of this Honourable Court declining jurisdiction to entertain this suit as presently constituted in view of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011.
2. An order of this Honourable Court transferring this suit to the Customary Court of Appeal of the Federal Capital Territory Abuja sitting at Utako for proper adjudication.
3. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.

The motion is supported by four paragraphed affidavit and a written address of counsel.

It is deposed to the fact that this matter was filed sometime in 2005 by the claimants/applicants and the suit has suffered several set back due to unnecessary adjournments but parties finally concluded their respective evidence and the suit was slated for judgment. The presiding judge then, Justice Balami however, retired and as such, the judgment could not be re-

assigned. It is stated further that the counsel made several attempts for the matter to be re-assigned to another judge and he later found out that the case had been re-assigned.

It is stated that it is a fact that the instant suit is a Chieftaincy matter which is governed by Chief (appointment and deposition) Federal Capital Territory Act and in 2011, the National Assembly enacted Customary Court of Appeal of the Federal Capital Territory Abuja (jurisdiction on Chieftaincy Matters) Act 2011 which gives the Customary Court of Appeal the jurisdiction to hear this matter, and that the grant of these reliefs will not prejudice the defendants/respondents.

In his written address, the counsel proposed an issue for determination, to wit:

Whether by the community reading of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 this court can still assume jurisdiction in respect of the Chieftaincy Matter in the Federal Capital Territory?

The counsel submitted that a court must have both jurisdiction and competence to be properly seised of the cause or matter and as such, jurisdiction is defined broadly as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject of the issues, and he cited the case of **PDP V. Okorochoa (2012) 15 NWLR (pt 205 (SC) and Gafar V. Kwara State (2007) 4 NWLR (pt 1024) 375.**

It is also the submission of the counsel that the only court conferred with original jurisdiction to entertain Chieftaincy Matters is the Customary Court of Appeal of the Federal Capital Territory, Abuja by virtue of Customary Court of Appeal Abuja (Jurisdiction on Chieftaincy Matters) Act 2011. The counsel opined that this Act in 2011 takes over section 12 of the Chiefs (Appointment and Deposition) Federal Capital

Territory Act 1997 which placed the jurisdiction of Chieftaincy matters on the foot of the High Court of the Federal Capital Territory. The counsel submitted that with the coming into operation of the Customary Court of Appeal of the FCT Abuja (Jurisdiction on Chieftaincy Matters Act) 2011, however, the position has been taken over by the law 2011 Act, and he argued that the High Court of the FCT can no longer assume jurisdiction in regard to Chieftaincy Matters in the FCT. He argued that it is the claim of the claimant that determines the jurisdiction of the trial court, and he cited the case of **Emeka V. Okagbido (2012) 18 NWLR (pt 55) SC**. The counsel also cited provision of Order 42 Rule 6 and submitted that this court has power to transfer a matter to the appropriate court where the High Court has no jurisdiction to entertain the matter before it, and he urged the court to transfer the matter to the Customary Court of Appeal sitting at Utako.

The counsel to the respondent, in his written address in opposition to the application, raised this issue for determination:

Whether this Honourable Court has an unlimited jurisdiction to hear, entertain and determine this suit despite the enactment of the Customary Court of Appeal of the Federal Capital Territory (Jurisdiction in Chieftaincy Matters) Act 2011?

The counsel submitted that this court has unlimited jurisdiction to hear, entertain and determine this suit in spite of the enactment by National Assembly of the Customary Court of Appeal of the FCT (Jurisdiction on Chieftaincy Matters) Act 2011. He argued that it was enacted by the National Assembly in 2011 and published as an Act No. 5 of the National Assembly Official Gazette No. 52, Vol. 98 dated 6th June, 2011, and he urged the court to discountenance the submissions of the applicants' counsel, as the jurisdiction of the FCT High court over Chieftaincy Matters is provided for under provisions of the constitution of the Federal Republic of

Nigeria 1999, (as amended) specifically section 257(1) of the said constitution.

The counsel opined that the provisions of the constitution is the unlimited jurisdiction and therefore FCT High Court has the requisite jurisdiction to adjudicate over the plaintiffs' claim in the suit since the legal right of the plaintiffs over Chieftaincy stool or throne of Gbesa/Dafa village community in Kwali Area Council of the FCT is at stake. He argued that the fact that the jurisdiction of the Customary Court of Appeal of the FCT has been increased does not divest this court of the jurisdiction to entertain this suit as the Customary Court of Appeal of the Federal Capital Territory Abuja (Chieftaincy Matters) Act 2011 (Act No. 5 of 2011) cannot be used to amend the constitution, he added that the Customary Court of Appeal has concurrent jurisdiction with the High Court of the FCT in matters affecting Chieftaincy dispute within the Federal Capital Territory and as such, this court has jurisdiction.

