

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. 13
CASE NUMBER : MOTION NO: CV/1887/2015
DATE: : FRIDAY 4TH JULY, 2025

BETWEEN:

PRINCE MAXWELL IGBOKWE APPLICANT

AND

- 1. THE PRESIDING JUDGE, UPPER AREA COURT, RESPONDENTS
KUBWA, FCT, ABUJA**
- 2. EKENE OKONKWO**
- 3. SAMUEL NWAEZEIGWE**
- 4. UMENNAJIOFOR I. NNABUGU**
- 5. THE REGISTERED TRUSTEES OF BUILDING
MATERIALS DEALERS ASSOCIATION, DEI – DEI,
FCT, ABUJA.**
- 6. THE CHAIRMAN, BUILDING MATERIALS DEALERS
ASSOCIATION, DEI-DEI, FCT, ABUJA.**
- 7. THE I.N.E.C CHAIRMAN, BUILDING MATERIALS
DEALERS ASSOCIATION, DEI – DEI, FCT, ABUJA.**
- 8. THE BOARD OF TRUSTEES CHAIRMAN, BUILDING
MATERIALS DEALERS ASSOCIATION, DEI – DEI,
FCT, ABUJA.**
- 9. THE CHAIRMAN, D123, BUILDING MATERIALS
DEALERS ASSOCIATION, DEI – DEI, FCT, ABUJA.**

RULING

This Ruling is at the instance of the Applicant who approached this Honourable Court vide Motion on Notice dated and filed 13th February, 2025 praying the Court for the following reliefs;

1. An Order of certiorari to remove for the purpose of being quashed, the entire proceedings, all processes filed by the 2nd – 4th Respondents particularly an Application by way of Motion on Notice dated the 10th day of February, 2025, filed on the same day and heard on the same day by the 1st Respondent.
2. An Order of certiorari quashing and setting aside the illegal, invalid and baseless order of the 1st Respondent dated the 10th of February, 2025.
3. A Declaration by the Honourable Court that the 1st Respondent lacks the requisite power or jurisdiction to hear and determine the action instituted by the 2nd – 4th Respondents through 5th – 9th Respondents.
4. An Order of Perpetual Injunction restraining the 2nd - 9th Respondents from disturbing, preventing, obstructing,

impeding or doing any acts whatsoever that may jeopardize the Applicant's constitutionally guaranteed rights to vote and be voted for under the Constitution of Building Materials Dealers Association, Dei-Dei, F.C.T, Abuja,

5. The Applicant also claims N50,000,000.00 (Fifty Million Naira) damages against the 2nd - 9th Respondents jointly and severally.
6. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this application.

The grounds upon which this application is made are as follows:

1. The Applicant is a Nigerian Businessman, adult and a member of the 5th Respondent for the past 29 years.
2. That being a solid financial member of the 5th Respondent coupled with the fact that the Applicant is a 2(two) time Chairman of the Iron Rod Section of the 5th Respondent, the Applicant signified his intention to run for the office of the Chairman of the 5th Respondent in accordance with the Constitution of the 5th Respondent.
3. That the 2nd – 9th Respondents having been at the Applicant's campaign and the large/huge numbers of the 5th

Respondent in support of the Applicant's aspiration, they became jittery and vowed that under no circumstances will the Applicant be elected as the Chairman of the Association.

4. That the action and the entire proceedings instituted by the 2nd – 4th Respondents before the 1st Respondent – Court, an inferior Court lacking the jurisdiction to hear and determine issues and matters relating to election of any registered association as it is in this case.
5. That it is necessary for this Honourable Court to bring the entire proceedings, all processes filed before the Upper Area Court, Kubwa, F.C.T, Abuja before this Honourable Court as it is clear and apparent on the face of the processes filed and the entire proceedings that there is obvious abuse or misuse of the powers of the 1st Respondent having regard to the nature of the action or suit pending before the Court.
6. That the 2nd – 4th Respondents through their solicitor - George Nwibo, Esq, have filed several motions in different Upper Area Courts in the F.C.T. to restrain the Applicant from contesting in and campaigning for the current election of Building materials Association fixed for the 19th day of February, 2025. One in Upper Area Court in Zuba with

motion no: **MT/9/2025** and another in Upper Area Court in Kubwa, with Motion no: **MT/77/2025**.

