

**HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT MAITAMA ABUJA**  
**ON THE 23<sup>RD</sup> JANUARY, 2020**  
**BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH**  
**(PRESIDING JUDGE)**

SUIT NO: FCT/HC/CV/1448/10  
**BETWEEN**

1. KING ALFRED DIETE SPIFF 2. ALHAJI ALIYU KILIYA 3. ENGR. ISIBOR B. ABULIMEN 4. REGISTERED TRUSTEE OF THE NIGERIA ASSOCIATION OF AUCTIONEERS	}	APPLICANTS
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**AND**

1. CHIEF SHUAIB AKAN 2. ALHAJI FATAI MOGBONJUBOLA 3. SALISU GARBA 4. ALHAJI LATEEF ABDULRAHMAN 5. CHIEF SAURA A. AJUWON 6. MUSA KURA 7. UBA ABDULLAHI ABUBAKAR	}	RESPONDENTS
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**RULING**

Before the Court is a process referred to as Form 49 which is a Notice to show cause why Order of Committal should not be made against the following:

1. Chief Shuaibu Akan
2. Alhaji Fatai Mogbonjubola
3. Salisu Garba
4. Alhaji Lateef Abdulrahman
5. Chief Suara A. Ajuwon
6. Musa Kura
7. Uba Abdullahi Abubakar

The Notice was filed on the 4<sup>th</sup> of June 2018 to show cause, and that where the respondents fail to Show Cause the Applicants are praying the Court for the following:

1. **AN ORDER** for committal of the RESPONDENTS to prison for failing to comply in the Order of this Honourable Court dated 31<sup>st</sup> December 2011, where it was ordered that the respondent shall not dissolve an elected Executive Council of the Nigerian Association of Auctioneers.
2. **AN ORDER**, directing the IGP to effect arrest of Chief Shuaibu Akan, Alhaji Fatai Mogbojubola, Salisu Garba, Alhaji Lateef Abdulrahman, Chief Suara A. Ajuwon, Musa kura, and Uba Abdullahi Abubakar respectively for the purpose of committing them to prison for disobeying the Court Order;
3. **AND** that Chief Shuaibu Akan, Alhaji Fatai Mogbojubola, Salisu Garba, Alhaji Lateef Abdulrahman, Chief Suara A. Ajuwon, Musa Kura, and Uba Abdullahi Abubakar respectively are required to attend the Honourable Court on the first mentioned day to show cause why an Order for their committal should not be made.

The application is supported by a 13 paragraph affidavit deposed to by Alhaji Kiliya with an attached Exhibit.

The Respondents by their Counsel informed the Court that they did not file any response to this application.

I have considered the Notice to show cause why order of committal should not be made against the Respondents, the supporting affidavit, the written submission of learned applicant's Counsel and Oral submissions of both Counsel and I am of the view that the issue arising for determination is:

*Whether the application sought ought to be granted under the circumstance.*

For the determination of the issue at hand, in an application for committal for contempt on the ground of disobedience of Court Order or Judgment, the primary duty is to show that the person has disobeyed the order of Court and the onus lies on the applicant who is asserting or alleging such disobedience. The standard of proof required to discharge this primary duty is the standard of proof in criminal cases. This is because an application to commit a person for contempt (civil or criminal) is in the nature of a criminal charge and the rules relating to criminal cases are therefore equally applicable to proceedings for committal of a person for contempt. See

**UZOR V. THE HONOURABLE MINISTER OF WORKS HOUSING AND URBAN DEVELOPMENT & ANOR (2013) LPELR-21248(CA) (PP.15-19, PARAS. E-B)**

Where his Lordship Justice Agim J.C.A resonated that;

*“It is obvious from the arguments of both Counsel above that it is necessary to start the determination of this issue with a statement on the burden and standard of proof on parties in a proceeding for committal for contempt of court on ground of disobedience of order of court.*

*In an application for the committal of a person for contempt on the ground of disobedience of court order, the primary duty to show that the person has disobeyed the order of court lies on the applicant who is asserting or alleging such disobedience. The standard of proof required to discharge this primary duty is the standard of proof in criminal cases. This is because an application to commit a person for contempt (civil or criminal) is in the nature of a criminal charge and the rules relating to criminal cases are therefore equally applicable to proceedings for committal of a person for contempt...”*

There are basically two types of contempt - that committed in facie curiae and that committed ex facie curiae. In the case of the second type, a charge and a plea are necessary and the accused is entitled to

fair hearing of the case against him. See **OKONOFUA VINCENT OMOIJAHE V. UWESU UMORU & ORS. (1999) LPELR-2645(SC) (P.10, PARAS. F-G)**

I have gone through the supporting affidavit wherein the applicant averred in paragraph 2 and 7 that he is aware that this court on the 31<sup>st</sup> December 2018 entered Judgement in this suit against the original respondents directing that they did not have the power to dissolve an elected executive and that he is aware that the Honourable Court's order on the said 31<sup>st</sup> December 2011 has not been appealed against.

