

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT:28
DATE: 5TH APRIL, 2022**

FCT/HC/ M/4522/2020

BETWEEN

**THE INCORPORATED TRUSTEES OF
THE INTERNATIONAL HUMAN RIGHTS
PROTECTION INITIATIVE**

.....

APPLICANT

AND

- 1. DIRECTORATE OF ROAD TRAFFIC SERVICES**
- 2. THE DIRECTOR, DIRECTORATE OF ROAD TRANSPORT
TRAFFIC SERVICES**

}

RESPONDENTS

RULING

I have carefully perused the Notice of Preliminary Objection filed by the Respondents on the 14th December,2021 seeking an Order of this Court dismissing the Application of the Applicant on grounds of lack of jurisdiction. The Respondents brought this Preliminary Objection pursuant to **Sections 2 (3) (f), 4 and 20 of the Freedom Of Information Act 2011, And Orders 43 Rule 1, 44 Rules 1 and 3 of the High Court of the FCT Civil Procedure Rules 2018** and under the inherent jurisdiction of the Honourable Court.

I have equally gone through the grounds upon which this Preliminary Objection is brought as contained on the face of the Application. The Application is supported by an affidavit deposed to by **Abubakar Liman** of the Directorate of Road Traffic Services Abuja, as well as accompanying exhibits. The Application is further supported by a written address in urging the Court to grant the prayers as contained therein.

The Applicant in response filed a reply on points of law dated 25/1/2022 urging the Court to dismiss the preliminary objection filed by the Respondents.

Having carefully analyzed the arguments of Counsel in light of the Notice of Preliminary Objection, same can readily be narrowed down to a sole issue to wit:

“Whether in the circumstances of the case, this Court has jurisdiction to entertain the Application of the Applicant”.

It is trite law that where in any proceedings, the issue of Jurisdiction is raised, the Court is bound to consider as well as see to the determination of same. Jurisdiction is and remains the life-wire of any Court to determine actions brought before it. The Court in plethora of cases has over time enunciated the need for the Court to hear and determine issues of Jurisdiction before entertaining the substantive matter between parties. The Court of Appeal in further stressing the above point stated in the case of ***EMERALD ENGINEERING SERVICES LIMITED & ANOR V INTERCONTINENTAL BANK PLC. (2010) LPELR-CA/A/38/M/2007*** that:-

“It is trite that the issue of jurisdiction strikes at the root of any cause or matter. Consequently, it raises

the issue of competence of the Court to adjudicate in any particular case."

On what the Court should consider in determining whether or not a Court has jurisdiction to entertain a matter, the Apex Court in the celebrated case of **Madukolu & Ors v Nkemdilim, F.S.C (1962) 11 LLER 1** stated in effect that a court is competent when;

- (1) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another.
- (2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and;
- (3) The case is initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The Court per **BAIRAMAIN, F.J** went further to state that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."

The focal point of the Application brought by the Applicant in this instance is that which falls under the ambit of Judicial review and the rules of this Court has expressly provided the proper mode in which an application for Judicial review should be initiated. **ORDER 44 RULE 3 (1)** of the High Court of the FCT, Civil Procedure Rules 2018, provides as follows:-

"(1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.

(2) An application for leave shall be made ex-parte to the court and shall be supported by: (a) A

statement setting out the name and description of the application, the reliefs and the grounds on which they are sought;

(b) An affidavit verifying the facts relied on and

(c) A written address in support of application for leave.”

It therefore leaves this Court with the all but important question, “whether the Application of the Applicant was initiated through due process of law and all conditions necessary and incidental to the exercise of jurisdiction followed and complied with”.

