

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN**  
**THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON TUESDAY 26<sup>TH</sup> DAY OF JANUARY, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**  
**MOTION NO: M/12316/2021**

**BETWEEN**

**BARR. JOHN AWA KALU.....APPLICANT/PETITIONER**

**AND**

- |   |   |                        |
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| <p><b>1. HIS WORSHIP, HON. MUINAT FOLASHEDE OYEKAN</b><br/>(The presiding Judge, Chief District/Magistrate Court, Kubwa, Abuja).</p> <p><b>2. MARGARET ENEBI</b> (By Her Attorney Ugochukwu Epuchie<br/>Trading Under the Name and Style Ugochukwu<br/>Epuchie &amp; Co).</p> | } | <b>.....Respondent</b> |
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**RULING**

By the applicant's amended motion ex parte No M/12316/2020 dated 23<sup>rd</sup> day of November, 2020 and filed on 25<sup>th</sup> of November, 2020 prays the court for leave to apply for the following order(s):

- (a) A declaration that the recovery of premises Act Cap 544, LFN 2004 applicable to FCT Abuja is the only extent and substantive law that regulates the recovery of premises between land lords and tenants in the FCT Abuja.
- (b) A declaration that the 1<sup>st</sup> Respondent lacks the jurisdiction to entertain suit No CV/1379/2020 for non compliance with

Section 7 and S. & (1) (d) of the Recovery of Premises Act (supra).

- (c) A declaration that the rental value of the subject matter in suit No CV/1379/2020 is in excess of the jurisdiction of the 1<sup>st</sup> respondent.
- (d) An Order removing suit No CV/1379/2020 from Chief Magistrate Court sitting in Kubwa, Abuja to the High Court for the purpose of being quashed.
- (e) An order prohibiting or restraining the 1<sup>st</sup> respondent from proceeding any further in the case in excess of her jurisdiction prematurely.
- (f) An Interim order restraining the 1<sup>st</sup> Respondent from proceeding further pending the determination of this suit.
- (g) And for such further order(s) as this court may deem fit to make in the circumstances.

Attached to the exparte application is the statement dated the 23<sup>rd</sup> November, 2020 stating name and description of the applicant, the relief sought and grounds on which they are brought. Also attached to same is a 16 paragraphed affidavit dated the 25<sup>th</sup> November, 2020 and a written address dated 23<sup>rd</sup> November, 2020.

The affidavit relied upon by the applicant was deposed to by himself same contained the following facts:

That the applicant is a yearly tenant of the 2<sup>nd</sup> Respondent with a rental value of N1, 000.00 (One Million Naira only) and that at all time material to the suit before the 1<sup>st</sup> Respondent, non of the statutory Notices including Notice to quit and 7 days notice of owners Intention to apply to recover possession was issued and served on the applicant. the applicant was served with a civil summon by the 2<sup>nd</sup> Respondent on the 10<sup>th</sup> November, 2020 a copy herein attached to this application and marked as Exhibit A and A1.

That the rental value of the tenancy is N1,000,000.00 (One Million Naira) and that the 1<sup>st</sup> Respondent can only award. 400.00 and does not have the jurisdiction to try any tenancy matter where the rental value is N1,000,000.00, and where the tenancy has not been formally determined.

That the 1<sup>st</sup> Respondent should be restrained from proceeding with the subject matter of the case which is fixed for hearing on the 27<sup>th</sup> November, 2020.

In his written address the applicant raised a sole issue for determination whether this is an appropriate case for the exercise of the court's discretion infavour of the applicant to seek the reliefs set out on the motion paper and to restrain the 1<sup>st</sup> Respondent in the interim. And he further submitted in his written address the grounds on which the reliefs are sought the verifying affidavit and

the exhibit A and A 1 are cogent and relevant facts or material placed before the court in exercising its discretion judicially and judiciously.

