IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 17TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/1500/2019

MICHAEL ADEJORO …. APPLICANT

AND

COMMISSIONER OF POLICE …. RESPONDENT

RULING

Leave was on 14th May 2019 *inter alia* granted by this Court to the Applicant herein to apply for judicial review.

By Motion on Notice dated 2nd April 2019 and filed on the same date, the Applicant sought the following prayers against the Respondent.

1. *An Order of Certiorari quashing the ruling and/or order of Area Court 1 Gwagwa 1 Abuja (presided over by Hon. A.H. Adamu) delivered in Case No. CR/48/2015 on 26th November 2018 on a No Case Submission filed by the Applicant at the conclusion of the prosecution's case at the Area Court, same ruling and/or order having been most erroneous in law, improper, biased, irrational, clearly offending to the established principles of law and also not supportable by the facts as made out in the prosecution's case.*
2. *An Order of Certiorari quashing the ruling and/or order of Area Court 1 Gwagwa 1 Abuja (presided over by Hon. A.H. Adamu) delivered and/or made in Case No. CR/48/2015 on 20thMarch 2019 by which bench warrant was granted against the Applicant, same ruling and/or order of bench warrant having not been made*

judicially and judiciously and same having been tainted with serious likelihood of bias against the Applicant.

3. *An Order of this Honourable Court releasing or directing the release of the Applicant from detention whether at Nigeria Prison Suleja or some other detention facility, in obedience to the said order(s) of certiorari quashing the said ruling and/or of bench warrant of the said Area Court 1 Gwagwa 1 Abuja (presided over by Hon. A.H. Adamu) as delivered and/or made against the Applicant in the said Case No. CR/48/15.*
4. *And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

It is pertinent to note for the record that prayers numbers 2 and 3 above were withdrawn by the Applicant through his Counsel and accordingly struck out by this Court on 10th March 2022, thus leaving only prayer number 1 (and the omnibus prayer) before this Honourable Court.

The application was brought pursuant to Order 43 Rules 1, 2, 3 and 4; Order 44 Rule 1(a) and (b); Order 44 Rules 6(a) and 5(1), (2), (3) & (4) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 36(1) and Section 272(1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of this Honourable Court.

In support of the application, the Applicant filed a 29 paragraphs Affidavit deposed to by SeyiAdejoro, who is averred to be the Applicant's brother. The Applicant also accompanied his application with his Counsel's written address.

At the hearing of the application, the Respondent was absent, unrepresented and did not file anything in response thereto.

In his written address, the Applicant's Counsel formulated a sole issue for the determination of the instant application to wit;

"Whether the FCT High Court has the power of judicial review and in particular the power to issue or make an order of certiorari to quash any judicial decision, ruling or order of an inferior court such as the Area Court before whom the Applicant is standing trial."

The brief facts of the case (relevant to the prayer before this Court) which can be culled from the affidavit in support, is that the Applicant is standing trial in Case No. CR/48/2015 at the Area Court 1 Gwagwa 1 Abuja on allegation of having committed the offence of theft by servant. That at the conclusion of the prosecution's case, the Applicant had in that criminal trial made a 'no case' submission to which the prosecution replied and the Area Court 1 Gwagwa 1 Abuja (presided over by Hon. A.H. Adamu) delivered its Ruling on 26th November 2018 to the effect that the Applicant's 'no case' submission failed as a *prima facie* case had been established againsthim warranting him to enter his defence. It is the Applicant's averment that the Area Court's said Ruling is erroneous, improper, biased and irrational.

The Applicant's Counsel's submissions in support of his prayer for order of certiorari quashing the aforementioned Ruling/decision of the Area Court is that this Honourable Court has the power to make such an order. He referred this Court to the relevant Rules of this Court and a plethora of decided cases. He urged this Court to see the obvious errors of law and bias shown on the face of the Ruling of the Area Court delivered on 26th November 2018. He stated that despite the Applicant's arguments (in support of his no case submission) to the effect that the prosecution failed to prove the elements of the offence against the Applicant and that the prosecution's case had been discredited under cross-examination, the Area Court did not show how or give reason why it came to the conclusion that a *prima facie* case had been established against the Applicant warranting him to enter his defence. Counsel contended that the Ruling of the Area Court is in fact a far cry from what a ruling on a no case submission ought to be. He urged this Court to issue an order of certiorari quashing what he considers the erroneous ruling of that court.