The counsel also urged this court to note that in 2005 when this suit was filed, the Customary Court of Appeal Act, 2011 was not in existence; as it commenced operation in 2011, and that there is no provision in the said Act which indicate that its provisions have retrospective effect and that it is a trite law that no party is allowed to introduce into a statute what it has not expressly provided for to the effect that it is trite that when the words of a document, legislation or constitution are clear, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit unless that would lead to absurdity or some repugnancy or inconsistency with the rest of the legislation or constitution, and in such a situation courts are without jurisdiction or power to import into the meaning thereof what it does not say hence nothing can be added or taken from the statute unless there are adequate grounds to

justify the inference that the legislature intended something which it omitted to express.

The counsel further submitted that a court is not entitled to read into a statute, words which are excluded expressly or impliedly from it. He stated that where the provisions of a statute are that and unambiguous, effect must be given to the words without retorting to an extrinsic aid to interpret it and it is the solemn duty of the court to interpret the words used in the section by the legislation and give them their intended meaning and effect, and he cited the case of **Okon Johnson & 14 Ors V. Mobil Producing (Nig.) unlimited & 3 Ors (2010) 52 WRN 54** and submitted that the provisions of the said Act cannot affect matters that are already pending in court before the enactment of the said Act.

The counsel further argued that it is trite law that the rights and obligations of the parties must be considered in this court and in the lower court in the light of the provisions or the law as it was when the cause of action arose, and he cited the case of **Festus Ibidapo Adesanoye & 2 Ors V. Prince Frances Gbadebo Adewole 2007 (citation not properly supplied)** where it was held that the applicable law is the law in existence at the time the cause of action arose and not the law in force at the time the jurisdiction of the court was invoked. He opined that it is clear that the provisions of the Customary Court of Appeal of Federal Capital Territory (Jurisdiction on Chieftaincy Matters) Act 2011 was not in existence at the time this action was filed and as such, it cannot have a retrospective effect.

The counsel argued that the effect of the repealed section 12 of the Chiefs (Appointment and Deposition) Federal Capital Territory Act No. 8 of 1997 by the provisions of the Customary Court of Appeal of the FCT (Jurisdiction on Chieftaincy Matters) Act 2011 has been taken care of by the provisions of section 6 of the Interpretation Act Cap. 123 LFN 1990 and submitted further that based on the above provision

that this suit cannot be affected in any way by the repeal of section 12 of the Chiefs (Appointment and Depositions) Federal Capital Territory Act No. 8 of 1997 and he urged the court to dismiss this application.

Let me quickly adopt the issue for determination as formulated by the counsel to the respondent with a slight modification, that is to say,

Whether this Honourable Court has the jurisdiction to hear, entertain and determine this suit despite the enactment of the Customary Court of Appeal of the Federal Capital Territory (Jurisdiction on Chieftaincy Matters) Act 2011?

Thus, an ouster or limitation of jurisdiction of a court can or may be made by a statute. See the case of **Kasunnu V. Shitta – Bey (2007) All FWLR (pt 356) p. 746 at 771, para. B.**

In the instant case, the jurisdiction of this court is spelt out in the constitution of the Federal Republic of Nigeria 1999 (as amended) which section 257 (1) provides:

“Subject to the provisions of section 251 and any other provisions of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in issue...”

By the above quoted provisions, it can be inferred that notwithstanding that the word unlimited is not mentioned in section 257(1) of the constitution, the FCT High Court has widest jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in issue, and it is oftenly referred to as having unlimited jurisdiction, this is because the word “unlimited” as mentioned

in 1979 constitution which is omitted in 1999 constitution, this is in regard to Federal High Court and Natural Industrial Court, the provisions of section 257 (1) of the Constitution 1999 has been made subject to section 251 of the same constitution of the Federal Republic of Nigeria, and this does not change the jurisdiction of the FCT High Court to be so wider. See the case of **NU.E.C. V. I.B.P.E (2010) All FWLR (pt 525) p. 240 paras. C-F.**

The National Assembly enacted Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 and section 1 (a) and (b) of the Act provides:

“Subject to section 267 of the Constitution, the Customary Court of Appeal of the Federal Capital Territory Abuja shall:

- (a) exercise appellate and supervisory jurisdiction in proceedings where the subject matter of the claim is on, or relates to Customary Law; and**
- (b) have exclusive original jurisdiction in the Federal Capital Territory, Abuja to hear and determine dispute on or relating to Chieftaincy Matters.”**

The area of concern in the above quoted provisions of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 is the expression “subject to section 267 of the constitution” which means the provisions of the Act 2011 is subjected or subsumed by section 267 of the Constitution. See the case of **Lawlehin V. Akanbi (2016) All FWLR (pt 865) p. 189 at 204, paras. D-E.**

Now, section 267 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

“The Customary Court of Appeal of the Federal Capital Territory, Abuja shall, in addition to such other jurisdiction as may be conferred upon it by an act of the National Assembly, exercise such

appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law.”

