

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
(APPEAL DIVISION)
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA
BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING
HON. JUSTICE A.O EBONG - MEMBER
APPEAL NO.:CVA/15/2019

BETWEEN:

1. USMAN SULE YUSUF
2. SOLOMON TANKO
3. USMAN ETSU
4. RHODA DOWOYE
5. MATHIAS HABAKKUK BARAU
6. SIMA BARAU

APPELLANTS

AND

HAUWA DEBI HABAKKUK RESPONDENT

RULING

This is an Appeal challenging the Judgment of the Customary Court of FCT sitting at Chukuku Village of Kuje Area Council of FCT, Abuja delivered on the 15th January, 2019 in **Suit No FCT/JD/CCC/CV/03/2018** in respect of the Estate of One Late Hon. Danjuma Habakkuk Barau who died intestate. The Customary Court handed down its Judgment in favour of the Respondent hence this Appeal.

Upon service of the Notice of Appeal and a Motion on Notice to raise fresh issues by the Appellant, the Respondent filed a Notice of Preliminary Objection challenging the jurisdiction of this Court.

We shall therefore, take the Notice of Preliminary Objection first before delving into the Appellant Motion on Notice.

The grounds upon which the Preliminary Objection is brought is as follows:-

- a. This Court lacks jurisdiction to entertain this Appeal.
- b. The Customary Court of Appeal is the only Court properly constituted to entertain Appeal in respect of decisions on Customary Law/Custom.
- c. Based on grounds 1 and 2 above, this Appeal is incompetent and liable to be dismissed.

Arguing on grounds one above i.e. This Court lacks jurisdiction to entertain this Appeal.

Learned Counsel contended that Order 50 Rule 1 of the Rules of this Honourable Court empower this Honourable Court to entertain Appeal from District and Area Court and that the words used must be given their ordinary and natural grammatical meaning.

***DANGIDA VS MOBIL OIL PRODUCING
UNLIMITED (2002)4 WRN 44.***

It is further the argument of the learned counsel that Section 257(1) of the 1999 Constitution (as amended) provides that this Court is seized of jurisdiction to hear and determine any civil proceeding, but it refers to the original jurisdiction of the court and not its Appellate jurisdiction.

Court was urged to dismiss Appeal.

On grounds two, i.e. The Customary Court of Appeal is the only Court properly constituted to entertain Appeal in respect of decisions on Customary Law/Custom.

Learned counsel argued that the proper Court to entertain this Appeal is the Customary Court of Appeal and not this Honourable Court, the subject matter of the suit, being issues/questions of Customary Law.

Learned counsel cited Section 267 of the 1999 Constitution (as amended) which provides as thus; “ *the Customary Court of Appeal of the Federal Capital*

Territory, Abuja, shall in addition to such other jurisdiction may be conferred upon by an Act of the National Assembly, exercise such Appellate and supervisory jurisdiction in Civil Proceedings involving questions of Customary Law”

Learned Counsel contended that the word “shall” as used in the above is mandatory and cannot be waived and neither does same allow room for discretion. **BAMAIYI VS A.G. FEDERATION (2001)8 NWLR (Pt. 715) 270 SC.**

On grounds 3, i.e. Based on grounds 1 and 2 above, this Appeal is incompetent and liable to be dismissed.

Learned counsel contended that on the strength of grounds 1 and 2, the Appeal filed by the Appellants amount to abuse of court process and therefore incompetent and liable to be dismissed.

***DINGYADI VS INEC (2011) ALL FWLR (Pt. 581) 1426
at 1455.***

Upon being served the said Preliminary Objection, a reply on points of law was filed by Appellant wherein Appellant argued that Order 50 of the Rules of this Court made provisions with respect to Appeals from District Courts and Area Courts and did not make provisions with respect to Appeals from Customary Court, is simply a lacuna, and that the facts that the matter was instituted at the Customary Court does not make it a Customary Matter.

Learned counsel contended further that, it is the subject matter or ground of the Appeal that determines where the Appeal should go to. Counsel contended, that ground one of the Appeal before this Court alleges that the Customary Court below distributed landed properties to some of the parties and that the Customary Court does not have jurisdiction over ownership of landed property in FCT.

***ENGR. YAKUBU IBRAHIM VS SIMON OBAJA
(2008)8 WRN Page 75 Ratio 5 at Page 89.***

Learned counsel finally argued that the present Appeal is competent and therefore, Court should dismiss this Notice of Preliminary Objection.

