

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE NYANYA JUDICIAL DIVISION  
HOLDEN AT COURT 8 NYANYA ABUJA ON THE 2<sup>ND</sup> DAY OF MAY 2020

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO: FCT/HC/CV/551/15

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

MR. GODDY AKHIREBHU.....CLAIMANT

AND

1. MR. ANDREW MORDI (ANDY) }  
2. MR. DANLAMI TOMA } .....DEFENDANTS

RULING

The Claimant/Applicant's Motion on Notice No. M/247/19 dated 23/05/19 is for:

1. An Order of this Court against the Esu of Bwari (Yaro Ibrahim), Danjuma Thomas, Josephat Ozor and Danlami Toma to show cause why an Order of Committal should not

be made against them pursuant to Section 347 of the Administration of Criminal Justice Act.

2. An Order mandating the DPO of Bwari Divisional Police Headquarters to release the names and Investigation Report of those breaching the peace ordered to be maintained by this Court.

Learned Counsel rely on the grounds for the application, the Affidavit of the Claimant filed in support and Exhibits attached.

In reaction, the Defendants/Respondents filed a Notice of Preliminary Objection against the Motion.

It prays the Court to strike out the Claimant's Notice of Motion for committal as incompetent and an abuse of Court process on the ground that:

1. The application is predicated on facts which are extraneous to this Suit.

2. That the application is for committal against the Defendants on record and some other persons who are not parties in this action.
3. That the purported contempt of Court was not committed on the face of the Court hence needs to be established by evidence.
4. That the procedure adopted by the Claimant is absolutely strange and can only amount to contempt of Court.

Learned Counsel also rely on the Affidavit filed in support of the Motion.

He adopted his Written Address and urged the Court to strike out the Claimant's application for being an abuse of Court process.

Learned Counsel to the Defendant also filed a separate Counter Affidavit in opposition to the Claimants Motion for Committal.

He also rely on same and adopted the Written Address.

I have also read the Claimant's reply on point of law to the Defendants' Notice of Preliminary Objection and Counter Affidavit.

The Order which the parties sought to be committed breached as can be garnered from the Affidavit of the Claimant is the Order made on 14/06/16.

I shall reproduced the said Order or ruling.

*“Leave is hereby granted to the Plaintiff/Applicant to serve the 2<sup>nd</sup> Defendant through substituted means by effecting service of the Court processes on Toma Danlami Etsu of Bwari at Etsu Palace Bwari Abuja FCT or by pasting the same at a conspicuous part of the property behind FCDA Quarters Extension Opposite Federal Government Girls College, Bwari Area Council Abuja FCT.”*

The Etsu of Bwari (Yaro Ibrahim) Josephat Ozor and Danjuma Thomas who are sought to be committed are not parties to this action.

The bailiff in compliance with the order of Court served the 2<sup>nd</sup> Defendant in this case.

The 2<sup>nd</sup> defendant has also entered his defence in this Suit and has accordingly been cross-examined by the Claimant.

The Claimant/Applicant has therefore not shown how the parties sought to be committed breached the Order reproduced above.

The DPO of Bwari is also not a party in this case.

This Court cannot make Orders against parties that are not before it.

The facts raised in the Affidavit are strange or extraneous matters.

The Claimant never made complaints or drew the attention of the Court to such issues warranting the Court to make an Order restraining the said persons.

This application is brought pursuant to Order 113, 347 and 309 of the Administration of Criminal Justice Act and Section 206 of the Evidence Act.

Section 113 of the Administration of Criminal Justice Act states:

**“A Court may issue a Summons or warrant as provided in this Act to compel the appearance before it of a suspect accused of having committed an offence in any place, whether within or outside Nigeria, triable in a State or in the Federal Capital Territory.**

**Section 347 of the Administration of Criminal Justice Act states:**

***“347(1) Where it appears to a Court that a person has committed perjury in any proceeding before it, the Court subject to the provisions of sub-section 2 of this Section and in addition, in the case of a Magistrate, to subsection 3 of this Section may***

- a. *Commit him for trial on information of perjury and bind any person by recognizance to give evidence at his trial or*
- b. *Try him summarily for contempt of Court*  
*and*  
*where he is found guilty commit him to*  
*prison*  
*etc.”*

Section 369 of the ACJA states:

*“In a summary trial, the court may whether the complaint is dismissed or not by order bind over either the Complainant or Defendant or both, with or without sureties to be of good behaviour...etc”*

It is clear from the above that the provisions of the Administration of Criminal Justice Act under which the Motion is brought is inapplicable.

The Suit the subject matter of this trial is a civil matter.

The order alleged to have been breached was an order for substituted service directed at the bailiff. The Order was carried out.

The Claimant further relied on Section 206 of the Evidence Act.

It states:

*“Any witness summoned to give oral evidence in any proceedings shall before giving such evidence be cautioned by the Court or the Registrar upon the Court’s direction.”*

The above provision is also inapplicable in the instant case.

Contempt of Court is an imputation of crime arising out of a civil matter. The onus is on the Applicant to prove that there is a



contempt of Court and that the Respondent is the one who actually committed the said contempt deliberately and with guilty mind.

To establish therefore that there is contempt of Court, the ingredients to be proved are cumulative and failure to prove one of them is fatal to the success of the case as the offence will be held not to have been proved.

These ingredients are:

1. There is a subsisting and a valid order of Court prohibiting the alleged contemnor from doing certain things.
2. The alleged contemnor did that which the said Order of Court prohibits him or her from doing and
3. The act was done by the alleged contemnor deliberately and with guilty mind.

See *ORIJA VS. AKOGUN (2009) 10 NWLR (PT.1150)*

*P.437.*

The Plaintiff/Applicant did not prove any of the above ingredients.

Aside the above, contempt of Court is quasi-criminal in nature and for this and other reasons the question of the issuance and service of Form 48, that is notice of consequence of interference with the administration of justice and Form 49, that is Notice to show cause why Order of attachment should not be made under the Judgment Enforcement Rules made pursuant to Section 72 of the Sheriffs & Civil Process Act Cap 407 LFN 1990 must be resolved before any committal Order is made against a contemnor.

There is no evidence that the Forms 48 and 49 were served on the alleged Contemnors by the Plaintiff/Applicant.

The Plaintiff/Applicant has failed to prove that there is a contempt of Court and that the Respondent actually committed the said contempt.

See *EBONG VS. EFFIONG (2007) 17 NWLR (PT.1062) 92.*

I agree with the Defendant/Respondent's Counsel that this application is not only a gross abuse of the process of Court, it is frivolous and incompetent.

It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE  
(HON. JUDGE)

12/05/20.