Looking at the above quoted provision of the 1999 constitution, it can be inferred that the constitution has recognised the Act of National Assembly considering the expression “shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly” to the effect that the constitution of the Federal Republic of Nigeria 1999 more especially section 267, has envisaged that the jurisdiction of the Customary Court of Appeal of the FCT may be increased, and not to limit or abridge the jurisdiction of the FCT High Court as to Chieftaincy Matters by virtue of jurisdiction conferred upon it by the constitution.

It is therefore, the argument of the learned counsel to the applicant that by the coming into operation of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011, the High Court of the Federal Capital Territory, Abuja has no longer original jurisdiction in regard to Chieftaincy Matters in the FCT, while it is the argument of the counsel to the respondent that FCT High Court has unlimited jurisdiction to hear, entertain and determine this suit inspite of the enactment of the National Assembly of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters Act, 2011, this is because he argued, the jurisdiction of the High Court of the Federal Capital Territory over Chieftaincy Matters is provided for under the provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended), and therefore submitted that the provision of section 257(1) of the 1999 constitution has conferred unlimited jurisdiction on this court that it has the requisite jurisdiction to adjudicate over Chieftaincy Matters. It is also the contention of the counsel to the respondent that the Customary Court of Appeal of the FCT Abuja Act has increased the jurisdiction does not divest this court of the jurisdiction to entertain this

suit, and therefore, the Customary Court of Appeal Abuja has concurrent jurisdiction with this court in Chieftaincy disputes within the FCT, Abuja.

Thus, it was held in the case of **Maikyo V. Itodo (2007) All FWLR (pt 363) p. 68 at 78, para. A** by the Supreme Court that the attitude of the court to provisions ousting its jurisdiction is that, it is regarded as an outrageous provision and one that should be treated with extreme caution since it is regarded as an unwarranted affront and an unnecessary challenge to the jurisdiction of the court. See the case of **Orakut Resources Ltd V. N.C.C. (2007) All FWLR (pt 390) p. 1492 at 1512, para. B** where the Court of Appeal, Abuja held that where a provision ousting the jurisdiction of the court is clear and unambiguous, the court is bound to apply it as it is. In page 1512, paras. C-D in the same case, the court held that where a statute seeks to deprive the court of the exercise of its jurisdiction in a matter, such a statute must be strictly and scrupulously construed. Ouster clauses are interpreted more liberally on the side of retaining and preserving the court's jurisdiction.

Now, looking at the provisions of section 1 (a) and (b) of the Customary Court of Appeal of the FCT, Abuja (jurisdiction on Chieftaincy Matters) Act 2011, it can be inferred that the Act limits and abridges the jurisdiction of the FCT High Court which has been provided by the constitution, and which is the grandnorm and has supremacy over the Act. This is because no reference was made by section 267 of the constitution or section 1 (a) and (b) of the Customary Court of Appeal Act, 2011 of the jurisdiction of the FCT High Court. In a nutshell, the provision of the Customary Court of Appeal of the Federal Capital Territory, Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 runs inconsistent with the provision of the constitution. In other words limiting, abridging or ouster of the jurisdiction of the FCT High Court has to be made by the constitution and not by the Act of the National Assembly. See the case of **Balogun V. Ode (2007) All FWLR (pt**

358) p. 1061, paras. A-B. See also the case of **N.U.E.E. V. B.P.E. (2010) All FWLR (pt. 525) p. 213 at 239, paras. F-G** where the Supreme Court held that the jurisdiction of the State High Court (which is *inparimateria* with FCT High Court) as conferred by the constitution can only be curtailed or abridged or even eroded by the constitution itself and not by an Act or law respectively of the National Assembly or State House of Assembly, meaning that where there is a conflict in that regard between the provisions of the constitution and the provisions of any other Act or law of National Assembly or House of Assembly respectively, the constitution shall prevail. In the instant case, the Customary Court of Appeal Act 2011 is in conflict with section 257(1) of the Constitution, and therefore, such Act to the extent of the inconsistency be void. See the case of **Attorney General, Ondo State V. Attorney General, Federation (2002) FWLR (pt 111) p. 1972.**

Thus, by the above analyses, I hold the view that the provisions of section 1 (a) and (b) of the Customary Court of Appeal of the Federal Capital Territory, Abuja (Jurisdiction in Chieftaincy Matters) Act 2011 which limits, abridges or erodes the jurisdiction of the FCT High Court runs in conflict with section 257 (1) of the 1999 Constitution and therefore inconsistent with the said constitution. I hold the view also that section 267 of the 1999 Constitution which makes reference to the Customary Court of Appeal having additional jurisdiction as may be conferred by an Act of National Assembly is not intended to limit the jurisdiction of the FCT High Court as no reference was made to that effect. The jurisdiction of the FCT High Court to entertain, hear and determine this matter is still intact, as section 257 (1) of the 1999 constitution prevails over the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011.

