

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

FCT/HC/MOTION NO. M/3666/2024
DATE: 23 – 04 -2024

BETWEEN:

DR. CHRISTOPHER OTABOR.....APPLICANT.

AND

- 1. MAGISTRATE MOHAMMED ABBA BELLO SADIQ
 - 2. NATIONAL AGENCY FOR THE PROHIBITION OF
TRAFFICKING IN PERSONS.
- }.....RESPONDENTS

Appearance:

C.J.Dingba, Esq, with Adedapo, Esan, Esq for the Applicant

RULING/JUDGMENT

By an Application for Judicial Review brought under Order 44 of the Rules of this Court, the Applicant, Dr. Christopher Otabor prays the Court for the following reliefs:

- 1. *An order of Certiorari removing the order of the 1st Respondent of the Magistrate Court of the FCT made on the 22nd January, 2024 in suit No. CV/WZZ/37/2024: MN/01/2024 Between the FEDERAL REPUBLIC OF*

NIGERIA V. DR OTABOR U. CHRISTOPHER to this Court for the purpose of being quashed.

2. ***A Declaration that the Detention of the Applicant by the 2nd Respondent in its custody pursuant to the order made by the 1st Respondent on the 22nd January, 2024 is unlawful.***
3. ***Omnibus prayer.***

An affidavit of 26 paragraphs deposed to by the Applicant with 5 Exhibits was filed in support of the Application.

In the written address in support of the application, Learned Counsel for the Applicant argued in favour of granting the relief sought.

In response the 2nd Respondent filed a Counter affidavit of 14 paragraphs deposed to by Umar Y. Shehu, a Staff of the 2nd Respondent. A written address was also filed where in Learned Counsel submitted 3 issues for determination, to wit:

1. ***Whether the 1st Respondent has Statutory duty or power to investigate an allegation of Criminal Conduct by the investigation of the Applicant upon the reasonable***

suspicion of the Commission of a crime based on a complaint against the Applicant.

2. Whether this Hon. Court can grant an order restraining the 2nd Respondent from investigating the allege offence(s) the Applicant was suspected to have committed.

3. Whether the 1st Respondent's arrest and detention of the Applicant was lawful.

Learned Counsel argued the issues in urging the Court to rule in its favour and dismiss the Application.

Upon receipt of the Counter affidavit and written address of the 2nd Respondent, the Applicant filed a further affidavit of 7 paragraphs deposed to by Peter Emekwu and a reply on points of law dated 12/03/2024.

It is pertinent to state here that the 1st Respondent did not file any process in opposition.

Court: I have considered the Application for judicial review, the reliefs Sought, the ground upon which same was predicated

upon, the supporting affidavit and the 5 annexures and written address in support of the Application on the one hand and the Counter affidavit and written address of the 2nd Respondent on the other hand.

In my view, the issue for determination is whether the Applicant herein has made out a case for the grant of this application.

Before delving into the issue, it is important to properly situate the facts in the affidavit of the parties for better understanding of the area of dispute.

In summary, it is the affidavit evidence of the Applicant that he was invited by the 2nd Respondent on allegation of Commission of crime and after obtain his statement and granting him bail, he was confronted with the Order of Magistrate Court, made by the 1st Respondent for his remand as in Exhibit A1. The Order for remand for 14 days was made pursuant to Order 293 of ACJA pending the conclusion of investigation. Consequently, the Applicant was kept on the Custody of the 2nd Respondent. The Applicant filed for leave to apply for Judicial Review and this Court on the 24th of January 2024 upon experte application grant leave and made Order for the release of the Application.

As argued on the written address Applicant's Application is based on the ground that the 1st Respondent made the Order of remand in excess of jurisdiction.

It is the argument of the Applicant that Section 293 of ACJA is granted, within the Courts power in Section 294 of ACJA. For clarity Section 293(1) & (2) of ACJA provides thus:

- 1. A suspect arrested for an offence which a Magistrate Court has no jurisdiction to try shall within a reasonable time of arrest be brought before a Magistrate Court for remand.*
- 2. An application for remand under this section shall be made exparte and shall:*
 - a) Be made in the prescribed "Report and Request for remand form" as contained in form 8, in the first Schedule to this Act; and*
 - b) Be verified on Oath and contain reasons for the remand request.*

Section 294(1) provides thus:

“Where the Court, after examining the reason for the arrest and for the request for remand in accordance with the provisions of Section 293 of this Act, is satisfied that there is probable cause to remand the suspect pending the receipt of a copy of the legal advice from the Attorney General of the Federation and arraignment of the suspect before the appropriate Court, as the case may be, may remand the suspect in Custody”.