On its part, Appellant filed a Motion on Notice with **Motion No. M/262/2020** praying the Court for the following:-

- a. An Order of this Honourable Court granting leave to the Appellants to raise fresh issues which are their 2nd and 3rd grounds of Appeal and deeming the said fresh issues to be properly added on their Notice of Appeal and frontloaded as part of ground of Appeal therein, all the necessary fees having been paid.
- b. An Order of this Honourable Court granting leave to the Appellants to withdraw their brief of argument dated 25th November, 2019 and filed same date and

to file and serve one subsequently as at when due at their hearing of the appeal.

- c. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is a 7 paragraph affidavit deposed to by Mathias Habakkuk Barau an Appellant in this case.

It is the deposition of Appellant that their 2nd ground of Appeal is fresh issue since it was not canvassed at all before the Court bellow.

That for the 3rd ground of Appeal, the Respondent laid a claim to it and the Court grant her relief.

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

A written address was filed wherein two issues were formulated for determination to wit;

- 1. Whether or not this Honourable Court has the requisite jurisdiction to grant all the reliefs sought.*
- 2. Whether or not the Applicants are entitled to all the relief sought.*

On issue one, whether or not this Honourable Court has the requisite jurisdiction to grant all the reliefs sought.

Learned counsel submit that this Honourable Court has the requisite jurisdiction to grant all the reliefs sought.

On issue two, whether or not the Applicants are entitled to all the relief sought.

Learned counsel submit that the Applicant are most entitled to all the reliefs sought from this Court and that Court are empowered to allow for additional evidence.

SAMPSON DANIEL UKPANG VS COMMISSIONER FOR FINANCE & ECONOMIC DEVT. (2007) ALL FWLR (Pt. 350) Page 246 Ratio 13.

Respondent upon being served, filed a counter affidavit of 5 paragraphs deposed to by the Respondent herself, in opposition to the motion of the Appellant/Applicant.

It is the deposition of the Respondent that the Appellants have neglected and refused to transmit the records of proceedings of the Lower Court between 17th June, 2019.

That the Appellants/Applicants have not served on either her or her solicitor the records of proceedings of the Lower Court and that they are in breach of the Order of conditional stay of execution made by the Lower Court requiring the 1st Appellant to deposit the sum of (Two Hundred and Eighty Thousand Naira) in the registry of the Lower Court.

That the Lower Court has commenced execution of its Judgment vide Exhibit 'A3' and that while trial was on in the Lower Court, the parties seeking to be joined refused to apply to be joined.

The Respondent avers further that, the parties seeking to be joined had already filed a matter in High Court of FCT copy of the writ is annexed as Exhibit ‘A7’.

In line with law, a written address was filed wherein a sole issue to wit;

Whether on the strength of the supporting affidavit, of the Applicant, the Applicant is entitled to the grant of the instant application.

Arguing on the issue, learned counsel submit that the law is trite that a party seeking the indulgence of a Court for extension of time must have cogent and compelling reasons in his supporting affidavit to warrant the discretion of a Court exercise in his favour.

JULIUS BERGER NIGERIA PLC & ANOR VS UGO (2014) LPELR 21352 (CA) at Ratio 2 & 3.

Learned counsel submit that the affidavit of the Appellant does not give cogent reason and therefore same should be dismissed.

It is further the contention of learned counsel that Court should avoid denying a Victorious party of the opportunity of enjoying the fruits of a Judgment.

***DAILY TIMES OF NIG.PL.C.VS KUSAMOTO (2002)
LPELR 10993 (CA) Ratio 2.***

COURT:-Before delving into the main Appeal, we shall consider the Preliminary Objection first since same touches on the jurisdiction of this Honourable Court to entertain this Appeal.

We have gone through the Notice of Preliminary Objection filed by the Respondent/Applicant and the reaction of the Appellants/Respondent,we shall be brief but succinct in addressing the issue of jurisdiction.

It is trite that the inherent jurisdiction of the court is not exercisable when the court lacks jurisdiction. What this means is that the inherent jurisdiction of a court only comes in where it has jurisdiction. Court shall of importance determine its jurisdiction first before being called upon to exercise any inherent jurisdiction. ***IWUJI & ORS VS GOVERNOR OF IMO STATE & ORS (2014) LPELR 22824 (CA)***

In determining whether the court has jurisdiction or not, what must be first considered are:-

- a. The Plaintiff's claim as contained in the writ of summons and statement of claim, where the action is commence by a writ of summons or the affidavit in support of originating process and the relief sought where the action is commenced by an originating summons.
- b. The statute creating the court. This is because courts are a creature of statute and it is the statute that

creates a particular court that also confers its jurisdiction. Jurisdiction in this instance can only be extended by the legislature and not by the court. ***PAM & ORS VS ABU & ORS (2013) LPELR 21486 (CA).***

We shall beam our judicial searchlight on the writ of summons to ascertain whether the court has jurisdiction or not.