Assuming but not conceding that this is not the correct position, and by affidavit in support of this application that this suit was filed sometime in 2005 by the claimants/applicants

and it has suffered several setback due to unnecessary adjournments but parties finally concluded their respective evidence and this suit was slated for judgment, and the presiding judge, Hon. Justice Mwada Balami retired and as such, the judgment could not be re-assigned, and now the matter has been assigned to this court.

I have painstakingly gone through the writ of summons and statement of claim and discovered that the suit was filed and instituted on the 4th day of March, 2005, and the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 came into operation on the 3rd day of June, 2011. Therefore, from the record, it can be seen that this suit predates the coming into force the Customary Court of Appeal Act 2011 which ousted the jurisdiction of this court and exclusively donated to the Customary Court of Appeal Abuja the jurisdiction to hear and entertain Chieftaincy Matters.

It is observed that the cause of action arose as at the time when the 3rd defendant purportedly turbaned the 1st defendant at 3rd defendant's house at Tunga village and brought the 1st defendant to Gbesna-Dafa and that the 1st defendant parades himself as the ward head of Gbesna-Dafa village, which means there are two ward-heads at Gbesna-Dafa which is a recipe for confusion, confrontation, conflict and eventual breakdown of law and order in Gbesna-Dafa. However, this suit was instituted on the 4th day of March, 2005.

It is pertinent to note that as at 4th day of March, 2005, this court has jurisdiction to entertain this matter by virtue of section 257(1) of the 1999 constitution, and it is only on the 3rd day of June, 2011 that the Act making the Customary Court of Appeal Abuja to have exclusive jurisdiction to hear it is the law, that the relevant law applicable in respect of cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an

action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard. See the case of **Adah V. NYSC (2004) All FWLR (pt 223) p. 1852 at 1856, paras. A-B**. See also the case of **Olutola V. University of Ilorin (2005) All FWLR (pt 245) p. 1154 at 1189, paras. C-D**.

The Supreme Court in 2011 in the case of **Ogboru V. Uduaghan (2012) All FWLR (pt 610) p. 1209 at 1236, paras. C-D** departed from the previous position when it held that the applicable law to any cause of action is the law in existence or as it existed at the time the cause of action arose not that at the time the action was instituted or the judgment written. In the instant case the cause of action, that is Chieftaincy issue arose even before the action was instituted. Therefore, this part heard case which commenced before the coming into operation of the Customary Court of Appeal of the Federal Capital Territory, Abuja (Jurisdiction on Chieftaincy Matters) Act can continue in this court as the Act does not have retroactive operation, and also taking into consideration the provisions of section 6(i) of the Interpretation Act, Cap. 123 LFN, 2004. See the case of **N.N.P.C V. Sele (2013) All FWLR (pt 708) pp. 848-849, paras. D-A per Rhudes – Vivour JSC**. See also the case of **Olufunsho V. Global Soap and Detergent Ind. Ltd. (2013) All FWLR (pt 709) pp. 1118 – 1126, paras. H-B per Ogbunya JCA** and more particularly at paragraph F at page 1122.

In the instant case, where the action was constituted and trial commenced in this court before coming into life of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011, this court will be imbued with the jurisdiction to entertain this matter to conclusion being a part heard matter which has to be guided by provision of section 6(i) of the Interpretation Act, Cap. 123, LFN, 2004. No matter what, the provision of section 1 (a) and (b) of the Customary Court of Appeal Abuja

Act 2011 does not operate retroactively or retrospectively particularly in the glaring absence of clear and express provision to that effect as the law looks forward and not backward.

Based upon the foregoing analyses, I have come to the conclusion that this court has the jurisdiction to entertain, hear and determine this suit having heard partly before the coming into operation the provisions of section 1 (a) and (b) of the Customary Court of Appeal of the Federal Capital Territory Abuja (Jurisdiction on Chieftaincy Matters) Act 2011 and has to conclude it.

The application is hereby dismissed accordingly.

Hon. Judge
Signed
6/12/2023.

Appearances:

Hussaini Isah Esq appeared holding the brief of A.A. Igah Esq for the claimant.

S.O. Oche Esq appeared for the 1st defendant/Respondent.

CT: The matter is adjourned to 13th day of March, 2024 for hearing.

Hon. Judge
Signed
6/12/2023.