It is trite that the evidence required to satisfy the court on contempt is that the order made by the court has been disobeyed. The applicant for contempt proceeding will show the existence of such an order and the terms of the order breached. It is from the terms of the order that it can be shown how and in what respect it has been disobeyed. See

**OBATULA & ORS V. WILKEY & ORS 2007 LPELR-4187(CA) (PP.40-41, PARAS E-F)** were it was held that,

*"an applicant for committal proceeding must exhibit the order of court flouted by the respondent, because a judgment sought to be enforced by committal proceedings must contain a positive order, which can be a subject of a breach to warrant the proceedings. Secondly, there must be evidence of service on the respondent of the said order, a notice of consequences of disobedience of order of court (form 48) and notice to show cause why an order of committal should not be made against the person (form 49) to show that the respondent was given the opportunity to obey or retrace his steps in the disobedience of the court order. See NWOSU & ORS V. NZEADIBE (2010) LPELR 4897. Order IX Rule 13 Judgments (Enforcement) Rules Cap 407 Laws of the Federation 1990 make this requirement of service of the form 48 and 49 mandatory. As this court held in OJEME V. MOMODU II (1998) 6 NWLR (pt. 403) 583 at 597, this is "to ensure that a person being deprived of his liberty in respect of an order of judgment made in a civil litigation deliberately intended to flout the order of court. Furthermore,*

*the law and its rules are made to ensure that, that person is given an opportunity to retrace his steps by service on him of Forms 48 and 49. If he remains recalcitrant, then the court will descend on him and commit him to prison."*

I have carefully gleaned the application with accompanying processes and it is clear that the said Judgment of 31<sup>st</sup> February 2018 or 31<sup>st</sup> December 2011 are not attached to the instant application. The above authority of **OBATULA & ORS V. WILKEY & ORS (Supra)** is apt for guidance on this omission.

I have painstakingly gone through the records of this Court and it is observed that the only judgment delivered in this suit was delivered on the 13<sup>th</sup> December 2011 which is obviously contrary to the averments in the paragraphs of the affidavit in support of this application and in the order prayed as reflected on the application.`

A perusal of the case file reveals that this Court did not deliver any Judgment or make any Order on the 31<sup>st</sup> February 2018 or 31<sup>st</sup> December 2011 in respect of this case.

For the consideration of this issue, the court cannot speculate or infer that the Judgment referred to by the applicant is same as the Judgment delivered by this Court on the 13<sup>th</sup> December 2011. These dates could have been overlooked as typo graphical errors but for the fact that these dates were reflected repeatedly in form 49 and the affidavit in support.

Also observed is that the order of the court on 13<sup>th</sup> December 2011 doesn't tally with what was couched as the order of court repeatedly in the cause of this application.

The Order of court on said 13<sup>th</sup> December 2011 appears not to have been fully contemplated nor articulated in this contempt proceedings. I reproduce it hereunder for clarity:

*Suffice to say that the prayer for a restraining order succeeds. Therefore a restraining Order is hereby made restraining the*

*Secretary, Board of Trustees and any member of the Board of Trustees itself from summoning Annual General Meeting of the Executive Council of Nigeria Association of Auctioneers in contravention of the provisions of its Constitution.*

This Court ought to base its decision on hard facts and the law and not on speculation nor guess work. Courts have been enjoined in a plethora of decided cases of the apex Court to refrain from speculation, conjecture or making out case for parties. I refer for support in this respect to See

**IKENTA BEST (NIG) LTD V. A.G RIVERS STATE (2008)LPELR-1476(SC) PG51 PARA D**

**ONUEKWUSI & ORS V. REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011) LPELR-2702 (SC) PG/ 9-10 PARA F-D** Per Muhammad JSC

**ALHAJI HASSAN ALABURA V. ALHAJI SALEH DANLADI MAINA & ORS (2015) LPELR-41653 (CA) PG 11-12 PARA B-C PER GEORGEWILL JCA**

**AND**

**AKINLAGUN & ORS V. OSHOBUJA & ANOR (2006) LPELR-348 (SC) PG17 PARAS A-C** Per Kalgo JSC

Suffice to say that for the reasons highlighted above this Court finds the prayers in this proceeding and the facts supporting same to be vague and incomprehensible in the circumstance.

Therefore this Court cannot properly consider the application much less proceed to granting same. See **A.F FEDERATION V. A.G ABIA STATE & ORS (2001) LPELR-24862 (SC) PG.94 PARAS B-E,**

And

**MR. CHARLES OJO V. FIRST BANK OF NIGERIA (2013)**  
**lpelr-23575(CA) PG 55 PARAS A-B** where the Court of Appeal Per  
Abiru JCA reasoned as follows:

*“One of the eternal qualities that a relief sought from a Court of law must always have are that it must be succinct, precise, certain and comprehensible where a claim is vague, unclear and imprecise, a court of law cannot grant it”*

See also **SENATOR DR C.N NGIGE & ANOR V. INEC & ORS**  
**(2014) LPELR-25413 (CA) PG 90-103**

Suffice to say that the instant application for committal of the alleged contemptors is found to be incompetent and accordingly struck out.

Signed

Honourable Judge

Appearances

Madeh Yakubu Esq for the Applicant

Adewale Yesuf Esq for the Respondent