

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/141/2021

BETWEEN:

- 1. ACCESS BANK PLC**
- 2. ECO BANK PLC**
- 3. FIRST CITY MONUMENT BANK PLC**
- 4. STERLING BANK PLC**
- 5. SUNTRUST BANK LIMITED**
- 6. WEMA BANK PLC**
- 7. ZENITH BANK PLC**
- 8. GUARANTY TRUST BANK PLC**
- 9. AUXANO AGRO AND ALLIED SERVICE LIMITED**
- 10. OGBOYOHEH AGRO AND INTEGRATED SERVICE LIMITED**
- 11. CREATIVE AND INNOVATIVE AGRICULTURAL
COOPERATIVE SOCIETY LTD.....APPLICANTS/RESPONDENTS**

AND

- 1. UNITED BANK FOR AFRICA PLC**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. E.D. EBIWARI, SENIOR MAGISTRATE,
JIWA, FCT.....RESPONDENTS/APPLICANTS**

RULING

By a Motion on Notice dated 20/1/2021 and filed the same date, brought pursuant to Order 44 Rules (1) – (8) of the High Court of FCT (Civil

Procedure) Rules (2018), Section 36 (1) (2) & (3) of the 1999 Constitution and under the inherent and jurisdiction of the Honourable Court as preserved by Section 6 (6) of the 1999 Constitution (As Amended). The Applicant prays for the following reliefs:-

- (1) An Order of the Honourable Court for Judicial Review by way of certiorari to bring into the Honourable Court the record of proceedings of the Senior Magistrate Court, Jiwa, FCT and Order made therein by His Worship E.D. Ebiwari Esq, for the purpose of being quashed.
- (2) An Order quashing the record of proceedings of the Senior Magistrate Court, Jiwa, FCT and Order made therein by His Worship E.D. Ebiwari Esq on the grounds herein.
- (3) An Order setting aside the direct criminal complaint in case No. CR/90/2020 between the 1st Respondent and the Applicants herein any acts done pursuant to the said Order as same amounts to an abuse of judicial process and unlawful.
- (4) An Order for immediate removal of Post No Debit (PND) on the 11th Applicant account number 1023443302 domiciled with the 1st Respondent as contained in the schedule of Accounts in the 1st Respondents undated Motion Exparte filed on 9th December, 2020 (Exhibit "A" herein).
- (5) And for such order and/or further orders as the Honourable Court may deem fit to make in the circumstances. Accompanying the

Motion is a Statement, stating the Names/Addresses and description of the Applicant, reliefs sought and grounds for the reliefs sought.

In support of the application is a 30 Paragraphs affidavit, sworn to by one Ede Eru Abraham, with 16 Exhibits marked as "A", "B¹⁻⁴", "C", "D", "E¹⁻⁴", "F¹⁻²⁴", "G" and "H". Also filed is a further and better affidavit of 5 Paragraphs with 8 annexures marked as Exhibits "I¹⁻⁴", "J", "K", "L" and "M". In compliance with the Rules, filed two Addresses in support of the Motion on Notice and the further/better affidavit, adopts the said addresses, in urging the court to grant the Reliefs sought.

The processes were served on the Respondents in compliance with Order of Court on 1/2/2021 for the 1st & 2nd Respondent, on the 3rd Respondent on 5/2/2021. Despite service, the Respondent failed to react to the processes. The implication of this, is that the application before the court stands unchallenged and uncontroverted. In case of Gana Vs FRN (2012) ALL FWLR (617) Pg 993 @ 800 Paras D – E, the court held that;

"Where an affidavit does not attract a counter-affidavit, the facts deposed to therein have been admitted and must be taken as true".

See also CBN Vs Igwilo (2007) 15 NWLR (PT. 1054) 406.

In the Written Address of Applicant counsel, settled by O.B.A. Ochoja Esq, only one (1) issue was formulated for determination;

"Whether the Honourable Court can grant to the Applicants leave to apply for an order of Judicial Review by way of certiorari to bring into

the Honourable Court the records of proceedings of Senior Magistrate Court, Jiwa, FCT for purpose of being quashed”.