Applicant also submits that by section 6 (2) (a) and (b), of the recovery of premises Act Cap 544 LFN applicable to the FCT Abuja the financial jurisdiction of the 1<sup>st</sup> Respondent is limited to N400.00 the 2<sup>nd</sup> Respondent is claiming an amount more than N1,000,000.00 an amount which is in excess of the jurisdiction of the 1<sup>st</sup> Respondent. Also statutory notices was not served on the applicant as required by the above laws (supra). This failure of non compliance, robs the court the jurisdiction to entertain this case Finally the applicant urged the court to grant his application. Having reproduced the submission of the applicant and his prayer aforesaid and also the affidavit and the exhibit's attached. I completely looked at the prayers one after the other and the law cited aforesaid. At this juncture I would like to treat them wholly in this ruling. This is principally because all the issues raised borders on jurisdiction and non compliance with statutory requirement of the law. Also the case cited by the applicant in his written address does not support his case. This is because the case of **TALA, AND ANORTHER VS. THE VC R.S.U @ T AND ANOR (1997) 11 NWLR (PT 329) 373-379 RATIO 2**. The applicant has to place relevant material before the

court to enable the court exercise its discretion both judicially and judiciously.

In my view the relevant material here is the record of proceeding of the lower court. The *exparte* application before this court is incomplete as the record of proceeding from the lower court is absent. The record of proceeding is sacrosanct and proof of what transpired during the hearing of the matter adjudicated upon by the court. See **EKPEMUPOLO VS. EDEMODO (2009) 8 NWLR (PT. 1142) 166**. See also **GROUP CAPTAIN J. JUDIGAL VS. THE NIGERIA AIR FORCE (RATIO DECIDENDI) 2018 LPELR 46856 (CA)**. It is necessary to state here that an application for leave to apply for judicial review by way of certiorari, the condition for the interference with the proceedings of the lower court must meet the condition laid down for interference in a proceeding for judicial review. These conditions are laid down in the locus classicus case of **COUNCIL OF CIVIL SERVICE UNION VS. MINISTER FOR THE CIVIL SERVICE (1985) AC 374 LORD DIPLOCK**. Summarized the grounds for reversing a decision of an inferior tribunal by way of judicial review to include either or all the following grounds, illegally, irrationality, (unreasonableness) procedural impropriety and legitimate expectation.

In the Nigeria case of **ITAMY EFFING (2013) LPECR 20417 CA THE CA PER OTISI JCA (PP 34-35 PARAGRAPH D.E)** held that:

Certiorari is a prerogative order available to the Hearing of a case in the exercise of its supervisory control over an inferior court, judicial tribunal or body entrusted with the performance of a judicial or quasi judicial function to ensure that it does not exceed its jurisdiction or commit irregularities, making its decision bad on the face of it. An Order of certiorari with thus issue to quash the decision of an interior court where it is established that (a) the inferior court has acted in excess of its jurisdiction. (B) There is a breach of the rules of natural justice.

(c) There is an error of law on the face of the Plaint filed in the inferior court containing the claim or charge. See **THE STATE VS. NWAOBOSHI (2003) 8 MJSC 170, 11 NWLR (PT 831) 305** the **SC PER UWAFOR JSC. SEE R VS. DISTRICT OFFICER KUTIA** people exparte fill **ATEM (1961). ALL NLR 51 AT 56 PER ADEOLA CJF** “The writ is issued in order that the issuing court may bring the proceeding of the inferior tribunal before it for inspection and if there is due cause disclosed to question them.

See also **ONUZUR LIKE VS. SCD ANAMBRA STATE (1992) 3 NWLR (PT 232) 791**. The law is trite that at the stage of the proceeding i.e. interlocutory application the court should not attempt to go into the merit of the matter in controversy, else it will be tempted to determine the case at that stage and leave nothing for the just and

proper determination of the suit after the hearing. See **REGISTERED TRUSTEE OF PCN VS. REGISTERED TRUSTEES OF ANSARRUDEEN SOCIETY OF NIG (2000) 5 NWLR (PT 657) PG. 368** and **JOHN HOLT NIG LTD VS. HOLTS AFRICAN WORKERS UNION OF NIG and CAMEROON (1963) LANR PG 379 2 SCNLR 383 SC.**

From the above judicial authorities the applicants have not complied with requirements for such an application to be granted. Going by the above condition, I have not seen where the Magistrate acted in error that requires this application. This can only be discovered where there is record of proceedings. Essentially for non compliance with this issue, makes me not to grant the application. Consequently this application is hereby refused and same is struck out accordingly

Signed  
Hon. Judge  
26/1/2021