7. That the solicitor to the 2nd – 4th Respondents has littered the Courts with consecutive abuse of Court processes by filing the same motion against the same parties and the same reliefs in different Courts clearly amounts to an abuse of Court process.
8. That the act of the solicitor to the 2nd – 4th Respondents can only be termed as forum shopping and abuse of the constitutionally guaranteed jurisdiction of the Court of law.
9. That except this application for leave is granted expeditiously, the presiding Judge being the 1st Respondent has granted an order dated the 10th day of February, 2025 to restrain the Applicant from contesting in and campaigning for the current election of Building materials Association fixed for the 19th day of February, 2025.
10. That irreparable damages will be occasioned on the Applicant except this application is granted as the 1st Respondent has already granted the 2nd – 4th Respondents' Motion on Notice restraining the Applicant from contesting in and campaigning for the current election of Building

materials Association fixed for the 19th day of February, 2025 in spite of all the efforts made by the Applicant and all other concerned members of the association.

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

In support of the application is a 16 paragraph affidavit deposed to by Prince Maxwell Igbokwe, the Applicant in this suit. It is the deposition of the Applicant, that by virtue of his membership of the 5th Respondent's Association which is duly registered and governed by a Constitution, he is fully aware and conversant with all the facts relating to the election of officers of the 5th Respondent association.

That when the 5th Respondent announced the date for the election of new officers of the association fixed for 19th February, 2025, most of the members of the association persuaded him to contest as the Chairman of the Association, pursuant to which he informed the 6th – 9th Respondents of his aspiration to contest as the Chairman of the Association.

That having been so informed of his aspiration, the 6th – 9th Respondents have vowed to do all within their powers to prevent

him from campaigning and contesting for the Chairmanship position of the Association.

That there is no reason whatsoever under the Constitution stopping him from campaigning or contesting for the office of the Chairman of the 5th Respondent Association having been so cleared by the INEC (Independent National Electoral Commission) of the Association to so contest. A copy of the Constitution of the Association was herein attached and marked as Exhibit "A".

That he did not take the threat of the 6th – 9th Respondents stopping him from campaigning and contesting the office of the Chairman of the 2nd Respondent until on Monday, the 10th day of February, 2025 when he was served with a Motion on Notice filed on the same date together with an order of the Upper Area Court, Kubwa, F.C.T. Abuja dated the same 10th February, 2025 praying for an Order of the Court preventing or stopping him from campaigning or contesting for the office of the Chairman of the 5th Respondent association, which election is fixed for the 19th of February, 2025. A copy of the Motion on Notice and Order of the Honourable Court dated the 10th day of February, 2025 was herein attached and marked as Exhibits "B" and "B1", respectively.

That upon being served with the motion on notice and order of the Upper Area Court Kubwa, he immediately contacted his solicitors - the law firm of Taiwo Abe & Company to take all legal measures to prevent the obvious and apparent abuse or misuse of judicial power by the Upper Area Court Judge, Kubwa, F.C.T. Abuja, who lacks the requisite jurisdiction to entertain the Motion on Notice filed by the 2nd – 4th Respondents.

That the 2nd – 4th Respondents through their solicitor - George Nwibo, Esq., have filed several motions in different Upper Area Courts in the F.C.T. to restrain the Applicant from contesting in and campaigning for the current election of Building materials Association fixed for the 19th day of February, 2025. One in Upper Area Court in Zuba with Motion No: MT/9/2025 and another in Upper Area Court in Kubwa, with Motion No: MT/77/2025.

That the solicitor to the 2nd – 4th Respondents has littered the Courts with consecutive abuse of Court processes by filing the same motion against the same parties containing the same reliefs in different Courts, which clearly amounts to an abuse of Court process.

That the act of the solicitor to the 2nd – 4th Respondents can only be termed as forum shopping and abuse of the constitutionally guaranteed jurisdiction of the Court of law.

That pursuant to the Motion on Notice filed by the 2nd – 4th Respondents dated the 10th day of February, 2025, his solicitors - the law firm of Taiwo Abe & Company filed an Ex-parte motion dated the 11th of February, 2025 for leave to issue an order of certiorari by way of judicial review against the Respondents.

