

**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:M/2029/2025**  
**DATE: : FRIDAY 4<sup>TH</sup> JULY, 2025**

**BETWEEN:**

**PRINCE MAXWELL IGBOKWE ..... APPLICANT**

**AND**

- 1. THE PRESIDING JUDGE, UPPER AREA COURT, ZUBA, FCT, ABUJA**
- 2. THE REGISTERED TRUSTEES OF BUILDING MATERIALS DEALERS ASSOCIATION DEI-DEI, FCT, ABUJA**
- 3. THE CHAIRMAN, BUILDING MATERIALS DEALERS ASSOCIATION DEI-DEI, FCT, ABUJA.**
- 4. THE I.N.E.C CHAIRMAN, BUILDING MATERIALS DEALERS ASSOCIATION DEI-DEI, FCT, ABUJA.**
- 5. THE BOARD OF TRUSTEES CHAIRMAN, BUILDING MATERIALS DEALERS ASSOCIATION DEI-DEI, FCT, ABUJA.**
- 6. THE CHAIRMAN, D123, BUILDING MATERIALS DEALERS ASSOCIATION DEI-DEI, FCT, ABUJA.**
- RESPONDENTS**

# **RULING**

This Ruling is at the instance of the Applicant who approached this Honourable Court vide Motion on Notice dated and filed 13<sup>th</sup> 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 and all processes filed by the 2<sup>nd</sup> Respondent particularly an Application by way of Motion on Notice dated the 14<sup>th</sup> day of January, 2025 and filed on the 7<sup>th</sup> of February, 2025 and fixed for hearing on the 13<sup>th</sup> of February, 2025 pending before the 1<sup>st</sup> Respondent.
2. A Declaration by the Honourable Court that the 1<sup>st</sup> Respondent lacks the requisite power or jurisdiction to hear and determine the action instituted by the 2<sup>nd</sup> Respondent through 3<sup>rd</sup> – 6<sup>th</sup> Respondents.
3. An Order of Perpetual Injunction restraining the 2<sup>nd</sup> – 6<sup>th</sup> 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,

4. The Applicant also claims **N50,000,000.00 (Fifty Million Naira)** damages against the 2<sup>nd</sup> – 6<sup>th</sup> Respondents jointly and severally.
5. 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 2<sup>nd</sup> Respondent for the past 29 years.
2. That being a solid financial member of the 2<sup>nd</sup> Respondent coupled with the fact that the Applicant is a two (2) time Chairman of the Iron Rod Section of the 2<sup>nd</sup> Respondent. The Applicant signified his intention to run for the office of the Chairman of the 2<sup>nd</sup> Respondent in accordance with the Constitution of the 2<sup>nd</sup> Respondent.
3. That the 3<sup>rd</sup> – 6<sup>th</sup> Respondents having been at the Applicant's campaign and the large/huge numbers of the 2<sup>nd</sup> 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 2<sup>nd</sup> Respondent before the 1<sup>st</sup> 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, Zuba, 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 1<sup>st</sup> Respondent having regard to the nature of the action or suit pending before the Court.
6. That except this application for leave is granted the presiding Judge being the 1<sup>st</sup> Respondent has fixed the 13<sup>th</sup> day of February, 2025 to hear and determine the 2<sup>nd</sup> Respondent's Motion on Notice dated the 14<sup>th</sup> day of January, 2025 but filed on the 7<sup>th</sup> February, 2025 to restrain the Applicant from contesting in and campaigning for the

current election of Building materials Association fixed for the 19<sup>th</sup> day of February, 2025.

7. That irreparable damages will be occasioned to the Applicant except this application is granted as the 1<sup>st</sup> Respondent is bent on proceeding with the hearing and determination of the 2<sup>nd</sup> Respondent's Motion on Notice in spite of all the efforts made by the Applicant and all other concerned members of the association.
8. That it will be in the interest of justice to grant this application as prayed.

In support of the application is a 13 paragraph affidavit deposed to by Prince Maxwell Igbokwe, the Applicant in this suit. It is the deposition of the Applicant;

That when the 2<sup>nd</sup> Respondent announced the date for the election of new officers of the association fixed for 19<sup>th</sup> 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 3<sup>rd</sup> – 6<sup>th</sup> Respondents of his aspiration to contest as the Chairman of the Association.

That having been so informed of his aspiration, the 3<sup>rd</sup> – 6<sup>th</sup> 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 2<sup>nd</sup> Respondent Association having been so cleared by the INEC 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 3<sup>rd</sup> – 6<sup>th</sup> Respondents stopping him from campaigning and contesting the office of the Chairman of the 2<sup>nd</sup> Respondent until on Friday, the 7<sup>th</sup> day of February, 2025 when he was served with a motion on notice filed on the same date at the Upper Area Court, Zuba, F.C.T, Abuja praying for an Order of the Court preventing or stopping him from campaigning or contesting for the office of the Chairman of the 2<sup>nd</sup> Respondent association, which election is fixed for the 19<sup>th</sup> of February, 2025 while the motion on notice pending before the Judge of the Upper Area Court, Zuba, F.C.T. Abuja is fixed for hearing on the 13<sup>th</sup> of February, 2025. A copy of the Motion on

Notice dated the 14<sup>th</sup> day of January, 2025 was herein attached and marked as Exhibit "B".

