IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS WEDNESDAY, THE 4TH DAY OF MARCH, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/572/19
MOTION NO: M/5151/2020

BETWEEN:

1. **MR EZE SOLOMON**
2. **WILSON E. IVARA**

.....APPLICANTS

AND

1. **COMMISSIONER OF POLICE**
2. **ABUBAKAR BABA SHANI ESQ**
   (Chief Magistrate, Gwagwalada, Abuja
   (As he then was))

.....DEFENDANTS

RULING

The Applicants filed an ex-parte application seeking leave for Judicial Review. The Reliefs sought for purposes of clarity are as follows:

1. **An Order for leave to remove the First Information Report (FIR) dated 10th September, 2014 (but signed 9th September, 2014) with Mrs. Julkat Dakin as nominal complainant and First Information Report dated 10th September, 2014 (but signed 9th September, 2014) with Mrs. Grace K. Kolo as nominal complainant, the Charge framed on 16th September, 2019 and proceeding of the Federal Capital Territory, Magistrate Court, Gwagwalada presided by Abubakar Baba Shani Esq. in CR/35/14 and**

CR/36/14 consolidated and referred to as CR/35/16 between COMMISSION OF POLICE VS EZE SOLOMON & ANOR for the purpose of Judicial Review, quashing same or prohibiting the proceedings.

2. **An Order for leave extending time within which an application for judicial review may be brought as per some of the grounds of this application.**

3. **An Order of Interim Prohibition of further proceedings in the said criminal case until final determination of this case OR for such Order or further Orders as the Honourable Court may deem fit to make for the protection and preservation of the Applicant's fundamental rights to presumption of innocence and fair trial.**

The grounds of the application are as contained in the motion paper. There is a 31 paragraphs affidavit with 17 annexures marked as Exhibits A-Q. A written address was filed in compliance with the Rules of Court. One issue was raised as arising for determination and submissions were made to the effect that the Applicants have made out a favourable case allowing the court to grant leave. The address forms part of the records of court.

I have carefully considered the processes filed and the submissions of learned counsel and the narrow issue is simply whether a case has been made out by Applicants to allow the court grant the application.

Now it is not in contention that the remedy of judicial review as sought by Applicants without any iota of doubt is a very ancient remedy. It is the process available to the High Court in the exercise of its supervisory control over an inferior tribunal or court to ensure that it does not exceed its jurisdiction or commit irregularities which will make its decision bad. By the process, the High Court brings up for examination the acts of the inferior court, tribunal or body and if there is due cause disclosed, such proceedings will be quashed.

By **Order 44 Rule 3 (1) of the Rules of Court**, no application for judicial review shall be made unless the leave of court has been obtained and by **Order 44 Rule 3 (4) of the Rules,** the court shall not grant leave unless the applicant has sufficient interest in the matter in which the application relates.

What this provision postulates is for the Applicants to denote clearly and sufficiently their interest in the matter to which the application relates. The court is clearly at this point not determining the merit of the application but this interest and the matter which the application relates to must be clearly streamlined. These critical points cannot be a matter of guess work or speculations.

An important element that must also not be lost sight of is that under **Order 44 Rule 4**, an application for judicial review shall be brought within **three (3) months** of the date of the occurrence of the subject of the application. This Rule again emphasises occurrence of the **"subject"** of the application to emphasise the importance of clarity with respect to the complaint subject of the judicial review. The Rule also uses the word **"shall"** in donating the time for bringing the application for judicial review to underscore the imperative of taking immediate steps to bring up for examination at the High Court the act(s) of the inferior court complained of so that if due case is disclosed, such proceedings will be quashed.

I have at some length stated some of the applicable principles. Let's situate same within the context of the case of applicants.

Now by Relief (1) which I have reproduced already, leave would appear to be sought to remove two (2) information reports or FIRs both dated 10th September, 2014; a charge framed on 16th September, 2019 and the proceedings of Abubakar Baba Shani, Esq., in consolidated suit No. CR/35/16.

I have carefully reflected on this relief and it is difficult to discern what this relief really entail or what is its intended objective. There is no real clarity with respect to what act or acts of the lower tribunal that is in issue here. Is it the specific FIRs filed over six (6) years ago or the charge framed on 16th September, 2019? If the proceedings of Abubakar Baba Shani in the consolidated action in CR/35/16 is the problem, then by Exhibit Q the record of proceedings clearly spans a period of six (6) years now. Indeed by Exhibit Q, the case in the consolidated suit CR/35/16 commenced on 9th September, 2014.

Learned counsel to the Applicants may have referred me to certain pages of the Record of proceeding Exhibit Q, but the relief sought clearly relates to the entirety

of the proceedings. If that is the position, then clearly the review is brought outside the time line of three (3) months as allowed by the Rules of Court.

Learned counsel has also made heavy weather of the grounds of the application but the grounds do not define the reliefs sought. The grounds only provides clarity and perhaps defines the factual basis to sustain the reliefs sought. The grounds in this case do not approximate or tantamount to the reliefs sought. There is here in Relief (1) a complete absence of clarity with respect to what is been sought to be removed to be quashed. There is here no Judgment, Order, conviction or a particular proceeding clearly streamlined and the interest of Applicants on such defined proceeding(s).

Perhaps realising that Relief (1) was not brought within the prescribed time line, Relief (2) then seeks for an order extending time within which an application for judicial review may be brought **"as per some of the grounds of this application."** This relief is again not clear. The relief did not indicate what aspect of the relief or case that time is required to be extended. Now even if time can be extended with respect to the grounds and that contention is even of doubtful validity, no ground was streamlined in the application for which time is to be extended.

Here again, the failure to precisely streamline what aspects of the relief that time is required to be extended has served to fatally undermine Relief (2) and indeed the entire application. There is no duty on court to begin a speculative exercise to determine which relief was brought in time and which was not brought in time.

On the whole, the haphazard manner in which the application was framed with complete absence of clarity with respect to matters to which the application relates and no less important is the failure to bring the application within three (3) months of the date of occurrence of the subject of the application has served to undermine the application. The attempt to seek extension of time was equally not properly delineated or made out. The bottom line is that when a relief is sought in court, it must not be a matter of speculation or doubt as to what it entails as in this case. A court of law qua justice cannot be expected to make an order which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the plaintiff intended to ask for. The guiding principle or rule is that a court must

not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd. V. Cooperative Development Bank Ltd. (2003) 35 SCM 39 at 105.**

As much as the court has sought to be persuaded, it has not been persuaded on the very unclear materials supplied by Applicants that the court can grant what was not asked for in clear terms and sufficiently established.

On the whole the application must fail and it is accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. P.D. Pius, Esq., for the Applicants.