That pursuant to the Motion Ex-parte filed by his solicitors, the Honourable Court heard and granted the Motion Ex-parte on the 12th of February, 2025. A certified true copy of the order of the Honourable Court was herein attached and marked as Exhibit "C".

That except this application is granted, the 2nd – 9th Respondents would succeed in denying me the constitutionally guaranteed right to vote and be voted for under our Constitution using the instrumentality of the Court where they have gone to the 1st Respondent for forum shopping.

That the Upper Area Court Kubwa, F.C.T, Abuja is an inferior court under the law and it is also apparent that the proceedings are subject to the supervisory jurisdiction of this Honourable Court as the abuse and misuse of the power of the lower court is

apparent on all the processes before the Judge of the Upper Area Court, Kubwa, F.C.T. Abuja.

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

In line with law and procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether the Applicant has shown sufficient reasons for the grant of this application by the Honourable Court."

It is the submission of learned counsel, that by virtue of the provisions of 6 (1), (2), (3), (5) (d), (6) (a) & (b), 36(1) of the 1999 Constitution of The Federal Republic Of Nigeria (As Amended); Order 44 Rule (1) (A), (2) (A), (B) & (C), 2, 3(1) & (2) Of The High Court Of The Federal Capital Territory, Abuja (Civil Procedure Rules) 2018, this Honourable Court is clothed with the requisite power and jurisdiction to grant the Applicant's prayers.

The cases of ***ONYEKWULUJE VS. BENUE STATE GOVT (2015) 16 NWLR (Pt. 1484) 40;***

KOREA NAT. OIL CORP. VS. O.P.S. (NIG.) LTD. (2018) 2 NWLR (Pt. 1604) 394 were cited.

Learned counsel submits, that a cursory and dispassionate look at the averments as contained in the affidavit in support of this motion will show that indeed the present action of the 2nd – 4th Respondents is an abuse of the process of this Honourable Court in the Supreme Court of ***NICHOLAS CHUKWUJEKU VS. PEOPLES DEMOCRATIC PARTY AND 3 ORS (2014) ALL FWLR (Pt. 728) page 887 at PAGES 903-904 PARAS G-B*** per Honourable Justice Onnoghen (Chief Justice of Nigeria) held as follows:

"The concept of abuse of process involves circumstances and situations of infinite variety though its common feature is the improper use of judicial process by a party in litigation to interfere with the due administration of justice. The abuse may lie both in proper and improper use of the judicial process in litigation, though generally, the term is used in relation to improper use of the judicial process to the annoyance, irritation of the opponent and the effective and efficient administration of justice, such as institution of multiple actions on the same subject against the same opponent on the same issue. To institute an

action during the pendency of another one claiming the same reliefs amounts to an abuse of Court process and it does not matter whether the matter is an appeal or not, as long as the previous action has not been finally disposed of. It is the subsequent action that is in abuse of the process of the Court. Where an abuse of process occurs, the court does not take it lightly as it is not a mere irregularity. It is fundamental vice punishable by dismissal of the offending process".

Learned counsel further contended, that the Applicant has fully complied with the provisions of the rules of this Honourable Court to warrant the grant of this application.

In conclusion, learned counsel urge this Honourable Court to resolve the above issue in favour of the Applicant by granting the Applicant prayers as prayed above.

On their part, 2nd, 3rd and 4th Respondents filed 14 paragraph Counter Affidavit deposed to by Samuel Nwaezeigwe, the 3rd Respondent in this suit.

It is the deposition of 2nd, 3rd and 4th Respondents, that contrary to paragraph 4 of the Applicants affidavit, the 2nd, 3rd and 4th

Respondents did not in any way try to prevent the Applicant from campaigning or contesting for the office of the Chairman of Dei-Dei Building Materials Market, Abuja.

That contrary to the averments of the Applicant in paragraph 6 of his affidavit, the 2nd, 3rd and 4th Respondents did not file any Suit against him. Rather, the said Suit was filed by one George Nwibo Esq. purportedly on the orders of the 2nd, 3rd and 4th Respondents, who never had any interface with the said Lawyer not to talk of briefing him to file a case on their behalf against the Applicant.