Before I proceed with the merits of the instant application, let me quickly address the issue of the Respondent's capacity to be sued in the name in which it has been sued.This was raised by this Court at the hearing of this application and the Applicant's Counsel in response thereto had referred this Court to the processes attached to his application on who the Respondent is.

Now the Respondent in this case is the 'COMMISSIONER OF POLICE'.

By virtue of **Section 215(1)(b) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)**, a Commissioner of Police is provided for each state of the Federation and the contingents of the Nigeria Police force in each State shall, subject to the authority of the Inspector General of Police, be under the command of the Commissioner of Police of that State. See also **COP, ONDO STATE & ANOR V. OBOLO (1989) LPELR-20451(CA) AT PP. 19 – 20 PARAS. E-D**.

It follows therefore that the proper way to describe a Commissioner of Police for the purpose of being sued would be to identify the State (in respect of which contingent of the Police force) he is in command of.

The name of the Respondent on record in this application however carries no such description.

I have perused the certified true copies of the processes of the Area Court in Case No. CR/48/2015 which have been annexed as exhibits to the affidavit in support of the instant application. As complainant at the Area Court, it would appear that the Respondent had been therein described exactly as he has been described in this case i.e. without indicating the State of his command. It is however obvious that the criminal proceedings in Case No. CR/48/2015 was commenced against the Applicant here in the FCT-Abuja and there is no misconception amongst parties as to which State Commissioner of Police the complainant therein (who is the Respondent in the instant application) is. The instant proceedings being an application for judicial review of the proceedings of the Area Court in

Case No. CR/48/2015, it is therefore not fundamental that 'FCT' is not indicated in the name of the Respondent in this case.

Now to the main issue in the instant application.

There can be no gainsaying that this Honourable Court has the power to make an order of certiorari removing for the purpose of quashing proceedings of an inferior tribunal or court (such as the Area Court in the instant application) which proceedings may have been conducted prejudicially by abuse of power and are fundamentally erroneous in law on the face of the record. See **Order 44 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018**. See also the cases of **HART V. MILITARY GOVERNOR. OF RIVERS STATE & ORS (1976) LPELR-1355(SC) AT PP. 27 – 28 PARAS. C-A**, **UNILAG& ORS V. UCHE (2008) LPELR-5073(CA) AT PP. 38 – 40 PARAS. B-F**, **ITEIDU & ORS V. OBI & ORS (2009) LPELR-8343(CA) AT PP. 23 – 24PARAS. D-C** and **ANIKE V. NSUDE & ORS (2017) LPELR-42798(CA) AT PP. 13 – 16PARA. D-D**.

It must however be noted that in an application for a writ of certiorari, the Applicant bears the burden of establishing sufficient facts justifying the making of the order. In other words, sufficient materials must be made available on the application to show that the Tribunal/Court whose decision is sought to be quashed had acted without jurisdiction on the face of the record. - **SHYLLON & ANOR. V. UNIVERSITY OF IBADAN (2006) LPELR-7721(CA); (2007) 1 NWLR PT. 1014 P. 1**.

It is not in dispute that the Applicant herein is facing trial before the Area Court 1 Gwagwa 1 Abuja for the offence of theft by servant. I have considered Exhibit 2 (attached to the affidavit to the instant application) which is the Applicant's 'no case' submission made at the conclusion of the prosecution's case in Case No. CR/48/2015. The grounds which the Applicant raised therein for his 'no case' submission are that the prosecution failed to prove the elements of the offence of theft by servant against the Applicant and also that the prosecution's evidence had been so

discredited under cross-examinationthat no reasonable tribunal could safely convict on it.

I have also considered the Ruling of the Area Court 1 Gwagwa 1 Abuja (attached to the affidavit in Support as Exhibit 5) wherein that court simply held that a *prima facie* case has been established warranting the Applicant to enter his defence and that his no case submission had failed.

The mere fact that Area Court 1 Gwagwa 1 Abuja did not exercise its discretion in favour of the Applicant by agreeing with his no case submission does not by itself make the Ruling of the said Court erroneous and liable to be quashed. Neither does the mere fact that the said Court did not give detailed or elaborate reasoning behind its finding that that a *prima facie* case had been established by the prosecution in that case warranting the Applicant to enter his defence.

