

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUIA JUDICIAL DIVISION**  
**HOLDEN AT GUDU-ABUIA**  
**ON THURSDAY THE 19H DAY OF JANUARY 2023.**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. CV/3120/2022**

BETWEEN

1. DR. ERIC OBELE
2. ISAAC OGBAH===== CLAIMANTS

AND

1. CELESTINE EZE
2. UCHE AMULU===== DEFENDANT/APPLICANT
3. LEZ GLOB RESOURCES LTD

**RULING**

The Applicant on the 13<sup>th</sup> day of September 2022 filed this application pursuant to Section 28, 63 and 72 of the Sheriffs and Civil process Act, Order IX Rules 13 and 17 of the Judgment Enforcement Rules and under the inherent Jurisdiction of this Court praying the Court for the following reliefs:

- a. An order of this honourable Court directing the commencement of contempt proceedings against the claimants/respondents and the respondents for their flagrant, continuous and intentional disobedience to the order of this honourable court made on the 7<sup>th</sup> day of July, 2021 wherein this Honourable Court ordered the facts and subject matter of this proceeding shall not be subject to police investigation until final determination thereof.
- b. An order of this honourable court directing the claimants/respondents and the respondents to show cause why they should not be committed to prison for their flagrant disobedience to the process and express order of this honourable court by continuing to act on the same petition and facts that are the subject matter of

this suit instituted by the self-same claimants/respondents to the detriment of the defendants.

- c. An order of this honourable court directing the immediate cessation of the criminal proceedings in charge no:CR/WZ2/29/2022 pending in the Magistrate Court of the Federal Capital Territory, Wuse Zone 2, FCT-Abuja, same being a direct product of disobedience to the order of this honourable Court made on the 7th day of July, 2021 and constituting an affront to the hierarchy of courts, therefore abuse of the judicial process.
- d. And for such other order or orders as the court may deem fit to make in the circumstance.

The Applicant filed grounds as well as a 20-paragraph affidavit deposed to by the Applicant with two Exhibits attached such as the proceeding of this Court of 7<sup>th</sup> of July 2021 and the Charge before the Magistrate Court marked as Exhibit 1 and 2 respectively. Also filed is a written address wherein Applicant raised a sole issue for determination which is “will it serve the end of justice to cite the Claimants/Respondents and the Respondents for contempt following their brazen disobedience to the authority of this Honourable Court”. Arguing the sole issue, Counsel submitted that the Claimants have clearly abused the judicial process by taking the matter already before the Court to the police against the express order of this Court and urged the Court to grant the prayers as sought.

In opposing the application, the 1<sup>st</sup> and 2<sup>nd</sup> Claimants filed a counter affidavit of 34 paragraphs and attached 4 exhibits marked as Exhibits Isaac 1, 2, 3 and 4. Also filed is a written address wherein Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Claimants raised two issues for determination thus:

1. Whether the motion on notice for order of commencement of committal proceedings filed against the Respondents pending before this Court is competent.

2. Whether the Respondents herein have disobeyed any order of this Honourable Court that Could be tantamount to contempt of Court.

Arguing issue 1, Counsel submitted that the procedure provided by the law on committal proceedings must be complied with and the Applicant has failed to comply with same hence, the committal proceeding is a nullity and urged the Court to so hold.

Arguing the second issue, Counsel contended that the Claimants/Respondents have never flouted the orders of this Court and the allegations against the Respondents are unsubstantiated by the Applicant for the Applicant to be entitled to the reliefs sought and urged the Court to refuse the applicants claim in the interest of justice and award cost against the Applicant.

I have examined the totality of the Applicant's motion, affidavit, written address and exhibits before me, I have also considered the counter affidavit, exhibits and written address filed by Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Claimants and before the Court decides whether or not the Applicant is entitled to the reliefs as sought, this Court will deal with the issue of competency raised by Counsel to the Respondents. The Respondents in this case are challenging the Applicant's application for failing to follow the laid down procedure on the commencement of contempt proceedings.

The law is very well settled that where there is a non-compliance with a stipulated precondition for setting a legal process in motion, any suit instituted in contravention of the condition precedent, is incompetent and a Court of law, is for that reason, lacking in jurisdiction/power to entertain it. See the case of ORAKUL RESOURCES LIMITED & ANOR v. NIGERIAN COMMUNICATIONS COMMISSION & ORS (2022) LPELR-56602(SC) (Pp. 26-29 paras. D). Hence, it is imperative that this issue of competency be dealt with before proceeding with the crux of this application.

The crux of this application is on the alleged contempt of the order of this Court by the Respondents. The law is trite that any decision whether an

order or a judgment delivered by a Court must be obeyed save it is set aside and disobedience to any order of Court amounts to a violation of the law and such party in violation is said to be in contempt.

Per Saulawa, JCA in Jegede V. Puroye&Ors (2016) LPELR-41292 (CA) (Pp. 64) paras C held thus;

“Instructively, committal quo contempt proceedings are sui generis, duly governed under a distinct rules of procedure peculiar thereto”.

The Sheriff and Civil Process Act, LFN 2003 in Section 72 and Order 9 Rule 13 of the Judgment Enforcement Rules governs the punishment and procedure for contempt being contemplated in this instant suit. For clarity, Section 72 of the Sheriff and Civil Process Act provides thus

“If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in paragraph (f) of section 66 of this Act, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs.

Order IX Rule 13 of the Judgment Enforcement Rules sets out the procedure for the commencement of committal proceedings. The said provision provides thus:

- 1. When an order enforceable by committal under section 72 of the Act has been made the registrar shall, if the order was made in the**

absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of an injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order endorsed with a notice in Form 48, and the copy so endorsed shall be served on the judgment debtor in like manner as a judgment summons.

