

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 15
CASE NUMBER : SUIT NO: CV/336/21
DATE: : THURSDAY 22ND JULY, 2021

BETWEEN

**MRS. CHINYERE LILIAN
AMUCHINWA**



APPLICANT

AND

1. IKEDI OHAKIM

**2.E.D EBIWARI (Magistrate 1, Sitting
in Magistrate Court 3 Giwa and 14,
Wuse**



DEFENDANTS

RULING

The Applicant herein approached this Honourable Court vide Motion on Notice seeking the following reliefs:-

1. An Order of certiorari to remove to the High Court of the Federal Capital Territory for purpose of its being quashed the entire Direct Criminal Complaint (Purporting Direct Criminal Complaint), proceedings, and ruling(s) of the District Court (or Magistrate Court) in Suit No. CR/95/2020.
2. An Order quashing or setting aside the entire Direct Criminal Complaint (Purporting Direct Criminal Complaint), proceedings and ruling(s) of the Magistrate Court in Suit No. CR/95/2020.

3. An Order of Prohibition restraining the 2nd Respondent from taking any step(s) in respect of the Direct Criminal Complaint (Purporting Direct Criminal Complaint) Suit No. CR/95/2020.
4. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is sought are brought are filed and an affidavit of 7 paragraphs was equally deposed to by the Applicant herself.

It is the deposition of the Applicant that the Direct Criminal Complaint is same with the Petition to the Police based on which the 1st Respondent was charged to Court for false information.

Applicant avers that on the 15th day of December, 2020, the Assistant Inspector General of Police in charge of Zone 7, Wuse Zone 3, Abuja FCT extended an invitation to her based on the Direct Criminal Complaint and that she went to answer to the invitation and she was given copies of the Order of referral and Direct Criminal Complaint from the Court vide Exhibits ‘C1’, ‘C2’ and ‘C3’.

That it will be in the interest of justice to grant this application.

In line with law and procedure, a written address was filed, wherein a lone issue to wit;

Whether having regards to the grounds upon which this application is brought, this Honourable Court should quash the proceedings in the District Court (The Lower

Court) and any Order made thereto; and prohibit the 2nd Respondent from taking any further or other step(s) in respect of the Suit No. CR/95/2020.

Arguing on the above, learned counsel submit that Order 44(1) & (2), empowers the Court to entertain, hear and determine application for judicial review in the exercise of its supervisory jurisdiction Pursuant to Section 257(2) of the Constitution of the Federal Republic of Nigeria 1999.

Counsel maintained that the District Court or even Magistrate Court cannot assume jurisdiction in a matter which is same in substance with a Criminal Charge which is pending in the High Court of the FCT, Abuja and the charge accordingly exhibited to the District Court as Charge No. **CR/993/2020**.

It is further the argument of learned counsel that the Direct Criminal Complaint is manifestly incompetent as thus:-

1. It is headed in the District Court which is inappropriate.
2. It contains more than one offence contrary to the provision of the Administration of Criminal Justice Act, 2015, Section 894.
3. It is not on oath to grant the issuance of a warrant of arrest.

Court was finally urge to grant this application in the interest of justice as there is no counter affidavit to this application.

Court:-

I have gone through the affidavit evidence of the Applicant cum the exhibit annexed therein and the written address. I shall be brief, but succinctly in addressing the issue thereof.

Writ of certiorari is a writ of common law origin...it is one of the prerogative writs whose function is to ensure that inferior courts or anybody entrusted with the performance of judicial or quasi judicial function keep within the limits of the jurisdiction conferred upon them by the statutes which creates them.. An order of certiorari will therefore lie to the High Court for the purpose of being quashed, any judgment, order, conviction or other proceedings of such inferior courts or other body, civil or criminal made without or in excess of jurisdiction. See ***R VS***

ELECTRICITY COMMISSIONERS (1924) 1 KB 171, LAGOS STATE J.S.C VS KAFFO (2008) ALL FWLR (Pt. 418) 327 at 329, Pages 342 – 343 Paragraph G – G (CA).

Undoubtedly, the proposition that certiorari lies only to quash judicial or quasi – judicial acts remains true till date.

Certiorari lies to the High Court to quash the orders or the proceedings of an inferior court or tribunal which has acted in excess of its jurisdiction.

Although certiorari use to lie at the High Court against only the decisions of inferior courts, same has since extended to other authorities or bodies exercising judicial or quasi judicial powers. See ***AGORUA & ORS VS OBIORA & ORS (2013) LPELR – 22056 (C A).***

It is instructive to note at this stage that certiorari is a discretionary remedy meant to be exercised judicially and judiciously by the judge... It therefore presupposes that same can be withheld once the superior court judge is not satisfied that the nature of the court by the inferior is such that does not require any judicial interaction. See *NEBEDUM VS LABISI (2011) 1 NWLR (Pt. 693) 82*.

Does the trial District Court have the jurisdictional competence to try the case, is the question to ask.

It is not in doubt that Exhibit 'C3' is headed in the District Court, but I must make haste to state here that, the District Court and Magistrate Court are one. It is only a matter of nomenclature. Where the Magistrate is sitting on civil matter, it is called District court whereas where the Magistrate is

presiding over Criminal matter it is called Magistrate Court.

Indeed, where complaint is not on oath, it is subject of Appeal to Appellate Court and not that of judicial review as wrongly argued by the learned counsel for the Applicant.

Counsel must always learn to avoid acts that are akin to forum shopping.

A Judge acting in excess or want of jurisdiction is the one likely to have his order or judgment quashed by a superior court.

Simply put, certiorari has little or nothing to do with procedural compliance.

The trial District Court Judge, was clothed with the jurisdictional competence to act, and did act in that capacity.

It is not the intention of any right thinking judge of a superior court to use the power of judicial review to reduce the power of inferior courts or tribunals.

The proper procedure is to raise objection to the charge on grounds known and settled in our Criminal jurisprudence touching on jurisdiction of the Trial Court and not to approach the High Court for judicial review as the real essence of judicial review is not to tamper with issues of procedure.

The argument of Nweze of counsel is technical in nature and unmeritorious.

Application is clearly one that this Court cannot grant for the reason afore-given. Same fails and is hereby dismissed.

Justice Y. Halilu
Hon. Judge
22nd July, 2021

APPEARANCE

I. O Nweze with W.U Oshekun- for the Applicant.

Respondent not in court and not represented.