Having carefully considered the affidavit evidence, which remained unchallenged and uncontroverted, written submission and judicial authorities cited, including the Exhibits, in the instant application, the court finds that only one (1) issue calls for determination, which is,

“Whether or not the Applicant have made out a case deserving of the reliefs sought in this instant application”

The principles guiding the court in the determination of an application of this nature have been stated in a Plethora of cases. In *Abdullahi Vs The Executive Governor of Kano State & Ors* (2014) LPELR 23099 (CA) the court stated the principles to be borne in mind by the court hearing the application for Judicial Review as follows:-

- (1) Judicial Review is not an Appeal.
- (2) The court must not substitute its judgment for that of the public body whose decision is being reviewed.
- (3) The correct focus is not upon the decision but the manner in which it was reached.
- (4) What matters is legality and not correctness of the decision.
- (5) The reviewing court is not concerned with the merit of a target activity”.

In *ACB Plc Vs Nwaigwe & Ors* (2011) LPELR 208 (SC) the Supreme Court stated per Onnoghen (JSC) thus;

“Judicial Review is the supervisory jurisdiction of the High Court exercised in review of the proceedings, decisions and acts of inferior courts and Tribunals and acts of governmental bodies. The remedies available are for orders of mandamus, certiorari and prohibition and also a Writ of Habeas Corpus. The Writ of Judicial Review is concerned with the legality and not with the merit of the proceedings decision or acts of the affected inferior court, Tribunal or governmental bodies”.

Flowing from these authorities, this court has the jurisdiction to hear an application for Judicial Review and in so doing will be guided by the principles stated in the authorities referred above.

The Applicant seeks an order certiorari in calling the court to exercise its jurisdiction of judicial review. And in the grant or otherwise of an order of certiorari, the court is enjoined to grant the order, where;

- (1) There is lack or excess of jurisdiction.
- (2) There is error on the face of the record of an inferior court.
- (3) There is breach of observance of the Rule of Natural Justice regarding fair hearing.

See the case of Chairman/Members of Customary Court Nbaiwusi & Ors Vs The State Ex parte Ndimere (2014) LPELR 22852 (CA). Also in the case of Nwaukuro Vs Customary Court Nchawa, Arondizuogu & Ors (2009) LPELR – 4589 (CA) the court stated the factors to be considered in the determination of an application for an order of certiorari as;

- (1) Whether or not the Order will issue does, not only depend on whether the errors complained of are errors of law or fact. The error must disclose excess of jurisdiction and the error of law must be one on the face of the record.
- (2) A person applying for an order of certiorari must show that the body concerned has in one way or the other failed to act judiciously where it should.
- (3) That it is not all errors of jurisdiction that will justify the making of an order of certiorari, while all errors giving to jurisdiction can provoke an order certiorari, all errors within jurisdiction are only caught up if they are errors on the face of the record.

The question that would of necessity come to mind at this stage for determination is whether the Applicants has satisfied the criteria mentioned above for consideration of the grant of this application. From the affidavit evidence in support of the application. Applicant narrated a catalogue of facts in support of the grounds for the application, particularly paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18. All of these depositions the 1st, 2nd and 3rd Respondents failed to controvert nor challenged and this court finds them sufficient to hold that the Applicants have satisfactorily established that the 3rd Respondent acted in excess of jurisdiction. I hold this view moreso paragraph 11 and Exhibits "A" and "B" reveals that the Applicant therein ought not to be the lawful Applicant to apply for a freezing order pending an investigation which she is not competent to carry out. Therefore

any application brought to court by that incompetent party would rob court of jurisdiction. I so hold.

From all of these and having found from the unchallenged and uncontroverted evidence of the Applicants that the Lower Court acted in excess of jurisdiction, this court therefore holds that the application has merit and should succeed.

Accordingly, the court hereby grants the following orders;

- (1) An Order for Judicial Review by way of certiorari to bring into the Honourable Court the record of proceedings of the Senior Magistrate Court, Jiwa, FCT and Order made therein by His Worship E.D. Ebiwari Esq, for the purpose of being quashed.
- (2) An Order quashing the record of proceedings of the Senior Magistrate Court, Jiwa, FCT and Order made therein by His Worship E.D. Ebiwari Esq.
- (3) An Order setting aside the Direct Criminal complaint in case No. CR/90/2020 between the 1st Respondent and the Applicants herein and any acts done pursuant to the said Order as same amounts to an abuse of judicial process and unlawful.
- (4) An Order for immediate removal of Post No Debit (PND) on the 11th Applicant account Number 1023443302 domiciled with the 1st Respondent as contained in the schedule of Accounts in the 1st Respondents undated Motion Exparte filed on 9th December, 2020.

This Order be served on the Respondent for compliance.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

4/3/2021

APPEARANCE:

OBA OCHOJA ESQ FOR THE APPLICANTS

NO REPRESENTATION FOR 1ST, 2ND AND 3RD RESPONDENTS