That as soon as the 2nd, 3rd and 4th Respondents got wind of the offending Court Order, they took urgent steps to distance themselves from the act. They immediately filed a Motion dated 12th, February, 2025, before the same Court, attaching affidavits showing that they do not know the Lawyer who filed the Matter against the Applicant, neither did they authorize him to do so, and urged the Area Court to quash the Order for being procured by fraud, misrepresentation and without the consent of the 2nd, 3rd and 4th Respondents. The said Motion, filed by the 2nd, 3rd and 4th Respondents seeking to set aside the Order of the Upper Area

Court, Kubwa, with all accompanying affidavits, attached as Exhibit "1".

That the said Motion was served on the Applicant on 13th February, 2025, the same day he filed this Motion, and served the 2nd, 3rd and 4th Respondents on 13th February, 2025.

That by virtue of the conciliatory conduct of the 2nd, 3rd and 4th Respondents, this Suit filed by the Applicant is avoidable, as he could have joined forces with the 2nd, 3rd and 4th Respondents to set aside the offending Order at the Area Court as already initiated by the 2nd, 3rd and 4th Respondents.

That contrary to paragraph 8 of the Applicant's affidavit, the 2nd, 3rd and 4th Respondents did not file any Motion at the Upper Area Court, Zuba, as a cursory look at the processes filed in that Court did not bear the name of any of the 2nd, 3rd and 4th Respondents. Even the one purportedly filed at the Upper Area Court, Kubwa, on behalf of the 2nd, 3rd and 4th Respondents, is what they have vigorously fought to set aside.

That contrary to paragraphs 9 and 10 of the Applicant's affidavit, the 2nd, 3rd and 4th Respondents neither engaged nor authorized any Solicitor to engage in any forum shopping in order to stampede the Applicant with a litany of Suits.

That the 2nd, 3rd and 4th Respondents are not interested in denying the Applicant of his right to vote and be voted for, as they have not rested to ensure that any impediment standing in the way of the Applicant to contest for the Market elections is removed.

That the Applicant's application is devoid of merit, needless, avoidable and only aimed at crying wolf where there is none, particularly as the 2nd, 3rd and 4th Respondents have taken positive steps to set aside the Order of the Upper Area Court, Kubwa, prior to the Applicant instituting the instant Suit.

That it is in the interest of Justice to dismiss the Suit of the Applicant.

COURT:-

I have read in extenso the reliefs sought by Applicant which is supported by affidavit and written address, on the one hand, and the counter affidavits filed by the 2nd, 3rd and 4th Respondents and the 5th, 6th, 7th and 8th Respondents.

It is instructive to note that the 1st and 9th Respondents did not file any counter affidavits in reaction to the claims of the Applicant.

Permit me to observe that on the 9th April, 2025 when the Originating Motion of Applicant came-up for hearing, one Nick Ilonoba, Esq. who appeared for the 5th, 6th, 7th and 8th Respondents informed the Court that their counter affidavit in opposition to the reliefs sought by the Applicant was filed out of time and without leave of Court.

I shall frontally deal with the effect of filing such a counter affidavit out of time and without leave of Court. Order 31 Rule 4 of the Rules of this Court makes such an affidavit useless as the Court is precluded from using it.

See also the case of ***CLEMENT ODUNUKURE VS. DENNIS OFOMATA & 1 OR NSCQR Vol. 44 (2010) Page 379.***

It is settled law that Rules of Courts are meant to be obeyed as failure to obey will lead to irreparable consequence.

See ***ABIA STATE TRANSPORT CORPORATION VS. QUORUM CONSORTIUM LTD. (2002) LPELR 10491 (CA).***

Clearly, the counter affidavit, so called, filed by the 5th – 8th Respondents which was filed out of time and without leave has no leg to rest on – in law.

It is hereby struck-out.

I am now left with the counter affidavit filed by the 2nd, 3rd and 4th Respondents to determine the instant Originating Motion of the Applicant.

From the deposition of the 2nd, 3rd and 4th Respondents, they are not in any way in antagonism with the Applicant and that the said counsel who filed the suit that is being challenged by way of Certiorari did not have their brief and that infact they did not know him not to talk of briefing him to go to Court... this is indeed curious and amazing.

I say so because the said 2nd, 3rd and 4th Respondents have not stated what they did to the said lawyer who went to Court on their behalf and without their approval.

It is similarly their averment, that they did not and could not have prevented the Applicant from contesting the said Election.