That upon being served with the motion on notice, he quickly 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, Zuba, F.C.T. Abuja, who lacks the requisite jurisdiction to entertain the Motion on Notice filed by the 2<sup>nd</sup> Respondent.

That pursuant to the Motion on Notice filed by the 2<sup>nd</sup> – 6<sup>th</sup> Respondents dated the 14<sup>th</sup> day of January, 2025, his solicitors - the law firm of Taiwo Abe & Company filed an ex-parte motion dated the 10<sup>th</sup> 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, the Honourable Court heard and granted the Motion ex-parte on the 12<sup>th</sup> 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 2<sup>nd</sup> – 6<sup>th</sup> Respondents would succeed in denying him 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 1<sup>st</sup> Respondent for forum shopping.

That the Upper Area Court Zuba, F.C.T, Abuja is an inferior court under the law and it is also apparent that the pending application fixed for hearing on the 13<sup>th</sup> of February, 2025 and 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, Zuba, 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 section 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.

In ***ONYEKWULUJE VS. BENUE STATE GOVT (2015)16 NWLR (Pt. 1484) 40***, where the Supreme Court held that,

*"Certiorari is one of the prerogative writs, the other mandamus, used by the court to restrain the abuse or misuse of power, or to correct errors of law or wrong exercise of discretion by tribunals, public authorities and Government officials. Once a public authority acts judicially or administratively its conduct is subject to control by the courts by means of certiorari or mandamus. [Judicial Service **COMMISSION OF CROSS RIVER STATE V. YOUNG (2013) 11 NWLR (Pt. 1364) 1** referred to.] (P. 90, paras. E-F)."*

Counsel also cited ***KOREA NAT. OIL CORP. VS. O.P.S. (NIG.) LTD. (2018) 2 NWLR (Pt. 1604) 394***, where the Supreme Court set out the basis of judicial review and held as follows:

***"Judicial review is based on the basic principle that powers can only be validly exercised within their true limits. Thus, it is a mechanism for keeping public authorities within due bounds and for upholding the rule of law. In effect, instead of substituting its***

***decision for that of some other body, as happens on appeal, the court on reviewing the decision, is concerned only with the question whether the act or order being challenged should be allowed to stand or not. In other words, the court is concerned with the legality and not the merits of the decision or the acts of the public authority."***

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 2<sup>nd</sup> – 6<sup>th</sup> 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 PART 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 submits, 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, this Honorable Court is urged to resolve the above issue in favour of the Applicant by granting the Applicant's prayers as prayed above.

**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 Paragraphs 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 used 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 state 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.***

The question ***Whether the Upper Area Court, Zuba, has the jurisdiction to entertain a suit seeking to restrain a member of an association from contesting in its internal election.***

The subject matter is one involving civil rights, obligations, and interpretation of Constitution which lie exclusively within the jurisdiction of the FCT High Court under the 1999 Constitution of Nigeria (as amended) and other Courts of coordinate jurisdiction.

Section 272(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

***"Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State 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 is in issue..."***

This provision applies mutatis mutandis to the High Court of the FCT, which is the only court with the jurisdiction to interpret the constitution of an association or to determine disputes involving civil rights and obligations of its members. The Supreme Court, in ***OLORUNTOBA-OJU & ORS. VS. ABDUL-RAHEEM & ORS. (2009) 13 NWLR (Pt. 1157) 83*** held that the High Court has exclusive jurisdiction over disputes involving:

***"The interpretation and enforcement of the constitution of a voluntary association and rights flowing therefrom."***

On the other hand, 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.

Thus, for the reasons advanced, and I see no reason why the applicant's application should not succeed. Moreover, Defendants neglected to counter the application.

It is trite that where evidence given by a party to any proceedings was not challenged or debunked by the other party who had the opportunity to do so, the court is entitled to rely on and accept such evidence as true. See ***ODUTOLA AND PAPERSACK INDUSTRIES NIGERIA LTD. (2006) 18 NWLR (Pt.1012) 470 at 500.***

I have no difficulty agreeing with the Applicant that the 1<sup>st</sup> Respondent does not possess the requisite jurisdiction to entertain the suit before the Court.

The reliefs prayed for by the Applicant ought to be granted as prayed.

Accordingly, they are hereby granted as follows;

1. An Order of Certiorari to Remove for the purpose of being quashed, the entire proceedings and all processes filed by

the 2<sup>nd</sup> Respondent particularly an Application by way of Motion on Notice dated the 14<sup>th</sup> day of January, 2025 and filed on the 7<sup>th</sup> of February, 2025 and fixed for hearing on the 13<sup>th</sup> of February, 2025 pending before the 1<sup>st</sup> Respondent **is hereby granted.**

2. A Declaration by the Honourable Court that the 1<sup>st</sup> Respondent lacks the requisite power or jurisdiction to hear and determine the action instituted by the 2<sup>nd</sup> Respondent through 3<sup>rd</sup> – 6<sup>th</sup> Respondents **is hereby granted.**
3. An Order of Perpetual Injunction restraining the 2<sup>nd</sup> – 6<sup>th</sup> 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, **is granted.**

On the issue of damages, I make no such Order in view of the fact that this Court had awarded damages in the sister case.

Above is the Judgment of this Court.

***Justice Y. Halilu  
Hon. Judge  
4<sup>th</sup> July, 2025***

**APPEARANCES**

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

**Innocent E., Esq.** – for the 8<sup>th</sup> Respondent.

Other Respondents not in Court and not represented.