2. If the judgment debtor fails to obey the order the registrar on the application of the judgment creditor shall issue a notice in Form 49 not less than two clear days after service of the endorsed copy of the order, and the notice shall be served on the judgment debtor in like manner as a judgment summons.
3. On the day named in the notice the court, on being satisfied that the judgment debtor has failed to obey the order and, if the judgment debtor does not appear-
  - a. that the notice has been served on him; and
  - b. if the order was made in his absence, that the endorsed copy thereof has also been served on him, may order that he be committed to prison and that a warrant of commitment may issue.

From the above provisions, once it is clear that an order has been disobeyed, the judgement enforcement rules has laid down the processes of enforcing such disobedience. The first step is to make an application to the Registrar of Court for the issuance and service of Form 48 which should

have the order said to be flouted attached to it. The purpose of the issuance and service of Form 48 is to serve as a notice of the consequences of the disobedience of the Court order. Upon service, if the alleged contemnor refuses to comply with the order, the party that sought the issuance of the form 48 would then apply to the Registrar for Form 49 after which the party can then approach the Court via motion on notice for an order for committal with the accompanying documents. The question that begs to be answered at this point is did the Applicant comply with the laid down procedure required for the commencement of committal proceedings. For this Court to determine whether or not the initiation of this committal proceedings is competent, this Court would look at the contents of the case file particularly the Form 48 and 49. Form 48 was filed on the 17<sup>th</sup> day of June 2021 and issued by the Registrar on the 12<sup>th</sup> day of October 2022. The said Form 48 was served on the 2<sup>nd</sup> Claimant. Form 49 was issued on the 25<sup>th</sup> day of October 2022 and the affidavit of service of Form 49 is dated 8<sup>th</sup> November 2022. The said Form 48 served on the Respondent falls short of the required procedure provided for in Order 9 Rule 13 as a copy of the Form 48 was not endorsed with the order said to be flouted. There is nothing before me to show that the Respondents were served with the Form 48 endorsed with the order of this Court of 7<sup>th</sup> July 2021. The aim of attaching the order said to be flouted is to give the contemnor an opportunity to do the right thing or get in line with the said order and avoid the punishment of the Court. It is immaterial that the alleged contemnor was present when the said order was granted as the said Form 48 with the attached order acts as a reminder of the court order which if continuously flouted, amounts to contempt.

In the case of Akpan Vs Akpan (1996)7 NWLR (Pt.462)620 at 626, my Lord Niki Tobi JCA (as he then was) held:

*"Since contempt proceedings affect the liberty of the individual, the law expects strict compliance with the*

*procedural rules. Therefore, where there is the slightest deviation or non-compliance with the rules, a Court of law must exercise its discretion in favour of the contemnor. This is because the law cannot afford to gamble with the liberty of the individual."*

The Court in *F.C.D.A. Vs Koripamo- Agary* (2010) 14 NWLR (Pt.1213) 377, held that any irregularity in procedure for committal is a fundamental flaw which vitiates the entire application. Also, in the case of **Okwueze Vs Ejiofor(2000)15 NWLR (Pt.690) 389 at 407**, the Court held that the issuance of the two Forms i.e. Forms 48 and 49, by the Registrar of the Court is sustained desire to remind the person against whom the two Forms were issued of two things, Firstly, that a Court order exists which the party was commanded to obey. Secondly, by Form 49 such a person is notified that legal machinery to enforce the order of the Court would therefore be commenced against him. That is the essence of issuance of the two Forms.

Service of the Forms is an intrinsic part of the commencement of committal proceedings and the Court in the case of **Archibong& Anor V. Okon& Anor (2016) LPELR-42065 (CA)** held that failure to serve Forms 48 and 49 in contempt proceedings vitiates the entire application as such committal proceedings affects the freedom and liberty of the contemnor.

The Court in **MANDARA v. ALI & ANOR (2020) LPELR-51460(CA) (Pp. 39-40 paras. E) Per SANKEY, J.C.A** held

*".....the procedure by which the contempt proceedings were commenced was also faulty. It is not disputed that prior to the filing of the application, the Respondents did not serve the requisite Forms 48 and 49 on the Appellant. Thus, the conditions precedent to the commencement of the action, as enshrined in the Sheriffs and Civil Process Act, were undoubtedly not met,*

*especially as the contempt was said to have been committed ex facie curiae”*

See also **ENOSEGBE v. ENIZODE-AIWIZE & ORS (2021) LPELR-54200(CA) (Pp. 87-88 paras. C)**

In this instant case, not only were all the Respondents not served with the said Forms, but the Respondent so served were served with a defective Form 48 as the Form 48 which falls short of the prescribed procedure of attaching the order as provided for in the Judgment Enforcement Rules, hence, the application before me is fundamentally defective and I so hold.

Having held that this application is fundamentally defective, going into the other issues raised by both counsel in the processes before me will be an academic exercise in futility.

Consequently, this application is hereby struck out.

**Parties:** Plaintiffs, 1<sup>st</sup> and 3<sup>rd</sup> defendants are absent. 2<sup>nd</sup> defendant is present.

**Appearances:** F. C. Ugwu appearing for the Claimant. Nina Nwagbo appearing for the 1<sup>st</sup> and 3<sup>rd</sup> defendants. Uche Amulu appearing in person as 2<sup>nd</sup> defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI  
JUDGE  
19<sup>TH</sup> JANUARY 2022**