Learned Counsel for the Applicant submitted that the Learned Magistrate, 1st Respondent did not consider Section 294 of ACJA which limits the power of the Court to grant the provisions under Section 293.

Further, Learned Counsel argued that the 2nd and 3rd orders made by the 1st Respondent were based on a none existent provision i.e. Section 264(2) of the ACJA. Counsel maintained that the 1st Respondent exceeded the jurisdiction of the Court.

On their part, 2nd Respondents affidavit evidence states that based on a criminal complaint, the 2nd Respondent sought for the Order under Section 293 of the ACJA to have the Applicant remanded while the 2nd Respondent complete investigation. It

was averred that the application was necessary to prevent the Applicant interfering with investigation. The 2nd Respondent is a body vested with power of arrest, detention and investigation of crime.

In opposing the application, as stated earlier in the preceding part of this ruling, the 2nd Respondent submitted 3 issues for determination.

In arguing the issue Learned Counsel submitted that the 2nd Respondent is vested with power to investigate crime and the Court lacks the power to prevent the 2nd Respondent from discharging its duty to investigate crime. It was in the course of discharging its duty that the 2nd Respondent Sought for and obtained the Order to remand the Applicant. Learned Counsel submitted that the 2nd Respondent has not in any way breach or infringed upon the Right of the Applicant and urged the Court to dismiss the application.

Having considered the evidence and argument put forwarded by parties, I want to start by agreeing with the Learned Senior Counsel for the Applicant that the 1st two issues submitted for determination by the 2nd Respondent do not relate to the

application before the Court and/or the reliefs Sought by the Applicant. The two issues are unrelated to the grounds/basis of the application. The matter before the Court is an application for Judicial Review, praying Order of certiorari to quash the Order of the 1st Respondent. The matter does not challenge the powers of the 2nd Respondent to investigate the Applicant for alleged crime. Accordingly, the two issues and argument canvassed on them are of no moment and hereby discountenanced.

This brings us to the question of whether the 1st Respondent acting on the request of the 2nd Respondent exceeded its jurisdiction under Section 293 and 294 of ACJA.

It is in evidence that, the 2nd Respondent Sought for and obtained a Remand Order from a Magistrate Court presided by the 1st Respondent under Section 293 of the ACJA, 2015. This is seen in Exhibit A1 (Court order dated 22/01/2024).

I have read the provision of Section 293 of ACJA which was reproduced in the preceding part of this Ruling. It is clear to me that the Judge is given a wide discretion to consider the application and decide on whether to grant or refuse same. In

Exhibit A4 (the Record of proceeding) of the Learned Magistrate stated in his Ruling thus:

“I have carefully gone through the affidavit evidence presented in support of this application and I am of the opinion that same is meritorious. The Applicant has complied with the condition stated in Section 394(2)sic of ACJA, 2015 and therefore this Motion Exparte is granted and it is ordered....”

It is clear to me that the Learned Magistrate has considered, the provision of Section 294 in reaching his decision to grant the Order Sought.

I have reviewed the proceeding of the Magistrate Court which the Applicants is seeking to have this Court quash on the ground that the 1st Respondent exceeded his jurisdiction, I do not share the position of the Applicant as it relates to its power under Section 293 of ACJA.

Accordingly, I find that the Order though not unlawful, I do not believe that a remand Order was necessary in the circumstance. By Section 295 the Magistrate ought to consider bail.

In the circumstance, the offence of Harvesting organ under Section 20 of the law against trafficking in persons is a bailable offence. Accordingly, having considered the evidence and an argument canvassed, it is ordered that, the Remand Order is quashed. Applicant shall present himself to the 2nd Respondent for purposes of release on administrative bail pending arraignment where it is considered necessary.

Signed
Hon. Judge.
23/04/2024.