2nd, 3rd and 4th Respondents have not contested the instant steps taken by Applicant who prays the Court for the reliefs contained in the application in question.

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 proceedings before the Lower Court does not require any judicial intervention. See ***NEBEDUM VS LABISI (2011) 1 NWLR (Pt. 693) 82.***

Does the Trial Presiding Upper Area Court have the jurisdictional competence to try the case, is the question to ask?

Matters of Interpretation of any written or unwritten law and Fundamental Human Rights pursuant to the FHR Enforcement Rules, 2009 are exclusively to be determined by the High Court of FCT, Federal High Court or State High Court. See Order 1 of FHR Enforcement Rule, 2009 on interpretation and Section 257(1) and (2) of the Constitution of Federal Republic of Nigeria 1999 (as amended).

The jurisdiction of the Upper Area Court is governed by the Area Courts Act, Cap. A9, Laws of the Federation of Nigeria, 2004 (applicable in the FCT). The jurisdiction is generally restricted to:

- Disputes governed by Islamic personal law (where both parties are Muslims and consent);
- Customary law matters;

- Minor civil claims as specifically assigned by law.

See ***UNIVERSITY OF ILORIN VS. OLUWADARE (2006) All FWLR (Pt. 293) 361*** where the Court held that inferior courts (such as the Area Court) have no jurisdiction over civil matters involving:

"Interpretation of documents such as a constitution or rules of association."

There is no statutory provision conferring jurisdiction on the Upper Area Court to interpret association constitutions, enforce contractual obligations, or adjudicate on internal election matters within registered associations.

The proper forum for adjudicating such disputes is the High Court of the Federal Capital Territory pursuant to Section 272(1) of the 1999 Constitution.

The Upper Area Court has no such competence to have made any such Order stopping Applicant from contesting election which is his right as a member of the Building Materials Dealers Association Dei – Dei, FCT – Abuja. See Section 40 of the 1999 Constitution of FRN as amended on right to Peaceful Assembly and Association.

The Respondents have failed to contest their action against the Applicant in view of the fact that their counter affidavit, so called, was struck –out because it was filed out of time and without leave of court. On the part of the 2nd, 3rd and 4th Respondents who filed their counter affidavit within time, they distanced themselves from the suit filed before the said Upper Area Court.

I have no difficulty from what has played out to hold that the Order of Upper Area Court Judge made on the 10th February, 2025 was made without jurisdiction. You cannot put something on nothing and expect it to stand. ***MCFOY VS. U.A.C LTD. (1962) AC 152.***

The proceedings of the said Court were conducted without the requisite jurisdiction. They are hereby quashed.

Similarly the said Order, so called, made without jurisdiction is hereby set aside.

The Order of Perpetual Injunction is **hereby granted.**

Next is relief for damages in the sum of **N50,000,000.00 (Fifty Million Naira)** against the 2nd – 9th Respondents.

Damages in law, be it general, special, punitive or aggravated, etcetera – etcetera is usually granted at the conclusion of trials.

Applicant simpliciter seeks Damages which I infer to mean General Damages...

General Damages need not to be pleaded or proved.

It is usually assessed by the Court taking into account the circumstances of the case.

See the case of ***DANGOTE CEMENT PLC. VS. PETER ASOM AGER & 10R ELC (2024) 7878 (SC) (PAGE 1)***

Clearly, the conduct of the Respondents has unsettled the Applicant mentally and psychologically.

Needless to also say that Applicant has incurred unnecessary expenses in engaging the several of lawyers to represent him in court and who have filed processes.

The actions of Respondents has occasioned a legal wrong against the Applicant, and where such is the case, a judge is obliged to Order that such a legal wrong be assuaged in damages... the maxim ubi jus ibi remedium is applicable.

See ***PARKER VS. PARKER (1954) ALL ER 22***

On the whole, Applicant shall be paid **N10,000,000.00 (Ten Million Naira)** in compensation.

Above is the judgment of this court.

Justice Y.
Halilu
Hon. Judge
4th July, 2025

APPEARANCES

Lawrence O. Gabriel, Esq. – for the Applicant.

Kayode O., Esq. holding the brief of **D.O. Ezeh, Esq.** – for the 2nd, 3rd and 4th Respondents.

Nick I., Esq., I hold the brief of Innocent, Esq.

1st and 9th Respondents not in Court and not represented.