In answering the above question, it is pertinent to further stress the position of the Courts on issues of jurisdiction. The Court in **OKEKE V SECURITIES AND EXCHANGE COMMISSION & ORS (2013) LPELR-CA/L/13/2009** stated thus:-

“It is trite principle, that the ever recurring vexed issue of jurisdiction is not merely important, but very fundamental. Thus, it ought to be accorded the highest degree of consideration and priority over and above any other issue. This is definitely so, because where a court embarks upon a decision in any given matter without the requisite jurisdiction, that decision is null and void and liable to be set aside...” Per **SAULAWA, J.C.A. (P.31, Paras. B-G)**

Similarly, the Court in **UBA PLC & ORS V ADEMOLA (2008) LPELR-CA/B/130/2005** also submitted thus:

*"It is trite that the issue of jurisdiction is a threshold and is paramount and of great importance in the adjudication of any matter. It is equally trite that once the issue of jurisdiction is properly raised in the adjudication of any matter, it has to be promptly considered and decided upon one way or the other. This is because the existence or otherwise of jurisdiction goes to the very root of the matter." Per **SHOREMI, J.C.A (P.12, Paras D-F)***

The above question therefore in light of the emphasis of the Courts on the need to readily resolve issues of jurisdiction begs for answer. The Applicant brought an Application before this Court for an Application for Judicial review, the Rules of this Court provides the framework by which all processes are to be initiated so as to ensure the Court is clothed with requisite jurisdiction to entertain the matter. The Applicant in his reply on points of law asserted a conflict between the rules of this Court and the Freedom of Information Act, 2011.

It is therefore my considered view ,that while the statutes may direct an application to Court for redress of any issue whatsoever, the rules of Court provide practice directions on how the applications should be initiated before Court, and same ought to be complied with to the latter. The submission of the Applicant that there is a conflict between the Freedom of Information Act and the Rules of this Court was erroneously arrived at and same is dismissed accordingly.

The rules of this Court as earlier pointed gives a direction or procedure in which applications of this nature ought to be initiated before the Court, the Applicant from the facts of this case and from the records before this Court has not complied with a very important and critical condition precedent to

the exercise of jurisdiction by this Court. The Rules of this Court provides for an application for “**leave by an ex-parte application**” before an action of this nature can be initiated, the essence of the above condition precedent is for the Court to satisfy itself that the Applicant has shown sufficient grounds while the leave should be granted so as to prevent actions being initiated in Court without merit and requisite justification.

The above issue and question is further judicially blessed by the Supreme Court in the case of **UTIH & ORS V ONOYIVWE & ORS (1991) LPELR-SC. 160/1988** where the Court per **BELLO, C.J.N. (P.46, Paragraphs. C-D)** stated in effect thus:

"Moreover, jurisdiction is blood that gives life to the survival of an action in a court of law and without jurisdiction; the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise".

Therefore the above issue and question as to whether the Application of the Applicant was initiated through due process of law so as to clothe this Court with requisite Jurisdiction to entertain same is hereby resolved in favour of the Respondents. It is the informed view of this Court that the Applicant failed to comply with the rules of this Court on the proper mode to which actions of this nature are initiated and the failure of the Applicant to comply with a condition precedent deprives this Court of the requisite Jurisdiction to entertain this matter.

The matter is hereby accordingly struck out.

It is imperative to note from the Respondent application it behoaves on a Court of law to take up the issue of jurisdiction first as it is a threshold issue and is indeed intrinsic to adjudication. In that wise a Court of law or Tribunal seized of a matter is bound to examine the statement of claim as made and the Plaint or petition as the case may be to ensure that it is a matter over which it has jurisdiction to entertain see ***NSSPECTRO OIL & GAS VS OLORUMBE (2012) 10 NWLR (PT 1307) 115*** from the process filed by the respondent in this suit initially same have to satisfy the requirement of instituting of the case as provided by order 44 rule 3(1) of the High Court Rules which clearly robs the Court from having jurisdiction to proceed with the case. It should be noted there is a difference between substantive jurisdiction and procedural competence or jurisdiction. All a Court has to do to assume substantive jurisdiction is to look at the reliefs sought in the writ of summons in order to determine whether the subject matter of the suit falls within constitutional and statutory jurisdiction of the Court. See ***REGJD VS SKY BANK PLC (2013) 4 NWLR (pt 1344) 251.*** from the application filed by the Respondent. Order 44 rule 3 (1) is a condition precedent for bringing this application. The Respondent failed to comply with the said requirement thereby robbing the Court of having jurisdiction to entertain this matter based on the above findings. This Court lacks the required jurisdiction to proceeds with the matter accordingly this case is thereby struck out. Primarily based on the facts that Respondent has failed to comply with provision of order 44 rule 3 (1) of the Rules of its Court.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
5/4/ 2020