We shall for the sake of clarity reproduce the reliefs sought in the complaints before the Lower Court which is a subject of Appeal to this Honourable Court as contained in Page 4 of the record of proceeding.

The following are the reliefs sought:-

1. An Order compelling the Respondents to exercise the custom and tradition upon them as relation to the deceased.

2. An Order stopping the Respondent “**UsmanSule Yusuf**” from inheriting the deceased person since he is a Muslim.
3. An Order compelling the Respondent to pay the Plaintiff all her debt including tenancy.
4. An Order compelling the Respondent to produce the money collected as robbing allowances before the court amounting to N1,280,000.00 (One Million, Two Hundred and Eight Thousand)
5. An Order stopping every move and allow the Estate shared before this Court.
6. And for such further Order as this Court may deem fit in the circumstance of this case.

Similarly in Page 3 of the record of proceedings the claim of the Respondent before the Lower Court is as follows:-

1. The Plaintiff a Christian and Gbari Tribe from Kilankwa II Kwali Area Council, Abuja and the

Representative of the Estate of the deceased person from PasaliKwali Area Council Abuja.

2. The Plaintiff is married to the Late Habakkuk DanjumaBarau under Gbari (Christian) Custom and Tradition and exercise such Tradition and Customs in all dealings.
3. The deceased person died on 7th November, 2013 Thursday and started serious sickness from 5th January, 2011.
4. The Plaintiff is within the jurisdiction of this Honourable Court.
5. The marriage before the death of the deceased was blessed with one daughter.

(a) **Shegnimi Faith Habakkuk** (9 years old)

6. The deceased died of colo-rectal-cancer and Abdonimal Surgery for fistulas in St. Ann's Hospital

(Carina with belief, hope and love). Gwagwalada FCT Abuja.

7. The Representative of the late deceased estate failed to observe the custom and tradition of Gbagi from the time of sickness to the time of death and even after death of the deceased person.

As stated in the preceding part of this Ruling, it is trite that when the issue of jurisdiction is raised, the court must carefully examine the writ of summons and the statement of claim to see whether it has the requisite jurisdiction to entertain and to determine the matter.

Jurisdiction can be raised as ground to challenge the competence of an action from the point of the subject matter or parties. i.e subject matter jurisdiction or parties jurisdiction.

From the gamut of claims before the Lower Court as reproduced above, the Kernel of the preliminary objection is subject matter jurisdiction.

It is worthy to note that Section 267 of the 1999 Constitution (as amended) provides that the Customary Court of Appeal of the Federal Capital Territory, Abuja, shall in addition to such other jurisdiction may be conferred upon by an Act of the National Assembly, exercise such Appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law.

Indeed, it is a well established principle or cannon of interpretation of statutes that where the provisions of a statute are clear and free from ambiguity, the position in law is that those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly.

AWOLOWO VS SHAGARI & ORS (1974) NSCC 87.

Similarly, Order 50 Rule 1 of the Rules of this Honourable Court provides for Appeals from District and Area Court. The term “Lower Court” in Order 50 Rule 1 of the Rules of this Court is interpreted in the interpretation Section of Order 50 Rules 31 of the Rules of this Court to mean “District Court” and “Area Court”.

Indeed taking a cursory look at the Appeal, the Appellants are seeking to overturn the decision of the FCT Customary Court sitting at Chikuku, Kuje, Abuja in respect of the division of the Estate of the Late Husband of the Applicant, according to Customary Law of Gbagi people and to also determine the Customary rites to be performed by the Appellants/Respondents in favour of the said Applicant: ***HAUWA DEBI HABAKKUK BARAU*** and more.

Order 27 Rule 2 (1) CCCPR provides.

“Every Appeal shall be brought by Notice of Appeal which shall be lodged at the Lower Court or the Customary Court of Appeal.”

Indeed, the operative word ‘**shall**’ has severally been held to mean mandatory and or a command.

See ***NWANKWO & ORS VS YARDU’A & ORS (2011) LPELR – 19739 CA.***

Thus, Appellants’ in the present appeal ought to have filed the instant Appeal at the Customary Court of Appeal and not High Court. Having failed to do the needful, this Court cannot help but decline jurisdiction to entertain same.

For above reason, Appeal **No CV/A/15/2019** is liable to be struck – out. Same is hereby struck – out.

Hon. Justice Y. Halilu
Presiding Judge
17th December, 2020

Hon. Justice A.O Ebong
Hon. Judge
17th December, 2020

APPEARANCES

SIKIRU ORIPELAYE with OPEYEMI K. SADIQUE
– for the Appellant/Applicant

Respondent not in court and not represented.