

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUJE
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
DATE:- 28TH SEPTEMBER,2021**

SUIT NO: FCT/HC/GWD/CV/71/21

BETWEEN:

ABDULRAHMAN ABU HAMISU-----

APPLICANT

AND

**1. HON. SANI MUHAMMAD UMAR
(JUDGE, UPPER AREA COURT OF
FEDERAL CAPITAL TERRITORY GWAGWALADA)
2. UPPER AREA COURT OF
FEDERAL CAPITAL TERRITORY ABUJA)**

RESPONDENTS

RULING

By a motion exparte No. M/186/2021 dated the 8th July,2021 and filed on the same day. Applicant is praying the Court for a judicial review with the following reliefs:-

- 1) An order for leave to apply for an order of prohibition restraining the Respondent from continuing with the proceedings upon which judgment debtor summons was issued to the applicant to show cause why he should not be committed to prison.
- 2) And for such further order(s) as this honorable Court may deem fit to make in the circumstance.

Attached to the application is a verifying affidavit of 7 paragraph deposed to by one Abdulrahman Askira a legal practitioner in the law

firm of the Counsel to the Applicant wherein he averred to the following facts.

That the 1st and 2nd Respondents has issued a judgment debtor summon on the applicant dated 22nd June, 2021 and served on the applicant on the 23rd June,2021 asking the applicant to show cause why he should not be committed to prison for not carrying out the Judgment delivered by the Respondent on the 12th January,2021 in suit no CV/07/2020 between Hajiya Hauwa Muhammed and Abdulrahaman Hamisu that the applicant has filed notice of appeal against the judgment with Appeal No. SCA/FCT/CV/3/2021 before the Sharia Court of Appeal Abuja that the Applicant also filed a motion on notice for stay of execution of the said Judgment before the SCA Abuja. The appeal has been entered and a hearing notice has been served on the applicant in respect of the appeal that the Respondent lacks jurisdiction to commit or continued any proceedings in respect of the suit in question because the appeal has been entered.

That the respondent ought to be prohibited by way of judicial review under the supervising role of this Court from proceedings with the judgment debtor summon against the applicant.

That the committal proceedings is a criminal proceedings which the respondent lacks jurisdiction to try.

Applicant annexed 5 exhibits marked A-E to this application and a written address wherein Counsel to the applicant raised a sole issue for determination. In his argument before the Court counsel submits that by order 44 A-Z Of the High Court Civil Procedure Rules 2018 on whose strength the application is made, prohibition is a form of judicial review. That the facts deposed to in the affidavit of this application are sufficient, cogent to sustain a grant for leave to apply for an order of prohibition.

Counsel submit that the factors the Court needs to take into consideration where an application for leave to apply for juridical review are spelt out in ***DANMUSA VS INUWA (2007)17 NWLR***

(PT1063)391 CA Pg 411-412, FAWAHIMI VS AKILU (1987) NWLR (PT67) 797 page 46-48 paragraph F-B Counsel further submits that it is not the duty of the Court at this stage to determine the substantive application for an order of prohibition see **WEMABOD ESTATE VS JOY LAND (2001) 18 NWLR (PT744) 22 CA**. Accordingly Counsel urged the Court to grant this application for judicial review under which same is brought pursuant to order 44 1 and 2 and 3 High Court Civil Procedure Rule 2018 of the FCT.

At this stage of considering the exparte application for leave to apply all that the trial Court need to consider in the application, includes the statement setting out the name and description of the Applicant, the reliefs sought and the ground on which the reliefs are sought and the affidavit evidence filed to verify the fact relied on by the Applicant.

The application if granted or refused mainly based on the process filed with the application. And all the Court is expected to do only is to consider whether the applicant is sufficiently interested in the matter to which the application relates and nothing more See **DANMUSA VS INUWA (2007) (supra)**

Order 44 rule 3 (5) of the High Court of the FCT Civil Procedure Rule 2018 states:-

“Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order conviction or proceedings which is subject to appeal and a time is limited for the bringing of the appeal the Court may adjourn the application for leave until the appeal is determined or the time for appealing has elapsed.”

In the present case the Applicant has filed notice of appeal at the Sharia Court of appeal against the judgment delivered by the Respondent see paragraph 4 (F) of Applicant verifying affidavit and exhibit c the said

appeal has been entered and hearing notice has been served on the applicant. See paragraph 4 of Applicant affidavit and exhibit.

In ***ORUPABO and ORS VS OPUAMBE and ORS (2014) LPELR -22673 CA*** the Court held that judicial review by its nature requires that the rules of proceedings governing its practice must be strictly obeyed and adhered to otherwise an application for judicial review will be incompetent ab initio see ***OHAKIM VS AGBAZO (2010)19 NWLR (pt 1226)172.***

Accordingly I have granted the prayer as prayed however the life span of this order expires on 30th November, 2021.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
28/9/ 2019