Now by virtue of **Sections 302, 303 and 357 of the Administration of Criminal Justice Act 2015**, after the hearing of the evidence of the prosecution, if the court considers that the evidence against the defendant is not sufficient to justify the continuation of the trial, the court will record a finding of not guilty without calling upon the defendant to enter upon his defence and such defendant shall thereupon be discharged. Where the 'no case' submission is overruled, the defendant shall be called upon to enter his defence in line with **Section 358 of the Administration of Criminal Justice Act 2015**.

In considering the issues in a no case submission, the court is expected to consider the evidence adduced by the prosecution and the ingredients of the offence charged to determine whether a *prima facie* case has been established against the defendant. It is the same ingredients and evidence which the court is expected to consider (along with the defence if any) at the end of trial to determine whether the offence charged has been proved beyond reasonable doubt against the defendant. There is therefore a real likelihood that if care is not taken, pronouncements will be made and conclusions reached by the court on the evidence adduced by the

prosecution which would have the effect of pre-determining substantive issues at the interlocutory stage of Ruling on a no case submission.

Thus, where the ruling on a no case submission would not put an end to the criminal trial, it is advisable that the Court should not say too much or comment on the evidence thus far led before it so as not to make pronouncements and conclusions that would prejudice the issues in the substantive trial. This position has been strongly affirmed by the Supreme Court in a plethora of decided cases. See the cases of**BELLO V. STATE (1966) LPELR-25291(SC)AT PP. 5 – 6 PARAS. F-C**, **AJIBOYE V. STATE (1995) LPELR-300(SC) AT P. 6 PARAS. A-D**,**EMEDO& ORS V. STATE (2002) LPELR-1123(SC) AT P. 9 PARA. D**, **ADAMA V. STATE (2017) LPELR-42266(SC) AT PP. 45 – 47 PARAS. D-B**and**OKO V. STATE (2017) LPELR-42267(SC) AT PP. 53 – 54**.

The Area Court 1 Gwagwa 1 Abuja therefore did not commit any procedural error whatsoever by refraining from giving detailed reasoning behind his finding that the prosecution had established a prima facie case against the Applicant requiring him to put forward his defence. Besides, there is specifically no indication from the said Ruling that the Area Court Judge refrained from considering the evidence of the Prosecution Witnesses before overruling the no case submission.

It is therefore my view that the Applicant in this case has not identified an error of law, illegality, procedural impropriety or irrationality or bias apparent from the record that makes the Ruling of the Area Court 1 Gwagwa 1 Abuja on his 'no case' submission liable to be quashed by this Court via the order of certiorari sought.

In any case, I have considered the provisions of **Section 289 of the Penal Code** which provides for the offence by servant for which the Applicant is standing trial at the Area Court 1 Gwagwa 1 Abuja in Case No. CR/48/2015. I have carefully perused the record of proceedings of the Area Court 1 Gwagwa 1 Abuja in Case No. CR/48/2015 attached as Exhibit 1 to the Applicant's affidavit in support. I have examined the

entire evidence of the prosecution witnesses in that case i.e. PW1, PW2, PW3 and PW4. I am obliged to say no more in the instant application so as not to pronounce on issues that might prejudice the Area Court's determination of substantive issues in that case. See the case of **HARDROCK CONSTRUCTION ENGINEERING CO. & ANOR V. STATE OF LAGOS & ORS (2018) LPELR-46538(CA) AT PP. 58 – 61 PARAS. B-A** where the Court of Appeal held that even an appellate court should exercise caution not to write a lengthy ruling on a no case submission to avoid inadvertently pronouncing on substantive issues bordering on proof beyond reasonable doubt that would render the trial court prejudicial to continue with the trial.

Pursuant to all the foregoing, I must conclude that the Applicant has failed to establish from the record any error of law apparent in the Ruling delivered on 26th November, 2018 or procedural impropriety from the records by the Area Court 1 Gwagwa 1 Abuja in Case No. CR/48/2015and on his no case submission. The Applicant has thus failed to establish his entitlement to an order of certiorari quashing the said Ruling.

In sum, the instant application for judicial review fails and it is hereby accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

Remigius Ani Esq appears for the Applicant.

Respondent unrepresented.